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국제학석사 학위논문

Case Studies of Countervailing Duty
Measures Filed on India by the United
States and the European Union, and Its
Implications for South Korea's CVD
utilization

미국 및 유럽연합의 對인도 상계관세 사례연구 및 향후
한국의 상계관세 활용 관련 시사점

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서울대학교 국제대학원
국제학과 국제통상전공
김문주

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지도교수 안 덕 근

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Abstract

Case Studies of Countervailing Duty Measures Filed on India by the U.S.A. and the European Union and Its Implications for South Korea's CVD Utilization

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Countervailing duty or anti-subsidy measure had been mostly utilized by countries with power such as the United States and the European Union in the past. Today, however, many emerging countries, especially India, are increasingly utilizing it as their trade remedy measure more and more while Korea has never utilized it before in its history. As India has never been an easy trading partner to many countries, especially for Korea, such recent change in India cannot be welcomed to the rest of the world.

In 2019, India initiated its first anti-subsidy investigation on Korea concerning imports of Styrene Butadiene Rubber originating in Korea which was recently decided by the Central Government of India not to impose countervailing measures as of March 2021. Korean products have been subject to the second most numerous anti-dumping investigations by India, that is after China. Given that Korea is merely the 8th largest trading partner of India accounting for three percent of its total trade volume, whereas China is India's major trading country accounting for 14% of its entire trade volume, India has been particularly harsh on Korean products. Despite the effort of two countries to have free and harmonized trade by signing Korea-India CEPA, India's frequent application of trade remedy measures against products originating in Korea have brought difficulties for many Korean exporters to expand their market into India.

Today India is already the fifth country for filing the most CVD measures in the world, which is growing at a rapid rate, despite the fact that it had its first final finding in 2016. Until several years ago, India used to be only a victim of

frequent CVD measures taken by other countries, mainly United States, and the European Union, the two of their main trading partners.

The United States currently imposes the most CVD measures on Indian imports, which is tallied up to 26 CVD measures as of July 2021. As a single country, the US is the largest goods export market for India accounting for about 16% share. Recently, the U.S. government has taken off India from the preferential list, which puts India in a vulnerable position for the future incoming AD and CVD measures against India. As for the European Union, it is the largest trading partner for India. The EU has four ongoing CVD measure upon Indian products. It has initiated its first CVD investigations against India in 1997 and has continued its imposition.

This paper looked into the ongoing CVD cases initiated by the US and the EU against Indian products that have been found to be countervailable, and will answer the following questions: What are the CVD cases that have been investigated on products originating in India by the U.S. and the EU that are found to be countervailable? Are there any product lines or industry in India that are frequently accused of CVD measures? How had Indian government dealt with the CVD measures imposed on the country? What are the commonly used export incentives granted by the Indian government? What can be the implications for Korea based on the analysis of CVD cases by the EU and the US? How much is Korea importing the Indian products that have been accused of being countervailable by the US or/and the EU? Will it be possible that Korea is also being injured from its imports of the very same products from India? What can these findings imply to Korea's potential CVD utilization? Answering these questions will not only facilitate the understanding of India's subsidy schemes that have been frequently accused of CVD measures, but also throw lights on Korea's potential CVD measure utilization.

Key words: Countervailing Duty(CVD), India, the United States, the European Union, India's Subsidy

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I. INTRODUCTION

1.1. Background and Significance of the Study

CVD measures used to be something countries with power made use of in the past as it takes a longer time, requires more resources, leading to a high threshold to initiate the investigation. But that story was only applied in the past. In recent years, emerging countries such as India, South Africa, Chinese Taipei, Egypt, Brazil etc. have initiated several investigations of CVD, pouring fuel on the fire where trade protectionism is widespread than ever before, especially with the outbreak of the Covid-19.

Korea is heavily dependent on its trade performance for its economy as it accounts for about 70% of the GDP, which is followed by frequent accusation towards Korea for both AD and CVD measures by other countries. In fact, Korea is the second and the third most recipient country for AD and CVD measures respectively while, oddly, Korea never filed one single CVD measure in its history.

Today India files the most numerous AD measures across countries while it also receives a large number of CVD measures from other countries too. According to WTO data, for the past 25 years from 1995 to 2020, India has received 91 CVD measures, which makes India the second most recipient for CVD. The United States and the European Union are the two of the major countries that file most of the CVD measures India receives. Looking into the CVD cases they filed against products originating in India will not only help understand India's different subsidy programs, but also give the ideas of the potential products that might have been imported into Korea when it was found to be countervailable.

1.2. Purpose of the Study

The first part of the paper analyzes the CVD cases against products originating in India that have been found affirmative by the United States and the European Union, with a focus on Indian subsidy programs. It is important to first understand different types of subsidies that India makes the most use of. Based on the arguments made from each party on each subsidy program found to be countervailable, the paper points out some of the repeating arguments from multiple cases for certain subsidy programs. The second part of the paper reviews the cases in relation to Korea by looking into the trade flow of each product between India and Korea to see Korea's trade dependence on India for each product. It was found that regarding the trade flow of all eight products dealt in this paper, Korea was clearly an importing side. Especially Korea was importing a great amount of Carbazole Violet Pigment 23, Polyester Textured Yarn, and Graphite Electrode systems from India. For the first two products, the US has imposed both AD and CVD measures. Also, the EU has continued its imposition of AD and CVD measures to Graphite Electrode systems since 2004 when Korea has been importing tens of millions of dollars' worth of the very same product from India. There is currently no ongoing investigation in Korea but there is a necessity to look into it further if Korea has suffered any material injury arising from India's countervailable subsidies.

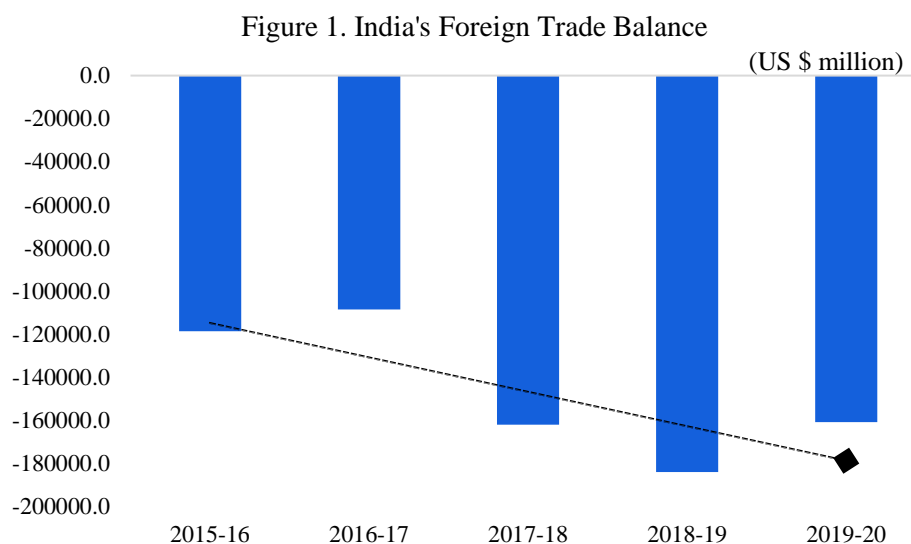
The purpose of this research is to throw light on the need for introducing CVD measures in Korea by studying different types of subsidies of India and its cases. After discussing arguments for countervailable subsidies, it aims to find a potential correlation to Korea's import of each product from India. Based on the analysis,

the paper suggests implications for Korea's potential utilization of CVD measures against India.

II. INDIA'S TRADE OVERVIEW

2.1. India's Trade Status quo

As a nation with world's 5th largest economy in terms of nominal GDP, India is increasingly becoming an important trading partner for many countries. According to the data from Reserve Bank of India, from April 2019 to March 2020, India had total exports value of USD 313.1 billion and imports value of USD 473.9 billion, leading to a negative trade balance of USD 160 billion. This figure is an improvement from the previous year with a negative USD 184 billion while some economists estimated the main contributing factor is, in fact, decreased imports due to Covid 19.

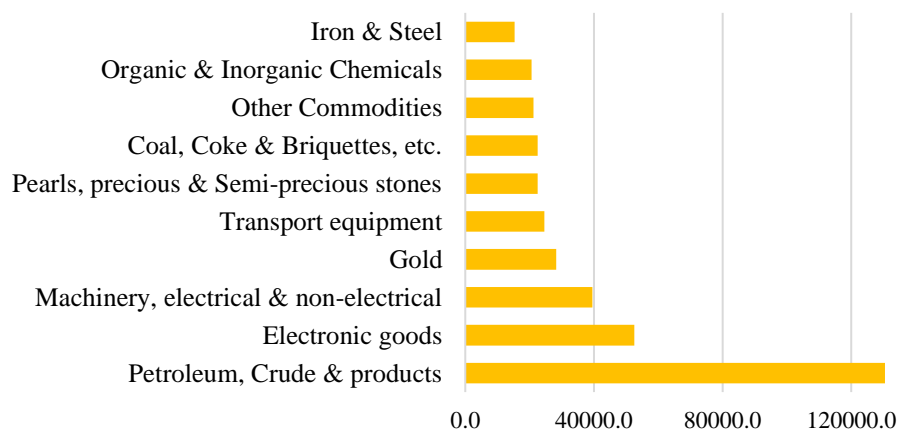


Source: Reserve Bank of India

According to the data from Department of Commerce of India, India's top export partners from April 2020 to February 2021 are United States with USD 45.9 billion, followed by China with USD 18.5 billion, and United Arab

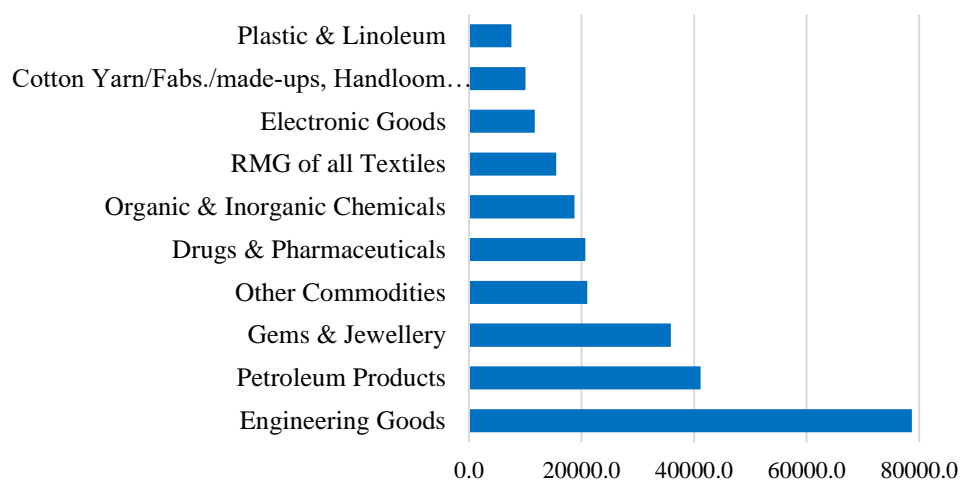
Emirates with USD 14.5 billion. The export to United States has decreased by approximately USD 7 billion, while India's export to China has increased by USD 2 billion. Its top import partners are China with USD 58.3 billion, followed by United States with USD 24.9 billion, and United Arab Emirates with USD 22.9 billion. India's import from the three major partners has decreased by USD 7 billion, USD 11 billion, and USD 7 billion, respectively. Its top exporting commodity is petroleum, crude & products, followed by electronic goods, and machinery, electrical & non-electrical goods. India's top importing commodity is engineering goods, followed by petroleum products, and gems & jewelry.

Figure 2. India's Top 10 Import by Commodity from April 2019-March 20



Source: Department of Commerce, Government of India

Figure 3. India's Top 10 Export by Commodity from 2019-20



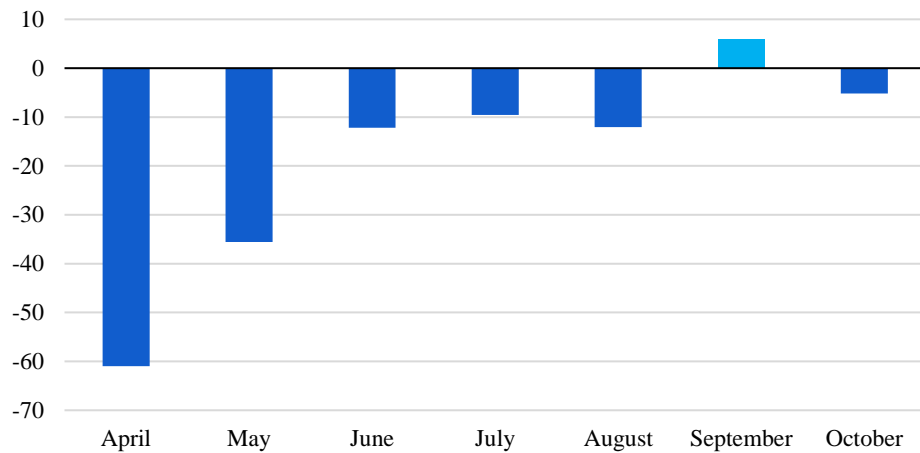
Source: Department of Commerce, Government of India

India is the second largest exporter, after European Union, of telecommunications, computer, and information services. Also, in terms of fish and fish products, India saw the biggest increase in world rankings than any other countries, as India rose nine places between 2010 and 2019, rising to 15th position. In 2010, India used to be world's 24th largest trader. This is mainly due to increase in demand from China as the improvement in its living standards brought a dramatic increase in demand. In addition, India is the third largest exporter of textiles with USD 17 billion value with its world share of 5.6 percent which is next to China(39.2%), and European Union(21.7%) in 2019.

Last year was a tough year as most countries went through an unprecedented disruption to the global economy and world trade due to Covid-19. In April 2020, while merchandise exports were down sharply in most economies from Covid-19 outbreak, India, particularly, saw 60 percent decline compared with

the previous year's record. Korea saw 25 percent drop. However, the table below suggests that India has shown an improving trend ever since its sharp decrease in April 2020. While services were also hit hard in most countries by the COVID-19 outbreak, India saw one percent growth in March 2020 while most other countries saw decline. The service sector, the largest recipient of FDI, contributes almost 70% to India's GDP growth.

Figure 4. Month-wise Year on Year Growth(%) of Indian Exports from April to October 2020



Source: Annual Report 2020-21, Department of Commerce

2.2. Overview of India's trade policy by sector

2.2.1. Agriculture

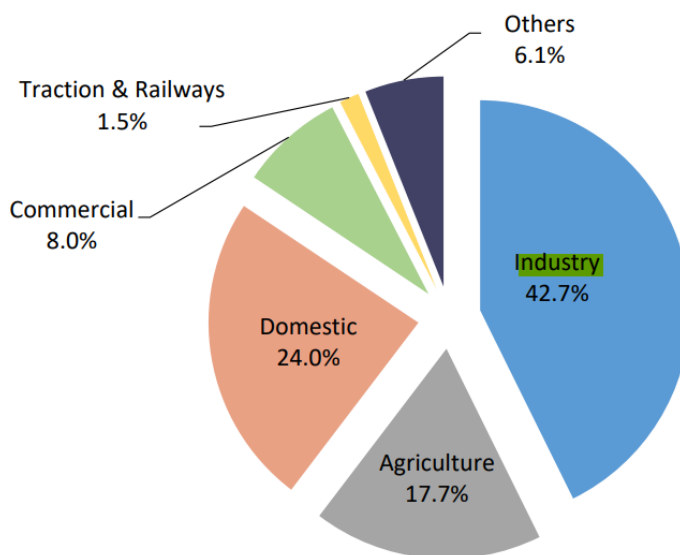
Agriculture accounts for 16% of GDP while its share of total employment is over 40%. India maintains price controls especially for agricultural products, such as LPG cylinders, natural gas, fertilizer, and drugs, under various mechanisms in order to ensure food security, and reduce poverty. The government provides support to its domestic farmers for inputs such as water, electricity, seeds, and fertilizers; minimum support prices; and marketing and transport. In addition, at the border, import and export restrictions, TRQs, state trading, and minimum import prices are applied. However, in December 2018, the government introduced a new policy called Agriculture Export Policy(AEP)¹ as it acknowledges that frequent use of export and import restrictions tends to reduce certainty in policy. The AEP aims to provide assurance that processed agricultural products and organic products will not be subject to export restrictions, while imports of agricultural products will be liberalized for the purposes of value-added production and export of processed goods.

¹ The objectives of AEP are to increase agricultural exports to reach a value of around USD 60 billion by 2022 and USD 100 billion in the following few years; to diversify exports and destinations, and boost high-value and value-added exports, including a focus on perishable products; to promote novel, indigenous, organic, ethnic, traditional and non-traditional agriculture exports; to provide an institutional mechanism for pursuing market access, tackling barriers and dealing with SPS issues; and to strive to double India's share in world agricultural exports by integrating with global value chains and enabling farmers to benefit from export opportunities in overseas markets.

2.2.2. Energy

In India, the third-largest producer and consumer of electricity in the world, both the central and state governments supervise the electricity sector. The Ministry of Power formulates the National Electricity Policy and the Tariff Policy, following the advice of the Central Electricity Authority (CEA) and the states. The CEA formulates the National Electricity Plan to implement the Policy's objectives. Other central government agencies that intervene in the energy sector include the Ministry of New and Renewable Energy (MNRE); and the Department of Atomic Energy.

Figure 5. Consumption of Electricity by Sectors during 2019-2020



Source: Ministry of Statistics and Programme Implementation, Energy Statistics (several years). Viewed at: http://mospi.nic.in/download-reports?main_cat=NzI2&cat=All&sub_category=All

India offers other financial and fiscal incentives to assist enterprises and to promote the use of renewable energy. Industrial "units", including MSMEs, were offered assistance by the states, such as refunds on electricity bills, and exemption and reimbursement of local electricity taxes. Goods imported for electricity-

generation projects are exempt from customs duties or are subject to concessional rates of duty of 2.5% and 5%. In addition, profits from thermal electricity projects, established before 2017, may be deducted from taxable income, for 10 consecutive years during the first 15 years of operations. According to the authorities, no other fiscal incentives were granted during 2015-20.

