



C-533-874

Administrative Review

POR: 9/25/2017 – 12/31/2018

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October 13, 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:** Issues and Decision Memorandum for the Final Results of the  
Countervailing Duty Administrative Review: Certain Cold-Drawn  
Mechanical Tubing of Carbon and Alloy Steel from India; 2017-  
2018

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## I. SUMMARY

There are two respondents in this administrative review of the countervailing duty (CVD) order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn tubing) from India covering the period of review (POR) September 25, 2017 through December 31, 2018: Goodluck India Limited (Goodluck) and Tube Investments of India Ltd. (TII). For these final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we have made no changes to the *Preliminary Results*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of Comments” section of this memorandum.

Below is a complete list of the issues in this review for which we received comments from parties:

- Comment 1: Appropriate Producer/Exporter Names for Goodluck
- Comment 2: Whether the Benefit for the Exemption from Entry Tax for Iron and Steel Industry Program was Correctly Calculated

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<sup>1</sup> See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Results of Countervailing Duty Administrative Review, 2017-2018*, 85 FR 12897 (March 5, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



## II. BACKGROUND

On March 5, 2020, Commerce published the *Preliminary Results* of this administrative review.<sup>2</sup> On April 20, 2020, the petitioners,<sup>3</sup> Goodluck, and TII each timely submitted case briefs.<sup>4</sup> On April 27, 2020, the Government of India (GOI) and Goodluck each timely filed a rebuttal brief.<sup>5</sup>

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>6</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.<sup>7</sup> The deadline for the final results of this review is now October 21, 2020.

On June 11, 2020, Commerce clarified that the subsidy rate calculated for Goodluck applies to entries exported by Goodluck, Good Luck Steel Tubes Limited, and Good Luck Steel Tubes Limited Good Luck House.<sup>8</sup> We invited parties to comment on this clarification but received no comments.<sup>9</sup>

## III. Changes Since the *Preliminary Results*

The “Discussion of Comments” section contains summaries of the comments and Commerce’s positions on the issues raised in the briefs. As a result of this analysis, we made no changes to the *Preliminary Results*.

## IV. Scope of the Order

For a full description of the scope of this order, *see* Attachment.

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<sup>2</sup> See *Preliminary Results*.

<sup>3</sup> The petitioners are: Arcelor Mittal Tubular Products; Michigan Seamless Tube, LLC; Plymouth Tube Co. USA; PTC Alliance Corp.; Webco Industries, Inc.; and Zekelman Industries, Inc.

<sup>4</sup> See Petitioners’ Letter, “Cold-Drawn Mechanical Tubing from India Petitioners’ Case Brief,” dated April 20, 2020 (Petitioners Case Brief); Goodluck’s Letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Case Brief of Goodluck India Limited,” dated April 20, 2020 (Goodluck Case Brief); and TII’s Letter, “Cold-Drawn Mechanical Tubing from India: Case Brief,” dated April 20, 2020. We note that, while TII submitted a case brief, it raised no issues, but, instead, requested that Commerce not modify or otherwise alter any of the calculations with respect to the benefits determined for TII during the POR.

<sup>5</sup> See GOI’s Letter, “Administrative Review of Cold Drawn Mechanical Tubing of Carbon and Alloy Steel exported from India: Rebuttal brief to the Petitioner Case Brief dated April 20, 2020,” dated April 27, 2020 (GOI Rebuttal Brief); and Goodluck’s Letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Rebuttal Brief of Goodluck India Limited,” dated April 27, 2020 (Goodluck Rebuttal Brief).

<sup>6</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

<sup>7</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>8</sup> See Memorandum, “Administrative Review of the Countervailing Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Clarification of Goodluck India Limited,” dated June 11, 2020 (Goodluck Clarification Memo).

<sup>9</sup> See Comment 1 for a discussion of this issue.

## **V. Period of Review**

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

## **VI. Subsidies Valuation Information**

### **A. Allocation Period**

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*.<sup>10</sup> No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies.

### **B. Attribution of Subsidies**

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies.<sup>11</sup> No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the attribution of subsidies.

