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Investigation
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September 18, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Certain Cold-Drawn
Mechanical Tubing of Carbon and Alloy Steel from India

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain cold-drawn mechanical tubing of carbon and alloy steel products (cold-drawn mechanical tubing) from India, as provided in section 703 of the Tariff Act of 1930, as amended (Act).

II. BACKGROUND

A. Initiation and Case History

On April 19, 2017, the Department received a petition from ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners) seeking the imposition of countervailing duties (CVDs) on cold-drawn mechanical tubing from India.¹ Supplements to the petition and our consultations with the Government of India (GOI) are described in the *Initiation Notice* and

¹ See Letter to the Secretary from the Petitioners, re: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland, dated April 19, 2017 (the petition).

accompanying Initiation Checklist.² On May 9, 2017, the Department initiated a CVD investigation on cold-drawn mechanical tubing from India.³

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on United States Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁴ On May 11, 2017, the Department released the CBP entry data under administrative protective order.⁵

On May 18, 2017, Tube Products of India, Ltd., a unit of Tube Investments of India Limited (Tube Investments) submitted respondent selection comments.⁶ On May 23, 2017, Goodluck Industries, a division of Goodluck India Limited (Goodluck) and the petitioners submitted respondent selection comments.⁷ On May 31, 2017, we selected Goodluck and Tube Investments as the mandatory respondents for this investigation.⁸ We issued our countervailing duty questionnaire to the GOI on June 1, 2017, seeking information regarding the alleged subsidies.⁹ The Department instructed the GOI to forward the questionnaire to the selected mandatory respondents.¹⁰

Between June 15, 2017 and July 19, 2017, we received timely questionnaire responses from Tube Investments and Goodluck.¹¹ Between July 19, 2017 and September 6, 2017, we received timely responses from Tube Investments and Goodluck to our supplemental questionnaires.¹²

² See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 22486 (May 16, 2017) (*Initiation Notice*); see also Memorandum, "Countervailing Duty Investigation Initiation Checklist: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated May 9, 2017 (Initiation Checklist).

³ See *Initiation Notice*.

⁴ *Id.* at 22488-89.

⁵ See Memorandum regarding: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy from India: Customs Data for Respondent Selection Purposes, dated May 11, 2017.

⁶ Letter to the Secretary from Tube Investments, re: Respondent Selection Comments, dated May 18, 2017.

⁷ Letter to the Secretary from Goodluck, re: Comments on CBP Data, dated May 23, 2017; Letter to the Secretary from the Petitioners, re: Petitioners' Respondent Selection Comments, dated May 23, 2017.

⁸ See Memorandum, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India," dated May 31, 2017.

⁹ See Department Letter re: Countervailing Duty Questionnaire, dated June 1, 2017 (Countervailing Duty Questionnaire).

¹⁰ *Id.*

¹¹ See Letter to the Secretary from Tube Investments, re: Section III Affiliated Companies Response, dated June 15, 2017 (Tube Investment Affiliation Response); Letter to the Secretary from Goodluck, re: Goodluck's Affiliation Response, dated June 19, 2017 (Goodluck Affiliation Response); Letter to the Secretary from Tube Investments, re: Section III Initial Questionnaire Response, dated July 10, 2017 (Tube Investments Questionnaire Response); Letter to the Secretary from Goodluck, re: Goodluck's Initial CVD Questionnaire Response, dated July 19, 2017 (Goodluck Questionnaire Response).

¹² See Letter to the Secretary from Goodluck, re: Goodluck's First Supplemental Affiliation Response, dated July 19, 2017 (Goodluck Supplemental Affiliation Response); Letter to the Secretary from Tube Investments, re: CVD Supplemental Questionnaire Response, dated August 18, 2017 (Tube Investments Supplemental Questionnaire Response); Letter to the Secretary from Goodluck, re: Goodluck's Second Supplemental Response, dated August 18, 2017 (Goodluck Supplemental Questionnaire Response); Letter to the Secretary from Tube Investments, re: CVD 2nd Supplemental Questionnaire Response, dated September 6, 2017.

The GOI initially improperly filed its questionnaire response, which the Department rejected.¹³ However, the Department allowed the GOI to remedy the deficiencies with its filing,¹⁴ and the GOI subsequently properly submitted its questionnaire response to the Department on July 17, 2017.¹⁵ The GOI timely responded to our supplemental questionnaires between August 18, 2017 and September 5, 2017.¹⁶

B. Postponement of Preliminary Determination

On June 19, 2017, based on a request from the petitioners, the Department postponed the deadline for the preliminary determination until September 18, 2017, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).¹⁷

C. Period of Investigation

The period of investigation (POI) was originally defined as January 1, 2016, through December 31, 2016. On June 7, 2017, Goodluck and Tube Investments submitted comments to the Department requesting that the Department change the POI to correspond with the most recently completed fiscal year, April 1, 2016 through March 31, 2017, as opposed to the calendar year.¹⁸ No other parties submitted comments regarding the POI. On June 14, 2017, the Department determined April 1, 2016 through March 31, 2017 to be the appropriate POI for this proceeding, reflecting the most recently completed Indian fiscal year and in accordance with 19 CFR 351.204(b)(2).¹⁹

III. SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations, and as noted in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation.²⁰

¹³ See Department Letter re: Section II Questionnaire Response Filing Deficiencies, dated July 11, 2017.

¹⁴ *Id.*

¹⁵ See Letter to the Secretary from the GOI, re: Response to Section II of the CVD Questionnaire, dated July 17, 2017 (GOI Questionnaire Response).

¹⁶ See Letter to the Secretary from the GOI, re: Response to Supplemental Questionnaire, dated August 18, 2017 (GOI Supplemental Questionnaire Response); Letter to the Secretary from the GOI, re: Response to Supplemental Questionnaire Issued by USDOC on August 22, 2017, dated August 28, 2017 (GOI Second Supplemental Questionnaire Response); Letter to the Secretary from the GOI, re: Response to Supplemental Questionnaire Issued by USDOC on August 30, 2017 (GOI Third Supplemental Questionnaire Response).

¹⁷ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India and the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigations*, 82 FR 28641 (June 23, 2017).

¹⁸ See Letter to the Secretary from Goodluck, re: Goodluck Request for Change in POI to Fiscal Year, dated June 7, 2017; Letter to the Secretary from Tube Investments, re: Request to Change POI to Fiscal Year, dated June 7, 2017.

¹⁹ Memorandum regarding: Period of Investigation, dated June 14, 2017.

²⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)(Preamble); see also *Initiation Notice*, 82 FR at 22486-87.

We received several comments concerning the scope of the antidumping duty (AD) and CVD investigations of cold-drawn mechanical tubing from, *inter alia*, India.²¹ We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigations, which are currently due November 11, 2017. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

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

V. INJURY TEST

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On June 9, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cold-drawn mechanical tubing from India that are allegedly subsidized by the GOI.²²

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.²³ The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed the allocation period.