Under the Electricity Act, 2003, a Renewable Purchase Obligation (RPO) was established to further promote the use of renewable energies. In 2018, the Ministry of Power stipulated that, under the RPO, 21% of the total electricity supplied by 2021/22 must be from renewable sources of energy. In addition, financial assistance is provided by the Central Government to increase small-hydro, biomass, and solar electricity generation. Financial support is also granted to small-scale off-grid renewable energy projects, such as the installation of solar panel roof-top systems, to meet the demand of isolated households.

2.2.3. Manufacturing

Trade is a vital aspect of India's development strategy. Recently, India has announced its plans for the Indian economy to reach USD 5 trillion by 2024-25 by boosting investment and improving trade performance. While India achieved a record-high FDI inflow of USD 74.39 billion in the financial year 2019-20, trade performance is not so rosy as it strives to be. Despite robust performance of service sectors, manufacturing sector showed a weak performance. The share of the manufacturing sector in India's GDP decreased to 15.1% in 2019/2020. Textiles and clothing play a significant role as they account for 11.4% of merchandise exports, and 2% of GDP.

Furthermore, India has the third-largest automobile market in Asia while the sector has been relatively shielded through high tariffs. The Automotive Mission Plan, 2026 aims to make the sector a driver of the Make in India program, become a significant contributor to the Skills India program, and increase exports. The average MFN tariff in 2020/21 for motor vehicles (HS 8703) was 51.25%, with considerable variation between rates for automotive parts and completely built up units.

As one of its efforts to foster its manufacturing trade, India implements the National Manufacturing Policy(NMP) with an aim to increase the share of manufacturing in GDP to 25% by 2022 by developing skills, facilitating financing for SMEs, and increasing demand for manufacturing and infrastructure through government procurement. Also, the Government announced a reform, called Aatma Nirbhar Bharat, to position the country as an efficient manufacturing destination to attract investment by encouraging entrepreneurship and innovation, through an efficient plug and play infrastructure and utilities environment, and further simplified approval processes, for businesses.

2.2.4. Services

Services can be divided into three sections: financial services that include banking and insurance, telecommunication services, transport services that include air transport, maritime and transport, and lastly, tourism.

The banking sector consists of 12 public sector banks (PSBs)128, 22 private sector banks, 46 foreign banks, 45 regional rural banks (RRBs), and 1,541 urban banks and 397 rural cooperative banks. There is also a large number of non-banking financial institutions (NBFCs). Foreign investment is restricted to 74% of

the paid-up share capital of the bank. For investment in the PSBs, the limit is up to 20% with prior government approval. Regulatory responsibility for the sector lies with the RBI under the Reserve Bank of India Act, 1934, and the Banking Regulation Act, 1949. The RBI regulates commercial banks, urban cooperative banks, financial institutions, and NBFCs, under the guidance of the Board for Financial Supervision (BFS). To operate in India, domestic and foreign banks must be granted a licence by the RBI. Until 2016, the RBI issued new private bank licenses on a periodic basis. Since then, private banks may apply for licenses at any time. On 12 February 2018, the RBI published the Revised Framework for the Resolution of Stressed Assets, which requires banks to identify defaults on loan accounts immediately, by classifying the stressed assets as "special mention accounts", and put in place board-approved policies for the resolution of such stressed assets under the Framework.

India is the world's second-largest telecom and Internet market. Telecom services are regulated mainly by the Indian Telegraph Act, 1885; the Indian Wireless Telegraphy Act, 1933; the Indian Telegraph Rules, 1951; and the Telecom Regulatory Authority of India Act, 1997. In 2018, National Digital Communication Policy (NDCP) has been launched to promote India's integration into the global digital economy. NDCCP aims to (i) provide universal access and ensure high-quality access to broadband services; (ii) attract investment to stimulate innovation in digital technologies (i.e. 5G) and manufacturing (e.g. semi-conductors); and (iii) promote local manufacturing and IPRs through the procurement of domestic goods and services with domestically owned IPRs

Roads are main modes of transportation as 69% of India's freight is transported by road. In 2017, the Central Government launched the Bharatmala Pariyojana

program to promote efficiency in the transportation of freight by road, by developing road corridors, expressways, and port connectivity. Incentives are provided to promote the development of transport-related infrastructure. For instance, until 2017, investors in projects related to roads, highways, ports, airports, and inland waterways were granted a 100% tax holiday for 10 consecutive years during the first 20 years of the project's operation. The Central Government continues to finance the cost of transporting goods and raw materials from remote areas via air, inland waterways, and rail, through several schemes. Some of the schemes are Northeast Industrial Development Scheme (NEIDS), Industrial Development Scheme for Jammu and Kashmir, and LANIDS, all of which provide 20% or 33% of assistance.

As for tourism, it is not regulated by the Central Government as India has no legislation to regulate tourism at the central level. The Ministry of Tourism (MOT) formulates and implements the national tourism policy. The global media campaign, "Incredible India!", has been initiated to support India becoming a "365-day destination." As one of its efforts, India has improved its e-visa facility which enabled nationals of 171 countries to apply for e-visas in 28 international airports and 5 cruise terminals.

III. CASE STUDY – THE UNITED STATES

3.1. Background: Trade Relations with India

According to a report from Congressional Research Service, the bilateral trade is about 3% of U.S. world trade; India is the United States' 12th largest goods export market. For India it is more consequential. The U.S. has been the single largest goods export market for India (17% share) and third-largest goods import supplier (7%), after China (14%) and the European Union (9%) in 2019. U.S. goods imports from India totaled \$57.7 billion in 2019, up 6.3% (\$3.4 billion) from 2018, and up 172.6% from 2009. U.S. imports from India account for 2.3% of overall U.S. imports in 2019 (Akhtar & Kronstadt, 2020).

According to United States Trade Representative(USRT), the U.S. goods trade deficit with India was \$23.3 billion in 2019, an 11.6 percent increase (\$2.4 billion) over 2018. U.S. goods exports to India were \$34.4 billion, up 2.7 percent (\$907 million) from the previous year. Corresponding U.S. imports from India were \$57.7 billion, up 6.1 percent (*2020 National Trade Estimate Report*, 2020, p. 237).

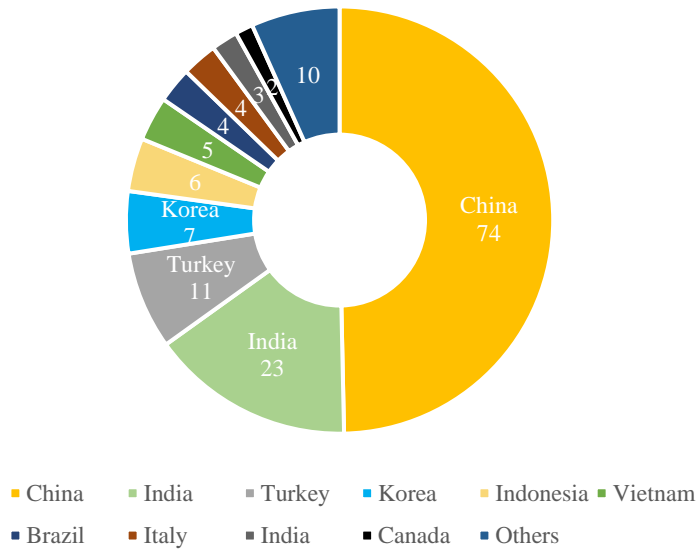
The United States and India view each other as valuable strategic partners with great potential for more growth. However, India has not been an easy trading partner for the United States, but rather, challenging. When the Trump Administration imposed the 25% steel and 10% aluminum tariffs based on Section 232 in 2018, India opposed and warned that India will apply retaliatory tariffs against U.S., which India repeatedly delayed applying, in hopes to solve this bilaterally. But, when U.S. took away India's eligibility for a U.S. trade preference program effective as of June 2019, India imposed tariffs ranging from 1.7% to 20%

on a wide range of products imported from U.S. that affected \$1.32 billion U.S. exports, such as nuts, chemicals, apples, and steel. U.S. Generalized System of Preferences (GSP) used to provide India nonreciprocal, duty-free tariff treatment. In 2018, India was the largest beneficiary of GSP which allowed over one-tenth (\$6.3 billion) of Indian goods exports to U.S. duty free (Akhtar & Kronstadt, 2020).

The top export categories (2-digit HS) in 2019 were: mineral fuels (\$8.2 billion), precious metal and stone (diamonds) (\$6.4 billion), aircraft (\$2.8 billion), machinery (\$2.4 billion), and organic chemicals (\$1.9 billion). Corresponding top U.S. imports categories (2-digit HS) in 2019 were: precious metal and stone (diamonds) (\$11 billion), pharmaceuticals (\$7.6 billion), machinery (\$3.7 billion), mineral fuels (\$3.6 billion), and organic chemicals (\$2.8 billion) (*U.S.-India Trade Facts*, 2020).

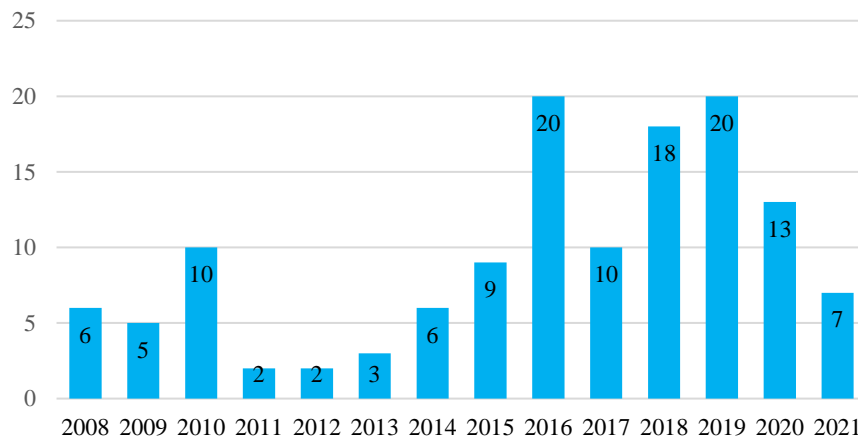
3.2. US's CVD measures status quo

Table 6. U.S. CVD Measures in Force by Countries
(as of March 2021)



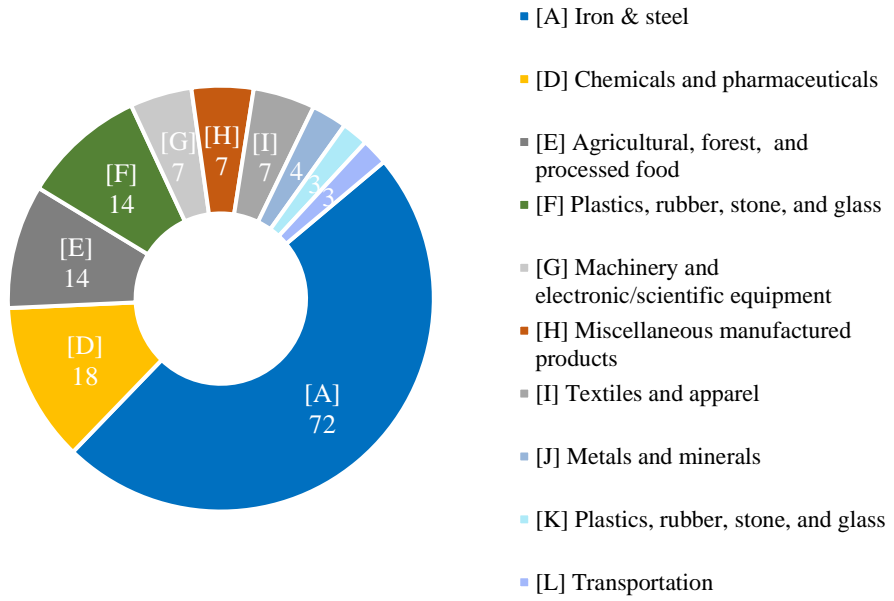
Source: USITC

Table 7. U.S. Number of CVD Initiation by Year



Source: WTO Data

Table 8. US CVD Measures in Force by Product Groups
(as of March 2021)



Source: USITC

3.3. US's CVD measures in force towards India

< Table 1> Current CVD measures in force by U.S.A. against India by product groups (as of April 27, 2021)

| | Product Group | Products | Order date | Continued Date |
|----|----------------------|--|-------------------|-----------------------|
| 1 | AG* | Lined paper** | 2006-09-28 | 2018-03-06 |
| 2 | CH* | Glycine** | 2019-06-18 | |
| 3 | | Commodity Matchbooks** | 2009-12-11 | 2020-11-03 |
| 4 | | Carbazole Violet Pigment 23** | 2004-12-29 | 2015-11-17 |
| 5 | | Polyethylene terephthalate (PET) film** | 2002-07-01 | 2014-08-06 |
| 6 | | Sulfanilic acid** | 1993-03-02 | 2017-05-09 |
| 7 | ISM* | Fluid End Blocks | 2021-01-25 | |
| 8 | | Cold-Rolled Steel Flat Products** | 2016-09-20 | |
| 9 | | Corrosion-Resistant Steel Products** | 2016-07-25 | |
| 10 | | Hot-rolled carbon steel flat products** | 2001-12-03 | 2014-02-07 |
| 11 | | Carbon steel plate** | 2000-02-10 | 2018-03-12 |
| 12 | ISO* | Carbon and Alloy Steel Threaded Rod** | 2020-04-03 | |
| 13 | | Stainless Steel Flanges** | 2018-10-05 | |
| 14 | | Finished Carbon Steel Flanges** | 2017-08-24 | |
| 15 | | Prestressed concrete steel wire strand** | 2004-02-04 | 2020-11-02 |
| 16 | ISP* | Forged Steel Fittings** | 2020-12-04 | |
| 17 | | Large Diameter Welded Pipe** | 2019-02-28 | |
| 18 | | Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel** | 2018-02-01 | |
| 19 | | Welded Stainless Pressure Pipe** | 2016-11-17 | |
| 20 | | Oil Country Tubular Goods** | 2014-09-10 | |

| | | | | |
|----|--------------|--------------------------------------|------------|--|
| 21 | PRSG* | Quartz Surface Products** | 2020-06-15 | |
| 22 | | New Pneumatic Off-the-Road Tires** | 2017-03-06 | |
| 23 | | Polyethylene Terephthalate Resin | 2016-05-06 | |
| 24 | TX* | Polyester Textured Yarn** | 2020-01-06 | |
| 25 | | Fine Denier Polyester Staple Fiber** | 2018-03-16 | |
| 26 | MM* | Common Alloy Aluminum Sheet | 2021-04-27 | |

Source: USITS

*AG: Agricultural, forest, and processed food products

*CH: Chemicals and pharmaceuticals

*ISM: Iron & steel: Mill products

*ISO: Iron & steel: Other products & castings

*ISP: Iron & steel: Pipe products

*PRSG: Plastics, rubber, stone, and glass products

*TX: Textiles and apparel

*MM: Metals and minerals

()**: Products with both CVD and AD duty measures

3.3.1 Carbazole Violet Pigment 23 (CVP 23)

1) Pre-Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or “packing credits,” to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes (i.e., purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Companies may also establish pre-shipment credit lines upon which they can draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of not more than 180 days.

Alpanil argued that this program was not used for its sales destined for the United States, though it had pre-shipment loans outstanding during the POR. However, Alpanil did not demonstrate that such loans were only destined for shipments to countries other than the United States. Also, the Department found that the export financing is countervailable to the extent that the interest rates set by

the GOI are lower than the rates exporters would have paid on comparable commercial loans.

The Department considered the benefit conferred to be the difference between the amount of interest the company paid on the government loan and the amount of the interest it would have paid on comparable commercial loans. As pre-shipment export financing is not tied to exports of subject merchandise, the Department calculated the subsidy rate for these loans by first subtracting the interest Alpanil actually paid on its pre-shipment export loans from the interest Alpanil would have paid using the short-term benchmark rate. By summing these differences to determine the total benefit from the program and dividing the benefit by the value of Alpanil's total exports during the POR, the Department determined the net countervailable subsidy from pre-shipment export financing for Alpanil to be 0.80 percent ad valorem during the POR (Andersen, 2010).

2) Duty Entitlement Passbook Scheme (DEPS/DEPB)

In response to the Department's final determination for imposing CVD measures on CVP 23, the GOI made several arguments and the Department responded as follows.

First, import duty exemptions for inputs in exported products are not countervailable so long as such exemption is only applied to inputs consumed in the production of the exported product, making normal allowances for waste. However, the government must have a system in place to confirm which inputs are consumed in the production of the exported products and in what amounts. The system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export. If such a system

does not exist, or is not applied in an effective measure, 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.

The GOI argued that a committee has been established to review how All Industry Rate of drawback is based on taking essentially averages of values of duties on materials, and how the GOI takes into account the extent to which these duties may not have been paid or already rebated or refunded. When the Department requested for a documentation to see specifically how the procedures confirm which inputs are consumed in the production of exported CVP 23 and in what amounts including waste, the GOI did not provide documentation to support its claim. Also, the GOI reported that the Committee visits manufacture exporter units for first-hand knowledge of the manufacturing process and observe the site. However, when the Department requested for information on the number of audits and site visits the GOI reported that the committee has not visited manufacture unit in this case. The Department concluded that it is not enough to just state that there is an effective system in place, and that such system must be implemented and supported with documentation.

Also in accordance with 771(5)(D)(ii) of the Act, rebated duties represent the revenue of the GOI forgone. As the GOI has not supported its claim that India's DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product, we determine that the entire amount of the import duty rebate earned during the POR constitutes a benefit under 19 CFR 351.519(a)(4). In addition, since the program is only

available to exporters, the Department determines that the DDB Program is specific under section 771(5A)(B) of the Act.