### **C. Benchmark Interest Rates**

Commerce made no changes to benchmarks or discount rates used in the *Preliminary Results*.<sup>12</sup> No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding benchmark interest rates.

## **VII. USE OF FACTS OTHERWISE AVAILABLE**

### **A. Legal Standard**

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

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 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

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<sup>10</sup> See PDM at 7-8.

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 10.

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."<sup>13</sup> 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."<sup>14</sup> 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, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."<sup>15</sup> It is Commerce's practice to consider information to be corroborated if it has probative value.<sup>16</sup> In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.<sup>17</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>18</sup>

Finally, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.

## **B. Application of AFA: GOI**

Commerce relied on AFA because the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information.<sup>19</sup> In applying AFA, we found 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.<sup>20</sup> However, because TII reported its usage of the aforementioned program, we relied on its reported information to calculate the benefit, if any, within the meaning

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<sup>13</sup> 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).

<sup>14</sup> 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.

<sup>15</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 vol. 1 (1994) (SAA) at 870.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 869.

<sup>18</sup> *Id.* at 860-70.

<sup>19</sup> See PDM at 7.

<sup>20</sup> *Id.*

of section 771(5)(E) of the Act. For further descriptions of this decision, *see* the *Preliminary Results*.<sup>21</sup> Because no party commented on this issue, Commerce continues to use AFA for these final results for the financial contribution and specificity findings, and continues to rely on TII's reported usage to determine the benefit.

## VIII. ANALYSIS OF PROGRAMS

### A. Programs Determined to be Countervailable

#### 1. GOI Subsidies

##### a. Advance Authorization Program (AAP)

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Goodluck: 0.27 percent *ad valorem* for 2017

TII did not receive a benefit from AAP during the POR.

##### b. Duty Drawback Scheme

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Goodluck: 2.00 percent *ad valorem* for 2017  
1.95 percent *ad valorem* for 2018

TII: 2.07 percent *ad valorem* for 2017  
2.12 percent *ad valorem* for 2018

##### c. Merchandise Export from India Scheme

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Goodluck: 2.61 percent *ad valorem* for 2017  
2.80 percent *ad valorem* for 2018

TII: 0.48 percent *ad valorem* for 2017  
0.53 percent *ad valorem* for 2018

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<sup>21</sup> *Id.*

**d. Status Holder Incentive Scheme (SHIS)**

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Goodluck:           0.35 percent *ad valorem* for 2017  
                          0.23 percent *ad valorem* for 2018

TII did not receive a benefit from SHIS during the POR.

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

TII:                   0.23 percent *ad valorem* for 2017  
                          0.24 percent *ad valorem* for 2018

Goodluck did not receive a benefit from EPCGS during the POR.

**f. Interest Equalization Scheme for Export Financing**

Goodluck:           0.15 percent *ad valorem* for 2017  
                          0.13 percent *ad valorem* for 2018

TII:                   0.79 percent *ad valorem* for 2017  
                          2.01 percent *ad valorem* for 2018

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

TII:                   0.29 percent *ad valorem* for 2017  
                          0.24 percent *ad valorem* for 2018

Goodluck did not receive a benefit from Income Tax Deductions for Research and Development Expenses (Section 35 (2AB)) during the POR.

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

TII:                   0.04 percent *ad valorem* for 2017  
                          0.03 percent *ad valorem* for 2018

Goodluck did not receive a benefit from Section 80-IC Tax Deduction during the POR.

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

TII:                   0.38 percent *ad valorem* for 2017

Goodluck received a *de minimis* countervailable subsidy rate for 32-AC of the Income Tax Act for 2017 and 2018.

**j. Provision of Steel Inputs by Steel Authority of India Ltd. for Less Than Adequate Remuneration**

Goodluck: 0.07 percent *ad valorem* for 2017  
*De minimis* for 2018

TII did not receive a benefit from this program for 2017 and received a *de minimis* countervailable subsidy rate for 2018.

**2. State Government Subsidies**

**State Government of Uttar Pradesh (SGUP)**

**i. Exemption from Entry Tax for the Iron and Steel Industry**

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results. *See* Comment 2.