Furthermore, for non-recurring subsidies, we have applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for

²¹ *See, e.g.*, Letter to the Secretary from the Petitioners, re: Petitioners’ Scope Clarification, dated, May 30, 2017.

²² *See Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea, and Switzerland; Determinations*, 82 FR 26812 (June 9, 2017) (ITC Preliminary Determination).

²³ *See* U.S. Internal Revenue Service Publication 946 (2015), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority of voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.²⁴

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.²⁵

Goodluck

Goodluck responded to the Department's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and

²⁴ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁵ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

production of subject merchandise.²⁶ While Goodluck has several subsidiaries, these companies are not involved in the production or sale of subject merchandise or the production of inputs used in subject merchandise.²⁷ Therefore, we will attribute subsidies received by Goodluck to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Tube Investments

Tube Investments responded to the Department's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.²⁸ While Tube Investments has several subsidiaries, these companies are not involved in the production or sale of subject merchandise or the production of inputs used in subject merchandise.²⁹ Therefore, we will attribute subsidies received by Tube Investments to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. Denominators

In accordance with 19 CFR 351.525(b)(1) – (5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs in this investigation are the respondent's export sales, including deemed exports,³⁰ or total sales as appropriate as described below, and which are also explained in further detail in the preliminary calculations memoranda prepared for this preliminary determination.³¹

VII. BENCHMARKS AND DISCOUNT RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market{,}” the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, the Department “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii). In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates. Also, in the absence of reported long-term loan interest rates, we

²⁶ See generally Goodluck Affiliation Response; Goodluck Supplemental Affiliation Response.

²⁷ *Id.*

²⁸ See generally Tube Investments Affiliation Response.

²⁹ *Id.*

³⁰ See 19 CFR 351.535(b)(2).

³¹ See Memorandum, “Preliminary Determination Calculations for Tube Investments,” dated concurrently with this memorandum at 2 (Tube Investments Preliminary Calculation Memo); Memorandum, “Preliminary Determination Calculations for Goodluck,” dated concurrently with this memorandum at 2 (Goodluck Preliminary Calculation Memo).

use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

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

Based on Goodluck's and Tube Investments' responses, we preliminarily determine that both companies did not take out comparable rupee-denominated long-term loans from commercial banks in the years for which we must calculate benchmark and discount rates.³² Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we are preliminarily using national average interest rates. Specifically, we used national average interest rates from the International Monetary Fund's International Financial Statistics ("IFS") as benchmark rates for rupee-denominated short-term and long-term loans. We preliminarily find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans.

B. Discount Rates

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

VII. USE OF FACTS OTHERWISE AVAILABLE

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate is

³² See Goodluck Questionnaire Response at Exhibit 14; Tube Investments Questionnaire Response at Exhibit 32.

³³ See Goodluck Preliminary Calculation Memo at 2; Tube Investments Preliminary Calculation Memo at 2.

³⁴ *Id.*

³⁵ Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015. See also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”³⁶ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁷

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.³⁸ Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³⁹ It is the Department’s practice to consider information to be corroborated if it has probative value.⁴⁰ In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.⁴¹ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.⁴²

Finally, under section 776(d) of the Act, when applying an adverse inference, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, the Department may use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, even if the rate is *de minimis*, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.⁴³ Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to

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

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

³⁸ See also 19 CFR 351.308(d).

³⁹ See, e.g., SAA at 870.

⁴⁰ *Id.*

⁴¹ See, e.g., SAA at 869.

⁴² See SAA at 869-870.

⁴³ See *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at “Selection of the Adverse Facts Available Rate.”

demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁴⁴

For the reasons explained below, the Department preliminarily determines that application of facts otherwise available, with an adverse inference, to the financial contribution and specificity aspects of the countervailability determination of several programs is warranted pursuant to section 776(b) of the Act because, by not responding to our requests for information, the GOI failed to provide information within the time limits and in the manner requested, and therefore failed to cooperate by not acting to the best of its ability.

Government of India

As discussed, in part, above, on August 4, 2017, and August 22, 2017, the Department issued the GOI supplemental questionnaires in response to certain deficiencies that we identified in its initial questionnaire response, submitted on July 17, 2017.⁴⁵ In these supplemental questionnaires, for a second time, we requested information that had been previously requested and which the GOI had failed to provide. This information included key program procedures and guidelines necessary to conduct our analysis regarding financial contribution and specificity. Specifically, in both its initial response and supplemental response, the GOI provided partial information for the following programs: Export Promotion of Capital Goods Scheme (EPCG Scheme); the Status Holders Incentive Scrip Scheme (SHIS); the Interest Equalization Scheme for Export Financing (IES); Duty Drawback Program (DDB); Section 80-IC Tax Deduction for Assessment Year 2016 to 2017; Deduction under Section 32-AC of the Income Tax Act; and the Provision of Steel Inputs by the Steel Authority of India Ltd. (SAIL) for less than adequate remuneration (LTAR).⁴⁶ The GOI did not provide any substantive response for the following programs in either the initial or supplemental questionnaire responses: Exemption from Entry Tax for the Iron and Steel Industry, Investment Promotion Scheme, Electric Duty Exemption in the State of Uttar Pradesh, and Stamp Duty Exemption in the State of Uttar Pradesh.⁴⁷

With regard to the EPCG Scheme, as part of the Standard Questions Appendix, we asked for information about all India companies using the program. However, the GOI failed to provide information for any companies other than the mandatory respondents.⁴⁸ In addition, because we treat this program as non-recurring, the GOI was asked to provide the necessary information regarding the companies for the entire period of the AUL (*i.e.*, 2001-2016); however, the government failed to provide any information prior to 2006.⁴⁹ The GOI also failed to provide a program application completed by each mandatory respondent.⁵⁰

⁴⁴ See section 776(d)(3) of the Act.

⁴⁵ See Department Letter, re: Supplemental Questionnaire for Section III Questionnaire Response, dated August 4, 2017; Department Letter, re: Supplemental Questionnaire on Duty Drawback, dated August 22, 2017; *see also* GOI Questionnaire Response.

⁴⁶ See *generally* Letter to the Department from the GOI, re: Response to Supplemental Questionnaire, dated August 18, 2017 (GOI Supplemental Questionnaire Response); GOI Questionnaire Response.

⁴⁷ *Id.*

⁴⁸ See GOI Supplemental Questionnaire Response at 13-15.

⁴⁹ *Id.*

⁵⁰ *Id.*

For the SHIS Scheme, the GOI failed to respond to any appendices, and instead only stated that the program had been discontinued.⁵¹ However, the GOI failed to provide any supporting documentation and because the program involves the importation of capital goods and is thus a non-recurring subsidy, the GOI should have provided the information as residual benefits that could still be received.⁵²

For the IES program, the GOI failed to provide eligibility information, including terms and conditions of the program.⁵³ As mentioned above, this information is a necessary component of our analysis in determining whether a program is specific. Additionally, while the GOI maintained that the program is operated by the GOI's Reserve Bank of India through Scheduled Banks of India, the GOI stated it has no records concerning the branches of the scheduled banks involved in the distribution of the program.⁵⁴ As such, the Department lacks information necessary for our financial contribution determination regarding the IES program.

