



C-533-874

Administrative Review

POR: 9/25/2017 – 12/31/2018

Public Document

E&C/OV: GC/HF

February 28, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Results of Countervailing Duty Administrative
Review: Certain Cold-Drawn Mechanical Tubing of Carbon and
Alloy Steel from India, 2017 – 2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain cold-drawn mechanical tubing of carbon and alloy steel (CDMT) from India in response to requests from interested parties. The period of review (POR) is September 25, 2017 through December 31, 2018. We preliminarily determine that Goodluck India Limited (Goodluck) and Tube Investments of India Ltd. (TII) benefitted from countervailable subsidies during the POR.

II. BACKGROUND

On February 1, 2018, Commerce published the CVD order on CDMT from India.¹ On February 8, 2019, Commerce published a notice of opportunity to request an administrative review of the Order.²

¹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China and India: Countervailing Duty Orders*, 83 FR 4637 (February 1, 2018) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 2816 (February 8, 2019).

Based on requests for review,³ on May 2, 2019, Commerce published a notice of initiation of this CVD review.⁴ In addition, we released the U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁵ We did not receive any comments regarding the data or respondent selection.

On June 18, 2019, we selected Goodluck and TII as mandatory respondents.⁶ On June 21, 2019, we issued the initial CVD questionnaire to the Government of India (GOI).⁷ The GOI, Goodluck and TII timely submitted responses.⁸

On June 27, 2019, ArcelorMittal Tubular Products LLC and Webco Industries, Inc. (collectively, the petitioners) timely withdrew their request for an administrative review for various companies. Because no other interested party requested a review of these companies, on August 23, 2019, Commerce rescinded the review, in part, with respect to them.⁹

From August 2019, to February 2020, we issued supplemental questionnaires to the GOI, Goodluck, and TII. We received responses to these supplemental questionnaires from September 2019, through February 2020.

³ See Petitioners' Letter, "Cold-Drawn Mechanical Tubing from India – Domestic Industry's Request for 2017 – 2018 First Administrative Review," dated February 28, 2019; Goodluck's Letter, "Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Request for Countervailing Duty Administrative Review," dated February 28, 2019; and TII's Letter, "Cold-Drawn Mechanical Tubing from India: Request for Administrative Review," dated February 28, 2019.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 18777, 18792 (May 2, 2019) (*Initiation Notice*).

⁵ See Memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: U.S. Customs Data for Respondent Selection," dated May 2, 2019.

⁶ See Memorandum, "Countervailing Duty Administrative Review of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Respondent Selection," dated June 18, 2019.

⁷ See Letter, "Administrative Review of the Countervailing Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Initial Questionnaire," dated June 21, 2019.

⁸ See Goodluck's Letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Goodluck's Affiliation Response of Countervailing Duty Administrative Review," dated July 5, 2019 (Goodluck July 5, 2019 AFFR); Goodluck's Letter, "Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Goodluck's Section III Response of Countervailing Duty Administrative Review," dated August 7, 2019 (Goodluck August 7, 2019 IQR); TII's Letter, "Cold-Drawn Mechanical Tubing from India: Section III Affiliation Questionnaire Response," dated July 5, 2019 (TII July 5, 2019 AFFR) and TII's Letter, "Cold-Drawn Mechanical Tubing from India: Correction to Section III Affiliation Questionnaire Response," dated July 10, 2019; TII's Letter, "Cold-Drawn Mechanical Tubing from India: Section III Questionnaire Response," dated August 6, 2019 (TII August 6, 2019 IQR); GOI's Letter, "Administrative Review of Countervailing Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Initial Questionnaire – Response to Questionnaire on Behalf of the GOI," dated August 5, 2019 (GOI August 5, 2019 IQR); *see also* Administrative Review of Countervailing Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Response to Supplementary Questionnaire on Behalf of GOI," dated February 24, 2020 (GOI February 24, 2020 SQR).

⁹ See *Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Partial Rescission of the Countervailing Duty Administrative Review; 2017 – 2018*, 84 FR 44280 (August 23, 2019).

On October 8, 2019, Commerce extended the time period for issuing these preliminary results by 120 days, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (the Act).¹⁰ The revised deadline for these preliminary results is now February 28, 2020.

III. SCOPE OF THE ORDER

The scope of the order covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.*, electric resistance welded, continuous welded, etc.) or seamless (*e.g.*, pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

- (1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A-512, ASTM A-513 Type 3 (ASME SA513 Type 3), ASTM A-513 Type 4 (ASME SA513 Type 4), ASTM A-513 Type 5 (ASME SA513 Type 5), ASTM A-513 Type 6 (ASME SA513 Type 6), ASTM A-519 (cold-finished);
- (2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;
- (3) Aerospace Material Specification (AMS) AMS T-6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;
- (4) United States Military Standards (MIL) MIL-T-5066 and MIL-T-6736;
- (5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:
 - (a) German Institute for Standardization (DIN) specifications DIN 2391-2, DIN 2393-2, DIN 2394-2;

¹⁰ See Memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated October 8, 2019.

- (b) European Standards (EN) EN 10305-1, EN 10305-2, EN 10305-4, EN 10305-6 and European national variations on those standards (e.g., British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);
- (c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and
- (6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this order when it meets the physical description set forth above.

Steel products included in the scope of the order is products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestructive testing, deburring or chamfering, remains within the scope of this order.

All products that meet the written physical description are within the scope of the order unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the order even if it is also dual or multiple certified to an otherwise excluded specification listed below.

The following products are outside of, and/or specifically excluded from, the scope of the order:

- (1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;
- (2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:
 - ASTM A-53;
 - ASTM A-106;
 - ASTM A-179 (ASME SA 179);
 - ASTM A-192 (ASME SA 192);
 - ASTM A-209 (ASME SA 209);
 - ASTM A-210 (ASME SA 210);
 - ASTM A-213 (ASME SA 213);
 - ASTM A-334 (ASME SA 334);
 - ASTM A-423 (ASME SA 423);
 - ASTM A-498;
 - ASTM A-496 (ASME SA 496);
 - ASTM A-199;
 - ASTM A-500;

ASTM A-556;
ASTM A-565;
API 5L; and
API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of the order.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. PERIOD OF REVIEW

The POR is September 25, 2017 through December 31, 2018.

On July 1, 2019, at the request of Goodluck and TTI, Commerce clarified that the reporting period in this review covered calendar years 2017 and 2018, and that the POR remained September 25, 2017 through December 31, 2018.¹¹ Accordingly, while the POR covers part of 2017, and calendar year 2018, we have analyzed data for the period January 1, 2017 through December 31, 2018, to determine the countervailable subsidy rate for exports of subject merchandise made during 2017 and 2018.

V. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce 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) of the Act states that an adverse inference may include reliance on information derived from the

¹¹ See Memorandum, “Administrative Review of the Countervailing Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Clarification of Reporting Period,” dated July 1, 2019.

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, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."¹² Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹³ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁴ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁵ It is Commerce's practice to consider information to be corroborated if it has probative value.¹⁶ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.¹⁷ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹⁸ Furthermore, Commerce is not required to corroborate any countervailing duty rate applied in a separate segment of the same proceeding.¹⁹

Under section 776(d) of the Act, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.²⁰ Additionally, when selecting AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.²¹

¹² 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); 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).

¹³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

¹⁴ See 19 CFR 351.308(d).

¹⁵ See SAA, H.R. Doc. No. 103-316, Vol. 1 at 870, reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994).

¹⁶ *Id.* at 870.

¹⁷ *Id.* at 869.

¹⁸ *Id.* at 869-870.