The GOI also contended that the DEPBS is not countervailable under SCM Agreement, bringing up WTO a case of DS486 to the table. However, the Department replied that findings of the WTO dispute panels and the Appellate Body are without effect under U.S. law “unless and until such has been adopted pursuant to the specified statutory scheme,” established in the Uruguay Round Agreements Act (URAA). The Act and the legislative history of the URAA indicate that Congress did not intend for WTO dispute panel and Appellate Body reports to undermine the exercise of Commerce’s discretion in applying the antidumping duty (AD) and CVD laws, and even in the cases in which those challenges applied to agency determinations, do not apply automatically. In other words, it concluded, WTO dispute panel reports “do not have any power to change U.S. law or to order such a change.”

While acknowledging that it had earned post-export credits for the product concerned under DEPBS program during the POR, Alpanil also reported that it paid required application fees for each DEPBS license associated with its export shipments. Section 771(6)(A) of the Act stipulates that “for the purpose of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.” Therefore, the Department recognized that these fees provide an allowable offset to DEPBS benefits.

The calculation of the DEPBS rate is as follows:

- i) Multiply the FOB value of each export shipment of subject merchandise to

the United States by the relevant percentage of DEPBS credit allowed under the program during the POR.

- ii) Subtract the application fees paid for the licenses for the post-export credits earned on exports of product concerned to the United States, in accordance with section 771(6) of the Act.
- iii) Take the total value of the licenses attributable to subject merchandise, net of application fees paid, and divided it by Alpanil's exports of subject merchandise to the United States during the POR.

Following such procedure, the Department determined Alpanil's countervailable subsidy from the DEPBS program to be 6.99 percent ad valorem (Andersen, 2010).

3) Income Tax Exemption Scheme 80 HHC

Producers of subject merchandise may receive countervailable subsidies through tax deductions under section 80HHC of India's Income Tax Act. Tax exemptions under section 80HHC can be claimed by any exporter. Eligible companies could claim full income tax exemptions from profits derived from their export sales. The Department finds this program to be contingent on exports under section 771(5A)(B) of the Act. Alpanil and Pidilite were found to have benefited from this program during the POI while AMI did not.

Here is how the benefit for each company was calculated:

- i) Subtract the total amount of income tax the company actually paid during the POI from the amount of tax the company would have paid if it had not claimed the deduction under the program.
- ii) Divide this difference by the FOB value of the company's total exports

during the POI.

Thus, the countervailable subsidy rate is determined to be 2.64 percent ad valorem for Alpanil and 2.10% percent ad valorem for Pidilite. This subsidy rate reflects the Section 80HHC benefits claimed by Alpanil as a “supporting manufacturer” for Meghmani’s exports of subject merchandise produced by Alpanil².

The GOI reported that prior to the Preliminary Determination, the rate at which Indian exporters can deduct export profits from taxable income was reduced, from 70 percent to 30 percent. In accordance with section 351.526 of the Department regulation³, such change cannot be regarded as a program-wide change (May, 2004).

4) Export Promotion Capital Goods Scheme (EPCGS)

The GOI argues that EPCGS does not confer a benefit as it ensures that “imports of inputs as capital goods used for pre-production, production, and post-production of the products are further exported within the quantum of consumption of those imported inputs”. In response, the Department replied that unless the government concerned has an effective and reasonable system applied to confirm which inputs are consumed and in what amounts to produce the exported product, the Department considers the entire amount of an exception, remission, deferral or

² Alpanil and Meghmani shared three common owners who collectively held fifty percent or more ownership interest in both companies. Meghmani acted as a trading company for some of Alpanil’s indirect exports of subject merchandise while it did not produce subject merchandise, nor did it produce inputs used in the production.

³ A program-wide change is defined as such: a change not limited to an individual firm or firms; and effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.

duty drawback to confer a benefit in accordance with 19 CFR 351.519. The GOI has not demonstrated it has such a system in place for the EPCGS.

GOI further argued that an “Independent Chartered Engineer” certifies the amount of any reasonable wastage that are anticipated to be imported under an approved EPCGS license by law. However, based on the examination of the application of Pidilite, such engineer neither examined nor certified the applicable amount of anticipated waste. In addition, the GOI has nor provided any information on the instant record such as audit reports about monitoring the EPCGS with Pidilite, or reports about the GOI’s site visits to monitor the EPCGS etc., which leads to the conclusion that the GOI does not maintain an adequate control or a verification system for the EPCGS in a way that this program would not be found countervailable(Maeder, 2020b).

The GOI argued that EPCGS allows for partial exemption from payment of customs upon importation of capital goods. As there are no restrictions on the goods manufactured by imported machines to be sold in the domestic market, it is not specific as defined under Article 2 of the SCM Agreement. The GOI also reported that a company needs to meet the export obligation in order to be exempt from the payment of customs duties, which means when such export obligation is not met, the previously exempted import duties would have to be paid back to the GOI.

The Department finds in the above argument that when an exporter benefits with a duty-free import for the anticipated export product but sell the product in the domestic market, there is an instant liability of the exporter to the GOI for paying back the exempted amount of the import duties, as the export obligations are not met. This is the revenue forgone for the GOI.

As 19 CFR 351.505(d)(1),(2) stipulates:

(i) In the case of an interest-free loan, for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan

(ii) If, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself

duty exemptions arising from completed export obligations are treated as grants.

Therefore, the Department concludes that the EPCGS is countervailable.

5) State of Gujarat (SOG) Sales Tax Incentive Scheme

The SOG grants exemptions to, or deferrals from, sales taxes to encourage regional development. Under the 1995 Industrial Policy of Gujarat, companies located in specific areas of Gujarat are exempted from paying sales tax on the purchase of raw materials, packing materials, consumable stores, and processing materials.

The Department finds that the SOG sales tax deferments on Pidilite's inter-company sales provided a financial contribution in the means of interest not being collected.

The Department treats the SOG sales tax deferrals as a domestic subsidy as it is specific to industries located within designated geographical regions under section

771(5A)(D)(iv) of the Act⁴. As it was the case with PET Film case, the Department treats deferred sales taxes as interest-free government loans. The benefit is calculated by multiplying the outstanding amount of sales tax deferrals under the SOG program by the appropriate long-term benchmark interest rate in order to determine the benefit in the form of unpaid interest on the deferred sales taxes during the POI. Then the resulting benefits are divided by Pidilite's total sales during the POI. The resulting countervailable subsidy rate for Pidilite is less than 0.005 percent ad valorem. AMI and Alpanil did not receive benefits under this program.

Therefore, the program is countervailable as it is limited to companies located in designated geographical areas; that the SOG provides a financial contribution in the form of revenue foregone; and there is a benefit in the amount of the sales tax exemptions (May, 2004).

6) State of Maharashtra (SOM) Sales Tax Incentive Scheme

State of Maharashtra grants sales tax incentives for manufacturers to invest in its state by means of an exemption or deferral of state sales taxes. Companies are exempted from paying state sales taxes on purchases and collecting sales taxes on sales. As an alternative, they are allowed to defer submitting sales taxes collected on sales to the state government. The companies are requested to pay the deferred sales taxes in equal installments over five to six years at zero interest rate as the deferral period expires.

⁴ 771(5A)(D)(iv) of the Act stipulates that 'where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific'.

Just like SOG scheme, the Department found the SOM Sales tax deferrals are specific within the meaning of section section 771(5A)(D)(iv) of the Act since the benefits are limited to industries located in designated areas. The SOM provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of interest on deferred sales taxes. Finally, there is a benefit in the amount of the interest which would otherwise be payable under section 771(5)(E) of the Act.

The method of calculating the subsidy rate is identical as the one from the SOG scheme above. The resulting countervailable subsidy rate for Pidilite is 0.31 percent ad valorem.

Commerce hereby determines that revocation of the CVD order on CVP from India would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

| Manufacturers/Producers/Exporter | Net Countervailable Subsidy Rate (Ad Valorem) (percent) |
|----------------------------------|--|
| Alpanil Industries Ltd. | 14.93 |
| Pidilite Industries Ltd. | 15.24 |
| AMI Pigments Pvt. Ltd. | 33.61 |
| All Others | 18.66 |

3.3.2. Polyester Textured Yarn

1) Advance Authorization Program(AAP), also known as Advance License Program(ALP)

According to Foreign Trade Policy Chapter 4, Advance License is issued to allow duty free import of inputs, which are physically incorporated in the export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts etc. which are consumed in the course of their use to obtain the export product, may also be allowed under the scheme ("Foreign Trade Policy," 2019). The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement.

The GOI argued that this benefit is tied to non-subject merchandise. When a subsidy is tied to a certain product or market, the Commerce will attribute that subsidy to only that product or market, pursuant to 19 CFR 351.525(b)(4) and (5). However, JBF did not submit any supporting evidence for its assertion. In fact, a letter received from JBF states that Polyester Textured Yarn falls under the notification issued by the Directorate General of Foreign Trade in regard to products which are eligible to avail the benefit of Advance Authorization.

Also contrary to the argument that only a portion of the imported raw materials was consumed to produce inputs for the subject, the Department found that, in fact, all of JBF's imported raw materials for which it reported benefits are inputs to the subject merchandise. Therefore, the request made by JBF to recalculate its benefits has been rejected.

The GOI argued that there is an adequate control or verification system in place. The GOI's response, however, lacks the documentation to support its claim that the GOI has a system in place that confirms which inputs are consumed in the

production of the exported products, and in what amounts. In fact, Commerce has made determinations consistent with this treatment of AAP/ALP since the *2005 Review of PET Film from India*.

Lastly, not merely does the entire amount of the import duty deferral or exemption provided to the respondent constitute a benefit under section 771(5)(E) of the Act, but also this program is specific under section 771(5A)(B) of the Act, because it is contingent upon exportation. Based on the view above, the Department finds the AAP/ALP countervailable.

The countervailable subsidy rate for JBF was calculated by dividing the AAP benefits earned on exports of subject merchandise during the POI by JBF's POI sales value for exports of subject merchandise. On this basis, rate of 19.22 ad valorem for JBF has been preliminarily established.

2) DDB Program

The GOI explained that the DDB rates are determined following a specified procedure that is undertaken by an independent committee appointed by GOI. The committee makes its recommendations after discussions with all stakeholders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of exports products.

Like the AAP/ALP above, Commerce has requested for the recommendations and supporting documents such as accounting records, company-specific files, databases, budget authorizations etc. so that Commerce can determine whether the GOI has the system in place where it can confirm which

inputs are consumed in the production of the exported products and in what amounts. The GOI, however, failed to submit such documentations.

Commerce determines that the DDB program confers a financial contribution that represent revenue forgone by the GOI, that there is no adequate system in place to confirm which inputs, and in what amounts are consumed in the production of the exported product, and, finally, that this program is contingent upon export performance.

For the above reasons, DDS is countervailable with the final subsidy rate of 1.98 percent ad valorem.

3) EPCGS

Previously, Commerce has determined that import duty exemptions or reductions under the EPCG program are countervailable as they: (1) provide a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provide two different benefits⁵ under section 771(5)(E) of the Act; and (3) are specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is specific and contingent on export. Because the evidence on the record with respect to this program has not changed from previous findings, Commerce determines that this program is countervailable.

⁵ The first benefit is the amount of unpaid duty liabilities that the respondents would have paid if they had borrowed the full amount of the duty reduction or exemption at the time of importation. The second is amount of duty waived by the GOI on imports of capital equipment covered by EPCG licenses for which the export requirement had already been met.

On this basis, Commerce determines a countervailable subsidy rate of 0.35 percent ad valorem for Reliance and that JBF did not receive any benefits under the EPCG program during the POI.

4) Merchandise Export Incentive Scheme (MEIS)

Under MEIS, companies can benefit when exporting specific products to specific countries that are categorized into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets')⁶.

If a subsidy is tied to a certain product, Commerce will attribute that subsidy to that product only pursuant to 19 CFR 351.525(b)(5). The burden of producing relevant evidence belongs with the respondents, not Commerce. In the verification report, Commerce did note that the program appeared to be tied to non-subject merchandise. Based on the consideration of the totality of the record evidence, however, Commerce reversed its previous finding and determined the MEIS program is tied to subject merchandise as the information submitted by the respondents is conflicting and insufficient to demonstrate this program is tied to non-subject merchandise.

The GOI and Reliance argued that the subject merchandise was not included in the list of eligible products under the laws which means the program is tied to non-subject merchandise. Appendix 3B of FTP 2015-2020 identifies the lists of products eligible to receive the benefit under MEIS. First of all, the GOI did

⁶ See Table 1 and Table 2 of Appendix 3B of [FTP 15-20](http://dgftcom.nic.in/Exim/2000/PN/PN15/pn0215.pdf). Access at <http://dgftcom.nic.in/Exim/2000/PN/PN15/pn0215.pdf>

not include the Appendix 3B in its submission. Reliance did provide a copy of Appendix 3B which did not list the subject merchandise as it insisted. Reliance even provided FTP documents to corroborate the information.

However, JBF conceded it received the benefits for other products manufactured which may be an intermediate product for subject merchandise i.e. yarn. Commerce note that Reliance used MEIS benefits in relation to intermediate products as well. JBF submitted public notices dated October 29, 2015, May 4, 2016, and August 21, 2017 which included updates from the previous versions to the list in Appendix 3B. In the later document Commerce found products that were not listed in Appendix 3B from Reliance. Furthermore, the copy of FTP that GOI provided was dated to June 30, 2015 which predates the public notices that JBF submitted.

European Union has found the MEIS to be countervailable since 2010 in *Stainless steel bars and rods* case, and pointed out that there have been constant amendments to the list that towards the end of the review investigation period the distinction between various markets was abolished and the scheme became available for all.

The record evidence shows that both JBF and Reliance received benefits under this program and that both companies earned these licenses for the production of inputs to subject merchandise. Furthermore, it is clear that they did not provide sufficient evidence to support its claim that the benefits are tied to non-subject merchandise. Therefore, MEIS is countervailable. Reliance's final subsidy rate is 0.20 percent ad valorem, and JBF's final subsidy rate is to be 1.01 percent ad valorem.

5) Special Economic Zones(SEZ) Import Duty Exemption

Under the SEZ Act of 2005, an SEZ may be established jointly or individually by the central government, a state government or an individual or entity, to manufacture goods and/or provide services and to serve as a Free Trade and Warehousing Zone. Entities that want to set up an SEZ in an identified area may submit their proposal to the relevant state government. All products produced, excluding rejects and certain domestic sales, must be exported and must achieve a positive net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production.

Reliance reported using the SEZ program to obtain: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) exemption from payment of CST of capital goods and thereon; (3) exemption from electricity duty, and cess thereon, on the sale or supply to the SEZ unit; and (4) income tax exemptions under Section 10A of the Income Tax Exemption Scheme.

As Reliance did not provide any evidence to support its claim, Commerce finds that subsidies provided within the Jamnagar SEZ are not tied to production of any particular merchandise and benefit all of Reliance's production. Also, as eligibility for the SEZ program is contingent upon export performance and location within the SEZ area, it is specific within the meaning of sections 771(5A)(B) and (D)(iv) of the Act. Furthermore, duty-free importation, and exemption from payment of CST and electricity duty provides a financial contribution through foregoing of duty payments.

Calculation of the benefit is as follows:

- i) Sum the total value of uncollected import duties for capital goods purchases and other purchases attributed to the POI and the total value of uncollected import duties due on all other purchases during the POI
- ii) Divide this amount by the total value of Reliance's export sales during the POI.

On this basis, Commerce determined the countervailable subsidy provided to Reliance through the import duty exemptions, CST exemptions, and electricity exemption under the SEZ program to be 1.47 percent ad valorem.

6) State and Union Territory Sales Tax Program

JBF and Reliance both reported that they used this program. Commerce normally rely on the information given by the government about the administration and specificity of programs in order to confirm the respondents' descriptions of how this program is administered. However, the GOI did not provide any information regarding this program.

Therefore, Commerce finds that an adverse inference in selecting from the facts otherwise available is warranted in determining whether the GOI provided a financial contribution through this program. Consequently, as adverse facts available(AFA), Commerce preliminarily determined that the GOI conferred a financial contribution and this program is specific, within the meaning of sections 771(5)(D) and 771(5A)(D) of the Act, respectively. By not responding to our requests for information, the GOI repeatedly failed to provide information in the manner requested and therefore failed to cooperate by not acting to the best of its ability.

7) State Government of Gujarat(SGOG) Subsidy Programs

Reliance did not provide any evidence to support its claim that benefits under these programs are tied to non-subject merchandise. We note evidence on whether the government knew the intended use of these subsidies at the time of bestowal is particularly lacking, given the GOI's failure to provide information concerning the operation of the programs. Therefore, Commerce finds that subsidies provided within Gujarat is not tied to production of any particular merchandise and benefit all of Reliance's production. Reliance's final subsidy rate for this program is 0.03 percent ad valorem.

8) GOI Policy Lending and Export Financing

The GOI claimed that the program does not exist. Although Commerce has requested that the GOI provide the supporting documentation multiple times, the GOI did not respond the questions. As such response significantly impeded the conduct of this investigation, Commerce proceeded the investigation with "facts available" to make its final determination pursuant to sections 776(a)(1), 776(a)(2)(A) and (C) of the Act. It also failed to act to the best of its ability to comply with and fully respond to Commerce's multiple requests for information. Therefore, an adverse inference is warranted in the application of facts available, in accordance with section 776(b) of the Act. Commerce finds that Policy Lending program constitutes a financial contribution and is specific.

JBF requested for a correction in the calculation of the rate and claimed that the loans it reported were provided at market rates. Pursuant to 19 CFR 351.505(c), Commerce calculated the benefit from these programs by comparing the amounts of interest JBF paid (i.e., interest actually paid during the POI) on the

government-provided loans to the amounts they would have paid on comparable commercial loans.