For the DDB Program, although we requested that the GOI provide information regarding all Indian companies using the DDB program, the GOI failed to provide information for any company other than the mandatory respondents.⁵⁵ Further, that information which the GOI did provide for the mandatory respondents was insufficient to determine the accuracy of the information related to the function of the DDB system, *i.e.* to confirm which inputs are consumed in the production of the exported products.⁵⁶ Specifically, the GOI failed to provide a copy of necessary information, such as the shipping bills or any other application forms filed by the respondents for the DDB program.⁵⁷

For the Section 80-IC Tax Deduction for Assessment Year 2016 to 2017 and Deduction under Section 32-AC of the Income Tax Act programs, we requested that the GOI describe the assistance under these programs in detail, including the amounts, dates of receipt, purpose and terms. We also instructed the GOI to answer all questions in the Standard Questions Appendix and all other appropriate appendices. In response, the GOI submitted only a single page exhibit

purporting to show the amounts deducted by the respondents.⁵⁸ In addition, the GOI failed to complete any of the requested appendices.⁵⁹

Regarding the Provision of Steel Inputs by SAIL for LTAR, the GOI failed to provide a variety of necessary information. In its initial response, the GOI provided only a brief statement that it was not involved in the decisions of SAIL, and did not submit any of the requested appendices.⁶⁰

⁵¹ *Id.* at 15-16.

⁵² *Id.*

⁵³ *Id.* at 17-29.

⁵⁴ *Id.* at 16.

⁵⁵ See GOI Questionnaire Response at 81.

⁵⁶ See GOI Supplemental Questionnaire Response at 18-20.

⁵⁷ *Id.*

⁵⁸ *Id.* at Exhibit I.

⁵⁹ *Id.* at 35.

⁶⁰ See GOI Questionnaire Response at 89.

When the Department requested the information a second time, the GOI again failed to fully respond to the Department's request for information.⁶¹ Specifically, the GOI failed to respond to the Department's questionnaire by making only a general statement that SAIL is not a governmental authority and failed to complete the Input Supplier Appendix as requested by the Department's questionnaire, despite admitting that it holds a majority shareholding interest in SAIL.⁶² Without this information, the Department lacks the evidence necessary to analyze SAIL's operations and evaluate the GOI's argument that the Provision of Steel Inputs by SAIL for LTAR is not a program that confers a benefit from the GOI because SAIL neither possesses governmental authority nor discharges any government function.⁶³ Additionally, the GOI failed to provide complete information related to domestic production and consumption of steel inputs, the industries that purchase such inputs, or trade publications specifying the price of such inputs.⁶⁴

Finally, as noted above, the GOI failed to provide necessary information in response to questions pertaining to the Exemption from Entry Tax for the Iron and Steel Industry, Investment Promotion Scheme, Electric Duty Exemption in the State of Uttar Pradesh, and Stamp Duty Exemption in the State of Uttar Pradesh. Given that such necessary information has been withheld by the GOI, the Department's ability to investigate those programs is significantly impeded.

Therefore, we preliminarily determine that necessary information is not available on the record and that the GOI withheld information that was requested of it in the time and manner requested, thereby significantly impeding the conduct of the investigation. Thus, the Department must rely on "facts available" in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the programs outlined above constitute a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A)(B) and 771(5A)(D) of the Act. Similarly, we are using an adverse inference to determine that SAIL is a governmental authority providing a financial contribution. We note that while certain of these programs have been countervailed in prior cases, in this instance we are preliminarily relying on adverse inferences as the GOI has not cooperated to the best of its ability. As respondents reported their respective usage of the aforementioned programs, we are relying on the respondents' reported usage data to calculate the benefit for the aforementioned programs, within the meaning of section 771(5)(E) of the Act.

IX. ANALYSIS OF PROGRAMS

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

⁶¹ See GOI Supplemental Questionnaire Response at 29-34.

⁶² *Id.* at 30.

⁶³ See GOI Supplemental Questionnaire Response at 30.

⁶⁴ *Id.* at 30-34.

A. Programs Preliminarily Determined to Be Countervailable

1. Advance Authorization Program (AAP), aka, Advance License Program (ALP)

Under the AAP, aka ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported.⁶⁵ The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled the export requirement.⁶⁶ The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI.⁶⁷ During the POI, Goodluck used advance licenses to import certain materials duty free.⁶⁸

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.⁶⁹ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.⁷⁰ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁷¹ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.⁷²

In the 2003 administrative review of countervailing duties on Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAP/ALP during 2005. The Department acknowledged that certain improvements to the AAP/ALP system were made. However, the Department found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that POR.⁷³ Specifically, in the 2003 review, the Department stated that it continued to find the AAP/ALP countervailable based on:

⁶⁵ See GOI Questionnaire Response at 11-22.

⁶⁶ *Id.*

⁶⁷ See Goodluck Questionnaire Response at 15-26 and Exhibit 8(c); see also GOI Supplemental Questionnaire Response at 11-22.

⁶⁸ *Id.*

⁶⁹ See 19 CFR 351.519(a)(1)(ii).

⁷⁰ See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at “Duty Drawback (DDB).”

⁷¹ *Id.*

⁷² See 19 CFR 351.519(a)(4)(i)-(ii).

⁷³ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*2003 Review of PET Film from India*), and accompanying IDM at 3-5.

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.⁷⁴

Since the 2003 PET Film review, the Department has in several other proceedings made determinations consistent with this treatment of the AAP/ALP.⁷⁵ In the current investigation, record evidence shows⁷⁶ there has been no change to the AAP/ALP program and therefore we preliminarily find that the program confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from payment of import duties that would otherwise be due; (2) the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A) (B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.⁷⁷ Under this program, during the POI, Goodluck did not have to pay certain import duties for inputs that were used in the production of subject merchandise.⁷⁸ Thus, we are treating the benefit provided under the AAP as a recurring benefit.

Goodluck imported inputs under the AAP for the production of subject merchandise duty free during the POI. In response to the Department's questionnaire, Goodluck provided supporting documentation regarding its AAP license.⁷⁹ The information provided affirmatively demonstrates that the licenses provided to Goodluck were tied to the production and export of subject merchandise within the meaning of 19 CFR 351.525(b)(5).

⁷⁴ *Id.*

⁷⁵ See, e.g., *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*Oil Country Tubular Goods from India Final*), and accompanying IDM; see also *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015), and accompanying IDM.

⁷⁶ See GOI Questionnaire Response at 11-22 and Exhibits C-F.

⁷⁷ See, e.g., *Oil Country Tubular Goods from India Final*, and accompanying IDM.

⁷⁸ See Goodluck Questionnaire Response at 20.

⁷⁹ *Id.* at Exhibit 8.