Goodluck: 0.32 percent *ad valorem* for 2017  
*De minimis* for 2018

TII did not receive any benefits from the Exemption from Entry Tax for the Iron and Steel Industry SGUP during the POR.

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

Goodluck: 0.10 percent *ad valorem* for 2017  
0.10 percent *ad valorem* for 2018

TII did not receive any benefits from the Electric Duty Exemption in the State of Uttar Pradesh during the POR.

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

The benefits Goodluck received from the Stamp Duty Exemption in the State of Uttar Pradesh were expensed prior to the POR.

TII did not receive any benefits from the Stamp Duty Exemption in the State of Uttar Pradesh during the POR.

## **State Government of Uttarakhand (SGOU) Subsidy Programs**

### **Uttarakhand Capital Investment Subsidy Scheme**

TII: 0.001 percent *ad valorem* for 2018

Goodluck did not receive a benefit from this program during the POR.

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

### **1. Federal Programs**

a. Incremental Exports Incentive Scheme

### **2. State Government of Maharashtra (SGOM) Subsidy Programs**

- a. Sales Tax Deferral Under 1997 Industrial Promotion Subsidy Program<sup>22</sup>
- b. 2007 Package Scheme of Incentives Program (Electric Duty Exemption)<sup>23</sup>

## **C. Programs Determined to Not Be Countervailable**

b. Pradham Mantri Rojgar Prothsahan Yojna Scheme

## **D. Programs Determined to be Not Used**

We 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

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<sup>22</sup> 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.

<sup>23</sup> In the underlying investigation, Commerce initiated on this program under the name “Electricity Duty Exemption.” See Initiation Checklist at 30.

#### 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 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 Special Economic Zone (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

#### SGOM 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 Strengthen Micro-, Small-, and Medium-sized and Large Scale Industries
  - d. Incentives for Mega/Ultra Projects

#### State Government of Tamil Nadu

23. Sales Tax Deferral

#### SGUP Subsidies

24. Investment Promotion Scheme
25. Special Assistance for Mega Projects

#### SGOU

26. GST Waiver

## IX. DISCUSSION OF COMMENTS

### Comment 1: Appropriate Producer/Exporter Names for Goodluck

#### *Goodluck's Case Brief*<sup>24</sup>

- Goodluck produced subject merchandise in two business units designated as “Good Luck Industries” and “Good Luck Industries II,” neither of which are separate legal entities. Further, although the company’s full name is Goodluck India Limited, Goodluck referred to sales by these units in its commercial invoices and packing lists sometimes as “Goodluck India Limited” and other times as “Good Luck Industries.”
- Goodluck requested a review for itself under the name “Goodluck India Limited,” while the petitioners requested a review of “Goodluck Industries.” Commerce initiated this review under both names.
- The petitioners withdrew their request for a review of “all Indian producers and/or exporters named in our request, except for Good Luck India Limited (Goodluck),” and Commerce continued its review of Goodluck and Goodluck Industries.
- To avoid confusion in the instructions sent to U.S. Customs and Border Protection (CBP), Commerce should clarify in its instructions that the producer and/or exporter include Goodluck India Limited or Good Luck Industries.

*No other parties commented on this issue.*

**Commerce’s Position:** We agree with Goodluck that it is appropriate to clarify the name of the entity involved in this review in order to ensure that Commerce assigns the correct cash deposit rate to entries of subject merchandise to that entity, as well as assesses CVD duties on entries of subject merchandise exported by Goodluck during the POR. Therefore, we have clarified that the calculated rate applies to Goodluck India Limited and Good Luck Industries, in light of the facts below.<sup>25</sup>

Record evidence indicates that Goodluck exports subject merchandise to the United States from two units of Goodluck: “Goodluck Industries” and “Goodluck Industries-II.”<sup>26</sup> Moreover in the investigation segment of this proceeding, Commerce found that the Good Luck Industries changed its name to Goodluck Industries. Goodluck provided commercial invoices and packing lists which demonstrate that sometimes the company is referred to as “Goodluck India Limited” and sometimes it is only referred to by its production unit name, “Good Luck Industries,” signifying that the products sold were sourced from the Goodluck Industries II division.<sup>27</sup> Further, record evidence indicates that Goodluck conducts business under both company names.