Lastly, Commerce disagrees with the claim that Commerce should assign JBF AFA rates in regard to the benefits it received for the GOI Policy Lending due to JBF's alleged failure to accurately report its loan data. Although JBF did not provide any information specifically regarding the use of the GOI Policy Lending and Export Financing programs, it did report its loans from GOI-affiliated banks. Commerce determined that the necessary information was on the record. Specifically, the loan information JBF reported was sufficient to analyze its use, and any benefits received, under the GOI Policy Lending and Export Financing programs. Commerce also verified the loan data JBF reported and noted no discrepancies. Accordingly, Commerce made no changes to its preliminary countervailability analysis with respect to the GOI Policy Lending and Export Financing programs.

As a result, JBF's final subsidy rate under Policy Lending continues to be 0.71 percent ad valorem. Reliance's final subsidy rate under Export Financing continues to be non-measurable. JBF's final subsidy rate continues to be 0.83 percent ad valorem.

| Companies | Subsidy rate |
|-----------------------------|--------------|
| JBF Industries Limited | 21.83% |
| Reliance Industries Limited | 4.29% |
| All Others | 4.65% |

3.3.3. Quartz Surface Products

1) DDB Scheme

The GOI argues that it had provided all available documentation and never withheld any information in regard to the comments from Commerce that GOI lacks supporting documents to prove the GOI has an effective and reasonable system in place. The GOI stated:

“The All Industry Rates of duty drawback are calculated on the basis of the data, pertaining to inputs used in the manufacturing process, provided by the different export promotion councils and are duly verified by the statutory auditors. Based on these verified data, and any additional statutory or non-statutory available from the different government departments, the drawback rates are calculated by the Drawback Committee.”

The GOI also stated that it has a stage verification where the exporter’s manufacturing premises and the books of accounts are randomly audited by the field formations.

In response to the GOI’s arguments, Commerce requested to describe in detail the analysis conducted by the Drawback Committee to confirm the accuracy of input consumption rates and the derivation of the recommended rates, including an explanation of the data that guided the Committee’s recommendations for the DDB rates in effect during the POI for quartz surface products. Also, Commerce requested information about the verification process that occurred with the mandatory respondents and producers of quartz surface products generally, including the number of audits and site visits that took place at the facilities of producers. The GOI however did not provide explanation of the data analysis

conducted for the derivation of the DDB rates, and commented that there is no specific data analysis and centralized data maintained. In addition, based on the verification conducted by Commerce, Antique Marbonite has never been audited or had an on-site visit by the GOI.

Based on the view above, Commerce determines that the GOI failed to prove its claim that Drawback Rules provide for a verification procedure. Commerce maintains that there is no reasonable or effective system in place to implement the monitoring of the inputs consumed in the production of the exported product. Also, in regard to the argument of the GOI that such exemptions and remission programs are not inconsistent with SCM Agreement, citing DS486, a WTO report between Pakistan and the European Union, Commerce responded that Commerce has conducted this investigation in accordance with U.S. CVD laws under the Act and Commerce's regulations, and that WTO dispute panel reports "do not have any power to change U.S. law or to order such a change"(Maeder, 2020a).

Therefore, Commerce determines that a financial contribution is provided under the DDB program, pursuant to section 771(5)(D)(ii) of the Act since rebated duties represent revenue forgone by the GOI. Commerce determines that the entire amount of the import duty rebate earned during the POI constitutes a benefit under 19 CFR 351.519(a)(4). Because the program is only available to exporters, we determine that the DDB is specific under section 771(5A)(B) of the Act. Accordingly, we determine that the DDB Scheme confers a countervailable subsidy. The CVD rate is 1.05 percent ad valorem.

2) EPCGS

Antique Marbonite and Pokarna reported that they imported capital goods with exempted customs duties under the EPCGS. As the evidence on the record with respect to this program has not changed, Commerce maintains the same findings under EPCGS as in previous *Carbazole Violet Pigment 23* and *Polyester Textured Yarn* cases.

The benefit received under the EPCGS is the sum of the interest that would have been due had Antique Marbonite borrowed the full amount of the duty exemption at the time of the importation of capital equipment for which Antique Marbonite had not met export requirements during the POI. Because a company may fulfill its EPCGS export obligations with deemed exports, Commerce has included deemed exports in the denominator, and divided the benefit received by Antique Marbonite under the EPCGS by the sum of its total export sales and deemed exports for the POI. This denominator best reflects the products that Antique Marbonite manufactured with the imported capital equipment and subsequently exported directly and via affiliated and unaffiliated companies. On this basis the net countervailable subsidy rate is 0.31 percent ad valorem for Antique Marbonite.

3) IES for Export Financing

Prism Johnson, a cross-owned company by Antique Marbonite, reported use of the IES for pre-shipment financing. Although normally Commerce rely on the information given by the government, in this case it had to rely on the RBI's IES Guidelines provided by Antique Marbonite to determine whether the GOI provided a financial contribution that is specific through the IES. According to the IES Guidelines, "From the month of February 2016 onwards, banks shall reduce the interest rate charged to the eligible exporters as per our extant guidelines on interest rates on advances by the rate of interest equalization provided by Government of India". The scheme provides for the rate of interest equalization at three percent per annum for pre- and post-shipment rupee-denominated export loans. The Guideline further stated that banks are required to completely pass on the benefit of interest equalization, as applicable, to the eligible exporters (Maeder, 2019).

Based on the IES Guidelines, Commerce determined that the GOI conferred a financial contribution and this program is specific. To calculate the benefit, Commerce relied on Prism Johnson's loan data. First, Commerce calculated the total benefit received in the POI for total exports, where the interest equalization was received in the POI. It then divided this sum by the value of Antique Marbonite's and Prism Johnson's total exports sales during the POI. On this basis, the countervailable duty is established at 0.21 percent ad valorem for Antique Marbonite.

4) SEZ Programs

Pokarna argued that as the SEZ at issue is located outside of Indian customs territory, the assistance provided under the program does not provide a financial contribution. However, Commerce finds that SEZs are not deemed to be territories outside the customs territory of India as the SEZs are clearly under the GOI's regulation. For instance, it is stated under the "Special Economic Zones Act, 2005" that the GOI has the ultimate control and is granted with the power to review any letter of approval for a SEZ.

Furthermore, the Commerce maintains that the GOI is still entitled to collect duties and taxes from companies in SEZ. If the SEZs were operated outside of the customs territory of India, there would be nothing to exempt or refund unless duties are applicable in the first place. Thus, Commerce rejected the claim that SEZ is akin to a free trade zone.

Pokarna reported that it produced subject merchandise during the POI in a SEZ unit located in the state of Andhra Pradesh. The benefits that Pokarna obtained under the SEZ program is as follows: (1) duty-free importation of capital goods and raw materials; (2) exemptions on payment of central sales tax (CST) on purchase of capital goods; (3) exemption of payment of stamp duty on leased land for the SEZ unit; and (4) income tax exemptions under Section 10AA of the Income Tax Exemption Scheme. However, Commerce finds that none of these benefits relate to imported items that are physically incorporated into the production of the re-exported merchandise. Therefore, these benefits are not relevant to the duty exemptions addressed under 19 CFR 351.519(a)(1)(ii) and 19 CFR 351.519(a)(4)(i) and (ii).

Import duty 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 in pursuant to 19 CFR 351.519(a)(1)(ii). However, as the GOI is found to have no system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts, the entire amount of any exemption, deferral, remission, or drawback is countervailable. Under the terms of the SEZ, there is no link between the volume of imported inputs and the volume of exported finished merchandise that confirms which inputs are consumed in the production of the exported products, and in what amounts.

Therefore, based on the above reasons, Commerce determines that SEZ program is countervailable. Its final countervailing duty rate arising from duty-free importation, exemption from payment of local government taxes and duties, and income tax exemption is 1.69%, 0.02%, and 0.58 percent ad valorem, respectively.

5) Export Oriented Units (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials

Under this program, firms designated as EOUs must export their entire production of goods and services, except for permissible sales in the Domestic Tariff Area.¹⁵⁷ Also, an EOU has to achieve a positive net foreign exchange calculated cumulatively for a period of five years from the commencement of production. Under the program, the GOI permits EOUs to import capital goods and raw materials duty-free. Commerce previously found this program to be countervailable.

Based on the approval form submitted to Pokarna by the GOI, the duty exemptions are contingent upon export performance, in general, and not on the exportation of specific products that are outside the scope of the investigation. On this basis Commerce determines that duty exemptions provided under this program constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and are specific under section 771(5A)(B) of the Act because the exemptions are contingent upon exports.

However, the import duty exemption under this program are approved for the purchase of capital equipment. As the CVD Preamble states that if import duty exemption tied to major equipment purchases is provided by a government, it may be reasonable to conclude that the benefits from such duty exemptions should be considered non-recurring benefits. Accordingly, Commerce treated such import duty exemptions Pokarna Limited received on capital equipment as non-recurring benefits.

The net countervailing duty under EOU is 0.05 percent ad valorem.

| Companies | CVD rate (percent) |
|-----------------------------------|--------------------|
| Antique Marbonite Private Limited | 1.57 |
| Pokarna Engineered Stone Limited | 2.34 |
| All Others | 2.17 |

3.3.4. Stainless Steel Flanges

1) DDB

Echjay reported it received duty rebates under this program. The GOI explained that 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. Just like the previous case about *Quartz Surface Products*, the DDB program is found to be countervailable in that it does not have an effective and reasonable system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts. The GOI explained that there is an independent committee appointed by the GOI to undertake a specified procedure to determine the rates thereon. However, again, the GOI failed to support its claim by submitting the documentation requested by Commerce.

Therefore, as identical as the determination from *Quartz Surface Products*, DDB is countervailable and its rate is 1.58 percent ad valorem for Echjay.

2) EPCGS

The GOI reported that the EPCG 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. Commerce finds that the first benefit under this program is a contingent-liability interest-free loan which is an unpaid liability that may be waived in the future. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met. For those 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). Commerce has previously found this program is to be countervailable. The evidence on the record of this investigation is consistent with those past cases.

Echjay reported that certain licenses were used for production of both subject and non-subject merchandise while certain others were exclusively for the production of non-subject merchandise. However, as Commerce requested for the documentation to support its certain exclusive production of non-subject merchandise, Echjay provided no documentation. Therefore, Echjay has failed to demonstrate that the license was tied to the production of non-subject merchandise. Based on this information, Commerce cannot reliably determine that the reported EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, Commerce finds that Echjay's reported EPCG licenses benefit the company's export sales.

Based on above findings, Commerce determines a countervailable subsidy rate of 0.08 percent ad valorem for Echjay.

3) MEIS

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

In the *Steel Flanges from India Preliminary Determination*, Commerce found the MEIS program is continuous and thus, recurring, in nature. 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).

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 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. On this basis, Commerce determines the countervailable subsidy to be 2.30 percent ad valorem for Echjay.

4) Interest Equalization Scheme(IES) for Export Financing

The RBI provides interest equalization for export financing in the form of a refund three percent on export finance. Thus, the program is specific within sections 771(5A)(B) of the Act because the benefit is contingent upon export. In addition, the program provides a financial contribution in the form of revenue

foregone under section 771(5)(D)(ii) of the Act in the form of refunded interest. Accordingly, we preliminarily determine that the GOI conferred a financial contribution, and Commerce finds that the IES program is specific within the meaning of 771(5)(D) and 771(5A)(B) of the Act, respectively. The countervailable subsidy is set at 0.71 percent ad valorem.

5) Status Holders Incentive Scrip Scheme (SHIS)

Previously, Commerce has determined SHIS to be countervailable in the past cases in that the scheme (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provides a benefit in the amount of exempted duties on imported capital equipment under section 771(5)(E) of the Act; (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is limited to exporters. The evidence on the record with respect to this program has not changed.

Echjay reported that import duty exemptions under this program are provided solely for the purchase of capital equipment. Thus, in accordance with 19 CFR 351.524(c)(2)(iii) and past practice, Commerce treats the import duty exemptions on capital equipment as non-recurring benefits.

It is stipulated in Commerce's regulations that Commerce will normally consider the benefit as having been received as of the date of exportation. However, 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. On this

basis, Commerce determines a countervailable subsidy of 0.28 percent ad valorem for Echjay.

6) State Government of Maharashtra(SGOM) Sales Tax Program

Echjay reported that its manufacturing unit utilized this program which provides a tax deferral of payable sales tax that can be deferred for a number of years after which the duty is required to be paid in five installments. Because such tax deferrals have to be paid back to the GOI, Commerce treats this liability as an interest-free loan. Therefore Commerce finds SGOM program to be countervailable at rate of 0.05 percent ad valorem for Echjay.

7) Special Capital Incentive under Package Scheme of Incentives 1988 Scheme

Echjay stated it benefited from a onetime special capital incentive associated with the expansion of its Khopoli unit. Because this incentive is tied to capital assets, Commerce applied the “0.5 percent test,” for non-recurring subsidies, as described in 19 CFR 351.524(b)(2). To determine whether to allocate these grants over the AUL, Commerce divided the total amount of the incentive received during each respective year of the AUL by the total sales values of each respective year of Echjay. On this basis, because and the amount approved did not pass “0.5 percent test,” in each year before the POI, Commerce finds that the benefit Echjay received from this program was expensed prior to the POI.

VI. EUROPEAN UNION

4.1. Overview of the trade relation with India

The European Union is India's largest trading partner, accounting for 11.1% of the total Indian trade in 2019, on par with the USA and ahead of China (10.7%). India is the EU's 10th largest trading partner accounting for 1.9% of total EU trade in goods in 2019 with €80 billion worth of trade in goods in 2019 (D'Ambrogio, 2020, p. 19). The EU had a trade deficit of €1.3 billion with India in 2019 for the first time in the last 10 years. In the year before, the EU had a trade surplus of €2.2 billion with India. The EU exports to India were €38.2 billion, a 4.7% decrease from the previous year. Corresponding EU imports from India were €39.5 billion, up 4.6% from the previous year (*EU trade in goods*, 2020). About 6,000 European companies are present in India that provide 1.7 million jobs directly and 5 million more if in a broad range of sectors (D'Ambrogio, 2020).

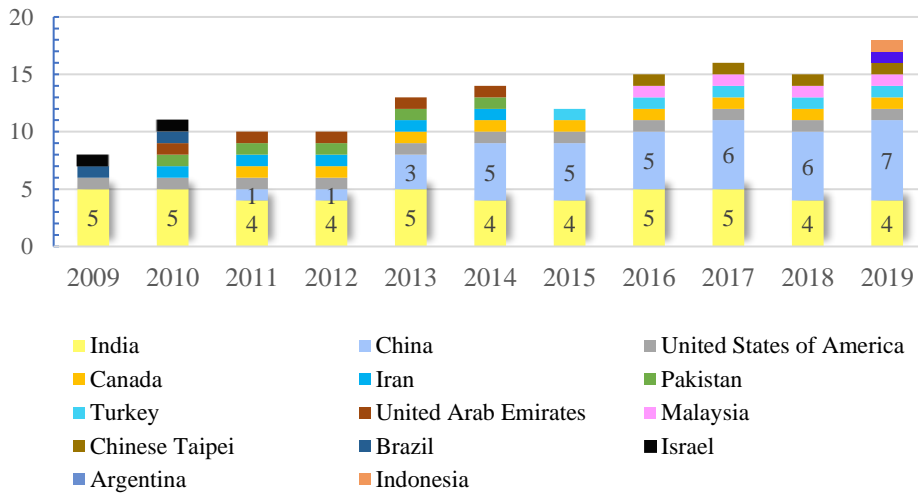
The EU has seen India as an important trade partner. According to a research journal from European Parliamentary Research Service, India has an "untapped potential" by comparing India's trade volume with the EU to China's, as China has replaced the US and become the EU's largest trading partner in 2020. Negotiations for EU-India FTA had begun ever since in 2007 but reached a dead end in 2013. The two countries now have revived the talks to renegotiate the FTA deal in 2020. India has not signed any trade agreement since 2012. Now the European Union and India expect to boost up the bilateral trade by alleviating trade barriers not only to trade in goods and services, but also in investment as well.

The three largest product groups for EU exports were machinery and appliances accounting for €11.6 billion, a 30% of the total EU imports in India,

followed by transport equipment (€5 billion, 13.1%), and products of the chemical or allied industries (€4.9 billion, 13%). Corresponding imports from India were products of the chemical or allied industries accounting for €6.6 billion, a 16.9% of the total imports, followed by textiles and textile articles (€6.1 billion, 15.6%), and machinery and appliances (€5.2 billion, 13.4%) (Directorate General for Trade).