To calculate the subsidy rate, we first determined the total value of import duties exempted during the POI for Goodluck under licenses tied to subject merchandise. We then divided the resulting benefit by the total value of Goodluck's export sales. On this basis, we determine the countervailable subsidy provided to Goodluck under the AAP to be 1.35 percent *ad valorem*.⁸⁰

2. Duty Drawback (DDB)

Goodluck and Tube Investments reported receiving duty rebates under this program.⁸¹ The GOI explained that the DDB Program provides rebates for duty or tax chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export goods.⁸² Specifically, the duties and tax "neutralized" under the program are the (i) Customs and Union Excise Duties in respect of inputs and (ii) Service Tax in respect of input services.⁸³ The duty drawback is generally fixed as a percentage of the free on board (FOB) price of the exported product.⁸⁴

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.⁸⁵ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.⁸⁶ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁸⁷ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.⁸⁸

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

The 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 stake holders 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,

⁸⁰ See Goodluck Preliminary Calculation Memo at 2.

⁸¹ See Goodluck Questionnaire Response at 26-30; Tube Investments Questionnaire Response at 18-26; Goodluck Supplemental Questionnaire Response at 9-10; Tube Investments Supplemental Questionnaire Response at 9-13.

⁸² See GOI Supplemental Questionnaire Response at 18.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See 19 CFR 351.519(a)(1)(ii).

⁸⁶ See *Shrimp from India Final Determination*, and accompanying IDM at "Duty Drawback (DDB)."

⁸⁷ *Id.*

⁸⁸ See 19 CFR 351.519(a)(4)(i)-(ii).

consumption ratios and FOB values of exports products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of DDB.⁸⁹

As submitted by the GOI, Rule 3(2) of the Drawback Rules 1995, states that in determining the amount of drawback, “the Central Government shall have regard to” the average quantity and value of an input, component or intermediate product, whether produced in India or imported, the import duties or excise duties paid thereon, as well as account for waste, re-use or sale of a by-product, and packing and input services rendered.⁹⁰

We requested that the GOI provide a copy of the recommendations and supporting documents (*e.g.*, accounting records, company-specific files, databases, budget authorizations, *etc.*) for the drawback rates in effect during the POI.⁹¹ As discussed above, the GOI did not provide documentation enabling the Department to determine whether the GOI has a system in place.⁹² Thus, consistent with the *Shrimp from India Final Determination*, based on the GOI’s questionnaire response that lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, we preliminarily conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.⁹³

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

Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred as of the date of exportation of the shipment for which the pertinent drawbacks are earned. We calculated the benefit on an as-earned basis upon export because drawback under the program is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at this point that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

We calculated the subsidy rate using the value of all DDB duty rebates that Goodluck and Tube Investments earned on U.S. sales. We divided the total amount of the benefit received by Goodluck and Tube Investments by the companies’ total U.S. exports during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 1.43 percent *ad valorem* for

⁸⁹ See GOI Questionnaire Response at 75.

⁹⁰ See GOI Supplemental Questionnaire Response at Exhibit E.

⁹¹ See Countervailing Duty Questionnaire.

⁹² See GOI Questionnaire Response at 81; GOI Supplemental Questionnaire Response at 18-20.

⁹³ See *Shrimp from India Final Determination*, and accompanying IDM at 12-14.

Goodluck, and a rate of 2.07 percent *ad valorem* for Tube Investments.⁹⁴

3. *Merchandise Export from India Scheme (MEIS)*

Goodluck and Tube Investments reported receiving benefits from the MEIS during the POI.⁹⁵ The GOI explained that the MEIS was introduced in the Foreign Trade Policy (FTP) 2015-2020.⁹⁶ Its purpose is to “offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India’s export competitiveness.”⁹⁷ Under this program, the GOI issues a scrip worth either two, three, or five percent of the FOB value of the of “exports in free foreign exchange, or on the FOB value of exports, as given on the shipping bills in free foreign exchange, whichever is less.”⁹⁸ To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with Director General of Foreign Trade (DGFT).⁹⁹ After a recipient receives and registers the scrip, it may use it for either the payment of future customs duties for importing goods or transfer it to another company.¹⁰⁰

In the *Steel Flanges from India Preliminary Determination*, the Department found the MEIS program to be countervailable based on its similarities to India’s Status Holder Incentive Scheme (SHIS) which the Department has also found countervailable.¹⁰¹ For that program, similar to the MEIS program, the GOI provides scrips to exporters worth a certain percentage of the FOB value of exports. The scrip could then be used as a credit for future import duties or could be transferred to other “Status Holders” to be used as a credit for future import duties.¹⁰²

The program is specific within sections 771(5A)(B) of the Act because, as the GOI, Goodluck, and Tube Investments admit, eligibility to receive the scrips is contingent upon export.¹⁰³ As the Department determined in the *Steel Flanges from India Preliminary Determination*, similar to the SHIS program, this program provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue foregone by the GOI.¹⁰⁴

⁹⁴ See Goodluck Preliminary Calculation Memo at 2-3; Tube Investments Preliminary Calculation Memo at 2-3.

⁹⁵ See Goodluck Questionnaire Response at 31; Tube Investments Questionnaire Response at 28.

⁹⁶ See GOI Questionnaire Response at 44.

⁹⁷ *Id.* at 47.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Goodluck Questionnaire Response at 34.

¹⁰¹ See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 16 (*Steel Flanges from India Preliminary Determination*) (unchanged in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM); see also “Status Holder Incentive Scheme (SHIS)” section, below.

¹⁰² *Id.*

¹⁰³ See, e.g., GOI Questionnaire Response at 47.

¹⁰⁴ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 16.

Goodluck and Tube Investments reported that they submitted applications and received approval under the MEIS program upon the export of qualified goods.¹⁰⁵ Goodluck indicated that it sold all of its scrips, or licenses, in the market and accounted for these sales in its receivables using the “exact license value.”¹⁰⁶ Tube Investments reported that it retains its scrips in its records which it later uses to pay the import duties owed on raw materials or capital goods.¹⁰⁷

In the *Steel Flanges from India Preliminary Determination*, the Department found the MEIS program is continuous and thus, recurring, in nature.¹⁰⁸ 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.¹⁰⁹ 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).¹¹⁰ We calculated the benefit to Goodluck and Tube Investments to be the total value of scrips granted during the POI. Normally, in cases where the benefits are granted based on a percentage value of a shipment, the Department calculates benefits as having been received as of the date of exportation.¹¹¹ However, because the MEIS benefit, *i.e.* the scrip amount, is not automatic and is not known to the exporter until well after the exports are made, the MEIS 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.¹¹² On this basis, we preliminarily determine a countervailable subsidy of 1.48 percent *ad valorem* for Goodluck, and a countervailable subsidy rate of 0.12 percent *ad valorem* for Tube Investments.¹¹³

4. Status Holders Incentive Scrip Scheme (SHIS)

Goodluck self-reported use of the SHIS in its questionnaire response and provided certain supporting documentation.¹¹⁴ It is the Department’s practice to rely on governments to provide financial contribution and specificity information. In this instance, while Goodluck did provide documentation demonstrating operation of this program in accordance with the Reserve Bank of India (RBI) and other banking rules, we were not able to confirm this information with the GOI

¹⁰⁵ See Goodluck Questionnaire Response at 34; Tube Investments Questionnaire Response at 29.