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<sup>24</sup> See Goodluck Case Brief at 3-5.

<sup>25</sup> In addition, the calculated rate also applies to entries made by Good Luck Steel Tubes Limited (*i.e.*, Goodluck’s former name), as well as by Good Luck Steel Tubes Limited Good Luck House (*i.e.*, the name used by Goodluck’s corporate office). See Goodluck Clarification Memo at 1.

<sup>26</sup> See Goodluck’s Letter, “Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Goodluck Section III Response of Countervailing Duty Administrative Review,” dated August 7, 2019 (Goodluck August 7, 2019 IQR) at 10-11.

<sup>27</sup> See Goodluck’s Letter, “Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Goodluck’s 2nd Supplemental Response to Section III of Countervailing Duty Questionnaire,” dated December 27, 2019 at Exhibit S2-3(b); *see also* Goodluck August 7, 2019 IQR at Exhibit 12 (d).

Additionally, there is no record evidence, nor is any party arguing, that Goodluck Industries and Goodluck are separate legal entities.

We note that the address in the petitioners' review requested for "Goodluck Industries"<sup>28</sup> was the same as the address indicated in Goodluck's request for review of itself. This further supports Goodluck's claim that it conducts business under both names. The petitioners specifically noted in their withdrawal request that they "withdrew their request for review of all Indian producers and/or exporters named in our request, except for Good Luck India Limited ("Good Luck") and Tube Investments of India Ltd. ("TII"), both of which the Department has now selected as mandatory respondents in this administrative review."<sup>29</sup> In response to the petitioners' withdrawal request, Commerce rescinded the administrative review for all entities for which a request for review was withdrawn.<sup>30</sup> However, Commerce noted that "we are continuing our review of Good Luck India Limited and Good Luck Industries."<sup>31</sup> Commerce, therefore, considered both company names to still be under review. For these reasons, we agree with Goodluck and find that its calculated rate applies to both itself, Goodluck, and its production unit, Goodluck Industries.

Finally, as noted above, for this administrative review, we clarified that the subsidy rate calculated for Goodluck applies to entries exported by Goodluck, Good Luck Steel Tubes Limited, and Good Luck Steel Tubes Limited Good Luck House.<sup>32</sup> Accordingly, we will include all three of these entity names in instructions issued to CBP, as well as Goodluck Industries. Specifically, we intend to indicate that the producers/exporters that should receive Goodluck's calculated rates are: Goodluck India Limited (formerly Good Luck Steel Tubes Limited), Good Luck Steel Tubes Limited Good Luck House, and Good Luck Industries.

## **Comment 2: Whether the Benefit for the Exemption from Entry Tax for Iron and Steel Industry Program was Correctly Calculated**

### *Petitioners' Case Brief*<sup>33</sup>

- Commerce should recalculate the benefit under the Exemption from Entry Tax for Iron and Steel Industry program for Goodluck using an entry tax exemption rate of five percent, as Commerce stated it had done in the Goodluck Preliminary Analysis Memorandum.<sup>34</sup> In the investigation, Commerce determined that, absent information from the GOI confirming relevant duty rates that applied to Goodluck, the program's

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<sup>28</sup> See Petitioners' Letter, "Cold-Drawn Mechanical Tubing from India – Domestic Industry's Request for 2017-2018 First Administrative Review," dated February 28, 2019 at 3.

<sup>29</sup> See Petitioners' Letter, "Cold-Drawn Mechanical Tubing from India – Petitioners' Partial Withdrawal of Review Request," dated June 27, 2019.

<sup>30</sup> 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).

<sup>31</sup> *Id.* 84 FR at 44281.

<sup>32</sup> See Goodluck Clarification Memo at 1.

<sup>33</sup> See Petitioners Case Brief at 1-5.

<sup>34</sup> See Memorandum, "Administrative Review of the Countervailing Duty of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel Products: Preliminary Results Analysis Memorandum for Goodluck India Limited," dated February 28, 2020 (Goodluck Preliminary Analysis Memorandum).

subsidy rate calculation should be based on the maximum potential rate, which would be five percent.