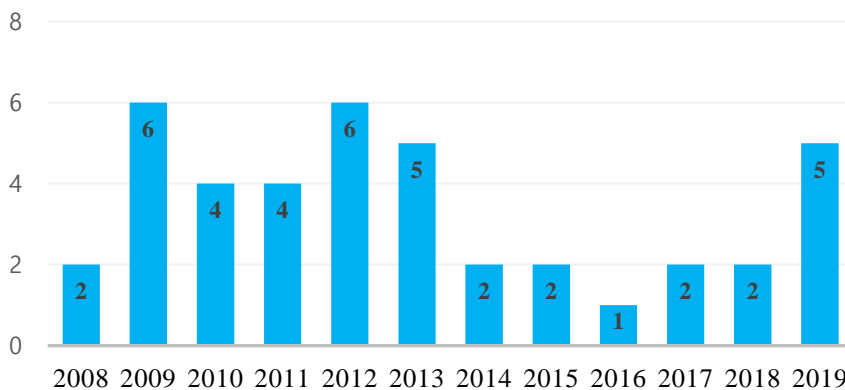
4.2. EU's CVD measures status quo in brief

Figure 9. EU's CVD final measures in force(cumulated) by countries



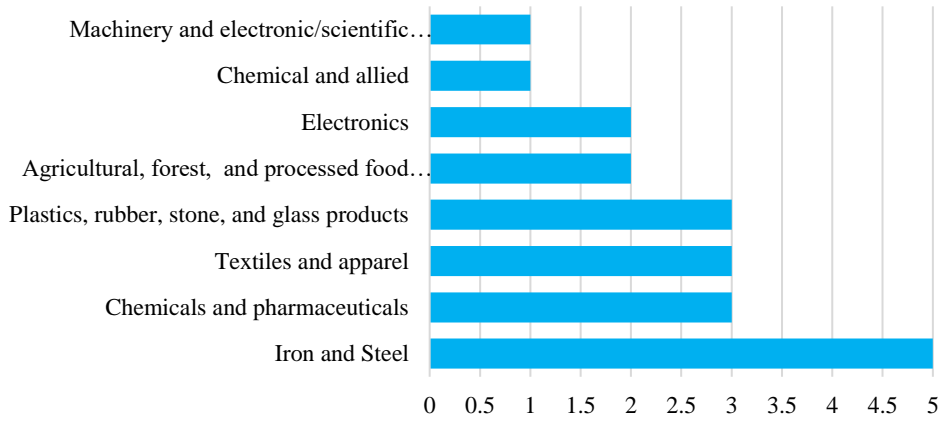
Source: WTO Data

Figure 10. E.U. CVD Measures Initiated by Year



Source: WTO Data

EU CVD Measures in Force by Product Groups



Source: European Commission

4.3. EU's CVD measures in force towards India EU

The European Union currently has four CVD measures in force against Indian products as of April 2021. Three of the four measures have been renewed after 6-year expiry reviews. The other one, which is tubes and pipes of ductile cast iron, is currently under an expiry review initiated as of March 17, 2021. The list of such four measures in force are as follows:

< Table 2 > List of Indian products currently in force of CVD measures by the EU

| | Product | Product Group | Notice of Initiation | Continued |
|---|--|-------------------|----------------------|--------------------------|
| 1 | Stainless steel bars and rods | Iron and Steel | 01-04-2010 | 28-04-2016 |
| 2 | PET | Chemical & Allied | 06-11-1999 | 24-02-2012 22-05-2018 |
| 3 | Tubes and pipes of ductile cast iron** | Iron and Steel | 11-03-2015 | |
| 4 | Graphite Electrode systems** | Electronics | 19-05-2004 | 17-09-2009 15-12-2015 |

Source: European Union

()** : products with both CVD and AD measures in force

Despite that the types of products all differ, many of the subsidies accused of being countervailable overlapped. Duty Drawback Scheme (DDS) appeared to be countervailable in all four of the products. Advance Authorization Scheme (AAS), Merchandise Exports from India Scheme (MEIS) and Export Promotion Capital Goods Scheme (EPCGS) were next in line appearing in three of the four products. Lastly Focus Product Scheme (FPS) and Focus Market Scheme (FMS) were found in one product each.

Most of the subsidies that were brought in four of the different cases, had the following mutual determinations:

- i) In accordance with Article 3(1)(a)(ii)⁷, a subsidy shall be deemed to exist if there is a financial contribution by a government in the country of origin where government revenue that is otherwise due is forgone or not collected.
- ii) It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation
- iii) The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would need to be carried out in the absence of an effectively applied verification system.
- vi) No further examination by the GOI was conducted on the basis of actual inputs and transactions to determine whether an excess payment occurred.
- v) A subsidy is deemed to be specific and countervailable when the subsidy is contingent upon export performance (Article 4(4) of the Regulation)

⁷ The basic Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union can be accessed at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1037>

4.3.1. Stainless steel bars and rods

1) Advance Authorization Scheme (AAS)

AAS has six sub-schemes that are physical exports, annual requirement, intermediate supplies, deemed exports, back to back inland letter of credit, and lastly Advance Release Order(ARO). In the present case, one cooperating exporting producer was found to have used the Physical Exports sub-scheme, which allows for duty-free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave the Indian territory. An import allowance and export obligation including the type of export product are specified in the license⁸.

For verification purposes by the Indian authorities, an Advance Authorization holder is legally obliged to maintain 'a true and proper account of consumption and utilization of duty-free imported/domestically procured goods in a specified format like an actual consumption register⁹.

Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (18 months with two possible extensions of 6 months each).

During the verification visit by the commission, it was found that there was no effective verification system or a procedure applied by the GOI, therefore, not being able to confirm whether and in what amounts inputs were consumed in the production of the exported product. The volume of imports allowed under the AAS

⁸ The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FTP 09-14 and chapters 4.1 to 4.30 of the HOP I 09-14 as well as paragraphs 4.03 to 4.24 of FTP 15-20 and chapters 4.04 to 4.52 of HOP I 15-20.

⁹ Chapter 4.51 and Appendix 4H HOP 2015-20 and updated HOP 2015-20

is determined by the GOI on the basis of Standard Input Output Norms (SIONs) which define the amount of input/inputs required to manufacture unit of output for export purpose. However, it was found that the SIONs for the product under review were not sufficiently precise enough and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production¹⁰ (*Commission Implementing Regulation*, 2017, pp. 6-8).

2) Duty Drawback Scheme (DDS)

Any manufacturer-exporter or merchant-exporter is eligible for this scheme. The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules 1995. An eligible exporter can apply for a drawback amount which is calculated as a percentage of the free-on-board ('FOB') value of products exported under this scheme. The drawback rates have been established by the GOI for a number of products, including the product concerned. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not.

¹⁰ ANNEX II.5. of the basic Regulation states that “where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting country based on the actual inputs involved will normally need to be carried out in the context of determining whether an excess payment occurred.”

To benefit from this scheme a company must export. At the moment when shipment details are entered in the Customs server (ICEGATE), it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest (EGM) and the Customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorize the payment of the drawback amount by either direct payment on the exporter's bank account or by draft. The exporter also has to produce evidence of realization of export proceeds by means of a Bank Realization Certificate (BRC). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay (*Commission Implementing Regulation*, 2017, p. 10).

The payment takes a form of a direct transfer of funds by the GOI subsequent to exports made by exporters. In the present case the DDS can not be deemed as a permissible duty drawback system or a substitution drawback system as the cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials. The GOI claimed the existence of an adequate link between them. However the commission did not consider that the link is sufficient in that the amount of credit is not calculated in relation to actual inputs used.

The Commission determines the DDS is countervailable.

3) Merchandise Exports from India Scheme (MEIS)

Any manufacturer-exporter or merchant-exporter is eligible for this scheme although there are certain types of exports excluded from the scheme, e.g. exports of imported goods or transshipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Companies can benefit from MEIS by exporting specific products to specific countries which were categorized into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets')¹¹. There have been constant amendments to the list that towards the end of the review investigation period the distinction between various markets was abolished and the scheme became available for all.

The duty credits under MEIS are freely transferable and valid for a period of 18 months from the date of issue. They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods, (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and, (iii) payment of service tax on procurement of services.

An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. An exporter is eligible for MEIS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without having to demonstrate that any input material was imported. Thus, even exporters which procure all of their inputs

¹¹ The countries falling under each group and the list of products with corresponding reward rates were specified in Table 1 and Table 2 respectively of Appendix 3B of [FTP 15-20](http://dgftcom.nic.in/Exim/2000/PN/PN15/pn0215.pdf). Access at <http://dgftcom.nic.in/Exim/2000/PN/PN15/pn0215.pdf>

locally and do not import any goods which can be used as inputs are still entitled to benefit from MEIS.

Moreover, an exporter can use MEIS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

The Commission determines MEIS is countervailable as such:

| | AAS | DDS | MEIS | Total |
|-----------------------|--------|-------|--------|-------|
| Chandan Steel Ltd | 0.88 % | 1.02% | 1.31 % | 3.21% |
| Isinox Steels Limited | 1.56% | 0.66% | 1.33% | 3.55% |
| Venus group | n/a | 1.82% | 1.0% | 2.82% |

Source: Commission Implementing Regulation (EU) No 2017/1141

4.3.2. PET

1) Advance Authorization Scheme(AAS)

The findings under AAS are identical to the previous descriptions from Stainless steel bars and rods case.

2) 'Duty Drawback Scheme' under Rule 3(2) (DDS)

In comparison to the previous DDS scheme from Stainless steel bars and rods case, the legal basis applicable, which was the Custom & Central Excise Duties Drawback Rules 1995 ('the 1995 DDS Rules'), as amended in 2006, has been replaced by Customs and Central Excise Duties Drawback Rules that entered into force on 1 October 2017. The rules that governed the methods of calculation of this duty drawback, and the Declaration that the exporting producers needed to fill out to benefit from the scheme remained identical in the 2017 DDS Rules.

Here is how the amount of the subsidy is calculated in accordance with the new 2017 DDS Rules:

In determining the amount or rate of drawback under this rule, the Central Government shall have regard to, -

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;

(f) any other information which the Central Government may consider relevant or useful for the purpose.' ("Custom and Central Excise Duties Drawback Rules," 2017).

In other words, the GOI based the refundable amount on industry-wide average values of relevant customs duties paid on imported raw materials and an average industry consumption ratio collected from what the GOI considers as being representative manufacturers of the eligible export products. The GOI then expresses the amount to be refunded as a percentage of the average export value of the eligible exported products.

The commission found that duty drawback amount is a financial contribution by the GOI as it takes form of revenue foregone. There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity by the excess amounts of import duties refunded or remitted by the GOI.

Also, like the DDS from the Stainless steel bars and rods case, the cash payment to the exporter is not necessarily linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.

Therefore, in the view of the above, DDS is countervailable.

3) Export Promotion Capital Goods Scheme (EPCGS)

As the foreign trade policy 2015-2020 stipulates, the objective of EPCGS is to facilitate import of capital goods(except those specified in negative list in Appendix 5 F) for producing quality goods and services and enhance India's manufacturing competitiveness. The scheme provides for a reduced import duty rate of 3 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of goods deemed for export during a certain period.

EPCGS allows import of capital goods for pre-production, production, and post-production at zero customs duty ("Foreign Trade Policy 2015-20," 2015). But in such case, the time period for fulfilment of the export obligation is shorter. The export obligation which amounts to six times the duty saved must be fulfilled within a period of maximum six years.

The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail itself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS license holder.

The commission finds EPCGS countervailable.

4) Merchandise Exports from India Scheme (MEIS)

At the time MEIS came into force in April 2015 the product under review was not included in Appendix 3B and was thus not eligible to MEIS benefits. On 29 October 2015 however, by Public Notice No. 44/2015-2020, PET exports to Group A and B countries became eligible to a MEIS benefit amounting to 2 % of the FOB value of exports. By Public Notice No. 06/2015-2020, the exports to Group C countries became eligible to the same 2 % benefit on 4 May 2016.

The commission finds MEIS countervailable as such:

| | DDS | EPCGS | MEIS | Total |
|---|-------|-------|-------|-------|
| IVL Dhunseri Petrochem Industries Private Limited (IDIPL) | 0.38% | 0.09% | 1.92% | 2.3% |
| Reliance Industries Limited | 1.44% | 0.30% | 1.94% | 3.6% |

4.3.3. Tubes and pipes of ductile cast iron

1) Focus Product Scheme (FPS)

Under this scheme exports of products listed in Appendix 37D of the HoP are entitled to duty credit equivalent to 2 % of the FOB value. The rate of the duty credit for ductile pipes was increased to 5 % in 2012. Ductile pipes are thus eligible for the duty credit.

The duty credits under FPS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

The credit entitlement certificate is issued from the port from which the exports have been made and after realization of exports or shipment of goods. As long as the applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realization certificates), the GOI has no discretion over the granting of the duty credits.

An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (I) of Annex I and Annexes II and III of the basic Regulation.

An exporter is eligible for FPS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus,

even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FPS.

Moreover, an exporter can use FPS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (I) of the basic Regulation, because they are not consumed in the production of the exported products.

However, one thing to notice was that as the new five-year Foreign Trade Policy 2015-2020 was introduced, FPS was discontinued with effect from 1 April 2015. Instead, the GOI introduced a new scheme named Merchandise Exports from India Scheme (MEIS) which replaced a number of pre-existing schemes including the FPS. Therefore, the benefit conferred by the FPS can still be countervailed.

Although one of the Indian producers, Electrosteel Castings Ltd(ECL) claimed that the FPS cannot automatically be considered as a replacement scheme of the FPS, the Commission rejected the claim given that the eligibility criteria for FPS and MEIS are basically the same which means the FPS was not discontinued and just renamed. The benefit conferred by the FPS continues was found to be conferred by the new scheme. Also, in its questionnaire response, the GoI acknowledged itself that FPS 'has been merged into a new scheme (MEIS)'. Therefore, the claim was rejected.

However, there is a difference in the amount of benefit conferred by the two schemes. While the duty scrip rate of FPS during the IP was 5%, the current rate under the MEIS was 2% of the FOB value of exports. The Indian producers claimed that this lower value should be the parameter for quantifying the amount of benefit to be countervailed, if any. ECL referred to the Commission 'Guidelines for the calculation of the amount of subsidy in countervailing duty investigations' and

Example 1 where the revised benefit applicable to the latter part of the IP should be applied ‘if the change is permanent in nature’.

In response, first of all, pursuant to Article 5 of the basic Regulation, ‘the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidization’. It was the duty credit of 5% of the FOB value of exports when the benefit was conferred during the IP.

Second, Article 11 of the basic Regulation states that ‘information relating to a period subsequent to the IP shall not, normally, be taken into account’, which means that post-IP developments can be taken into account only in exceptional circumstances, namely when ignoring them would be ‘manifestly inappropriate’. For instance, 10 new Member States acceded to the European Union in 2004. This triggered a duty for the Commission to investigate whether the information obtained during the investigation was still representative for the enlarged EU. Therefore, such claim cannot be applied.

Also, the exporters clearly have benefited from the 5% rate during the IP. The assumption that the reduced rate of 2 % post-IP is permanent in nature, cannot be confirmed either, as the government is empowered to change the rate of the scheme at any time. The history shows that the Government changed the rate from 2 % to 5 % effective from 31 December 2012 when the former FPS had been introduced by law in 2009. Therefore, based on those reasons above, 2% is not appropriate amount. Only if the current rate of 2 % proves its longevity, the exporters will be free to request an interim review demonstrating the lasting change of circumstances with respect to this subsidy scheme.

2) Export Promotion of Capital Goods Scheme (EPCGS)

It was found that two companies received concessions under the EPCGS which could be allocated to the product concerned during the IP. Aside from those mutual determinations stated earlier, given that capital goods are not covered by the scope of permissible systems set out in Annex I point (I), of the basic Regulation, which cannot be consumed in the production of the exported products, the EPCGS cannot be considered a permissible duty drawback system or substitution drawback system.

3) Duty Drawback Scheme (DDS)

The commission found that the DDS provides subsidies within the meaning of Article 3(1)(a)(I) and Article 3(2) of the basic Regulation, and that duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer. Such amount confers a benefit upon the exporter as it improves its liquidity.

In addition, the commission found that the scheme does not have the characteristics of a permissible duty drawback system or a substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.

However, the GOI made two arguments. First was that the Commission has not provided the requirements which it considered imperative for DDS to constitute a legitimate duty drawback system or provided a rationale for such a determination. Second was that there is an adequate link between the drawback rates as well as the duties paid on raw materials. This is because the GOI takes into account the

average quantity or value of materials used as inputs in the manufacturing of the product as well as the average amount of duties paid on inputs in determining the duty drawback rates.

In regard to the first argument, the Commission stated in the disclosure the reasons for which it did not consider the scheme a permissible duty drawback system or substitution drawback system. Indeed, it clarified that the cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.

The second claim's reply is just the same as the answers from the previous Stainless Steel Bars and Rods case and PET case above. The amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (I) of Annex I, and Annexes II and III of the basic Regulation. Therefore, the claim is rejected.

Lastly, the payment takes a form of direct grant which is contingent on export performance. Therefore, it is concluded that the DDS is countervailable.

| Company | FPS | EPCGS | DDS | Total Export Subsidies | Total |
|------------|-------|-------|-------|------------------------|-------|
| ECL Group | 4.35% | 0.03% | 1.66% | 6.04% | 9.0% |
| Jindal Saw | 3.11% | 0.38% | 1.37% | 4.86% | 8.7% |

| Company | Subsidy margins | Injury margins | Countervailing duty rate |
|------------|-----------------|----------------|--------------------------|
| ECL Group | 9.0% | 54.6% | 9.0% |
| Jindal Saw | 8.7% | 48.8% | 8.7% |
| All others | 9.0% | 54.6% | 9.0% |

4.3.4. Graphite Electrode systems (GES)

1) Duty Drawback Scheme (DDS)

The DDS provides subsidies within the meaning of Article 3(1)(a)(I) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GoI as it takes form of a direct transfer of funds by the GoI. There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.

The scheme does not have the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.

During the verification visit, a claim that there was an adequate link was made since the GOI considers the average quantity or value of materials used as inputs in the manufacturing of the product as well as the average amount of duties paid on inputs in determining the duty drawback rates.

The Commission however does not consider that the alleged link between the drawback rates and the duties paid on raw materials is sufficient in order for the scheme to conform to the rules laid down in Annex I, Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation as the amount of credit is not calculated in relation to actual inputs used.

Aside from the mutual determinations, based on the view above, the DDS is countervailable.

2) Advance Authorization Scheme (AAS)

The investigation established that the verification requirements stipulated by the Indian authorities were not yet honored or tested in practice. The cooperating exporting producer maintained a certain production and consumption register. It was however not possible to verify which inputs (including their origin) were consumed in the production of the exported product and in what amounts. In particular with the system put in place it was not possible to identify and measure with precision whether there was an excess remission.