¹⁰⁶ See Goodluck Questionnaire Response at 34.

¹⁰⁷ See Tube Investments Questionnaire Response at 28-29.

¹⁰⁸ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 16.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See 19 CFR 351.519(b)(1).

¹¹² See *Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2012*, 79 FR 50616, (August 25, 2014) (*PET Film from India Preliminary Results 2012*), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11160 (March 2, 2015) (*PET Film from India Final Results 2012*); *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 (February 16, 2016) (*PET Film from India Final Results 2013*), and accompanying IDM at Comment 2.

¹¹³ See Goodluck Preliminary Calculation Memo at 3-4; Tube Investments Preliminary Calculation Memo at 3-4.

¹¹⁴ See Goodluck Questionnaire Response at 37.

and its official documents, as discussed under the section “Use of Facts Otherwise Available,” above. As discussed above, we are therefore finding that an adverse inference is warranted in determining whether the GOI provided a financial contribution through the SHIS program, and whether the SHIS is specific. Consequently, as AFA, we preliminarily determine that the GOI conferred a financial contribution and we find the SHIS program specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively.

As explained in the *Steel Flanges from India Preliminary Determination* which relied on *Steel Threaded Rod from India*, a benefit is also provided under the SHIS program under 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.¹¹⁵ As discussed at “Use of Facts Otherwise Available,” section above, we are using information on the record provided by respondents to calculate the benefit received by the companies.

Goodluck reported that import duty exemptions under this program are provided solely for the purchase of capital equipment.¹¹⁶ The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring...”.¹¹⁷ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.¹¹⁸

Goodluck reported that it received SHIS license scrips to import capital goods duty-free during the AUL. Information provided by Goodluck indicates that its SHIS license scrips were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by Goodluck to its total exports.¹¹⁹

The SHIS scrip represents a non-recurring benefit that is not automatically received, and the amount of said benefit is not known to the recipient at the time of receipt of the scrip.¹²⁰ Although the Department’s regulations stipulate that we will normally consider the benefit as having been received as of the date of exportation, *see* 19 CFR 351.519(b)(1), because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.¹²¹

¹¹⁵ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 18 (citing *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India*), and accompanying IDM, at “Status Holder Incentive Scrip”).

¹¹⁶ See Goodluck Questionnaire Response at 39.

¹¹⁷ See *Countervailing Duties*, 63 FR at 65393.

¹¹⁸ See *Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹¹⁹ See generally Goodluck Questionnaire Response at 37-49.

¹²⁰ See *Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹²¹ The Department determined, and was upheld by the CIT in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*) with respect to a similar, but discontinued, GOI program, the Duty Entitlement Passbook Scheme (DEPS), that benefits were conferred when earned, rather than when the credits were used.

We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which Goodluck received the SHIS scrip and allocated the benefits across the AUL.¹²² We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). On this basis, we determine a countervailable subsidy of 0.39 percent *ad valorem* for Goodluck.¹²³

5. Incremental Exports Incentive Scheme (IEIS)

Goodluck and Tube Investments reported use of the IEIS and provided certain supporting documentation.¹²⁴ It is the Department’s practice to rely on governments to provide financial contribution and specificity information. According to the GOI, the IEIS program entitles companies to a scrip equivalent to two percent of the incremental realized FOB value of exports in free foreign exchange for the period January 1, 2013 to March 31, 2013 over January 1, 2012 to March 31, 2012 to specified markets, *i.e.*, the United States, Europe, and Asia.¹²⁵

The program is specific within sections 771(5A)(B) of the Act because, as the GOI, Goodluck, and Tube Investments admit, eligibility to receive the scrips is contingent upon export.¹²⁶ Similar to the SHIS program, this program provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue foregone by the GOI.¹²⁷

As the GOI reported that the scrips are based on the value of exports, we are therefore attributing the license value received by Goodluck and Tube Investments to their total exports. However, Goodluck reported that it did not use its IEIS scrip during the POI or prior to the POI.¹²⁸ Rather, Goodluck indicated and provided supporting documentation that it received and sold its scrip to an unaffiliated party prior to the POI. Thus, we find that Goodluck did not receive a benefit from this program during the POI.¹²⁹ On the other hand, Tube Investments utilized its license during the POI in a manner similar to the IEIS program, to offset future import duty, and the Department therefore determines that it did receive a benefit during the POI.¹³⁰

Normally, in cases where the benefits are granted based on a percentage value of a shipment, the Department calculates benefit as having been received as of the date of exportation;¹³¹ however,

¹²² See Goodluck Preliminary Calculation Memo at 4.

¹²³ *Id.*

¹²⁴ See Goodluck Questionnaire Response at 51; Tube Investments Supplemental Questionnaire Response at 18 and Exhibit 54.

¹²⁵ See Goodluck Questionnaire Response at 37.

¹²⁶ See, *e.g.*, GOI Questionnaire Response at 37; Tube Investments Supplemental Questionnaire Response at 19.

¹²⁷ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 16.

¹²⁸ See Goodluck Questionnaire Response at 53.

¹²⁹ *Id.*

¹³⁰ See Tube Investments Supplemental Questionnaire Response at 19.

¹³¹ See 19 CFR 351.519(b)(1).

because the IEIS benefit, *i.e.* the scrip, amount is not automatic and is not known to the exporter until well after the exports are made, the IEIS 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.¹³²

Thus, with regard to Tube Investments, to determine the subsidy rate, we divided the amount of the benefits provided to Tube Investments under section 771(5)(E) the Act during the POI and divided it by Tube Investment's total export sales during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.10 percent *ad valorem* for Tube Investments.¹³³

6. *Export Promotion of Capital Goods Scheme (EPCG)*

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.¹³⁴ Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to a multiple of the duty saved within a period of a certain number of years.¹³⁵ If the company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, in addition to an interest penalty.¹³⁶

The Department has previously determined that import duty reductions or exemptions provided under the EPCG program are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provides two different benefits (*see* below) under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.¹³⁷ However, as described above, because the GOI did not act to the best of its ability, we are relying on our adverse inference in determining whether the GOI provided a financial contribution through the EPCG program, and whether the EPCG program is specific.

Under the EPCG program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).¹³⁸ Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCG program. The second benefit arises when the GOI waives the duty on imports of

¹³² See *PET Film Preliminary Results 2012, unchanged in PET Film Final Results 2012; PET Film from India Final Results 2013* at Comment 2.

¹³³ See Tube Investments Preliminary Calculation Memo at 4.

¹³⁴ See GOI Questionnaire Response at 24-37.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See, e.g., *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at "EPCGS" section; *see also Shrimp from India Final Determination*, and accompanying IDM at 14.

¹³⁸ *Id.*

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).