¹⁹ See section 776(c)(2) of the Act.

²⁰ See section 776(d)(1) of the Act.

²¹ See section 776(d)(3) of the Act.

For purposes of these preliminary results, we are applying AFA for the circumstances outlined below.

B. Application of AFA

Application of AFA: Government of India

On February 11, 2020, we issued a supplemental questionnaire to the GOI to remedy certain deficiencies in its initial questionnaire response.²² In this supplemental questionnaire, we requested information that we had previously requested and that the GOI had failed to provide in its initial questionnaire response. This information included key program procedures and guidelines pertaining to assistance provided under several programs, including a program that TII had reported it used during the POR, the Uttarakhand Capital Investment Subsidy. In particular, we requested official documentation and program operation information to determine the countervailability of these programs. We received the GOI's response to this supplemental questionnaire on February 24, 2020. The GOI was non-responsive regarding the Uttarakhand Capital Investment Subsidy.²³

Because the GOI failed to provide any information regarding this program, we preliminarily determine that necessary information is not available on the record and that the GOI withheld information that was requested of it. Further, the GOI significantly impeded the review. Thus, Commerce must rely on "facts available" in making our preliminary determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (a)(2)(C) of the Act. We preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the Uttarakhand Capital Investment Subsidy program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and that this program is specific within the meaning of section 771(5A)(D) of the Act.

Because TII reported its usage of the aforementioned program, we are relying on its reported information to calculate the benefit, if any, within the meaning of section 771(5)(E) of the Act.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce 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.²⁴ In

²² See GOI February 24, 2020 SQR.

²³ In its response, it appears the GOI did not provide any response for this program. However, the GOI did note, for the program "Capital Subsidy Scheme of Department of Industrial Policy and Promotion," which potentially is another name for the program we are reviewing, that Commerce should "collect the information from the Mandatory Respondent(s) and GOI would verify the same." See GOI February 24, 2020 SQR at 15.

²⁴ See 19 CFR 351.524(b).

Commerce’s initial questionnaire to the GOI and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service Publication 946 (2017).²⁵ No parties submitted comments challenging this AUL period, and we, therefore, preliminarily determine that a 15-year period is appropriate to allocate benefits from non-recurring subsidies.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide 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. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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(s) in essentially the same ways it can use its own assets. This section of Commerce’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 preamble to Commerce’s regulations further clarifies Commerce’s cross-ownership standard. According to the *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.

²⁵ See U.S. Internal Revenue Service Publication 946 (2017), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.²⁶

Thus, Commerce’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 Commerce’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.²⁷

Goodluck

Goodluck responded to Commerce’s questionnaires 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 Goodluck has multiple subsidiaries, these companies are not involved in the production or sale of subject merchandise, nor in the production of inputs used to manufacture subject merchandise.²⁹ Therefore, we will attribute subsidies received by Goodluck to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

TII

TII responded to Commerce’s questionnaires 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.³⁰ While TII has multiple subsidiaries, these companies are not involved in the production or sale of subject merchandise, nor in the production of inputs used to manufacture subject merchandise.³¹ Therefore, we will attribute subsidies received by TII to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents’ receipt of benefits under each program at issue.³² As discussed in further detail below under “Programs Preliminarily Determined to be Countervailable,” where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator. Where the program has been found to be contingent upon export performance, we used the recipient’s total export sales or export sales of subject merchandise to the United States as the denominator, in accordance with 19 CFR 351.525(b)(4). All sales used in our net subsidy rate calculations are net of intra-

²⁶ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

²⁷ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

²⁸ See Goodluck August 7, 2019 IQR at 9-10; see also Goodluck July 5, 2019 AFFR at 3-7.

²⁹ *Id.*

³⁰ See TII August 6, 2019 IQR at 9; see also TII July 5, 2019 AFFR at 4.

³¹ *Id.*

³² See 19 CFR 351.525(b)(1)-(5).

company sales. For a further discussion of the denominators used, *see* the Goodluck and TII Preliminary Calculation Memoranda.³³

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,” Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce “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 Commerce will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates. In the absence of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

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

Based on Goodluck’s and TII’s responses, we preliminarily determine that neither Goodluck nor TII took out comparable rupee-denominated long-term loans from commercial banks in the years for which we must calculate benchmark and discount rates.³⁴ Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we are preliminarily using national average interest rates for Goodluck and TII. 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).³⁵ The interest-rate benchmarks and discount rates used in our preliminary calculations are provided in the preliminary calculation memoranda.³⁶

VIII. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

³³ See Memorandum, “Preliminary Results Calculations for Goodluck,” dated concurrently with this memorandum (Goodluck Preliminary Analysis Memorandum); *see also* Memorandum, “Preliminary Results Calculations for Tube Investments of India Ltd. and Tube Products of India,” dated concurrently with this memorandum (TII Preliminary Analysis Memorandum).

³⁴ See Goodluck August 7, 2019 IQR at Exhibit 11f; and TII August 6, 2019 IQR at Exhibit CVD-29.

³⁵ See Goodluck Preliminary Analysis Memorandum; and TII Preliminary Analysis Memorandum.

³⁶ *Id.*

1. GOI Subsidies

a. *Advance Authorization Program (AAP)*

The AAP is administered by the Directorate General of Foreign Trade. Under this program, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported.³⁷ The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled the export requirement.³⁸ TII indicated that, although it did receive licenses under this program, it never used these licenses, instead surrendering them and paying all applicable customs duties plus interest.³⁹ Goodluck used advance licenses during the POR to import certain materials duty free.⁴⁰ In 2018, Goodluck reported the use of the AAP for only non-subject merchandise; and in 2017, it reported that the AAP was used for imports for both subject and non-subject merchandise.⁴¹ The GOI provided information on its guidelines for measuring the consumption of imported inputs used in the production of goods under this program.⁴²

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.⁴³ 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.⁴⁴ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁴⁵ 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.⁴⁶

In the 2003 administrative review of countervailing duty order 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 this program during 2005.⁴⁷ Commerce

³⁷ See GOI August 5, 2019 IQR at 43-53.

³⁸ See Goodluck August 7, 2019 IQR at 45-50 and at Exhibit 14 (a) Part 1; see also GOI August 5, 2019 IQR at 43-55 and at Exhibit D, Exhibit E, and Exhibit F.

³⁹ See TII August 6, 2019 IQR at 68 and Exhibit CVD-46.

⁴⁰ See Goodluck August 7, 2019 IQR at 45-50 and Exhibit 14(a) Part 1 and Exhibit 14(a) Part 2.

⁴¹ *Id.* at 47.

⁴² See Goodluck August 7, 2019 IQR at Exhibit 14 (a) Part 1, Exhibit 14(a) Part 2, Exhibit 14(b), Exhibit 14(c), and Exhibit 8(c); see also GOI August 5, 2019 IQR at 44.

⁴³ See 19 CFR 351.519(a)(1)(ii).

⁴⁴ 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).”

⁴⁵ *Id.*

⁴⁶ See 19 CFR 351.519(a)(4)(i)-(ii).

⁴⁷ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying IDM at 3-5.

acknowledged that certain improvements to the system were made. However, Commerce 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 system during that POR.⁴⁸ Specifically, in the 2003 review, Commerce stated that it continued to find the program countervailable based on:

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 {AAP} 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 {AAP} or for claiming excessive credits; and, (3) the availability of {AAP} benefits for a broad category of "deemed" exports.⁴⁹

Since the 2003 PET Film review, Commerce has in several other proceedings made determinations consistent with this treatment.⁵⁰ In the current administrative review, record evidence shows⁵¹ there has been no change to the AAP 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. Further, this preliminary finding is consistent with our finding with respect to the AAP in underlying investigation, and there is no new information or evidence of changed circumstances that would warrant reconsidering that determination. Therefore, for these preliminary results, we continue to find this program countervailable.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 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.