Furthermore, it was established that only between 75 % and 85 % of the main raw material (calcined petroleum coke or 'CPC') imported duty free under AAS was physically incorporated in GES while between 15 % and 25 % was incorporated in two by-products i.e. lumps and fines. It was also found that at least a part of both by-products was sold on the domestic market and that no system was in place to measure the actual amounts of CPC imported duty free incorporated in the by-products exported or sold domestically.

In conclusion, AAS is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporter since it improves its liquidity. In addition, since without an export commitment a company cannot obtain benefits under the scheme, AAS physical exports are contingent in law upon export performance, therefore, deemed to be specific and countervailable.

Furthermore, the GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product. And the SIONs for the product under review

were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would need to be carried out in the absence of an effectively applied verification system.

3) Focus Market Scheme (FMS)

Under this scheme exports of all products which include exports of GES to countries notified under Tables 1 and 2 of Appendix 37(C) of HOP I 09-14 are entitled to duty credit equivalent to 3 % of the FOB value.¹² As of 1 April 2011, exports of all products to countries notified under Table 3 of Appendix 37(C) ('Special Focus Markets') are entitled to a duty credit equivalent to 4 % of the FOB value. Certain types of export activities are excluded from the scheme, e.g. exports of imported goods or transshipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.

The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

The credit entitlement certificate is issued from the port from which the exports have been made and after realization of exports or shipment of goods. As

¹² Appendix 37(C) of HOP I 09-14 can be accessed at https://chemexcil.in/uploads/HBP_Vol_1.pdf

long as the complainant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realization certificates), the GOI has no discretion over the granting of the duty credits.

An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without having to demonstrate that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS.

An exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products. In addition, the Commission observes that no further examination by the GOI was conducted on the basis of actual inputs and transactions in order to determine whether an excess payment occurred.

4) Merchandise Export from India Scheme (MEIS)¹³

Exports to the European Union were not directly eligible to MEIS during the RIP as the EU Member States are part of country Group A which was not eligible to MEIS benefits during that period. On that basis the GOI claimed that MEIS should not be considered countervailable. However MEIS duty credits obtained from exports of GES to third countries are freely transferable and can be used to offset import duties on inputs incorporated in the product under review even when it is exported to the Union. For that reason it was considered that MEIS conferred benefits to exports of GES in general, including exports to the Union, and therefore the claim was rejected.

5) Export Promotion Capital Goods Scheme (EPCGS)

Descriptions and arguments are identical as the ones in previous products.

| Schemes | DDS | AAS | FMS | MEIS | EPCGS | Total |
|-------------|-------|------|-------|-------|-------|-------|
| HEG Limited | 2.02% | 0.3% | 0.13% | 0.31% | 0.27% | 3.03% |

¹³ Refer to the details of MEIS in previous Stainless Steel Bars and Rods case.

V. CASE STUDY REVIEW

5.1. Overall Case Study Review

One issue that was dealt in every single case covered in this paper was whether India has an effective and reasonable system that can confirm which inputs are consumed in what amounts to produce the exported product, and whether an excess payment of import duties occurred. When such a system does not exist or is not applied in an effective manner, it is the responsibility of the government to carry out an examination. If not, the entire amount of any exemption, deferral, remission, or drawback is countervailable.

The US Commerce maintains that import duty exemptions for inputs in exported products are not countervailable so long as such exemption is only applied to inputs consumed in the production of the exported product, making normal allowances for waste. The only condition is whether there is an adequate system in place mentioned above. In *Carbazole Violet Pigment 23* case, the GOI argued that there is a committee reviewing how All Industry Rate of drawback is based on taking essentially averages of values of duties on materials, and how the GOI considers the extent to which these duties may not have been paid or already rebated or refunded. Also, the GOI argued that there is “Independent Chartered Engineer” certifying the amount of any reasonable wastage that are anticipated to be imported under an approved EPCGS license by law. However, based on the examination, such engineer neither examined nor certified the applicable amount of anticipated waste. Also, the GOI failed to submit any documentation to support its claim. Therefore, it was determined that there is no adequate system in place.

In *Stainless Steel Bars and Rods, Tubes and Pipes of Ductile Cast Iron*, and *Graphite Electrode systems* cases from the EU, the GOI argued that it measures the average quantity or value of materials used as inputs in the manufacturing of the product as well as the average amount of duties paid on inputs in determining the duty drawback rates. However, the EU council rejected its claim and determined that the amount of credit is not calculated in relation to actual inputs used because there is no adequate system in place to do so.

As for the subsidy schemes, the most frequently used subsidy programs from the previous case studies in this paper are Export Promotion of Capital Goods Scheme (EPCGS) and Duty Drawback Scheme (DDS) which have been determined countervailable from six out of eight cases. The second most frequently used subsidy was Advance Authorization Scheme(AAS) and Merchandise Export from India Scheme(MEIS) which have been determined countervailable from four out of eight cases.

Under MEIS, both US and the EU have raised issues of its eligibility that is constantly changing. Under MEIS, companies can benefit by exporting specific products to specific countries that are categorized into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C 'Other Markets')¹⁴. Such list is included in Appendix 3B of FTP 2015-2020, which identifies lists of products eligible to receive the benefit under MEIS. From *Polyester Textured Yarn* case from US, it was pointed out that the two different Indian producers had submitted the Appendix 3B that have

¹⁴ The countries falling under each group and the list of products with corresponding reward rates were specified in Table 1 and Table 2 respectively of Appendix 3B of [FTP 15-20](http://dgftcom.nic.in/Exim/2000/PN/PN15/pn0215.pdf). Access at <http://dgftcom.nic.in/Exim/2000/PN/PN15/pn0215.pdf>

different contents from one another. One manufacturer argued that the program is tied to non-subject merchandise and submitted a copy that was not reflecting the recent updates. Commerce, therefore, determined that it is countervailable as they did not provide sufficient evidence to support its claim, questioning the validity of the evidence provided. In the *Stainless steel bars and rods* case where the EU has found countervailable since 2010, the Council pointed out that the distinction between various markets got blurred due to the constant amendments to the list, and that the scheme became available for all at the end of the investigation.

MEIS, however, no longer remains valid as the GOI has withdrawn the scheme from effect as of Jan. 1st, 2021¹⁵. The MEIS will be replaced by the Remission of Duties or Taxes on Export Products (RoDTEP), a scheme for exporters to get a reimbursement on taxes, duties and levies which are not exempted or refunded under any other existing mechanism. RoDTEP is a combination of MEIS and RoSCTL (Rebate of State & Central Taxes and Levies Scheme) to ensure the compatibility with WTO trade norms.

¹⁵ See <https://content.dgft.gov.in/Website/dgftprod/4a37d60a-f0bf-4783-bc67-a17131168d46/N30E.pdf>

5.2. The US-India CVD case reviews in relation to Korea

5.2.1. US-India CVD cases overview

As of April 26, 2021, USA currently imposes total of 26 CVD measures to India, of which 14 cases were iron and steel, and five cases were chemicals and pharmaceuticals. The following table indicates the list of Indian products that are currently under CVD measure from US and corresponding Korea's imports and exports of the certain product from and to India. Specified lists according to the HS codes(6 digits) from the investigation are in Appendix 1 at the end of the paper.

< Table 3 > List of products from India with CVD measures in force by US and corresponding Korea's import/export of the product from/to India >

(In US dollars)

| # | Products | Korea | |
|----|---------------------------------------|------------|-------------|
| | | Import | Export |
| 1 | Carbazole Violet Pigment 23 | 27,401,883 | 3,708,910 |
| 2 | Polyester Textured Yarn | 20,066,604 | 1,049,031 |
| 3 | New Pneumatic Off-the-Road Tires | 11,039,597 | 141,872,632 |
| 4 | Fluid End Blocks | 8,546,891 | 67,358,409 |
| 5 | Glycine | 8,332,925 | 4,538,248 |
| 6 | Quartz Surface Products | 5,913,827 | 372,549 |
| 7 | Stainless Steel Flanges | 5,729,637 | 756,511 |
| 8 | Cold-Rolled Steel Flat Products | 2,390,039 | 409,330,399 |
| 9 | Carbon and Alloy Steel Threaded Rod | 2,225,489 | 45,859,547 |
| 10 | Polyethylene terephthalate (PET) film | 2,107,753 | 5,393,469 |
| 11 | Carbon steel plate | 1,624,671 | 327,161,735 |
| 12 | Corrosion-Resistant Steel Products | 1,484,638 | 331,952,757 |
| 13 | Forged Steel Fittings | 1,366,012 | 28,905,251 |

| | | | |
|----|--|---------|------------|
| 14 | Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel | 368,051 | 9,334,201 |
| 15 | Fine Denier Polyester Staple Fiber | 331,929 | 14,385,657 |
| 16 | Polyethylene Terephthalate Resin | 243,263 | 1,521,088 |
| 17 | Prestressed concrete steel wire strand | 183,564 | 3,751,506 |
| 18 | Lined paper | 116,330 | 16,353,279 |
| 19 | Finished Carbon Steel Flanges | 50,063 | 3,519,432 |
| 20 | Welded Stainless Pressure Pipe | 22,508 | 4,733,908 |
| 21 | Sulfanilic acid | 14,452 | 0 |
| 22 | Commodity Matchbooks | 0 | 0 |
| 23 | Large Diameter Welded Pipe | 0 | 6,089,825 |
| 24 | Hot-rolled carbon steel flat products | N/A | N/A |
| 25 | Oil Country Tubular Goods | N/A | N/A |
| 26 | Common Alloy Aluminum Sheet | | |

5.2.2. Carbazole Violet Pigment(CVP) 23

According to UN Comtrade, India is the third largest producer of the CVP 23 under subheading 32.04.17. The largest producer is China with 930 million US dollars of export value in 2020, followed by Germany with 725.8 million US dollars, and India with 723.8 million US dollars. India's largest export market for CVP 23 is China accounting for about 13% of India's total CVP 23 export, followed by USA, Netherlands, and Germany. Korea is India's 8th biggest export market accounting for about 3.5% of India's entire CVP 23 export. Korea's CVP 23 import from India accounts for about 9.2% of Korea's entire import of the CVP 23.

According to Korea's five-year trade flows of the CVP 23, Korea is more of an importing country when it comes to CVP 23. The figures from the tables below indicate that Korea's entire import of CVP 23 is about as double as its exports. But Korea's CVP 23 export to India is about, merely, one tenth of its import from India, which means Korea is relatively more relying on India for its CVP 23 supply than it is on other countries.

< Table 4-1 > Korea's National Export/Import of CVP 23 >

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|---------|------------|---------|------------|
| | | Value | Weight(kg) | Value | Weight(kg) |
| 32.04.17 | 2020 | 154,792 | 18,516 | 297,721 | 12,902 |
| | 2019 | 165,243 | 19,285 | 311,630 | 12,964 |
| | 2018 | 167,384 | 20,712 | 334,987 | 13,829 |
| | 2017 | 166,168 | 21,010 | 315,295 | 13,757 |
| | 2016 | 172,836 | 20,468 | 297,856 | 13,914 |

< Table 4-2 > Korea's Export/Import of CVP 23 from India >

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|------------|--------|------------|
| | | Value | Weight(kg) | Value | Weight(kg) |
| 32.04.17 | 2020 | 3,708 | 394 | 27,401 | 4,823 |
| | 2019 | 4,274 | 458 | 28,320 | 4,663 |
| | 2018 | 4,153 | 549 | 29,282 | 4,969 |
| | 2017 | 3,304 | 439 | 28,179 | 4,688 |
| | 2016 | 3,727 | 464 | 26,817 | 4,657 |

Source: Trade Statistics Service, TRASS

On October 1, 2020, Commerce initiated its third sunset review of the CVD order on CVP 23 from India. A petition was filed November 21, 2003, by Nation Ford Chemical and Sun Chemicals. Product under review is CVP-23 identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of diindolo [3,2-b:3',2'-m] triphenodioxazine, 8,18-dichloro-5,15-diethy-5,15-dihydro-, and molecular formula of C₃₄H₂₂Cl₂N₄O₂. Commerce published its final results of the expedited third five-year sunset review that is applicable as of February 9, 2021. Final determination found the following subsidy programs of India countervailable:

- Pre-Export Financing
- Duty Entitlement Passbook Scheme (DEPBS/DEPB)
- Income Tax Exemption Scheme 80 HHC
- Export Promotion Capital Goods Scheme
- State of Gujarat (SOG) Sales Tax Incentive Scheme
- State of Maharashtra (SOM) Sales Tax Incentive Scheme

The countervailable subsidy rate for each producer is as follows:

| Manufacturers | Net Countervailable Subsidy Rate(%) |
|--------------------------|-------------------------------------|
| Alpanil Industries Ltd. | 14.93 |
| Pidilite Industries Ltd. | 15.24 |
| AMI Pigments Pvt. Ltd. | 33.61 |
| All Others | 18.66 |

5.2.3. Polyester Textured Yarn

According to UN Comtrade, the largest producer of Polyester Textured Yarn is China which reported its export trade value to be 1,573 US million dollars in 2020. The second largest producer is India, with 460 US million dollars of export value in 2020. India's No.1 export market is Turkey, with its net export value reported to be 114 million US dollars, followed by Brazil with 78 million US dollars, and Bangladesh with 47 million US dollars. Korea is India's 6th biggest export market.

The five-year trade flows of Polyester Textured Yarn in Korea indicates that Korea has been mostly an importing country of the product. The export value is about 28 percent of the entire import values. The export value from India, however, is merely about 5 percent of the total imports from India. This suggests that Korea is heavily relying on India for its Polyester Textured Yarn supply compared to other countries.

< Table 5-1 > Korea's National Export/Import of Polyester Textured Yarn

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|---------|---------|
| | | Values | Weight | Values | Weight |
| 54.02.33 | 2020 | 52,417 | 23,983 | 187,681 | 130,244 |
| | 2019 | 62,545 | 23,663 | 223,905 | 130,733 |
| | 2018 | 49,531 | 17,376 | 237,975 | 124,593 |
| | 2017 | 41,920 | 16,204 | 205,307 | 120,769 |
| | 2016 | 39,274 | 14,430 | 179,337 | 114,110 |

< Table 5-2 > Korea's Export/Import of Polyester Textured Yarn from India

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|--------|--------|
| | | Values | Weight | Values | Weight |
| 54.02.33 | 2020 | 1,014 | 550 | 20,066 | 16,681 |
| | 2019 | 959 | 390 | 40,726 | 27,494 |
| | 2018 | 1,240 | 463 | 44,364 | 26,373 |
| | 2017 | 1,000 | 366 | 37,315 | 25,983 |
| | 2016 | 732 | 311 | 42,522 | 32,353 |

Source: Trade Statistics Service, TRASS

On November 19, 2019, Commerce determined that the countervailable subsidies are being provided to producers and exporters of Polyester Textured Yarn from India. On October 18, 2018, Commerce received a petition from Nan Ya Plastics Corporation, and America and Unifi Manufacturing, Inc. The product under review is polyester textured yarn, a synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn

density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams) (*Federal Register* 2020). Final determination found the following subsidy programs to be countervailable:

- Advance Authorization Program(AAP)
- DDB Program
- EPCGS
- Merchandise Export Incentive Scheme (MEIS)
- Special Economic Zones(SEZ) Import Duty Exemption
- State and Union Territory Sales Tax Program
- State Government of Gujarat(SGOG) Subsidy Programs
- GOI Policy Lending and Export Financing

The countervailable subsidy rate for each producer is as follows:

| Companies | Subsidy rate |
|-----------------------------|--------------|
| JBF Industries Limited | 21.83% |
| Reliance Industries Limited | 4.29% |
| All Others | 4.65% |

5.2.4. Quartz Surface Products

India is one of the major exporters of quartz surface products across all the subheadings that were included in the investigation. Especially, India is the second largest producer for Quartz Surface Products under subheading 25.06.10, the one that Korea is importing the most compared to other subheadings. As indicated in Appendix I, the import figure of HS code 25.06.10, particularly, is outstanding in comparison to others. Thus, to avoid complexity by including all, this section focuses on quartz surface products under subheading 25.06.10.

In 2020, India had a net trade value of 67 million US dollars for exporting quartz surface products. The largest producer is China with 125 million US dollars. India's largest export market for the product concerned is Viet Nam with 10 million US dollars of trade value last year, followed by Malaysia, China, Japan, Canada, and Korea. Korea is India's 6th biggest export market.

The five-year trade flows of quartz surface products indicates that Korea is an importing country as its export value is about 20% of its total imports. However, looking into the trade flows with India, Korea's export is non-existent except the year of 2017 when Korea had slight export values of total 9,000 US dollars. Indian imports account for about 17% of Korea's national quartz surface products imports.