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring....”¹³⁹ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.¹⁴⁰ Goodluck reported that they imported capital goods at reduced import duty rates under the EPCG program.¹⁴¹ Based on record information, Goodluck received various licenses which it reported were for the manufacture of non-subject merchandise.¹⁴² Goodluck provided complete license documentation on the record of this investigation, including copies of the original licenses issued by the GOI.¹⁴³ Specifically, Goodluck demonstrated that its non-transferable licenses were issued for use in a plant which does not produce subject merchandise.¹⁴⁴ Furthermore, the licenses submitted by Goodluck established that they were issued solely for the production of non-subject merchandise.¹⁴⁵ Thus, based on the information and documentation submitted by Goodluck, we were able to determine that the EPCG licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). We further determine that Goodluck’s licenses are tied to the production of non-subject merchandise, and as such, Goodluck’s EPCG licenses do not benefit the company’s exports of subject merchandise.

Tube Investments reported that it imported capital goods at reduced import duty rates under the EPCG program.¹⁴⁶ Tube Investments received various EPCGS licenses, which it reported were for the production of subject merchandise and non-subject merchandise. Tube Investments provided complete license documentation on the record of this investigation, including copies of the original licenses issued by the GOI.¹⁴⁷ Specifically, Tube Investments demonstrated that certain of its licenses were issued for the purchase of capital goods and raw materials to be used in the production of subject merchandise. Tube Investments was also able to demonstrate that

¹³⁹ See *CVD Preamble*, 63 FR at 65393.

¹⁴⁰ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010), and accompanying IDM at Comment 9; see also *Certain Frozen Warmwater Shrimp from India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Shrimp from India Preliminary Determination*), and accompanying PDM at “Duty Incentives under the Export Promotion Capital Goods (“EPCG”) Program,” unchanged in *Shrimp from India Final Determination*.

¹⁴¹ See Goodluck Questionnaire Response at 55.

¹⁴² *Id.*; see also Goodluck Supplemental Questionnaire Response at 11-12.

¹⁴³ See Goodluck Questionnaire Response at Exhibit 17(d); Goodluck Supplemental Questionnaire Response at Exhibit S-8(b).

¹⁴⁴ *Id.*; see also Goodluck Supplemental Questionnaire Response at 11.

¹⁴⁵ See Goodluck Questionnaire Response at Exhibits 17(c) and 17(d); see also Goodluck Supplemental Questionnaire Response at Exhibit S-8(b).

¹⁴⁶ See Tube Investments Questionnaire Response at 43.

¹⁴⁷ *Id.* at 44 and Exhibit 25.

certain other licenses were for the purchase of capital goods and raw materials for production of non-subject merchandise. Specifically, Tube Investments provided copies of the original licenses and condition sheets issued by the GOI. Thus, based on the information and documentation submitted by Tube Investments, we were able to determine that the EPCG licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). We further determine that certain of Tube Investments' license(s) are tied to the production of non-subject merchandise and certain others to the production subject merchandise. As such, we find that certain Tube Investments' EPCG licenses benefit the company's exports of subject merchandise.

Tube Investments met the export requirements for certain EPCG licenses prior to March 31, 2017 (the last day of the POI), and the GOI has formally waived the relevant import duties.¹⁴⁸ For a number of its licenses, however, Tube Investments had not yet met their export obligation as required under the program.¹⁴⁹ Therefore, although Tube Investments received a deferral from paying import duties for the capital goods that were imported, the final waiver of the obligation to pay the duties was not demonstrated for a number of these imports.¹⁵⁰

To calculate the benefit received from the GOI's formal waiver of import duties of Tube Investments' capital equipment, where the export obligations were met prior to March 31, 2017 (the last day of the POI), we used the total amounts of duties waived. We treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in the *PET Film Final Determination*, we preliminarily determined the year of receipt of the benefit to be the year in which the GOI formally waived the respondents' outstanding import duties.¹⁵¹ Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted these companies an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of the respondent's total export sales, we expensed the amount of the waived duties to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of the respondent's total export sales in that year, we allocated the waived duty amount using the allocation period of 15 years for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2). *See* the "Allocation Period" section, above. For purposes of allocating the value of the waived duties over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties. *See* "Benchmarks and Discount Rates" section, above.

As noted above, import duty reductions or exemptions that the respondents received on the imports of capital equipment for which they had not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.¹⁵²

¹⁴⁸ *See* Goodluck Questionnaire Response at 59; Tube Investments Supplemental Questionnaire Response at Exhibit 55.

¹⁴⁹ *See* Tube Investments Supplemental Questionnaire Response at Exhibit 55.

¹⁵⁰ *Id.*

¹⁵¹ *See* *PET Film Final Determination*, and accompanying IDM at Comment 5.

¹⁵² *See* 19 CFR 351.505(d)(1); *see also* *Shrimp from India Preliminary Determination*, and accompanying Decision Memorandum at EPCG Program (unchanged in *Shrimp from India Final Determination*).

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but was not officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondent would have paid during the POI, had it borrowed the full amount of the duty reduction or exemption at the time of importation.¹⁵³

As noted above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment), occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above.¹⁵⁴ We multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and then summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POI from the formally waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) interest due on the contingent-liability loans for imports of capital equipment that have unmet export requirements during the POI. We then divided the total benefit received by Tube Investments under the EPCG program by the company’s total exports during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.42 percent *ad valorem* for Tube Investments.¹⁵⁵

7. Interest Equalization Scheme (IES) for Export Financing

The GOI introduced the IES program effective April 1, 2015, which centers on rupee export financing, or pre-shipment and post-shipment export financing in rupee denomination. Under this program, the RBI provides a refund of three percent of interest charged by the bank on “pre-shipment and post-shipment export finance in Rupees.”¹⁵⁶ According to Goodluck, this scheme is available to certain products that are exported under specific tariff codes, as identified by the RBI for exports made by Micros, Small & Medium (MSMEs) across all “ITC (HS) codes.”¹⁵⁷ Goodluck states that the three percent interest equalization, as charged by the bank, is specific to the merchandise under investigation and is contingent upon exports.¹⁵⁸

In order to avail itself of benefits under this program, Goodluck explains that it must first submit a formal application to its local commercial bank identifying the “ITC HS code” of the product

¹⁵³ *Id.*

¹⁵⁴ See the Preliminary Calculation Memoranda for further details.

¹⁵⁵ See Tube Investments Preliminary Calculation Memo at 4-5.

¹⁵⁶ See Goodluck Questionnaire Response at 68.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 68-69.

to be exported or that has been exported and for which it is requesting a refund under the IES. Goodluck further explained that once the bank is satisfied with the information submitted in the company's application, the bank issues a credit to the company's bank account equivalent to the three percent refund under this scheme. According to Goodluck, thereafter, the bank credits the interest refund on a monthly basis.¹⁵⁹

While Goodluck reported the use of the IES program in its questionnaire response and provided documentation, it is the Department's practice to rely on governments to provide financial contribution and specificity information. In this instance, while Goodluck did provide documentation demonstrating operation of this program in accordance with the RBI and other banking rules, we were unable to confirm this information with the GOI and its official documents, as discussed above under "Use of Facts Otherwise Available." Therefore, we are determining that an adverse inference is warranted in determining whether the GOI provided a financial contribution to Goodluck under the IES program, and in determining whether this program is specific. Accordingly, we preliminarily determine that the GOI conferred a financial contribution and we find that the IES program is specific within the meaning of 771(5)(D) and 771(5A)(B) of the Act, respectively.