⁵¹ See GOI August 5, 2019 IQR at 43-54 and Exhibits D-F.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.⁵² Under this program, during the POR, Goodluck did not have to pay certain import duties for inputs that were used in the production of subject merchandise.⁵³ 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 and non-subject merchandise duty free in 2017. In response to Commerce's questionnaire, Goodluck provided supporting documentation regarding its AAP license.⁵⁴ 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).

To calculate the subsidy rate, we first determined the total value of import duties exempted in 2017 for Goodluck under licenses tied to subject merchandise. We then divided the resulting benefit by the total value of Goodluck's export sales of subject merchandise. On this basis, we determine the countervailable subsidy provided to Goodluck under the AAP to be 0.27 percent *ad valorem* for 2017.⁵⁵

As noted above, TII indicated that it surrendered the licenses it received and paid all applicable customs duties plus interest.⁵⁶ As a result, we preliminary find that TII did not receive any benefit under this program.

b. Duty Drawback Scheme (DDB)

The DDB program provides rebates for duty or tax chargeable on any imported or excisable materials used to manufacture exported goods.⁵⁷ Specifically, the duties and tax rebated under the program are the Customs and Central Excise Duties for inputs used to manufacture exported goods.⁵⁸ The duty drawback is generally fixed as a percentage of the free-on-board (FOB) price of the exported product.⁵⁹ Drawback rates are calculated based on averages known as the "All Industry Rate" (or "AIRs") for a given product.⁶⁰ The GOI indicated that this program has been modified since the investigation to update some tax program information and the AIRs, but such updates have not changed the operation of this program.⁶¹

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁶² However, the government in question must have in place and

⁵² See, e.g., *Oil Country Tubular Goods from India Final IDM*.

⁵³ See Goodluck August 7, 2019 IQR at 47.

⁵⁴ *Id.* at Exhibit 14a-14b.

⁵⁵ See Goodluck Preliminary Analysis Memorandum.

⁵⁶ See TII August 6, 2019 IQR at 68 and Exhibit CVD-46.

⁵⁷ See GOI August 5, 2019 IQR at 18-19.

⁵⁸ *Id.*

⁵⁹ *Id.* at 19.

⁶⁰ *Id.*

⁶¹ See GOI February 24, 2020 SQR at 6-8.

⁶² See 19 CFR 351.519(a)(1)(ii).

apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.⁶³ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁶⁴ 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 of drawback is countervailable.⁶⁵

In the underlying investigation, we found that the information provided by the GOI did not support its claim that its system is reasonable or effective for the purposes intended, and determined that DDB confers a countervailable subsidy.⁶⁶ Based on the GOI's information in its questionnaire responses and lacking the documentation to support the GOI's narrative,⁶⁷ and consistent with other proceedings,⁶⁸ we conclude for these preliminary results that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended. Our findings are consistent with prior India CVD proceedings.⁶⁹

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-provided information does not support 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 POR constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under sections 771(5A)(A) and (B) of the Act. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the underlying investigation that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

⁶³ See *Shrimp from India Final Determination* IDM at "Duty Drawback."

⁶⁴ *Id.*

⁶⁵ See 19 CFR 351.519(a)(4)(i)-(ii).

⁶⁶ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44558 (September 25, 2017) (*CDMT Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM) at 14-15, unchanged in *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017) (*CDMT Final Determination*).

⁶⁷ See GOI August 5, 2019 IQR at 18-19; see also GOI February 24, 2020 SQR at 6-8.

⁶⁸ See *CDMT Preliminary Determination* PDM at 14-15, unchanged in *CDMT Final Determination*. We found, as AFA, that this program was countervailable in the underlying investigation. However, consistent with our determinations in other proceedings, we now find that the GOI's responses regarding this program do not warrant the application of AFA, but, instead, the GOI's responses were insufficient to establish that the GOI has a system in place for this program that is reasonable or effective for the purposes intended; therefore, we find this program countervailable on that basis. See, e.g., *Shrimp from India Final Determination* IDM at "Duty Drawback".

⁶⁹ See, e.g., *Shrimp from India Final Determination* IDM at "Duty Drawback (DDB)"; *CDMT Preliminary Determination* PDM at 14-15, unchanged in *CDMT Final Determination*; and *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 16054 (April 13, 2018), and accompanying IDM at 12-13.

Under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the POR constitutes a benefit. Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred as of the date of export of the shipment for which the pertinent drawbacks are earned.⁷⁰ 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).

Goodluck and TII reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis.⁷¹ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. For Goodluck and TII, we divided the DDB rebates earned on exports of subject merchandise to the United States during the years of the POR by the POR exports of subject merchandise to the United States for each calendar year.

On this basis, we preliminary determine a countervailable subsidy rate of 2.00 percent *ad valorem* for Goodluck in 2017, and 1.95 percent *ad valorem* for Goodluck in 2018; and of 2.07 percent *ad valorem* for TII in 2017, and 2.12 percent *ad valorem* for TII in 2018.⁷²

c. Merchandise Export from India Scheme (MEIS)

The GOI stated that the MEIS was introduced by the Foreign Trade Policy (FTP) 2015-2020.⁷³ Its purpose is to “promote the manufacture and export of notified goods/products.”⁷⁴ Under this program, the GOI issues a scrip worth a given percentage of the FOB value of the “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.”⁷⁵ 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).⁷⁶ After a recipient receives and registers the scrip, it may either use it for the payment of future customs duties for importing goods or transfer it to another company.

Commerce has found the MEIS program to be countervailable based on its similarities to India’s Status Holders Incentive Scrip Scheme (SHIS), which Commerce has also found countervailable.⁷⁷ For that program, similar to the MEIS program, the GOI provides scrip to

⁷⁰ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Cut-To-Length Carbon Quality Steel Plate from India*, 64 FR 73131, 73134 and 73140 (December 29, 1999).

⁷¹ See TII August 6, 2019 IQR at 43 and Exhibits CVD-30 and CVD-145; see also Goodluck August 7, 2019 IQR at 33-36 and at Exhibit 12(a) Part 1, Exhibit (a) Part 2.

⁷² See Goodluck and TII Preliminary Analysis Memoranda.

⁷³ See GOI August 5, 2019 IQR at 54.

⁷⁴ *Id.* at Exhibit D.

⁷⁵ *Id.* at 54.

⁷⁶ *Id.* at 57.

⁷⁷ See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges from India*), and accompanying PDM at 16, unchanged in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final*); see also “Status Holder Incentive Scheme (SHIS)” section, below.

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.⁷⁸

The program is specific within sections 771(5A)(A) and (B) of the Act because, as the GOI, Goodluck, and TII reported, eligibility to receive the scrip is contingent upon export.⁷⁹ As Commerce determined for the SHIS program, this program provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because the scrip provides exemptions for paying duties associated with the import of goods, which represents revenue foregone by the GOI.⁸⁰ A benefit is also provided under the MEIS scheme pursuant to section 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported inputs or capital equipment. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the underlying investigation that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

Goodluck and TII reported that they submitted applications and received approval under the MEIS program upon the export of qualified goods.⁸¹ Goodluck indicated that it sold all of its scrip, or licenses, in the market and accounted for these sales in its receivables using the “exact license value.”⁸² TII reported that it retains its scrip in its records, which it later uses to pay the import duties owed on raw materials or capital goods.⁸³

In *Steel Flanges from India*, Commerce found the MEIS program is continuous and thus, recurring, in nature, consistent with 19 CFR 351.524(c)(2)(i).⁸⁴ This program provides a recurring benefit because, unlike the scrip in the SHIS scheme, the scrip provided under this program are not tied to capital assets.⁸⁵ Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year.⁸⁶ We calculated the benefit to Goodluck and TII to be the total value of scrip granted in each year of the POR.

Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates benefits as having been received as of the date of export.⁸⁷ 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

⁷⁸ *Id.*

⁷⁹ See GOI August 5, 2019 IQR at 54-57; *see also* Goodluck August 7, 2019 IQR at 50-54; and TII August 6, 2019 IQR at 76.

⁸⁰ See *Steel Flanges from India* PDM at 16, unchanged in *Steel Flanges from India Final*.

⁸¹ See Goodluck August 7, 2019 IQR at 51-52; and TII August 6, 2019 IQR at 85.

⁸² See Goodluck August 7, 2019 IQR at 52.

⁸³ See TII August 6, 2019 IQR at 84.

⁸⁴ See *Steel Flanges from India* PDM at 16, unchanged in *Steel Flanges from India Final*.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See 19 CFR 351.519(b)(1).

validity and the duty exemption amount as issued by the GOI, are the best method to determine the time at which the benefit was received and the amount of benefit received.⁸⁸

To determine the benefit from this program, we summed TII's and Goodluck's reported scrip entitlement value during each calendar year.⁸⁹ We divided this sum by TII's and Goodluck's total export sales for the respective calendar years for each company.

On this basis, we preliminarily determine a countervailable subsidy of 2.61 percent *ad valorem* for Goodluck in 2017, and of 2.80 percent *ad valorem* for Goodluck in 2018; and of 0.48 percent *ad valorem* for TII in 2017, and of 0.53 percent *ad valorem* for TII in 2018.⁹⁰

d. SHIS

The GOI indicated the SHIS program was introduced in 2009 with the objective to promote investment in upgrading technology in specific sectors.⁹¹ Status Holders under the GOI's listing of specific exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of a duty credit.⁹² The SHIS license can only be used for imports of capital goods, and it can be transferred to another Status Holder for the import of capital goods.⁹³ Additionally, because this program applies to capital goods, companies were able to apply for benefits up to March 31, 2013, and the AUL in this proceeding is 15 years, companies may receive residual benefits from this program through 2029.⁹⁴

In the underlying investigation of this order, Commerce found that this program is countervailable because it provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because duty free import of goods represents revenue foregone by the GOI. Further, Commerce determined that it is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters. A benefit is also provided under the SHIS program under section 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.⁹⁵ There is no new information or evidence of

⁸⁸ See, e.g., *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), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11160 (March 2, 2015); and *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 (February 16, 2016), and accompanying IDM at Comment 2.

⁸⁹ See TII's Letter, "Cold-Drawn Mechanical Tubing from India: 2nd Supplemental Questionnaire Response," dated December 5, 2019 at 45.

⁹⁰ See Goodluck and TII Preliminary Analysis Memoranda.

⁹¹ See GOI August 5, 2019 IQR at 64.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See GOI August 5, 2019 IQR at 67, stating that March 31, 2014 was the last date for filing a SHIS application for the 2012-2013 year (*i.e.*, the last year benefits were available under this program).

⁹⁵ See *CDMT Preliminary Determination* PDM at 18, unchanged in *CDMT Final Determination*; see also *Steel Flanges from India* 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"), unchanged in *Steel Flanges from India Final*.

changed circumstances that would warrant reconsidering our determination in the underlying investigation that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

Import duty exemptions under this program are provided solely for the purchase of capital equipment.⁹⁶ The *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... .”⁹⁷ 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.⁹⁸

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.⁹⁹ Although 19 CFR 351.519(b)(1) stipulates that we will normally consider the benefit as having been received as of the date of export, 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.¹⁰⁰

Goodluck reported use of the SHIS in its questionnaire response and provided certain supporting documentation.¹⁰¹ The GOI provided information corroborating that Goodluck received benefits during the AUL period.¹⁰² Information provided by Goodluck indicates that its SHIS license scrip was 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.¹⁰³ 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 years in which Goodluck received the SHIS scrip and determined to allocate the benefits across the AUL.¹⁰⁴ We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). We summed the benefits for each year during the POR and divided the results by Goodluck’s total export sales for the respective year in the POR.

TII did not report applying for or receiving any SHIS scrip directly from the Indian government.¹⁰⁵ Instead, TII reported that it purchased SHIS scrip from third parties and used it

⁹⁶ See GOI August 5, 2019 IQR at 64.

⁹⁷ See *Preamble*, 63 FR at 65393.

⁹⁸ See *CDMT Preliminary Determination* PDM at 18, unchanged in *CDMT Final Determination*.

⁹⁹ See Goodluck August 7, 2019 IQR at 55.

¹⁰⁰ Commerce finds that benefits are conferred when earned, rather than when the credits were used. The CIT upheld this principle with respect to a similar, but discontinued, GOI program, the Duty Entitlement Passbook Scheme (DEPS), in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005).

¹⁰¹ See Goodluck August 7, 2019 IQR at 55, Exhibit 13e, and Exhibit 16.

¹⁰² See GOI August 5, 2019 IQR at 64 and Exhibit F.

¹⁰³ See Goodluck August 7, 2019 IQR at 55 and Exhibit 16.

¹⁰⁴ See Goodluck Preliminary Analysis Memorandum.

¹⁰⁵ See TII August 6, 2019 IQR at 90, noting that TII has purchased SHIS licenses on the open market from third parties prior to the POR.

to offset the cost of import duties during the AUL period.¹⁰⁶ Because TII purchased its licenses at market value from third parties, we preliminarily determine that TII did not receive a benefit from this program.

On this basis, we determine a countervailable subsidy of 0.35 percent *ad valorem* for Goodluck in 2017, and of 0.23 percent *ad valorem* for Goodluck in 2018.¹⁰⁷

e. *Export Promotion Capital Goods Scheme (EPCGS)*

The GOI reported that the EPCGS allows an exemption or partial exemption from payment of customs duties upon importation of capital goods used in the production of exported products.¹⁰⁸ 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.¹⁰⁹ The EPCGS program allows the importation of capital goods, including spares, for pre-production, production, and post-production at zero duty subject to an export obligation.¹¹⁰ Eligibility is not limited to a particular sector or region.¹¹¹ The GOI indicated that this program has been updated since the investigation due to the July 2017 introduction of a new Goods and Services Tax (GST); however, the GOI did not indicate any changes that would impact the countervailability of this program. As such, we preliminarily find that the essential structure of the program remains unchanged, and we continue to find this program countervailable.¹¹²

Commerce has previously determined that import duty reductions or exemptions provided under the EPCGS program are countervailable export subsidies because they: (1) provide a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provide two different benefits (*see* below) under section 771(5)(E) of the Act; and (3) are specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.¹¹³ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the underlying investigation that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is Commerce's practice to treat any balance on an unpaid liability as a contingent liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).¹¹⁴ The second benefit is the waiver of duty on imports of capital equipment covered by those

¹⁰⁶ See TII August 6, 2019 IQR at 90 and Exhibit CVD-57.

¹⁰⁷ See Goodluck Preliminary Analysis Memorandum.

¹⁰⁸ See GOI August 5, 2019 IQR at 9.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 8.