< Table 6-1 > Korea's National Export/Import of Quartz Surface Products

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|--------|---------|
| | | Values | Weight | Values | Weight |
| 25.06.10 | 2020 | 5,622 | 13,994 | 28,033 | 131,106 |
| | 2019 | 8,089 | 22,257 | 23,112 | 141,767 |
| | 2018 | 7,536 | 25,376 | 22,156 | 151,297 |
| | 2017 | 7,981 | 18,041 | 25,878 | 169,842 |
| | 2016 | 5,686 | 13,953 | 19,822 | 143,856 |

< Table 6-2 > Korea's Export/Import of Quartz Surface Products from India

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|--------|--------|
| | | Values | Weight | Values | Weight |
| 25.06.10 | 2020 | 0 | 0 | 4,903 | 45,699 |
| | 2019 | 0 | 0 | 6,363 | 69,470 |
| | 2018 | 0 | 0 | 5,587 | 65,627 |
| | 2017 | 9 | 20 | 3,822 | 38,449 |
| | 2016 | 0 | 0 | 3,481 | 36,528 |

Source: Trade Statistics Service, TRASS

On May 8, 2019, Commerce received AD and CVD petitions from Cambria Company LLC. Effective as of June 22, 2020, Commerce has published its final affirmative countervailing duty determination regarding its quartz surface products import from India. The product under review includes products where the silica content is greater than any other single material, by actual weight. It also includes

surface products of all other sizes, thicknesses, and shapes.¹⁶ The final determination found the following subsidy programs to be countervailable:

- DDB Scheme
- EPCGS
- IES for Export Financing
- SEZ Programs
- Export Oriented Units (EOU) Program

The countervailable subsidy rate for each producer is as follows:

| Companies | CVD rate (percent) |
|-----------------------------------|--------------------|
| Antique Marbonite Private Limited | 1.57 |
| Pokarna Engineered Stone Limited | 2.34 |
| All Others | 2.17 |

¹⁶ For a further detailed description of the scope of order, *see* <https://www.govinfo.gov/content/pkg/FR-2020-06-22/pdf/2020-13374.pdf>

5.2.5. Stainless Steel Flanges

China is world's largest producer of Stainless Steel Flanges, followed by Italy, and India. India had a net export value of 132 million US dollars in 2020 for the product concerned. India's largest export market is USA with the net trade value of 23 million US dollars in 2020, followed by Netherlands, Germany, and Belgium. Korea is India's 8th largest export market for Stainless Steel Flanges. Indian stainless steel flanges imports account for about 9.5% of Korea's entire stainless steel flanges imports. The five-year trade flow of the stainless steel flanges suggests that import values are slightly higher than export. When it comes to Korea's trade flows with India, the difference in figures gets more extreme.

< Table 7-1 > Korea's National Export/Import of Stainless Steel Flanges
(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|--------|--------|
| | | Values | Weight | Values | Weight |
| 73.07.21 | 2020 | 49,763 | 5,751 | 60,215 | 12,920 |
| | 2019 | 65,146 | 7,179 | 75,968 | 14,669 |
| | 2018 | 60,033 | 8,779 | 71,572 | 12,808 |
| | 2017 | 35,029 | 5,764 | 55,571 | 10,322 |
| | 2016 | 39,979 | 5,055 | 54,632 | 11,299 |

< Table 7-2 > Korea's Export/Import of Stainless Steel Flanges from India
(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|--------|--------|
| | | Values | Weight | Values | Weight |
| 73.07.21 | 2020 | 756 | 62 | 5,729 | 1,133 |
| | 2019 | 1,538 | 185 | 8,265 | 1,406 |
| | 2018 | 2,370 | 325 | 9,192 | 1,571 |
| | 2017 | 813 | 110 | 4,405 | 884 |
| | 2016 | 200 | 24 | 4,778 | 949 |

Source: Trade Statistics Service, TRASS

Applicable as of October 5, 2018, Commerce has determined that there is a countervailable subsidy being provided to Indian producers of stainless steel flanges which resulted a material injury to US industry. On April 19, 2017, Commerce received a petition from the Coalition of American Flange Producers and its individual members, Maass Flange Corporation and Core Pipe Inc. The product under review is certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges)¹⁷. The final determination found the following subsidy programs countervailable: (1) DDB, (2) EPCGS, (3) MEIS, (4) Interest Equalization Scheme(IES) for Export Financing, (5) Status Holders Incentive Scrip Scheme (SHIS), (6) State Government of Maharashtra(SGOM) Sales Tax Program, and (7) Special Capital Incentive under Package Scheme of Incentives 1988 Scheme

The countervailable subsidy rate for each producer is as follows:

| Companies | Subsidy rate(Percent) |
|------------|-----------------------|
| Bebitz | 256.16 |
| Echjay | 4.92 |
| All Others | 4.92 |

¹⁷ For a further description of the product under review, *see* <https://www.govinfo.gov/content/pkg/FR-2018-10-05/pdf/2018-21732.pdf>

5.3. The EU-India CVD cases

5.3.1. EU-India CVD cases overview

The EU imposes four CVD measures on Indian products. Two of them are iron and steel, and the other two are in chemical and electronics sector, respectively. For stainless steel bars and rods, Korea is also currently imposing the AD measures for the specific HS code subheading. The EU also used to impose AD measures together with the CVD measures but recently terminated it. An interesting case for Korea to look at is *graphite electrode systems* case which Korea has no record of imposing any trade remedy measures when it is importing a great deal from India. The EU has continued imposing CVD measures for the product since 2004.

< Table 8 > List of products from India with CVD measures in force by the EU and corresponding Korea's import and export of the product from/to India in 2020 according to HS Codes in 6 digits

(In US dollars)

| | Products | HS Code (6 digits) | Korea | |
|---|--------------------------------------|-----------------------|---------|------------|
| | | | Export | Import |
| 1 | Stainless steel bars and rods | 72.22.20 | 90,472 | 8,316,295 |
| 2 | PET | 39.07.61 | 790,834 | 129,338 |
| 3 | Tubes and pipes of ductile cast iron | 73.03.00 | 225 | 0 |
| 4 | Graphite Electrode systems | 85.45.11 | 303,212 | 13,074,690 |
| | | 85.45.90 | 108,008 | 67,666 |
| | | Total | 411,220 | 13,142,356 |

Source: Trade Statistics Service, TRASS

5.3.2. Stainless steel bars and rods

The largest producer of stainless steel bars and rods, under subheading 72.22.20, is Italy with the export value of USD 615.8 million in 2020, followed by Germany, India, and Spain. India is the third largest producer of stainless steel bars and rods. India made its export value of USD 273 million in 2020. According to the database from Department of Commerce, the largest export market for India is Turkey with the trade value of USD 47 million from 2019 to 2020, followed by Germany, Netherland, and Italy. Korea is its 12th largest export market for the subheading 72.22.20 alone.

Currently, Korea is imposing AD measures on Stainless steel bar originating in India under HSK 7222.11 7222.19, 7222.20, and 7222.30. And the Korea Trade Commission(KTC) found that Korea is the fourth largest export market for India's stainless steel bars. A report from KTC states that out of India's total USD 672 million export values of stainless steel bars, USD 39 million came from Korea. Also, India has production capacity that is ten times larger than Korea's (스테인리스스틸바 4 차재심 최종보고서, p. 38). The current AD rates that Korea is imposing on the Indian exporting producers in question are as follows:

| Companies | AD rate |
|-----------------------------------|---------|
| 1. Viraj Profiles Ltd. | 3.51% |
| 2. Venus Wire Industries Pvt.Ltd. | 15.39% |
| 3. Chandan Steel Ltd. | |
| 4. Panchmahal Steel Ltd. | |
| 5. Jyoti Steel Industries. | |
| 6. Mukand Ltd. | |
| 7. Bhansali Bright Bars Pvt.Ltd. | |

< Table 9-1 > Korea's National Export/Import of Stainless Steel Bars and Rods

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|--------|--------|
| | | Values | Weight | Values | Weight |
| 72.22.20 | 2020 | 9,192 | 2,109 | 35,264 | 7,698 |
| | 2019 | 11,643 | 2,760 | 51,740 | 12,246 |
| | 2018 | 10,563 | 2,979 | 74,416 | 18,258 |
| | 2017 | 12,152 | 4,106 | 63,261 | 16,759 |
| | 2016 | 8,041 | 2,002 | 47,384 | 12,018 |

< Table 9-2 > Korea's Export/Import of Stainless Steel Bars and Rods from India

(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|----------|------|--------|--------|--------|--------|
| | | Values | Weight | Values | Weight |
| 72.22.20 | 2020 | 90 | 33 | 8,316, | 3,528 |
| | 2019 | 600 | 293 | 13,863 | 5,610 |
| | 2018 | 794 | 391 | 19,184 | 7,581 |
| | 2017 | 1,546 | 855 | 9,868 | 4,521 |
| | 2016 | 382 | 235 | 3,480 | 1,679 |

Source: Trade Statistics Service, TRASS

According to the statistics from Ministry of Economy and Finance of Korea, manufacturing industry accounts for 27.8% of Korea's overall national output, which is considered a relatively high ratio in comparison to other OECD countries (손해용, 2020). Korea's manufacturing industry ranks No.5 in the world, and the role it plays in Korean economy is critical. Stainless steel bars and rods are some of the critical parts that make up such number because these are the essential

materials for semi-conductor, automobiles, electronics, and shipbuilding industry which are the major industries that Korea's economy heavily relies on.

Following a complaint lodged by the European Federation of Iron and Steel Industries, the Council determined that there are countervailable subsidy programs involved in stainless steel bars and rods originating in India on April 19, 2011. Expiry review was conducted on June 27, 2017, and the Council determined to continue its measure. Product under review is stainless steel bars and rods that are not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more under the subheading of CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89. The Indian export producers with its final countervailable subsidy rate are indicated as follows:

| Companies | CVD rate |
|-----------------------|----------|
| Chandan Steel Limited | 3.21% |
| Isinox Steels Limited | 3.55% |
| Venus Group | 2.82% |

Corresponding subsidy schemes found countervailable are Advance Authorization Scheme(AAS), Duty Drawback Scheme(DDS), and Merchandise Exports from India Scheme(MEIS).

5.3.3. PET

PET film industry is expected to grow at an extensive rate given that demands for ready-to-eat meals and takeout are getting more and more popular than any other times, particularly, due to prolonging Covid-19 pandemic worldwide. Korea is world's fourth largest export market for PET film while India is ranked as the second largest producer accounting for 11.3% of the entire global PET film production, next to China that accounts for 46.8% as of 2017. India boasts production capacity for PET film that is 150% of Korea's.

The product under review from EU's PET case is polyethylene terephthalate (PET) having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in India. The Indian exporting producers in question are as follows:

- Reliance Industries Limited, Mumbai ('RIL')
- IVL Dhunseri Petrochem Industries Private Limited, Kolkata ('IDIPL')

Korea Trade Commission(KTC) has imposed anti-dumping duties at rate of 34.90% to Indian PET film producers, namely, Garware Polyester Limited, and Jindal Poly Films Limited for their material injury in Korean market since 2008. The PET film case from the EU does not cover the same product and producers in question. The product under review from the EU's case was CN code 3907 61 00, whereas ones in Korea are HSK 3920.62.0000, 3920.69.0000. The final determination concluded the following subsidies were found to be countervailable is as follows:

- A. Pre-shipment and post-shipment export financing
- B. Duty entitlement passbook scheme (DEPS)
- C. Duty free replenishment scheme (DFRC)

D. Export promotion of capital goods scheme (EPCGS)

E. Advance license program (ALP)

F. Export oriented units (EOU)

On the other hand, as seen in Table, US has been imposing CVD measures against Indian PET film since 2002 under its subheading 3920.62.00. According to its second sunset review determination, the final countervailable subsidy rate was as follows:

| Manufacturers | Countervailable subsidy rate |
|---------------------------|------------------------------|
| Ester Industries Ltd. | 27.37% |
| Garware Polyester Ltd. | 33.42% |
| Polyplex Corporation Ltd. | 22.69% |
| All Others | 29.34% |

5.3.4. Tubes and pipes of ductile cast iron

The product concerned is tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes') originating in India, currently falling within CN codes ex 7303 00 10 and ex 7303 00 90.

Korea has no current imports of the product concerned.

5.3.5. Graphite Electrode Systems

- HS code 85.45.11

India is the fourth largest producer of Graphite Electrode Systems in the world under subheading 85.45.11. China is the No. 1 producer of the product concerned with its trade value of 789 million US dollars in 2020, followed by Spain, Japan, and India. India had a net trade value of USD 185 million in 2020. Egypt is its largest export market with USD 25 million trade value, followed by Turkey, USA, Saudi Arabia, UAE, and finally Korea. Korea is India's 6th largest export market.

- HS code 85.45.90

India is 8th largest producer of Graphite Electrode Systems in the world under subheading 85.45.90. The largest producer is Germany with trade value of USD 108 million in 2020, followed by USA, China, Japan, and Hong Kong. India had net trade value of USD 5.5 million in 2020. Poland is India's largest export market with trade value of USD 1.4 million, followed by Brazil, Jordan, Indonesia etc. Korea is India's 11th largest export market.

< Table 10-1 > Korea's National Export/Import of Graphite Electrode Systems
(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|-----------|------|--------|--------|---------|--------|
| | | Values | Weight | Values | Weight |
| 85.45.11/ | 2020 | 22,056 | 3,366 | 266,063 | 32,625 |
| 85.45.90 | 2019 | 27,933 | 3,715 | 547,954 | 48,280 |
| | 2018 | 20,385 | 3,159 | 502,751 | 45,432 |
| | 2017 | 19,172 | 3,054 | 175,012 | 45,676 |
| | 2016 | 18,077 | 2,694 | 147,919 | 44,185 |

< Table 10-2 > Korea's Export/Import of Graphite Electrode Systems from India
(In thousand US dollars/kg)

| HS code | Year | Export | | Import | |
|-----------|------|--------|--------|--------|--------|
| | | Values | Weight | Values | Weight |
| 85.45.11/ | 2020 | 411 | 40 | 13,142 | 3,771 |
| 85.45.90 | 2019 | 2,696 | 283 | 82,763 | 8,637 |
| | 2018 | 28 | 7 | 43,609 | 3,604 |
| | 2017 | 31 | 1 | 12,214 | 4,552 |
| | 2016 | 419 | 100 | 11,460 | 4,576 |

Source: Trade Statistics Service, TRASS

Following an anti-subsidy investigation, the Council imposed a CVD on imports of certain graphite electrodes systems originating in India. As of March 9, 2017, it has finished its second sunset review and determined continuation of the CVD order. The council received a petition from SGL Carbon GmbH, TOKAI Erftcarbon GmbH and GrafTech Switzerland SA that represent 25% of the total Union production of certain graphite electrode systems. The product concerned is graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 μ.Ω.m or less, and nipples used for such electrodes, whether imported together or separately originating in India ('GES' or 'the product under review'). It currently falls within CN codes ex 8545.11.00 and ex 8545.90.90. The Council has found the following subsidy programs countervailable:

- Duty Drawback Scheme(DDS)
- Advance Authorization Scheme(AAS)
- Foreign Market Scheme(FMS)
- Merchandise Export from India Scheme(MEIS)
- Export Promotion Capital Goods Scheme(EPCGS)

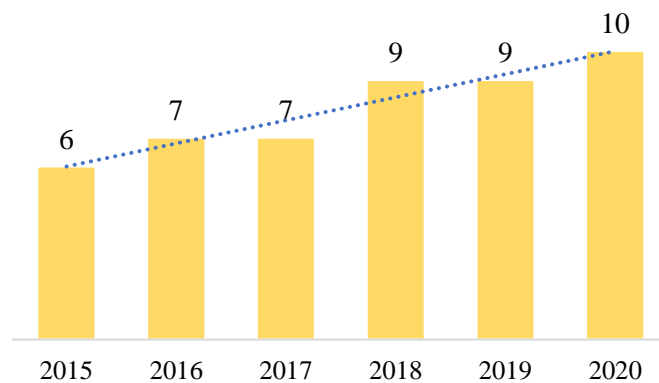
The countervailable subsidy rate for producer, HEG Limited, is 3.03%

VI. KOREA’S CVD MEASURE UTILIZATION

6.1. Korea’s Trade Remedy Measure Overview – focus on CVD measures

According to a 2020 Global Market Report from Korea Trade-Investment Promotion Agency(KOTRA), Korean products are subject to the second and the third most numerous investigations of AD and CVD measures, respectively, while Korea is ranked as the 12th country for filing the most AD measures. However, when it comes down to CVD measures, it is interesting, or, even wondering, that Korea has filed zero CVD measures in its history when it has been dealing with increasing number of CVD cases against Korean products, let alone the fact that Korea is highly intertwined in the world of trade and its remedies.

Figure 11. Number of CVD measures against Korea



< Table 11-1 > Cumulative AD Measures Taken by Countries from 1995 to 2020

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 12 |
|-------------|-----------------|----------------|-----------------|-----------------|--------------------|--------------------|----------------|----------------|
| Complainant | India (1036) | USA (786) | EU (523) | Brazil (421) | Argentina (392) | Australia (366) | China (288) | Korea (152) |
| Respondent | China (1440) | Korea (464) | Taipei (325) | USA (303) | India (247) | Thailand (246) | Japan (231) | - |

< Table 11-2 > Cumulative CVD Measures Taken by Countries from 1995 to 2020

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | |
|-------------|----------------|---------------|----------------|-------------------|----------------|---------------|-------------------|--------------|
| Complainant | USA (277) | EU (87) | Canada (73) | Australia (37) | India (24) | China (13) | S. Africa (13) | Korea (0) |
| Respondent | China (181) | India (91) | Korea (31) | Indonesia (28) | Turkey (25) | USA (21) | Vietnam (21) | |

Source: KOTRA

Korea has been a victim of several notorious CVD measures. POSCO and Daehan Steel once received the CVD measure from USA in the past at the rate of 58.68 percent and 58.79 percent, respectively. Also, there is SK Hynix CVD measure from USA that lasted for eight years since 2003 of which the CVD rate of 44.29% lasted for the first four years. On January 2021, Korea won WTO case over U.S. AFA provision as the WTO panel found that the eight cases of high anti-dumping and countervailing duties imposed by the U.S. on Korean steel and transformer products are not consistent with WTO regulation. This will certainly lessen the burden of Korean companies as U.S. would have to either re-investigate the cases or abolish the AFA provision if the U.S. does not appeal to the appellate body.

< Table 12 > List of Korean Products with CVD measures in force
as of Dec 31, 2020

| | Product Group | Country | Product | Initiation of Investigation | Final Determination |
|----|------------------|---------|---|-----------------------------|---|
| 1 | Iron & Steel | USA | Large Diameter Welded Pipe | '18.01.17 | '19.04.02 |
| 2 | Iron & Steel | USA | Carbon and Alloy Steel Cut-to-length Plate | '16.04.08 | '17.05.05 |
| 3 | Iron & Steel | USA | Hot-Rolled Steel Flat Products | '15.09.01 | '16.09.12 |
| 4 | Iron & Steel | USA | Certain Cold-Rolled Steel Flat Products | '15.08.17 | '16.09.02 |
| 5 | Iron & Steel | USA | Certain Corrosion-Resistant Steel Products | '15.06.23 | '16.07.15 |
| 6 | Iron & Steel | USA | Cut-to-length Carbon Steel Plate | '99.03.16 | '99.12.14 |
| 7 | Iron & Steel | USA | Cold-rolled stainless steel sheet and strip in coils | '98.06.30 | <Final> '99.8.6 |
| 8 | Iron & Steel | USA | Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe | '20.10.08 | Ongoing |
| 9 | Iron & Steel | Canada | Cold-rolled Steel | '18.5.25 | '18.12.21 |
| 10 | Plastic & Rubber | India | Styrene Butadiene Rubber | '19.10.29 | Withdrawn as of Mar. 30, 2021 ¹⁸ |

Source: Korea Trade Commission

¹⁸ See Office Memorandum dated 30th March 2021, https://www.dgtr.gov.in/sites/default/files/OM_SBR.pdf

6.2. Implications for Korea's Potential CVD Utilization

Not many countries have been utilizing the CVD measures as part of their trade remedy system. The reasons can vary, from the high threshold to initiate the CVD investigation to burden of cost etc. USA has utilized the CVD measures the most which is currently applying 160 CVD measures to 25 countries as of April 26, 2021, followed by Canada, European Union, and Australia.

CVD measures have been utilized by nations with powers in its history. Recently, however, things are changing. Countries that had not utilized CVD measures as their trade remedies before have started to actively use them to protect their domestic industry from material injuries brought by foreign producers with countervailable subsidies. India is one of them.

Currently, India has six CVD investigations that have been concluded affirmative against products originating in China, Indonesia, Malaysia, Thailand, and Vietnam. Also, there are seven other on-going CVD investigations. Yet, Korea is not to relieve. In October 2019, India initiated its anti-subsidy investigation against styrene butadiene rubber originating in Korea of which the Central Government recently decided not to impose countervailing duty as of March 31, 2021. It was India's very first CVD investigation towards Korea.

Korean products are subject to the second most numerous investigations by the Indian Government, that is after China. As of December 31st, India imposes

34 measures including eight cases still under investigation. Now that India has already initiated its first move toward CVD measures on Korean products, it is only a matter of time until India initiates another investigation on Korea.

Case studies on this paper suggested a potential signal that some of the accused products originating in India might be also imported to Korea. According to the data from Trade Statistics Services of Korea, Korea have been importing those very same products, namely, Carbazole Violet Pigment 23, Polyester Textured Yarn, Quartz Surface Products and Stainless Steel Flanges to Korea in a great amount. All those four products were imposed with both AD and CVD measures by the U.S. For EU's Stainless steel bars and rods case, Korea has been already imposing an AD measure on India for many years now, which means Korea acknowledges the material injury from the product. Thus, there might a possibility those material injuries were in fact arising from the countervailable subsidies from India. As for Graphite Electrode systems case from the EU, there is currently no ongoing investigations by Korea when Korea has been importing tens of millions of dollars' worth of the very same product from India while the EU has continued its imposition of AD and CVD measures since 2004.

VII. CONCLUSION

At the center of India's recent economic development lies "Modinomics" which aims to strive for economic growth through "Make in India", "Smart City" and "Digital India" initiatives. Through "Make in India", India strived to strengthen competitiveness of its domestic industries in its manufacturing and services sectors by imposing more trade restrictions than ever before. WTO Trade Policy Review conducted in January 2021, noted that during time period of 2015-2019 (December 2019), India initiated 233 investigations while its number of initiations from 2011-14 (June) stood at 82. During the Review, Japan and China called upon India to eliminate certain customs duties as they are inconsistent with WTO principles and India's commitments. Some were concerned over India's very little progress in the past years on eliminating trade barriers many of which are long-standing. Also, it was noted that frequent changes of tariff rates and other trade policy instruments have created great uncertainty for exporters, since India still continues to rely on trade policy instruments such as export taxes, tariff, licensing, and import and export restrictions.

Recently, import licensing system issues have put many firms in various countries in difficulties, as every time India imports certain products, such as tire and TV, the exporters must get the import license. It frustrates exporters as "import licenses of specified goods, services or technology may be suspended or cancelled without giving prior notice to the license holder." Also, its newly made regulation regarding Rules of Origin to countries that signed FTA with is also becoming an issue as the Indian government now requests for more documentation, resulting in delay in customs and an increase in costs.

Korea relies about 70 percent of its entire GDP on trade. This ratio is exceptionally high and also risky since the whole country's economy can easily tremble by external economic and trade factors. This also means Korea is particularly more vulnerable to such trade policy instruments that India has been making the most use of. As Korea is one of the major countries affected by the measure, comprehensive analysis on India's current subsidy schemes that have been found countervailable would help Korea to come up with countermeasures. Also, reinforcement of responding organization and close cooperation between the government and business sectors will be needed. A reasonable level of CVD enforcement may be under consideration for Korea.

< Appendix 1 >

List of products from India with CVD measures in force by the US and corresponding Korea's import and export of the product from/to India in 2020 according to HS Codes in 6 digits

| | HS Code (6 digits) | Export (US \$) | Import (US \$) |
|--|-----------------------|----------------|----------------|
| Carbazole Violet Pigment 23 | 32.04.17 | 3,708,910 | 27,401,883 |
| Carbon and Alloy Steel Threaded Rod | 73.18.15 | 45,859,547 | 2,225,489 |
| Carbon steel plate | 72.08.51 | 110,685,795 | 0 |
| | 72.08.52 | 6,476,772 | 0 |
| | 72.08.90 | 7,555 | 3,570 |
| | 72.10.70 | 117,739,040 | 5,851 |
| | 72.10.90 | 39,070 | 82,918 |
| | 72.11.14 | 9 | 0 |
| | 72.11.90 | 60,941 | 215,695 |
| | 72.12.40 | 7,346,073 | 1,081,361 |
| | 72.12.50 | 1,659,044 | 922 |
| | 72.25.40 | 7,847,079 | 15,697 |
| | 72.25.50 | 73,159,337 | 22,607 |
| | 72.25.99 | 735,440 | 0 |
| | 72.26.91 | 1,194,058 | 0 |
| | 72.26.99 | 211,522 | 196,050 |
| | Total | 327,161,735 | 1,624,671 |
| Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel | 73.04.31 | 1,463,826 | 274,864 |
| | 73.04.51 | 106,695 | 90,384 |
| | 73.06.30 | 7,763,200 | 2,803 |
| | 73.06.50 | 480 | 0 |
| | Total | 9,334,201 | 368,051 |

| | | | |
|------------------------------------|-------------|-------------|-----------|
| Cold-Rolled Steel Flat Products | 72.09.15 | 697,652 | 0 |
| | 72.09.16 | 29,548,771 | 141,061 |
| | 72.09.17 | 70,177,184 | 50,823 |
| | 72.09.18 | 2,443,224 | 0 |
| | 72.09.27 | 73,070 | 25,908 |
| | 72.09.28 | 0 | 9,401 |
| | 72.09.90 | 0 | 1,301 |
| | 72.10.70 | 117,739,040 | 5,851 |
| | 72.11.23 | 17,096 | 211 |
| | 72.11.29 | 8,352,771 | 448,141 |
| | 72.11.90 | 60,941 | 215,695 |
| | 72.12.40 | 7,346,073 | 1,081,361 |
| | 72.25.50 | 73,159,337 | 22,607 |
| | 72.25.99 | 735,440 | 0 |
| | 72.26.92 | 5,083,072 | 0 |
| | 72.10.90 | 39,070 | 82,918 |
| | 72.12.50 | 1,659,044 | 922 |
| | 72.15.10 | 83,163 | 0 |
| | 72.15.50 | 413,174 | 0 |
| | 72.15.90 | 371,189 | 0 |
| | 72.17.10 | 3,669,789 | 0 |
| | 72.17.90 | 2,497,073 | 351 |
| | 72.25.19 | 59,504,673 | 0 |
| | 72.26.19 | 618,013 | 0 |
| | 72.26.99 | 211,522 | 196,050 |
| | 72.28.50 | 7,022,143 | 27,356 |
| | 72.28.60 | 211,772 | 70,124 |
| | 72.29.90 | 17,596,103 | 9,958 |
| Total | 409,330,399 | 2,390,039 | |

| | | | |
|------------------------------------|----------|-------------|-----------|
| Commodity Matchbooks | 36.05.00 | 0 | 0 |
| Common Alloy Aluminum Sheet | 76.06.11 | 231,055 | 148,412 |
| | 76.06.12 | 65,663,363 | 1,184,773 |
| | 76.06.91 | 340,963 | 1,882 |
| | 76.06.92 | 2,044,396 | 67,062 |
| | 76.07.11 | 24,194,011 | 2,200 |
| | Total | 92,473,788 | 1,404,329 |
| Corrosion-Resistant Steel Products | 72.10.30 | 29,622,488 | 0 |
| | 72.10.49 | 92,694,923 | 28,003 |
| | 72.10.61 | 26,860,252 | 0 |
| | 72.10.69 | 11,796,734 | 0 |
| | 72.10.70 | 117,739,040 | 5,851 |
| | 72.10.90 | 39,070 | 82,918 |
| | 72.12.20 | 1,411,089 | 52 |
| | 72.12.30 | 132,200 | 2,402 |
| | 72.12.40 | 7,346,073 | 1,081,361 |
| | 72.12.50 | 1,659,044 | 922 |
| | 72.12.60 | 152,130 | 6,646 |
| | 72.15.90 | 371,189 | 0 |
| | 72.17.20 | 347,132 | 0 |
| | 72.17.30 | 542,281 | 0 |
| | 72.17.90 | 2,497,073 | 351 |
| | 72.25.91 | 2,203,176 | 0 |
| | 72.25.92 | 17,784,026 | 0 |
| | 72.25.99 | 735,440 | 0 |
| | 72.26.99 | 211,522 | 196,050 |
| | 72.28.60 | 211,772 | 70,124 |
| | 72.29.90 | 17,596,103 | 9,958 |
| | Total | 331,952,757 | 1,484,638 |

| | | | |
|---------------------------------------|----------|------------|-----------|
| Fine Denier Polyester Staple Fiber | 55.03.20 | 14,385,657 | 331,929 |
| Finished Carbon Steel Flanges | 73.07.91 | 3,519,432 | 50,063 |
| Fluid End Blocks | 72.18.91 | 295,563 | 0 |
| | 72.18.99 | 2,460 | 340,746 |
| | 72.24.90 | 0 | 11,255 |
| | 73.26.19 | 15,352,032 | 18,490 |
| | 73.26.90 | 35,238,543 | 3,052,749 |
| | 84.13.91 | 16,469,811 | 5,109,199 |
| | Total | 67,358,409 | 8,546,891 |
| Forged Steel Fittings | 73.07.92 | 4,207,613 | 15,335 |
| | 73.07.93 | 2,473,639 | 0 |
| | 73.07.99 | 6,871,967 | 1,332,187 |
| | 73.26.19 | 15,352,032 | 18,490 |
| | Total | 28,905,251 | 1,366,012 |
| Glycine | 29.22.49 | 4,538,248 | 8,332,925 |
| Hot-rolled carbon steel flat products | N/A | N/A | N/A |
| Large Diameter Welded Pipe | 73.05.11 | 759,377 | 0 |
| | 73.05.31 | 5,330,448 | 0 |
| | Total | 6,089,825 | 0 |
| Lined paper | 48.11.90 | 16,112,404 | 99,744 |
| | 48.20.10 | 240,875 | 16,586 |
| | Total | 16,353,279 | 116,330 |
| New Pneumatic Off-the-Road Tires | 40.11.20 | 108,177 | 28,714 |
| | 40.11.70 | 7,666 | 2,003,839 |
| | 40.11.80 | 7,934 | 3,170,712 |
| | 40.11.90 | 0 | 6,609 |
| | 84.24.90 | 1,747,642 | 399,005 |
| | 84.31.20 | 524,087 | 116,414 |
| | 84.31.39 | 4,877,073 | 103,467 |

| | | | |
|---|----------|-------------|------------|
| New Pneumatic Off-the-Road Tires | 84.31.49 | 115,367,944 | 3,972,115 |
| | 84.32.90 | 53,996 | 3,908 |
| | 84.33.90 | 15,781 | 22,571 |
| | 85.03.00 | 14,569,621 | 541,548 |
| | 87.08.70 | 4,574,938 | 665,628 |
| | 87.09.90 | 4,483 | 2,107 |
| | 87.16.90 | 13,290 | 2,960 |
| | Total | 141,872,632 | 11,039,597 |
| Oil Country Tubular Goods | N/A | N/A | N/A |
| Polyester Textured Yarn | 54.02.33 | 1,014,059 | 20,066,604 |
| | 54.02.52 | 34,972 | 0 |
| | Total | 1,049,031 | 20,066,604 |
| Polyethylene terephthalate (PET) film | 39.20.62 | 5,393,469 | 2,107,753 |
| Polyethylene Terephthalate Resin | 39.07.61 | 790,834 | 129,338 |
| | 39.07.69 | 730,254 | 113,925 |
| | Total | 1,521,088 | 243,263 |
| Prestressed concrete steel wire strand | 73.12.10 | 3,751,506 | 183,564 |
| Quartz Surface Products | 25.06.10 | 0 | 4,903,591 |
| | 25.06.20 | 0 | 21,622 |
| | 68.10.11 | 250,598 | 0 |
| | 68.10.19 | 0 | 2,357 |
| | 68.10.99 | 0 | 18,367 |
| | 68.15.99 | 121,951 | 967,850 |
| | 70.16.90 | 0 | 40 |
| | Total | 372,549 | 5,913,827 |
| Stainless Steel Flanges | 73.07.21 | 756,511 | 5,729,637 |
| Sulfanilic acid | 29.21.41 | 0 | 14,452 |
| Welded Stainless Pressure Pipe | 73.06.40 | 4,733,908 | 22,508 |

Source: Trade Statistics Service, TRASS

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< 국문 초록 >

상계관세 또는 반보조금 정책은 그간 미국과 유럽연합과 같은 강대국에 의해 주로 활용되어왔다. 하지만 오늘날은 특히 인도와 같은 많은 신흥 국가들 또한 상계관세 정책을 활용하는 것이 증가하는 추세에 있다. 그에 반면에 우리나라는 역사상 상계관세조치를 취해본 적이 없다. 인도가 그간 특히 한국을 포함한 많은 나라들에게 있어서 쉬운 무역 파트너였던 적이 없던 만큼, 최근 이러한 변화는 단연 좋은 뉴스는 아니다.

2019년, 인도가 우리나라의 스타이렌뷰타다이엔고무(Styrene Butadiene Rubber)에 대하여 상계관세 조사를 개시하였다. 2021년 3월, 인도 정부가 해당 조사를 철회하였지만, 그간 우리나라에게 반덤핑 조치만을 부과해왔던 인도가 한국을 상대로 첫 상계관세 조사 개시를 하였다는 것은 눈여겨볼 만하다. 한국은 인도가 중국 다음으로 많은 반덤핑관세를 부과하는 나라다. 한국은 전체 무역량의 3%를 차지하는 인도의 8번째 무역 상대국이고, 중국은 전체 무역량의 14%를 차지하는 가장 큰 무역상대국인 것을 감안할 때, 인도가 한국 상품에 특히 적대적인 측면이 강하다는 것을 부인할 수 없다. 자유롭고 조화로운 무역 교류를 위한 노력의 일부인 한·인 CEPA 체결에도 불구하고 인도의 잦은 무역구제조치는 한국 수출업자들이 인도 시장을 진출하는 데에 있어 많은 어려움을 안겨왔다.

인도는 2016년도 첫 상계관세 판정조치 이후, 오늘날 이미 세계에서 다섯번 째로 가장 많은 상계관세 조치를 부과하는 국가로 급부상했다. 몇 년 전만해도 인도는 한국과 마찬가지로 미국, 유럽 연합

등 주로 다른 강대국들에 의해 갖은 상계관세를 부과받기만 했던 국가 중 하나였고 이들은 인도의 주요 무역 상대국이다.

미국은 2021년 7월 기준, 인도를 대상으로 26개의 상계관세 조치를 시행중으로 이는 가장 많은 숫자다. 단일국으로는 미국이 인도의 가장 큰 수출 시장으로, 전체 무역규모의 16%를 차지한다. 최근 미국은 인도를 우대목록(preferential list)에서 제외하며 향후 인도를 향한 상계관세 및 반덤핑 조치를 더 수월하게 한바있다. 유럽연합은 인도의 가장 큰 무역상대국으로, 현재 인도에게 4개의 상계관세 조치를 취하고 있다. 유럽연합은 1997년 인도를 상대로 첫 번째 상계관세 조치 이후 지금까지 꾸준히 조치를 취하고있다.

본 연구는 미국과 유럽연합이 인도를 상대로 조치중인 상계관세 사례들을 보조금 중심으로 분석한다. 각 국의 주장을 통합하여 복수의 사례에서 반복적으로 등장하는 주장 및 근거들을 살펴본다. 또한 본 연구는 연구 대상의 인도상품들에 대하여 한국과의 무역 흐름을 파악하고, 해당 품목에 대한 한국의 인도에 대한 무역의존도를 살핀다. 연구 결과 연구 대상 8개상품 모두 한국이 수입국 측이며, 이 중에서도 한국은 Carbazole Violet Pigment 23, Polyester Textured Yarn, 그리고 Graphite Electrode systems 에서 유독 많은 수입량을 보였는데 첫 두 품목의 경우 미국이 반덤핑 및 상계관세 모두 부과중이며, 마지막 품목의 경우에는 유럽연합이 2004년부터 꾸준히 반덤핑 및 상계관세 모두 부과해왔다. 본 연구는 이와 같은 연구 결과들을 바탕으로 한국의 잠재적 상계관세 활용을 촉구한다.