Based on the information provided on the record of this investigation, we find that a benefit was conferred under section 771(5)(E)(ii) of the Act in as much as the interest rates, which are determined by the RBI, provided under these programs are lower than commercially available interest rates. As discussed above under the section in this memorandum entitled, "Use of Facts Otherwise Available," we are using information on the record as provided by Goodluck to calculate the benefit received. Because the IES program is contingent upon exports, and is a recurring benefit, we divided the total benefit received for each year in which this benefit was reported by the value of Goodluck's total exports during the POI. On this basis, we determine the countervailable subsidy provided to Goodluck under the IES program to be 0.27 percent *ad valorem*.¹⁶⁰

8. *Income Tax Deductions for Research and Development Expenses*

The GOI's response stated that Section 35(2AB) of the Income Tax Act of 1961 provides a tax deduction to cover expenses related to scientific research for Indian companies engaged in the bio-technology sector or in a business not involved in sectors listed in the Eleventh Schedule of the Income Tax Act of 1961.¹⁶¹ Tube Investments claimed a benefit under this program by disclosing a deduction under this program from 2015 through 2017.¹⁶²

The tax deductions provide a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act. Furthermore, under 771(5A)(D)(i) of the Act, the program is

¹⁵⁹ *Id.* at 69-70.

¹⁶⁰ *See* Goodluck Preliminary Calculation Memo at 4.

¹⁶¹ *See* Tube Investments Questionnaire Response at 59.

¹⁶² *Id.* at Exhibit 33.

specific because it is limited to certain enterprises or industries or certain groups of enterprises or industries.

Tube Investments reported receiving a benefit within the meaning of 771(5)(E) of the Act and 19 CFR 351.509 and 19 CFR 351.519 in the amount of tax payments that are exempted. To determine the subsidy rate, we divided the amount of the benefits provided to Tube Investments under section 771(5)(E) the Act during the POI and divided it by the Tube Investment's total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.29 percent *ad valorem* for Tube Investments.¹⁶³

9. Section 80-IC Tax Deduction for Assessment Year 2016-2017 (Fiscal Year 2015-2016)

Tube Investments reported that it received an income tax deduction based on the location of one of its production facilities.¹⁶⁴ While Tube Investments did provide documentation demonstrating operation of this program, we were unable to confirm this information with the GOI and its official documents, as discussed under section "Use of Facts Otherwise Available," above. As discussed above, we are therefore finding that an adverse inference is warranted in determining whether the GOI provided a financial contribution through this program. Consequently, as AFA, we preliminarily determine that the GOI conferred a financial contribution and we find this program is specific within the meaning of section 771(5)(D) and 771(5A)(D) of the Act, respectively.

This income tax deduction constitutes a benefit pursuant to 771(5)(E) of the Act, 19 CFR 351.509, and 19 CFR 351.519 in the amount of tax payments that are exempted. To calculate the subsidy rate, we divided the benefit by the total value of sales during the POI. On this basis, we preliminarily determined the a countervailable subsidy rate of 0.05 percent *ad valorem* for Tube Investments.¹⁶⁵

10. Deduction Under 32-AC of the Income Tax Act

Goodluck reported use of this program related to the payment of income tax. While Goodluck did provide documentation demonstrating operation of this program, we were unable to confirm this information with the GOI and its official documents, as discussed under section "Use of Facts Otherwise Available," above. As discussed above, we are therefore finding that an adverse inference is warranted in determining whether the GOI provided a financial contribution through this program. Consequently, as AFA, we preliminarily determine that the GOI conferred a financial contribution and we find this program is specific within the meaning of section 771(5)(D) and 771(5A)(D) of the Act, respectively.

¹⁶³ See Tube Investments Preliminary Calculation Memo at 5-6.

¹⁶⁴ See Tube Investments Questionnaire Response at 69-70.

¹⁶⁵ See Tube Investments Preliminary Calculation Memo at 6.

Goodluck reported that it received a deduction in taxable income for investment in a new plant and machinery during financial year 2015-2016 (assessment year 2016-2017, the POI), thus conferring a benefit pursuant to section 771(5)(E) of the Act.¹⁶⁶ To calculate the subsidy rate, we divided the benefit by the total sales during the POI. On this basis, we preliminarily determined the a countervailable subsidy rate of 0.08 percent *ad valorem* for Goodluck.¹⁶⁷

11. Provision of Steel Inputs by SAIL for LTAR

Goodluck reported purchases of hot rolled coil from SAIL.¹⁶⁸ As discussed above in the section “Use of Facts Otherwise Available,” based on AFA, we find that the GOI conferred a financial contribution through the provision of hot rolled steel coil under section 771(5)(D) of the Act, and we find that the program is specific within the meaning of section 771(5A)(B) and 771(5A)(D) of the Act, respectively.

In its submission, Goodluck argues that the Department should not subject the hot rolled coil that it purchased from SAIL to our LTAR subsidy analysis because the inputs were not subsequently used to make subject merchandise.¹⁶⁹ For purposes of this preliminary determination, we disagree with Goodluck. We note that Goodluck is not arguing that these inputs cannot be used in the production process. In fact, Goodluck admits that the various grades of hot rolled coil purchased from SAIL are inputs used in the production of subject merchandise.¹⁷⁰ Instead, the company argues only that it did not happen to use these particular purchases of hot rolled coil to product subject merchandise.¹⁷¹ The Department’s regulations at 19 CFR 351.525(b)(5)(i) state that, “(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.” In making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal.¹⁷² A subsidy is tied only when the intended use is known to the subsidy giver (in this case, the GOI) and so acknowledged prior to or concurrent with the bestowal of the subsidy.¹⁷³ For example, in determining whether a loan is tied to a particular product, the Department examines the loan approval documents; to determine whether a grant is “tied” at the time of bestowal to a particular product, the Department examines the grant approval documents. Therefore, in accordance with our regulations, we do not consider the manner in which Goodluck used its inputs as a factor that is germane to the Department’s subsidy analysis and, thus, for purposes of this preliminary determination we have included Goodluck’s purchases of hot rolled coil from SAIL to our LTAR subsidy analysis.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate

¹⁶⁶ See Goodluck Questionnaire Response at 83-85.

¹⁶⁷ See Goodluck Preliminary Calculation Memo at 6.

¹⁶⁸ See Goodluck Questionnaire Response at 72-74.

¹⁶⁹ *Id.*

¹⁷⁰ See Goodluck Supplemental Questionnaire Response at 14.

¹⁷¹ *Id.*

¹⁷² See *CVD Preamble*, 63 FR at 65,403; see also *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper from Canada*), and accompanying IDM at 26-27.

¹⁷³ *Id.*

market-determined benchmarks for measuring the adequacy of remuneration for government provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions of the good within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country under investigation.¹⁷⁴ As Goodluck provided invoices with actual sales transactions of purchases of hot rolled steel coil from unaffiliated, non-government suppliers in India, we will rely on this information as tier one benchmark prices pursuant to 19 CFR 351.511(a)(2).