¹¹¹ *Id.* at 15.

¹¹² *Id.* at 7; *see also* GOI February 24, 2020 SQR at 5-6.

¹¹³ 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* IDM at 14.

¹¹⁴ See *PET Film Final Determination* IDM at "EPCGS."

EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their 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 *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...”¹¹⁵ 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.

Goodluck reported that it imported capital goods at reduced import duty rates under the EPCG program during the AUL period, but not during the POR.¹¹⁶ Based on record information, Goodluck received various licenses which it reported were for the manufacture of non-subject merchandise.¹¹⁷ Goodluck provided complete license documentation on the record of this administrative review, including copies of the original licenses issued by the GOI.¹¹⁸ Specifically, Goodluck demonstrated that its non-transferable licenses were issued for use in a plant which does not produce subject merchandise.¹¹⁹ Furthermore, the licenses submitted by Goodluck established that they were issued solely for the production of non-subject merchandise.¹²⁰ 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.

TII reported that it imported capital goods with waived import duty rates under the EPCGS program.¹²¹ Additionally, TII reported that all residual benefits associated with an export-oriented unit program that was in existence prior to the AUL period were rolled into the EPCGS program prior to the POR, and it provided supporting documentation.¹²² TII indicated in its response that the waived duties pertained to both subject- and non-subject merchandise, and that the capital goods imported for non-subject merchandise were plant, product, and unit-specific, and could not be used to produce subject merchandise.¹²³ Further, TII stated that its licenses were not transferrable between facilities that produced subject versus non-subject merchandise.¹²⁴ Based on TII’s documentation and in accordance with our treatment of TII’s

¹¹⁵ See *Preamble*, 63 FR at 65393.

¹¹⁶ See Goodluck August 7, 2019 IQR at 19-32.

¹¹⁷ *Id.* at Exhibit 9a.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 22, Exhibit 9b and Exhibit 9c.

¹²⁰ *Id.*

¹²¹ See TII August 6, 2019 IQR at 32.

¹²² See TII’s Letter, “Cold-Drawn Mechanical Tubing from India: Comments on Preliminary Calculation Results,” dated February 3, 2020, at 2; see also TII August 6, 2019 IQR at Exhibit CVD-75.

¹²³ *Id.*

¹²⁴ See TII August 6, 2019 IQR at 33.

EPCGS licenses during the investigation, we continue to find that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5).¹²⁵ As such, we preliminarily find that certain TII EPCGS licenses benefited the company's exports of subject merchandise.

TII met the export requirements for certain EPCGS licenses prior to December 31, 2018 (the last day of the POR), and the GOI has formally waived the relevant import duties. For a number of its licenses, however, TII had not yet met its export obligation as required under the program.¹²⁶ Therefore, although TII 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.¹²⁷

To calculate the benefit received from TII's formal waivers of import duties on capital equipment imports, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act. Additionally, TII indicated that several duties applied to its purchase of capital goods were "countervailing duties" applied under Indian law to imported goods in order to counterbalance excise duty and state taxes charged on domestic sales.¹²⁸ Consistent with Commerce's practice in prior cases, these duties did not confer a benefit because they are refundable to TII as Central Value-Added Tax (CENVAT) credits, independent of the EPCGS program.¹²⁹ We consider the amount of duties waived, less the "cenvatable" duties and the application fees, to be the benefit, and treated these amounts as grants, pursuant to 19 CFR 351.504.

Further, consistent with the approach followed in previous investigations, we preliminarily find the year of receipt of the benefit to be the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).¹³⁰ We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for the years in which the GOI granted the respondents the import duty waiver.¹³¹ For any years in which the value of the waived import duties was less than 0.5 percent of TII's total export sales, we expensed the value of the duty waived to the year of receipt. For those license(s) which were not expensed in the year of receipt, we calculated the benefit from these allocable grants using the methodology set forth in 19 CFR 351.524 to determine the benefit in the POR from these grants. We summed the benefits from these grants to determine the total benefit for TII of these waivers.

As noted above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. To calculate TII's benefit received on licenses where the export obligation has not yet been met, and pursuant to 19 CFR 351.505(d)(1), we utilized the long-term interest rates as discussed in the "Benchmark Interest Rates" section above,

¹²⁵ See *CDMT Preliminary Determination* PDM at 21-22, unchanged in *CDMT Final Determination*.

¹²⁶ See TII August 6, 2019 IQR at Exhibit CVD-26.

¹²⁷ *Id.*

¹²⁸ See TII August 6, 2019 IQR at Exhibit CVD-26.

¹²⁹ See *Steel Threaded Rod from India* IDM at 15.

¹³⁰ See *PET Film Final Determination* IDM at Comment 5.

¹³¹ See TII Preliminary Analysis Memorandum.

because the event upon which repayment of the duties depends occurs more than one year after the date of importation of the capital goods. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit. For EPCGS licenses with duty free imports made during the POR, we calculated a daily interest rate based on a long-term interest rate and the number of days the loan was outstanding during the POR, to arrive at a prorated contingent liability for those imports.¹³²

The benefit received under the EPCGS program is the sum of: (1) the benefit attributable to the POR from the formally-waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POR; and (2) the interest that would have been due had the respondents borrowed the full amount of the duty reduction or exemption at the time of importation for imports of capital equipment that have unmet export requirements during the POR. We then divided the total benefit received by TII under the EPCGS program for each year of the POR by its total export sales of subject merchandise for the respective year, as described above.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.23 percent *ad valorem* for TII during 2017, and of 0.24 percent *ad valorem* for TII during 2018.¹³³

f. 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 Reserve Bank of India (RBI) provides a refund of three percent of interest charged by the bank on pre-shipment and post-shipment export finance in Rupees.¹³⁴ According to the GOI, this scheme is available to certain products that are exported under specific tariff codes, as identified by the RBI, and for all exports made by Micros, Small & Medium (MSMEs).¹³⁵ The GOI states that the three percent interest equalization, as charged by the bank, is specific to the merchandise under investigation and is contingent upon exports.¹³⁶ Both Goodluck and TII reported receiving assistance under this program during the POR.¹³⁷

In the underlying investigation of this order, Commerce found that this program is countervailable because it provides a financial contribution in the form of revenue foregone under section 771(5)(D) of the Act. Further, Commerce determined that it is specific under section 771(5A)(B) of the Act because it is limited to exporters.¹³⁸ A benefit is also provided under the IES program under 771(5)(E)(ii) of the Act because the interest rates, which are determined by the RBI, provided under these programs are lower than commercially-available interest rates. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the underlying investigation that this program is

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See GOI August 5, 2019 IQR at 82.

¹³⁵ *Id.*

¹³⁶ *Id.* at 82 and Exhibit U.

¹³⁷ See Goodluck August 7, 2019 IQR at 58-60; and TII August 6, 2019 IQR at 93-99.

¹³⁸ See CDMT Preliminary Determination PDM at 23, unchanged in CDMT Final Determination.

countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

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 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.¹³⁹

Because the IES program is contingent upon exports, and is a recurring benefit, we calculated the total benefits received in each year of the POR where the date of interest equalization received was in the POR. We divided this sum by the value of total exports for the respective year.¹⁴⁰

On this basis, we preliminarily determine a countervailable subsidy rate of 0.15 percent *ad valorem* for Goodluck in 2017, and of 0.13 percent *ad valorem* for Goodluck in 2018; and of 0.79 percent *ad valorem* for TII in 2017, and 2.01 percent *ad valorem* for TII in 2018.¹⁴¹

g. Income Tax Deductions for Research and Development Expenses (Section 35 (2AB))

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 1961.¹⁴²

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 specific because it is limited to certain enterprises or industries or certain groups of enterprises or industries. Lastly, this program confers a benefit within the meaning of section 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.