- The GOI has not submitted any additional information on the record of this instant review that would alter Commerce's decision made in the underlying investigation.
- The GOI is the only entity that can explain and provide additional underlying laws and regulations related to this program.
- Goodluck provided an uncorroborated SGUP tariff schedule published in 2015, and it speculates that the rates in the tariff schedule remained in place through the POR. Because the GOI failed to cooperate in providing information to Commerce for this program, and because there continues to be no official documentation submitted by the GOI to corroborate Goodluck's tariff rate claims for the relevant period, there is no record evidence demonstrating the tariff rate or rates that were in effect during the POR.

#### *GOI's Rebuttal Brief*<sup>35</sup>

- Commerce correctly calculated the benefit under the Exemption from Entry Tax for the Iron and Steel Industry program, based on record evidence that the GOI submitted, which noted that "the State Govt of UP has collected the entry tax @ 1% on the entry of Steel Products. The firms are eligible for refund of entry tax paid on the exported Goods on the pro-rata basis."<sup>36</sup>
- The "Exemption from Entry Tax" program does not provide a countervailable subsidy since it is not specific; instead, the entry tax rates are applicable to all entities located within the state that trade in goods.

#### *Goodluck's Rebuttal Brief*<sup>37</sup>

- Commerce correctly calculated the benefit under the Exemption from Entry Tax for Iron and Steel program using a tax rate of one percent.
- Commerce's reference in the Goodluck Preliminary Analysis Memorandum to the five percent of the value of the goods purchased relates to the Uttar Pradesh's Tax of Entry of Goods into Local Area Act 2007 (SGUP 2007 Law). However, this law does not set rates applicable to specific products; instead, the Rate Schedule submitted by Goodluck demonstrates the specific tax rate for section 14, iron and steel, at a one percent rate.
- Goodluck submitted a certificate from the SGUP's Commercial Tax Department that states that "the highest rate of entry on tax on any Iron & Steel product during the period of 1st January 2017 to 30th June 2017 was 1%. Further with effect from 1st July 2017 with implementation of Goods & Services Tax (GST)... Entry Tax has been abolished."<sup>38</sup>
- In this review, unlike in the underlying investigation, the GOI has submitted information to support the use of the one percent rate, including the SGUP 2007 Law itself and an amendment to the SGUP 2007 Law, which provided the rate schedule for iron and steel products at one percent.<sup>39</sup>

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<sup>35</sup> See GOI Rebuttal Brief at 2-5.

<sup>36</sup> See GOI's Letter, "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) at 10-11.

<sup>37</sup> See Goodluck Rebuttal Brief at 3-7.

<sup>38</sup> See Goodluck August 7, 2019 IQR at Exhibit 19 (i).

<sup>39</sup> See GOI February 24, 2020 SQR at Exhibit F.

**Commerce’s Position:** For these final results, we continue to find that the appropriate entry tax rate applicable to Goodluck’s steel product inputs is one percent, as discussed further below.<sup>40</sup>

As an initial matter, we disagree with the GOI that the program is not countervailable. In the underlying investigation, Commerce found this program to be countervailable because it provided a financial contribution in the form of revenue foregone under section 771(5)(D) of the Act, was specific under section 771(5A)(D) of the Act, and conferred a benefit pursuant to section 771(5)(E) of the Act.<sup>41</sup> The GOI argues that Commerce has improperly found this program to be specific because it is limited to a certain geographic area. Although the GOI now argues that this program is automatically available to all purchases of hot rolled coil/ingots in SGUP – and, thus, it is not specific to any industry or company<sup>42</sup> – the GOI failed to provide any additional information that would allow Commerce to reexamine the specificity of this program,<sup>43</sup> despite our request for such information.<sup>44</sup> Therefore, we find that there is no new information or evidence of change surrounding this program that would warrant a reconsideration of our prior finding that this program is countervailable.