To calculate the program benefit, we compared the corresponding monthly benchmark unit prices to the unit prices that Goodluck paid SAIL for hot rolled coil purchased from SAIL during the POI. To calculate the benefit for Goodluck purchases from SAIL, we used an average of the prices Goodluck paid for hot rolled coil from private sources, *i.e.*, sources other than SAIL or state-owned enterprises, during the relevant month for the benchmark. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price that a firm actually paid for the product, including delivery charges and import duties. Where the benchmark unit price was greater than the price paid to SAIL, we multiplied the difference by the quantity of hot rolled coil purchased from SAIL to derive the benefit. We next summed these amounts and divided the total by Goodluck's total sales for the POI. On this basis, we preliminarily determine a *de minimis* subsidy rate for Goodluck.

12. State Government of Uttar Pradesh (SGUP) Subsidy Programs

The Department is examining three separate programs administered by the SGUP. In this instance, while Goodluck and Tube Investments did provide documentation demonstrating operation of these state government administered programs, we were unable to confirm this information with the GOI and its official documents, as discussed under section "Use of Facts Otherwise Available," above. As discussed above, we are therefore finding that an adverse inference is warranted in determining whether the GOI provided a financial contribution through these programs. Consequently, as AFA, we preliminarily determine that the GOI conferred a financial contribution and we find these programs are specific within the meaning of sections 771(5)(D) and 771(5A)(D) of the Act, respectively.

a. Exemption from Entry Tax for the Iron and Steel Industry

Goodluck reported a benefit under this program based on the exemption of entry taxes of its

¹⁷⁴ See, *e.g.*, *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2003) and accompanying IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark" ("Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier").

imports of hot rolled coil and steel ingots for use in its production processes; however, Goodluck indicated that steel ingots cannot be used in the production of subject merchandise.¹⁷⁵ There is no contradictory information on the record and thus we did not consider steel ingots in our benefit calculation.

Goodluck reports that it received licenses for the production of hot rolled coil which were for the manufacture of both subject and non-subject merchandise.¹⁷⁶ There is no application or approval process, and Goodluck only retains invoices which reflect that no entry tax was paid on a good.¹⁷⁷ Based on this information, we cannot reliably determine that the exemption from entry taxes are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Therefore, we find that all of Goodluck's exemptions benefit the company's total sales. Furthermore, Goodluck's exemption from entry taxes on hot rolled coil constitutes a benefit pursuant to section 771(5)(E) of the Act. To calculate the subsidy rate, we divided the benefit by the total value of sales during the POI. On this basis, we preliminarily determined a countervailable subsidy rate of 3.04 percent *ad valorem* for Goodluck.¹⁷⁸

b. *Electric Duty Exemption in the State of Uttar Pradesh*

Goodluck reported that one of its manufacturing facilities was exempted from the payment of electricity duty during the POI, thus conferring a benefit pursuant to section 771(5)(E) of the Act.¹⁷⁹ The SGUP has exempted electricity duties from new industrial units in the state.¹⁸⁰ To calculate the subsidy rate, we divided the benefit by the total sales during the POI. On this basis, we preliminarily determined a countervailable subsidy rate of 0.03 percent *ad valorem* for Goodluck.¹⁸¹

c. *Stamp Duty Exemption in the State of Uttar Pradesh*

Goodluck stated they benefited from a one-time stamp duty exemption associated with the purchase of land in Uttar Pradesh.¹⁸² Because these exemptions are tied to the purchase of land, we 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, we divided the total amount of the exemptions received during each respective year of the AUL by the total export sales values of each respective year of Goodluck. On this basis, because these benefits were received before the POI, and did not pass "0.5 percent test," in each year they were received, we find that all of the benefits Goodluck received from this program were expensed prior to the POI.

¹⁷⁵ See Goodluck Questionnaire Response at 77-81.

¹⁷⁶ *Id.* at 81; see also Goodluck Supplemental Questionnaire response at 15.

¹⁷⁷ *Id.*

¹⁷⁸ See Goodluck Preliminary Calculation Memo at 5.

¹⁷⁹ See Goodluck Questionnaire Response at 83-85.

¹⁸⁰ *Id.*

¹⁸¹ See Goodluck Preliminary Calculation Memo at 5-6.

¹⁸² See Goodluck Questionnaire Response at 86.

B. Programs Preliminarily Determined Not to Be Used

Government of India Programs

- a) Duty Free Import Authorization Scheme
- b) Focus Product Scheme
- c) Duty Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
- d) Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
- e) Exemption from Stamp Duty of all Transactions and Transfers of Immovable Property within the SEZ
- f) Exemption from Electric Duty and Cess (a tax or levy) Thereon on the Sale or Supply to the SEZ Unit
- g) SEZ Income Tax Exemption Scheme (Section 10A)
- h) Discounted Land Fees in an SEZ
- i) Duty Free Import of Goods, Including Capital Goods and Raw Materials
- j) Reimbursements of Central Sales Tax Paid on Goods Manufactured in India
- k) Duty Drawback on Fuel Procured from Domestic Oil Companies
- l) Exemption from Payment of Central Excise Duty on Goods Manufactured in India Procured from a DTA
- m) Market Access Initiative
- n) Market Development Assistance Scheme
- o) GOI Loan Guarantees
- p) Steel Development Fund Loans
- q) Provision of High-Grade Iron Ore for LTAR
- r) Industrial Promotion Subsidy/ Sales Tax Program
- s) Interest Subsidy
- t) Electric Duty Exemption
- u) Waiver of Stamp Duty
- v) Incentives to Strengthening Micro-, Small-, and Medium- Sized and Large Scale Industries

State Government Programs

- a) Investment Promotion Scheme
- b) Special Assistance for Mega Projection

X. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will normally determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. However, in this investigation, we have not preliminarily calculated the all-others rate by weight-averaging the rates of the two individually investigated respondents, because doing so

risks disclosure of proprietary information. Consistent with the Department's practice, for the "all-others" rate, we have instead calculated a simple average of the two responding firms' rates, which avoids concerns about potentially disclosing such information.¹⁸³

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after the Department makes its final affirmative determination.

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁸⁴ Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁸⁵ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, maybe submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the other concurrent countervailing duty and antidumping duty investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁸⁶ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹⁸⁷ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made,

¹⁸³ See, e.g., *Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Determination*, 79 FR 10097 (February 24, 2014).

¹⁸⁴ See 19 CFR 351.224(b).

¹⁸⁵ See 19 CFR 351.309(c)-(d); see also 19 CFR 351.303 (for general filing requirements).

¹⁸⁶ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁸⁷ See 19 CFR 351.310(c).

the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the Department's electronic records system, ACCESS.¹⁸⁸ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁸⁹ on the due dates established above.

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.

☐

Agree

☐

Disagree

9/18/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

¹⁸⁸ See 19 CFR 351.303(b)(2)(i).

¹⁸⁹ See 19 CFR 351.303(b)(1).