TII claimed a benefit under this program by disclosing deductions under this program for the POR.¹⁴³ To determine the subsidy rate, we took the amount of the benefits provided to TII under this program for each year of the POR and divided it by TII’s total sales for the respective year.¹⁴⁴ On this basis, we preliminarily determine a countervailable subsidy rate for TII of 0.29 percent *ad valorem* for 2017, and of 0.24 percent *ad valorem* for 2018.

¹³⁹ See Goodluck August 7, 2019 IQR at 58-60 and Exhibit 18 (d) and Exhibit (e).

¹⁴⁰ We preliminarily determine that TII is not able to tie the benefits for subject merchandise to specific markets, in accordance with 19 CFR 351.525(b)(4), for its transactions. See TII August 6, 2019 IQR at Exhibit CVD-63.

¹⁴¹ See Goodluck and TII Preliminary Analysis Memoranda.

¹⁴² See GOI August 5, 2019 IQR at 27.

¹⁴³ See TII August 6, 2019 IQR at 57-58 and Exhibit CVD-37.

¹⁴⁴ See TII Preliminary Analysis Memorandum.

h. Section 80-IC Tax Deduction for Assessment Years 2017-2018 (Fiscal Year 2016-2017) and 2018-2019 (Fiscal Year 2017-2018)

Under this program, companies may receive a tax deduction at a rate of 100 percent for the first five years, and a rate of 30 percent for an additional five years, when they establish a manufacturing facility within certain designated locations.¹⁴⁵

In the underlying investigation of this order, Commerce found that this program is countervailable because it provides a financial contribution in the form of revenue foregone under section 771(5)(D) of the Act. Further, Commerce determined that it is specific under section 771(5A)(D) of the Act.¹⁴⁶ 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. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the underlying investigation that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

TII reported that it received an income tax deduction based on the location of one of its production facilities.¹⁴⁷ To calculate the subsidy rate, we divided the benefit for each year of the POR by the total value of sales during the respective year. On this basis, we preliminarily determine a countervailable subsidy rate of 0.04 percent *ad valorem* for TII in 2017, and of 0.03 percent *ad valorem* for TII in 2018.¹⁴⁸

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

The GOI reported that this program provides “an incentive to investment made in plant and machinery” by permitting the tax deduction of a percentage of the actual costs of new assets purchased during each fiscal year from 2013 through 2017, and it provided details on usage by the mandatory respondents during the AUL period.¹⁴⁹ The deduction is claimed by recipients on their tax returns and is not dependent on export performance.

In the underlying investigation of this order, Commerce found that this program is countervailable because it provides a financial contribution in the form of revenue forgone under section 771(5)(D) of the Act. Further, Commerce determined that it is specific under section 771(5A)(D) of the Act,¹⁵⁰ and we found that this deduction conferred a benefit pursuant to section 771(5)(E) of the Act.¹⁵¹ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the underlying investigation that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

¹⁴⁵ *Id.* at 126.

¹⁴⁶ See *CDMT Preliminary Determination* PDM at 25, unchanged in *CDMT Final Determination*.

¹⁴⁷ See TII August 6, 2019 IQR at 125.

¹⁴⁸ See TII Preliminary Analysis Memorandum.

¹⁴⁹ See GOI August 5, 2019 IQR at 34-43 and Exhibit L.

¹⁵⁰ See *CDMT Preliminary Determination* PDM at 25, unchanged in *CDMT Final Determination*.

¹⁵¹ See Goodluck August 7, 2019 IQR at 37-42.

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). TII indicated that it received the tax deduction under section 32AC for fiscal year 2016-2017 only, because it installed new assets during that period that met the requirements to receive the deduction of 15 percent of the total assets acquired.¹⁵² To calculate the subsidy rate for each company, we took the amount claimed as a deduction on each tax return and divided this benefit by the total sales for each calendar year during which the relevant tax return was filed.¹⁵³

On this basis, we preliminarily determine a *de minimis* countervailable subsidy rate for Goodluck for 2017 and 2018; and 0.38 percent *ad valorem* percent for TII in 2017.¹⁵⁴

j. Provision of Steel Inputs by Steel Authority of India Ltd. (SAIL) for Less Than Adequate Remuneration (LTAR)

Goodluck and TII reported purchases of steel inputs from SAIL, a government-owned and controlled steel producer.¹⁵⁵ Regarding this program, the GOI stated that it did not have any involvement in the purchase or sales decisions of SAIL, and it declined to provide additional information about the program.¹⁵⁶ As such, we will not re-examine the countervailability of this program in the current review. Our findings are consistent with prior India CVD proceedings.¹⁵⁷ Consistent with our findings in the investigation, 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)(D) of the Act.

In its submission, Goodluck argues that Commerce should not subject the hot rolled coil that it purchased from SAIL to our LTAR subsidy analysis because it did not use the inputs to make subject merchandise during the POR.¹⁵⁸ For purposes of these preliminary results, we disagree with Goodluck. Commerce has generally stated that it does not trace the use of subsidies. Rather, Commerce looks at the purpose of the subsidy at the time of bestowal. In fact, Goodluck admits that the various grades of hot rolled coil purchased from SAIL are inputs used in the production of subject merchandise,¹⁵⁹ and it argues only that it did not happen to use these particular purchases of hot rolled coil to product subject merchandise during the POR.¹⁶⁰ Commerce'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

¹⁵² See TII August 6, 2019 IQR at 61.

¹⁵³ See TII Preliminary Analysis Memorandum.

¹⁵⁴ See Goodluck and TII Preliminary Analysis Memoranda.

¹⁵⁵ See Goodluck August 7, 2019 IQR at 41-49 and Exhibit 13(a).

¹⁵⁶ See GOI August 5, 2019 IQR at 43.

¹⁵⁷ See, e.g., *Carbon and Steel Threaded Rod from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 36570 (July 29, 2019) (*Steel Threaded Rod 2018 Prelim*), and accompanying PDM at 8-10, unchanged in *Carbon and Alloy Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination*, 85 FR 8828 (February 18, 2020) (*Steel Threaded Rod 2018 Final*).

¹⁵⁸ See Goodluck August 7, 2019 IQR at 42

¹⁵⁹ See Goodluck SQR at 5-8.

¹⁶⁰ *Id.*

product.” In making this determination, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.¹⁶¹ 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.¹⁶² For example, in determining whether a loan is tied to a particular product, Commerce examines the loan approval documents; to determine whether a grant at the time of bestowal is tied to a particular product, Commerce examines the grant approval documents. Based on record evidence, there is no information showing that, at the time of bestowal of the subsidy, the GOI had a stated purpose for the subsidy. 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 Commerce’s subsidy analysis and, thus, for purposes of these preliminary results, we have conducted an LTAR subsidy analysis with respect to Goodluck’s purchases of hot rolled coil from SAIL.¹⁶³

Under 19 CFR 351.511(a)(2), Commerce determines the basis for identifying appropriate 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.¹⁶⁴ However, consistent with the investigation, the GOI did not provide information regarding the steel industry in India. We therefore preliminarily find the steel market distorted. Under these circumstances, a tier one benchmark would not be appropriate. However, because no party submitted alternative benchmark information for this program, we are preliminarily relying on the tier one information as facts available. As Goodluck and TII provided all actual sales transactions of purchases of steel inputs from unaffiliated, non-government suppliers in India during the POR, we will rely on this information as tier one benchmark prices pursuant to 19 CFR 351.511(a)(2) to value Goodluck’s and TII’s steel input purchases from SAIL for LTAR.¹⁶⁵

¹⁶¹ See *Preamble*, 63 FR at 65403; see also *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015), and accompanying IDM at 26-27.