With respect to the benefit calculation, the petitioners correctly note that, in the investigation, Commerce used a five percent tax exemption rate for this program.<sup>45</sup> However, there the GOI provided no information regarding this program; rather, only Goodluck self-reported a one percent exemption benefit.<sup>46</sup> Commerce requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters in a CVD proceeding in order to determine whether a countervailable subsidy exists.<sup>47</sup> Absent information from the GOI, Commerce correctly based its finding on AFA.<sup>48</sup> In the benefit portion of its AFA determination, Commerce relied on information on the investigation record which included a reference to exemption rates for the program of as high as five percent.<sup>49</sup>

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<sup>40</sup> We acknowledge that we inadvertently stated in a memorandum accompanying the *Preliminary Results* that the tax Goodluck would have paid absent this program is five percent. See Goodluck Preliminary Analysis Memorandum. However, this statement was in error, and we correctly calculated the benefit for this program using a tax rate of one percent. *Id.* at Entry Tax Exemption 2017 worksheet.

<sup>41</sup> 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 PDM at 27-28, 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*), and accompanying IDM.

<sup>42</sup> See GOI Rebuttal Brief at 2.

<sup>43</sup> See 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,” dated August 5, 2019 at electronic page 87 (despite requesting such information, the GOI did not provide any information regarding this program); see also GOI February 24, 2020 SQR at 8 (the GOI did not respond to all the questions provided in the Standard Questions Appendix, including questions that would allow Commerce to determine the specificity of this program).

<sup>44</sup> See Commerce’s Letter, “Countervailing Duty Administrative Review of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Supplemental Questionnaire,” dated February 11, 2020 at 3-4.

<sup>45</sup> See *CDMT Preliminary Determination* PDM at 27-28.

<sup>46</sup> *Id.*

<sup>47</sup> See e.g., *Multilayered Wood Flooring from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011), and accompanying IDM at 14.

<sup>48</sup> See *CDMT Final Determination* IDM at Comment 7.

<sup>49</sup> *Id.*

For these final results, we are relying on information the GOI provided in this administrative review. In its response, the GOI provided the relevant law, as well as a 2013 amendment to that law, for this program.<sup>50</sup> The law demonstrates that the entry tax rate of this program is applied differently across industries, as the rate schedule in the law lists different rates categorized by different industry products, with “iron and steel” currently eligible for a one percent exemption.<sup>51</sup> The petitioners argued that a rate schedule, subsequently published in 2015 with the same rates, may not be applicable to the POR.<sup>52</sup> However, the rate schedule for the program applies indefinitely, and there is no evidence that the rate schedule was changed or replaced subsequent to its issuance in 2013. In addition, the GOI Commercial Tax Department of Sector-1, Gautam Budh Nagar, confirms that the effective tax exemption rate for the program for the iron and steel industry from January 1, 2017 through June 30, 2017 was one percent.<sup>53</sup> Furthermore, additional information provided by Goodluck demonstrates that its invoices for the POR reflect the application of a one percent exemption rate for this program.<sup>54</sup>

Finally, we agree with the GOI and Goodluck that the benefit received by Goodluck for the POR was calculated correctly in the *Preliminary Results*. Specifically, we calculated the subsidy rate by dividing the benefit in each year of the POR (as outlined the State Rate Schedule for iron and steel products as one percent) by the total value of sales during the respective year. Based on the information provided by the GOI on this record, which was not provided in the underlying investigation, we conclude that the program is correctly calculated with the applicable tax exemption rate of one percent.

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<sup>50</sup> See GOI February 24, 2020 SQR at Exhibit E (providing the relevant law) and F (providing the 2013 amended rate schedule).

<sup>51</sup> *Id.* at Exhibit F.

<sup>52</sup> See Goodluck August 7, 2019 IQR at Exhibit 19(c). The 2015 publication is titled “Hand Book on VAT, CST & Entry Tax in Uttar Pradesh Alongwith Proposed GST,” and is released by the Garg & Goyal company.

<sup>53</sup> See Goodluck August 7, 2019 IQR at Exhibit 19(i).

<sup>54</sup> *Id.*

**X. RECOMMENDATION**

We recommend that you approve the positions set forth above. If these recommendations are accepted, we will publish the final results of the review in the *Federal Register*.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

10/13/2020

**X** 

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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

## Attachment

### 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;
  - (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.