¹⁶² *Id.*

¹⁶³ See *CDMT Preliminary Determination* PDM at 26, unchanged in *CDMT Final Determination*.

¹⁶⁴ 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”).

¹⁶⁵ See TII’s Letter, “Cold-Drawn Mechanical Tubing from India: Supplemental Questionnaire Response,” dated September 6, 2019, at Exhibit CVD-139. In the underlying investigation, we determined that the GOI did not respond to our questions regarding the Indian steel market; however we used a tier one benchmark to determine the benefit from this program. We have continued to use a tier one benchmark for these preliminary results, but will request further information from interested parties regarding the appropriate benchmark to measure the benefits from this program for the final results.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, Commerce will adjust the benchmark price that a firm actually paid for the product, including delivery charges. We determined the benefit as the difference between the benchmark prices and the prices reported. To calculate the benefit for Goodluck's purchases from SAIL, we used a monthly average of the prices Goodluck paid for each grade type of steel purchased from private sources, *i.e.*, sources other than authorities. To calculate the benefit for TII's purchases from SAIL, we used a monthly average of the prices TII paid for each item code of steel purchased from private sources, *i.e.*, sources other than authorities. When no direct comparison existed, we calculated benchmarks based on the closest item code(s) or grade type of steel on monthly and half-yearly bases, using the most proximal comparison in time and item or grade possible for each calculation. We summed the transaction benefits for each year to determine the total benefit, which we then divided by Goodluck's and TII's total sales, respectively, for each calendar year within the POR.¹⁶⁶

On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Goodluck in 2017, and *de minimis* for Goodluck in 2018.¹⁶⁷ We preliminarily find that TII did not receive any benefit during 2017.¹⁶⁸ TII's calculated subsidy rate was *de minimis* for 2018.¹⁶⁹

2. State Government Subsidies

State Government of Uttar Pradesh (SGUP)

Commerce is examining three programs administered by the SGUP: Exemption from Entry Tax for the Iron and Steel Industry, Electric Duty Exemption, and Stamp Duty Exemption. The GOI indicated that none of the mandatory respondents received assistance under the Exemption from Entry Tax for the Iron and Steel Industry program or the Stamp Duty Exemption program.¹⁷⁰ However, Goodluck reported benefits under all three programs, and it provided documentation demonstrating the operation of them.

In the underlying investigation of this order, Commerce found that these programs are countervailable because they each provide a financial contribution in the form of revenue foregone under section 771(5)(D) of the Act. Further, Commerce determined that they each are specific under section 771(5A)(D) of the Act,¹⁷¹ and we found that these programs conferred a benefit pursuant to section 771(5)(E) of the Act. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the underlying investigation that these programs are countervailable. Therefore, for these preliminary results, we continue to find these programs countervailable.

¹⁶⁶ See TII Preliminary Analysis Memorandum.

¹⁶⁷ See Goodluck Preliminary Analysis Memorandum.

¹⁶⁸ See TII Preliminary Analysis Memorandum.

¹⁶⁹ *Id.*

¹⁷⁰ See GOI August 5, 2019 IQR at 87.

¹⁷¹ See CDMT Preliminary Determination PDM at 27-28, unchanged in CDMT Final Determination.

TII indicated that it did not have any facilities or locations within Uttar Pradesh, and, as such, that it is not eligible to receive benefits under these programs.¹⁷² Therefore, TII did not receive any state-specific subsidies for SGUP.

i. 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 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.¹⁷³ There is no contradictory information on the record and thus we did not consider steel ingots in our benefit calculation.

Goodluck reported that it received licenses for hot rolled coil which was used to manufacture both subject and non-subject merchandise.¹⁷⁴ There is no application or approval process for these licenses, and Goodluck only retains invoices which reflect that no entry tax was paid on a good.¹⁷⁵ Based on this information, we cannot reliably determine that the exemption from entry taxes is 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.

To calculate the subsidy rate, we divided the benefit in each year of the POR by the total value of sales during the respective year. On this basis, we preliminarily determine a countervailable subsidy rate of 0.32 percent *ad valorem* for Goodluck in 2017, and *de minimis* for Goodluck in 2018.¹⁷⁶

ii. Electric Duty Exemption in the State of Uttar Pradesh

The SGUP has exempted electricity duties from new industrial units in the state.¹⁷⁷ Goodluck reported that one of its manufacturing facilities was exempted from the payment of electricity duty during the POR, thus conferring a benefit pursuant to section 771(5)(E) of the Act.¹⁷⁸ To calculate the subsidy rate, we divided the benefit for each year in the POR by the total sales during the respective year. On this basis, we preliminarily determine a countervailable subsidy rate of 0.10 percent *ad valorem* for Goodluck in 2017, and 0.10 percent *ad valorem* for Goodluck in 2018.¹⁷⁹

iii. Stamp Duty Exemption in the State of Uttar Pradesh

¹⁷² See TII August 6, 2019 IQR at 104.

¹⁷³ See Goodluck August 7, 2019 IQR at 60-67.

¹⁷⁴ *Id.* at 65 and exhibit 19(b-i).

¹⁷⁵ *Id.*

¹⁷⁶ See Goodluck Preliminary Analysis Memorandum.

¹⁷⁷ See Goodluck August 7, 2019 IQR at 67-71.

¹⁷⁸ *Id.*

¹⁷⁹ See Goodluck Preliminary Analysis Memorandum.

Goodluck stated it benefited from a one-time stamp duty exemption associated with the purchase of land in Uttar Pradesh.¹⁸⁰ 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 period, we divided the total amount of the exemptions received during each respective year of the AUL period by the total export sales values of each respective year of Goodluck. On this basis, because these benefits were received before the POR, 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 POR.

State Government of Uttarakhand (SGOU) Subsidy Programs

Uttarakhand Capital Investment Subsidy Scheme

TII self-reported use of this program during the AUL period.¹⁸¹ TII reported that this program is operated by the SGOU, and it provides incentives to new and existing industrial units to expand in various kinds of industrial centers or in “thrust industries” located outside these centers in specifically-identified locations within the state.¹⁸² TII’s business unit TIDC India received a benefit under this program during 2018.¹⁸³

As discussed above, the GOI was non-responsive regarding this program, and, thus, Commerce is relying on AFA with respect to the financial contribution and specificity determinations for it. We preliminarily determine that this program is countervailable because it provides a financial contribution in the form of revenue foregone under section 771(5) of the Act and because it is specific under section 771(5A)(D) of the Act. Further, we find that this program conferred a benefit pursuant to section 771(5)(E) of the Act.

Because this grant is tied to the purchase of capital goods, we applied the “0.5 percent test” for non-recurring subsidies, as described in 19 CFR 351.524(b)(2). Because the grant did not pass the 0.5 percent test, we have expensed the benefit in the year it was received. Since this grant pertained to TII as a whole, we calculated the subsidy rate by dividing the payment amount received in 2018 by TII’s total sales for 2018. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for TII in 2018.¹⁸⁴

¹⁸⁰ See Goodluck August 7, 2019 IQR at 71-72 and at Exhibit 22.

¹⁸¹ See TII August 6, 2019 IQR at 170 and Exhibit CVD-112.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See TII Preliminary Analysis Memorandum.

B. Programs Preliminarily Determined to Not Confer a Measurable Benefit During the POR

Federal Programs

Incremental Exports Incentive Scheme (IEIS)

According to the GOI, the IEIS program entitles companies to a scrip equivalent to two percent of the incremental export growth achieved by the exporter between the year of application and the previous year to specified markets, *i.e.*, the United States, Europe, and Asia.¹⁸⁵ Goodluck reported that it did not receive any new or additional assistance under this program during the POR. Goodluck notes that Commerce has treated this program as providing a recurring benefit; however, it did provide information regarding its use of the IEIS during the AUL period because it had reported its use of this program during the investigation.¹⁸⁶ TII indicated it did not receive any IEIS scrip during the POR.¹⁸⁷

The program is specific within section 771(5A)(B) of the Act because eligibility to receive the scrip is contingent upon export.¹⁸⁸ 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 scrip provides exemptions for duties associated with the import of goods.¹⁸⁹ Unlike the scrips in the SHIS scheme, the scrips provided under this program are not tied to capital assets, and therefore the program provides a recurring benefit.

As the GOI reported that the scrip is based on the value of exports, we are therefore attributing the license value received by Goodluck to its total exports. However, Goodluck reported that it did not use its IEIS scrip during the POR.¹⁹⁰ Rather, Goodluck indicated and provided supporting documentation that it received and sold its scrip to an unaffiliated party prior to the POR. Thus, we find that Goodluck did not receive a benefit from this program during the POR.¹⁹¹

State Government of Maharashtra (SGOM) Subsidy Programs

*a. Sales Tax Deferral Under 1997 Industrial Promotion Subsidy Program*¹⁹²

TII indicated that it participated in this program during the AUL period, between March 1, 1997, and October 31, 2005, based on its establishment of a new unit in an area designated as a

¹⁸⁵ See GOI August 5, 2019 IQR at 75-76.

¹⁸⁶ See Goodluck August 7, 2019 IQR at 55-56.

¹⁸⁷ See TII August 6, 2019 IQR at 92.

¹⁸⁸ See GOI August 5, 2019 IQR at 76.

¹⁸⁹ See *Steel Flanges from India* PDM at 16, unchanged in *Steel Flanges from India Final*.

¹⁹⁰ See Goodluck August 7, 2019 IQR at 56 and Exhibit 17.

¹⁹¹ *Id.*

¹⁹² In the underlying investigation, Commerce referred to this program as the “Industrial Promotion Subsidy (IPS)/ Sales Tax Program.” See Countervailing Duty Initiation Checklist: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India (May 9, 2017) (Initiation Checklist) at 29.

preferred investment area under the SGOM.¹⁹³ Under the program, sales tax was deferred for a period of ten years, at which point the company must pay the deferred taxes owed over a period of ten years. TII paid off all remaining taxes owed under the program in 2014.

*b. 2007 Package Scheme of Incentives Program (Electric Duty Exemption)*¹⁹⁴

TII self-reported use of this program during the POR.¹⁹⁵ TII explained that this program provides incentives to eligible industrial units for making investments in certain sub-regions within Maharashtra state.¹⁹⁶ As a medium manufacturing unit with investments at a certain level, TII stated that it qualified for this incentive based on the fact that it has a facility in Maharashtra associated with the TI Metal Forming unit of TII.¹⁹⁷

TII indicated that, under this program, it received a discount on its electrical duties each month during the POR from the state utilities board, based on a reduced industrial duty rate of 9.3 percent.¹⁹⁸ Since these discounts pertained to TII as a whole, we calculated the subsidy rate by totaling the monthly benefits for each calendar year and dividing the totals by TII's total sales for each calendar year of the POR. We found that the resulting calculated subsidy amount was less than the 0.05 percent threshold to find a measurable benefit.¹⁹⁹

C. Programs Preliminarily Determined to Not Be Countervailable

a. Pradham Mantri Rojgar Prothsahan Yojna (PMRPY) Scheme

This program was initially reported by Goodluck in its questionnaire responses, noting that it was only applicable for the company in 2018.²⁰⁰ Goodluck reported that the PMRPY Scheme was created to incentivize employers to hire new employees and to provide them social security. To qualify for this program, all companies must register with the Employees' Provident Fund Organization (EPFO) and not have hired employees that previously worked for an EPFO-registered employer; further, the new employee must be earning less than or equal to 15,000 rupees per month. The program is open to any company if the employer/new employee meet these criteria. When approved, the GOI will make an 8.33 percent contribution to the Employees' Pension Scheme for a period of three years.²⁰¹

Consistent with other proceedings,²⁰² Commerce preliminarily finds that this program is not specific within the meaning of section 771(5A) of the Act because the EPFO registration is open

¹⁹³ See TII I August 6, 2019 QR at 143 and Exhibit CVD-93.

¹⁹⁴ In the underlying investigation, Commerce initiated on this program under the name "Electricity Duty Exemption." See Initiation Checklist at 30.

¹⁹⁵ *Id.* at 143.

¹⁹⁶ *Id.* at 154.

¹⁹⁷ *Id.* at 155 and Exhibit CVD-98.

¹⁹⁸ *Id.*

¹⁹⁹ See TII Preliminary Analysis Memorandum.

²⁰⁰ See Goodluck August 7, 2019 IQR at 84-87, and at Exhibit 26a-c.

²⁰¹ *Id.*

²⁰² See *Steel Threaded Rod 2018 Prelim PDM* at 28, unchanged in *Steel Threaded Rod 2018 Final*.

to public and private sector employers and is not limited to a particular industry, sector or enterprise. Therefore, we preliminarily determine this program is not countervailable.

D. Programs Preliminarily Determined to be Not Used

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

1. Duty Free Import Authorization Scheme
2. Focus Product Scheme
3. Market Development Assistance Scheme
4. Market Access Initiative
5. Steel Development Fund Loans
6. GOI Loan Guarantees
7. Alternative fuels and electric vehicle subsidy

Federal Tax Programs

8. Section 80-IA
9. Section 80-JJAA

Export Oriented Units

10. Duty-Free Import of Goods, Including Capital Goods and Raw Materials
11. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
12. Duty Drawback on Fuel Procured from Domestic Oil Companies
13. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area

Special Economic Zones

14. Duty Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material.
15. Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
16. Exemption from Stamp Duty of all Transactions and Transfers of Immovable Property within the SEZ (stamp duty)
17. Exemption from Electric Duty and Cess (a tax or levy) Thereon on the Sale or Supply to the SEZ Unit
18. SEZ Income Tax Exemption Scheme (Section 10A)
19. Discounted Land Fees in an SEZ

State Government of Haryana

20. Sales Tax Deferral

State Government of Maharashtra Subsidy Programs

21. Subsidies for Mega Projects under the Package Scheme of Incentives
22. Maharashtra Package Scheme of Incentives, 2013

- a. Interest Subsidy
- b. Waiver of Stamp Duty
- c. Incentives to strengthening Micro-, Small-, and Medium-sized and Large Scale Industries
- d. Incentives for Mega/Ultra Projects

State Government of Tamil Nadu

23. Sales Tax Deferral

State Government of Uttar Pradesh (SGUP) Subsidies

24. Investment Promotion Scheme

25. Special Assistance for Mega Projects

State Government of Uttarakhand

26. GST Waiver

IX. RECOMMENDATION

We recommend that you approve the preliminary findings described above. If these recommendations are accepted, we will publish the preliminary results of the review in the *Federal Register*.



Agree

Disagree

2/28/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance