

February 3, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Countervailing Duty Administrative Review of Polyethylene
Terephthalate Film, Sheet, and Strip (PET film) from India

I. Summary

We have analyzed the case and rebuttal briefs submitted by interested parties in response to the preliminary results of this review. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review, 74 FR 39631 (August 7, 2009) (Preliminary Results). The “Subsidies Valuation Information” and the “Analysis of Programs” sections below set forth our determinations with respect to the programs under review as well as the methodologies applied in analyzing these programs. These sections are followed by the “Analysis of Comments” section, which contains the Department of Commerce’s (the Department) response to the issues raised in the briefs. We recommend that you approve the positions described in this memorandum.

Comments were submitted by Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc. (collectively Petitioners),, as well as the company respondent, Jindal Poly Films Limited of India (Jindal). Below is a complete list of issues raised by interested parties in their case and rebuttal briefs:

Benefit Calculation For the Export Promotion Capital Goods Scheme (EPCGS)

- Comment 1: Allocation of Benefit for License Number P/J/3092819
- Comment 2: EPCGS Benefits on Capital Goods Used for Non-Subject Merchandise
- Comment 3: Deduction of Certain Application Fees Paid on EPCGS Licenses

Value Added Tax (VAT)

- Comment 4: Benefits Through Refunds of the VAT

Advanced License Program (ALP)

Comment 5: Countervailability of the ALP under the GOI's New Monitoring Procedures

II. Subsidies Valuation Information

Period of Review (POR)

January 1, 2007 through December 31, 2007.

Allocation Period

Under 19 CFR §351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company-specific AUL or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR §351.524(d)(2)(i) and (ii). For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years. In the 2003 administrative review, the Department determined that Jindal had rebutted the presumption and applied a company-specific AUL of 17 years for Jindal. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006) (PET Film Final Results of 2003 Review). Because there is no new evidence on the record that would cause the Department to reconsider this decision in this review, the Department continues to use an AUL of 17 years for Jindal in allocating non-recurring subsidies.

Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate or discount rate, 19 CFR §351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan on the market. Also, 19 CFR §351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR §351.505(a)(3)(ii).

Pursuant to 19 CFR §351.505(a)(2)(iv), if a program under review is a government provided, short-term loan program, the preference would be to use a company-specific annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required a rupee-denominated short-term loan benchmark rate to determine benefits received under the Pre-Shipment Export Financing and Post-Shipment Export Financing programs. For further information regarding this program, see the “Pre-Shipment and Post-Shipment Export Financing” section below.

In a prior review of this case, the Department determined that Inland Bill Discounting (IBD) loans are more comparable to pre-shipment and post-shipment export financing loans than other types of rupee-denominated commercial short-term loans. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004), and accompanying Issues and Decision Memorandum, at Comment 3 (PET Film Final Results of 2001-2002 Review). There is no new information or evidence of changed circumstances that warrant reconsidering this finding. Therefore, for these final results, we continue to use IBD loans as the basis for the short-term rupee-denominated benchmark for all applicable programs for Jindal.

Jindal did not have any US dollar-denominated short-term loans during the period of review (POR). Therefore, in accordance with 19 CFR §351.505(a)(3)(ii), the Department used a national average dollar-denominated short-term interest rate, as reported in the International Monetary Fund’s publication International Financial Statistics (IMF Statistics) for Jindal.

Further, for those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated long-term benchmark rate, we used, where available, company-specific, weighted-average interest rates on comparable commercial long-term, rupee-denominated loans. For this review, the Department required benchmarks to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) and Export Oriented Units (EOU) programs. Jindal did not have comparable commercial long-term rupee-denominated loans for all required years. Therefore, for those years for which we did not have company-specific information, we relied on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR §351.505(a)(2)(iii). When there were no comparable long-term, rupee-denominated loans from commercial banks during either the year under consideration or the preceding year, we used national average interest rates, pursuant to 19 CFR §351.505(a)(3)(ii), from the IMF Statistics.

III. Analysis of Programs

A. Programs Determined to be Countervailable

1. Pre- and Post-Shipment Export Financing

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

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

Commercial banks extending pre- or post-shipment export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

In the original investigation, the Department determined that the pre-shipment and post-shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Tariff Act of 1930, as amended (Act) as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act inasmuch as the interest rates, which are determined by the RBI, provided under these programs are lower than commercially available interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002), and accompanying Issues and Decision Memorandum (PET Film Final Determination), at “Pre-Shipment and Post-Shipment Financing.” There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these final results, we continue to find this program countervailable.

Jindal reported that it did not receive any post-shipment export financing during the POR. However, it did report receiving pre-shipment export financing during the POR. With regard to pre-shipment loans, the benefit conferred is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (i.e., the short-term benchmark). Because pre-shipment loans are not tied to exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit received by Jindal under this program during the POR by the value of Jindal's total exports during the POR. See 19 CFR §351.525(b)(2). On this basis, we determined the net countervailable subsidy from pre-shipment export financing for Jindal to be 0.08 percent ad valorem during the POR.

2. Advance License Program (ALP)

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

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the ALP. The Department analyzed the changes introduced by the GOI to the ALP in 2005 and acknowledged that certain improvements to the ALP system were made. However, the Department found that systemic issues continued to exist in the ALP system. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 3 (PET Film Final Results of 2005 Review); see also, Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum, at Comment 10 (Lined Paper - Final Determination). Based on the information submitted by the GOI and examined during previous reviews of this proceeding, the Department noted that the systemic issues previously identified by the Department continued to exist. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007), and accompanying Issues and Decision Memorandum, at Comment 3, (PET Film Final Results of 2004 Review). See also PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at "Advance License Program (ALP)," and at Comment 3. In the 2005 review, the Department specifically stated that it continues to find the ALP countervailable because of the systemic deficiencies in the ALP identified in that review, including:

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective

for the purposes intended, as required under 19 CFR §351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 3.¹

Further, in that same review, the Department found that PET film producers "do not have to keep track of wastage since it is not recoverable for the production of PET film." Id. Accordingly, no allowance was made by the GOI to account for waste to ensure that the amount of duty deferred would not exceed the amount of import charges on imported inputs consumed in the production of the exported subject merchandise. See id. Furthermore, the Department found that, in developing the SIONs for PET Film, the GOI did not tie the relevant production numbers to a producer's accounting system or financial statements. Id.

In this review, Jindal, reporting the revisions addressed in the above referenced 2005 administrative review of the order, argued that the ALP "now meets the Department's criteria for being non-countervailable." See Jindal's Original Questionnaire Response, at 78 (October 30, 2008). Specifically, Jindal argued that the GOI, in order to strengthen the supervision and monitoring system of the ALP, conducted an on-the-spot verification of Jindal's plant to review the actual consumption and utilization of the inputs imported duty free under the ALP.² Jindal also provided supporting documentation and copies of GOI publications on the administration of the ALP, the introduction of Appendix 23, and the revision of the PET Film SION. The Department requested that Jindal provide a copy of the GOI's verification of Jindal's Appendix 23 consumption register for the actual quantity imported during the POR, against the quantities included in the SION for PET Film, as enumerated in paragraph 4.28(v) of the Handbook of Procedures 2004-2009. However, Jindal was unable to provide the requested

¹ The Department verified the GOI with respect to the GOI SION verification in the Department's 2005 review of this order. See Memorandum to File from Elfi Blum: Placing the GOI Verification Report of the 2005 Countervailing Duty Administrative Review on the Record of the 2007 Countervailing Duty Administrative Review (July 20, 2009).

² In Exhibit 31(c) Jindal included the report by officials from the Directorate General of Foreign Trade (DGFT) on their search for documentation on the original fixation of the PET Film SION at Jindal and at the DGFT. According to the report, the officers ultimately found some information via the Public Notice folder on the original PET Film SION. The second document was a report by the team of DGFT officials on the verification of Jindal and the hearing the committee held with Polyplex on the second production process. Annexure II of that report included a description of the "Film Plant Process of Polyplex Corporation Limited," describing the basic production process and various usages of PET Film. None of these documents included any new or additional information on the devising and verification of the new PET Film SION. Further, none of these documents demonstrated that the GOI's SION calculations reflect the production experience of the PET film industry as a whole, nor did they provide any evidence demonstrating the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits.

copies of Appendix 23, explaining that it was not required to maintain the Appendix 23 for any of the Advance Licenses which it had redeemed during the POR. Thus, the Department was unable to examine whether the information in Appendix 23 is indeed reflective of effective tracing of the consumption of the quantities of inputs imported duty free to the quantities of subject merchandise exported, in accordance with the 2005 SION for PET Film. Therefore, there is no additional record evidence demonstrating the functionality and accuracy of the GOI's new monitoring procedures that would allow the Department to determine that the inputs imported duty free under this program were consumed in the production of exported products, in accordance with the newly established PET Film SION.

Moreover, neither Jindal nor the GOI addressed any concerns the Department had in the 2005 review with respect to the formulation and verification of the PET Film SION. In particular, the GOI did not require Jindal to tie the inventory and consumption data to Jindal's accounting systems and financial statements in order to verify the accuracy of Jindal's data, or to account for waste, which is normally incurred in the production. In addition, in the current review, the Department noted inconsistencies between the inputs listed in the revised SIONs for PET Film (H209 and H210), as reported in Exhibit 31(c) of Jindal's Original Questionnaire Response, and certain input items listed as allowable imports on Jindal's advance licenses. Specifically, it appears that several of the items imported, or allowed to be imported, under Jindal's advance licenses were not listed in the SIONs. See Jindal's Second Supplemental Questionnaire Response, Exhibit S2-39 (July 14, 2009) (Jindal's Second Supplemental Questionnaire Response).

Because the deficiencies in the ALP system identified above still exist, the Department continues to find that the ALP 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 the 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 earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon export.

Pursuant to 19 CFR §351.524(c)(1), the exemption of import duties normally provides a recurring benefit. During the POR, Jindal did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we are treating the benefit provided under the ALP as a recurring benefit.

Jindal received various ALP licenses, which it reported separately for the production of: (1) subject merchandise and (2) non-subject merchandise. However, upon close examination of the

record, the Department is not able to determine whether certain licenses are in fact tied to the production of a particular product within the meaning of 19 CFR §351.525(b)(5). The Department, after examining all original ALP licenses submitted in Exhibit S2-39 of Jindal's Second Supplemental Questionnaire Response, and comparing those to the data reported in Exhibits 31(a) and (b), noted certain inconsistencies. For further clarification, see Memorandum to File from Elfi Blum: Calculations for the Preliminary Results: Jindal Poly Films of India Limited (Jindal) (July 31, 2009). While Jindal attempted to explain these inconsistencies (see Comment 5, below), after reviewing the record again, we still cannot establish that the ALP licenses are tied to the production of a particular product within the meaning of 19 CFR §351.525(b)(5), and we find that Jindal's ALP licenses benefit all of the company's exports. Therefore, we have divided the total value of the duties exempted under the Advance Licenses during the POR by Jindal's total export sales. On this basis, we determine the countervailable subsidy provided under the ALP to be 1.35 percent ad valorem.

The Department's position on parties' comments regarding the ALP program is discussed in Comment 5.

Further, in the Preliminary Results the Department stated that, in order to address Jindal's claim that its invalidated Advance Licenses were not countervailable, additional information was needed. See Preliminary Results, at "C. Programs for which more Information is Required; Invalidated Licenses under the ALP." On December 23, 2009, the Department issued its Post-Preliminary Determination on Invalidated Licenses, finding the portions of Jindal's Advance Licenses that were invalidated to be not countervailable. See Memorandum To Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India: 2007 Administrative Review of the Countervailing Duty Order; Post-Preliminary Determination (December 23, 2009) (Post-Preliminary Determination Memorandum). The Department stated that information on the record does not indicate that the invalidated portions of Jindal's Advance Licenses provided either a financial contribution, as defined under section 771(5)(D)(ii) of the Act, or a benefit under section 771(5)(E) of the Act, to Jindal. Specifically, the Department determined that the record indicates that, once the portion of the license is invalidated, Jindal can no longer use its Advance License to import that quantity of the input duty-free, and there is no obligation for the domestic supplier to compensate Jindal through reduced prices or other means for the value of the duty and tax exemptions it received under its Advance Intermediate License (AIL). Furthermore, the Department found there is no requirement or obligation for Jindal to purchase from that supplier.

However, the Department noted that, in light of the complexity of the process of invalidating Advance Licenses and issuing Advance Intermediate Licenses, in addition to the fact that the invalidation of Advance Licenses is part of the ALP, which has always been found countervailable, we will continue to examine the issue of invalidated Advance Licenses in any future segments of this proceeding. See Post-Preliminary Determination Memo, at 3. All interested parties were invited to comment on the Department's Post-Preliminary Determination Memo, however, no interested party filed comments or rebuttal comments. See Memorandum

To All Interested Parties From Elfi Blum: Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India; Briefing Schedule on Invalidated Licenses under the Advance License Program (ALP) (December 24, 2009).

3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) in the form of revenue forgone for not collecting import duties; (2) respondents receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act. See, e.g., PET Film Final Determination, Issues and Decision Memorandum, at “EPCGS.” There is no new information or evidence of changed circumstances that would warrant reconsidering our determination 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 accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department’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). Id. The second benefit is the waiver of duty on imports of capital equipment covered by those 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 provided for the purchase of capital equipment. The preamble to our regulations 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” See Countervailing Duties; Final Rule, 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR §351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

Jindal reported that it imported capital goods under the EPCGS in the years prior to and during the POR. Jindal received various EPCGS licenses, which it reported were for the production of: (1) subject merchandise, and (2) non-subject merchandise. However, information provided by Jindal indicates that some of the licenses were issued for the purchase of capital goods and materials that could be used in the production of both subject and non-subject merchandise, or were reported as such in a prior review. See Jindal's Original Questionnaire Response, at Exhibits 20(a), 20(c), 22(a), and 22(b), and Jindal's First Supplemental Response, at Exhibit S1-1 and S1-20(b). Information included in Jindal's most recent supplemental response indicates that the GOI approved certain licenses for export of both subject and non-subject merchandise, and capital equipment reported by Jindal as imported for the production of non-subject merchandise only, was approved by the GOI for the export of subject merchandise. See Jindal's Second Supplemental Questionnaire Response, at Exhibit S2-29. Based on the information and documentation submitted by Jindal, we cannot determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR §351.525(b)(5). As such, we find that all of Jindal's EPCGS licenses benefit all of the company's exports. For a more detailed discussion on our analysis, see Comment 2, below.

Jindal met the export requirements for certain EPCGS licenses prior to December 31, 2007, and the GOI has formally waived payments of the relevant import duties. For further discussion on this issue, see Comment 1, below. For most of its licenses, however, Jindal has not yet met its export obligation as required under the program. Therefore, although Jindal has received a deferral from paying import duties when the capital goods were imported, the final waiver of the obligation to pay the duties has not yet been granted for many of these imports.

To calculate the benefit received from the GOI's formal waiver of import duties on Jindal's capital equipment imports where its export obligation was met prior to December 31, 2007, we considered the total amount of duties waived (net of required application fees) to be the benefit, and treated these amounts as grants pursuant to 19 CFR §351.504. For a discussion on application fees, see Comment 3, below. Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Jindal's outstanding import duties. See PET Film Final Determination, Issues and Decision Memorandum, at Comment 5. Next, we performed the "0.5 percent test," as prescribed under 19 CFR §351.524(b)(2), for each year in which the GOI granted Jindal an import duty waiver. Those waivers with values in excess of 0.5 percent of Jindal's total export sales in the year in which the waivers were granted were allocated using Jindal's company-specific AUL, while waivers with values less than 0.5 percent of Jindal's total export sales were expensed in the year of receipt. See "Allocation Period" section, above. We then calculated the benefit from these allocable grants using the methodology set forth in 19 CFR §351.504 to determine the benefit in the POR from these grants. We summed the benefits from these grants to determine the total benefit for Jindal of these waivers.

As noted above, import duty reductions that Jindal received on the imports of capital equipment for which they have not yet met export obligations may have to be repaid to the GOI if the

obligations under the licenses are not met. Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest-free loan. See 19 CFR §351.505(d)(1); and PET Film Final Determination and Issues and Decision Memorandum, at “EPCGS”; see also Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005) (Indian PET Resin Final Determination).

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we find the benefit to be the interest that Jindal would have paid during the POR on the full amount of the duty reduction or exemption at the time of importation. See, e.g., Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 70 FR 46483, 46485 (August 10, 2005) (PET Film Preliminary Results of 2003 Review) (unchanged in the final results, 71 FR 7534); see also (Indian PET Resin Final Determination).

As stated above, under the EPCGS program, the time period for fulfilling the export commitment expires eight years after importation of the capital good. As such, pursuant to 19 CFR §351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.*, under the EPCGS program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). As the benchmark interest rate, we used the weighted-average interest rate from all comparable commercial long-term, rupee-denominated loans for the year in which the capital good was imported. See the “Benchmarks for Loans and Discount Rate” section above for a discussion of the applicable benchmark. 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 license was approved and summed these amounts to determine the total benefit to Jindal from these interest-free loans.

Thus, the total benefit received under the EPCGS is the sum of: (1) the benefit attributable to the POR from the formally waived duties for imports of capital equipment for which respondents met export requirements by December 31, 2007, and (2) interest due on the contingent liability loans for imports of capital equipment that have not met export requirements. We then divided the total benefit by Jindal’s total exports to determine a subsidy of 4.06 percent ad valorem.

4. Export Oriented Units (EOU)

Companies that are designated as an EOU are eligible to receive various forms of assistance in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales, for five years. Companies designated as EOUs may receive the following benefits: (1) duty-free importation of capital goods and raw materials; (2) reimbursement of

central sales taxes (CST) paid on capital goods and materials procured within India; (3) purchase of materials and other inputs free of central excise duty; and (4) receipt of duty drawback on furnace oil procured from domestic oil companies. Consistent with its previous administrative review, Jindal reported that it had been designated as an EOU. See PET Film Final Results of 2004 Review, Issues and Decision Memorandum, at “Export Oriented Units.” Specifically, Jindal reported receiving the following benefits: (1) the duty-free importation of capital goods and materials; (2) the reimbursement of CST paid on raw materials and capital goods procured domestically; and (3) the purchase of materials and other inputs free of central excise duty.

The Department previously determined that the purchase of materials and/or inputs free of central excise duty is not countervailable. See Indian PET Resin Final Determination, Issues and Decision Memorandum, at “Export Oriented Units (EOUs) Programs: Purchase of Material and other Inputs Free of Central Excise Duty.” With respect to the other categories of benefits enumerated above, the Department determined that the EOU program was specific, within the meaning of section 771(5A)(A) and (B) of the Act, because the receipt of benefits under this program was contingent upon export performance. See, e.g., Indian PET Resin Final Determination, Issues and Decision Memorandum, at “Export-Oriented Unit (EOU) Program: Duty-Free Import of Capital Goods and Raw materials,” and “Export-Oriented Unit (EOU) Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically.” There is no new information or evidence of changed circumstances that would warrant reconsidering this finding.

In this review, Jindal reported also receiving benefits from the “EOU Duty Drawback on Furnace Oil Procured From Domestic Oil Companies” program and the “EOU Income Tax Exemption Scheme (Section 10B),” both programs previously reported as not used in prior reviews of this proceeding. The countervailability of these programs is discussed below under sections (c) and (d).

a. Duty-Free Importation of Capital Goods and Raw Materials

Under this program, an EOU is entitled to import, duty-free, capital goods and raw materials for the production of exported goods in exchange for committing to export all of the products it produces over five years. The Department previously determined that the duty-free importation of capital goods and raw materials provides a financial contribution and confers benefits equal to the amount of exemptions of customs duties. See Sections 771(5)(D)(ii) and (E) of the Act. See also, Indian PET Resin Final Determination, Issues and Decision Memorandum, at “Export-Oriented Unit (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials.” With respect to raw material imports, the GOI was not able to demonstrate that it has in place and applies 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. There is no new information or evidence of changed circumstances that warrant reconsidering this finding.

Based on the information provided by Jindal in the form of copies of its “Executed Legal agreement for EOU Unit” with the GOI, at Exhibits 26(b.i.), and 26(b.ii.), until an EOU demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties. See Jindal’s Original Questionnaire Response, at Exhibits 26(b.i.) and 26(b.ii.). Jindal has not yet met its export requirement under this program and will owe the unpaid duties if the export requirement is not met. (Upon Jindal meeting its export requirement, the Department intends to treat the waived duties as a grant.) Therefore, consistent with 19 CFR §351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties to be an interest-free loan made to Jindal at the time of importation. We determine the benefit to be the interest that Jindal would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation.

Pursuant to 19 CFR §351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends occurs at a point in time that is more than one year after the date of importation of the capital goods (i.e., under the EOU program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). We used the long-term, rupee-denominated benchmark interest rate discussed in the “Benchmarks for Loans and Discount Rate” section above for each year in which capital goods were imported as the benchmark.

For the duty free importation of capital goods, because Jindal did not fulfill any export obligation under the EOU program, we determined the benefit for each year is the total amount of interest that would have been paid if Jindal had received a loan to pay the duties. To calculate the benefit to Jindal under this program, we summed the amount of interest that would have been paid during the POR, and the duty exemptions on raw material inputs received during the POR. We then divided Jindal’s total benefits under this program by its total export sales during the POR. On this basis, we determine the countervailable subsidy from this category of the program to be 1.09 percent ad valorem for Jindal.

b. Reimbursement of CST Paid on Materials Procured Domestically

Under this program, Jindal was also reimbursed for the CST it paid on raw materials and capital goods procured domestically. The Department previously determined that the reimbursement of CST paid on materials procured domestically provides a financial contribution and confers benefits equal to the amount of reimbursements of sales taxes pursuant to sections 771(5)(D)(ii) and (E) of the Act. See, e.g., PET Film Preliminary Results of 2003 Review, 70 FR at 46490 (unchanged in the final results). Specifically, the benefit associated with domestically purchased materials is the amount of reimbursed CST received by Jindal during the POR.

Normally, tax reimbursements, such as the CST, are considered to be recurring benefits. However, some of the reimbursements under this program are tied to the purchase of capital

assets. As such, pursuant to 19 CFR §351.524(c)(2)(iii), we would normally treat such reimbursements as non-recurring benefits. However, we performed the “0.5 percent test,” as prescribed under 19 CFR §351.524(b)(2) and found that the amount of CST reimbursements tied to capital goods received during the POR was less than 0.5 percent of total export sales for 2007. We also performed the “0.5 percent test on Jindal’s reimbursements of CST on its purchases of capital assets for the 2006 and 2005 review periods, and found that they were less than 0.5 percent of total export sales for the respective years. Therefore, Jindal’s benefits under this program are properly expensed entirely in the year earned and the only benefit to Jindal was from the CST reimbursements claimed under this program during the POR. See 19 CFR §351.524(b)(2). To calculate the benefit for Jindal, we first summed the total amount of CST reimbursements for capital goods and raw materials received during the POR. We divided this amount by the total value of Jindal’s export sales during the POR. On this basis, we determine the countervailable subsidy provided to Jindal through the reimbursement of CST under the EOU program to be 0.03 percent ad valorem.

c. EOU Duty Drawback on Furnace Oil Procured From Domestic Oil Companies

During the POR, Jindal was reimbursed for duties paid on its furnace oil purchased from domestic oil companies. This duty drawback rate on furnace oil purchases is only available to EOUs. The “all-industry” rate is calculated, in part, on the total cost of insurance and freight (CIF) value of oil imported by the two major Indian oil suppliers. This duty drawback on furnace oil is not tied to the production process of any particular industry or product, including the subject merchandise, but applies only to the overall import charges on furnace oil without taking into consideration how the furnace oil is used by an EOU, or whether it is consumed in the production process. An EOU’s reimbursement is based on the FOB value of the invoice received from the Indian oil supplier, inclusive of the import duties paid by the Indian oil supplier. See Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration: Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Preliminary Analysis of the Export Oriented Unit (EOU) Program on Duty Drawback on Furnace Oil Procured from Domestic Oil Companies Program and Purchases of Materials and Other Inputs Free of Central Excise Duty, at 1-3 (February 14, 2005).

As mentioned above, the Department previously determined that this program is limited to EOUs and therefore, is specific as an export subsidy under section 771(5A)(A) and (B) of the Act. In addition, the Department found that this program provides a financial contribution in accordance with section 771(5)(D)(ii) of the Act, in the amount of the reimbursement claimed. Finally, a benefit is conferred in accordance with section 771(5)(D)(ii) of the Act and section 771(5)(E) of the Act and 19 CFR §351.519(a)(4)(ii) in the entire amount of the reimbursement claimed under this program, since the GOI does not have a system or procedure in place to confirm the amount of furnace oil consumed in the production of exports for purposes of claiming duty drawback. See 19 CFR §351.519(a)(1)(i); see also Indian PET Resin Final Determination, at “Export-Oriented Unit (EOU) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies.”

To calculate the subsidy rate for Jindal, we first summed the amount of duty drawback claimed under this program during the POR. We then divided this benefit by Jindal's total export sales during the POR to calculate a countervailable subsidy of 0.07 percent ad valorem.

d. EOU Income Tax Exemption Scheme (Section 10B)

In the instant review, Jindal reported that, in accordance with Section 10B of the Income Tax Act, 1961, it was allowed to deduct its profits derived from the export sales as an EOU, as defined in the Foreign Trade Policy (FTP), from its taxable income during the POR. Specifically, Section 10B states that:

Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking. . . for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce . . . shall be allowed from the total income of the assessee . . .

See Jindal's Original Questionnaire Response, at Exhibit 35(a). According to Jindal, an EOU does not have to file a formal application to make this deduction under the program. See id., at 97. According to the GOI, "no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years." See GOI's Original Questionnaire Response, at 57.

Based on the information above, we determine this program to be a countervailable export subsidy, because it is contingent upon export performance and, therefore, specific in accordance with section 771(5A)(A) and (B) of the Act. Pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes paid by Jindal, pursuant to section 771(5)(E) of the Act. We also determine that the EOU Income Tax Exemption Scheme (Section 10B) provides a recurring benefit under 19 CFR §351.509(c) and 19 CFR §351.524(c). Using the standard corporate tax rate in India, we calculated the amount of taxes Jindal should have paid absent this program and subtracted the amount it did pay. We then divided the benefit by Jindal's total export sales during the POR, to determine a countervailable subsidy of 0.15 percent ad valorem.

5. State and Union Territory Sales Tax Incentive Programs

According to the GOI, state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. See GOI's Original Questionnaire Response, at 46 to 50 (October 16, 2008; revised October 23, 2008) and the GOI's First Supplemental Response, at 18 to 19 (March 9, 2009). These incentives allow privately-owned (i.e., not 100 percent owned by the GOI) manufacturers, that are in selected industries and are located in certain designated regions, to sell goods without charging or collecting state sales taxes.

In the original CVD investigation, we determined that the operation of these types of state sales tax programs confer countervailable subsidies. See PET Film Final Determination, Issues and Decision Memorandum, at "State of Maharashtra Programs" and "State of Uttar Pradesh Programs;" Sales Tax Incentives;" see also, PET Film Final Results of 2005 Review, Issues and Decision Memorandum at "State Sales Tax Incentive Programs." Specifically, the Department found that these programs provide a financial contribution in the form of revenue foregone by the respective state governments pursuant to section 771(5)(D)(ii) of the Act, and confer a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(A) and (D)(iv) of the Act, these programs are specific because they are limited to certain geographical regions within the respective states administering the programs.

To calculate the benefit, we first calculated the total sales tax reduction or exemption the respondents received during the POR by subtracting taxes paid from the amount that would have been paid on their purchases during the POR absent these programs. We then divided this amount by Jindal's total sales during the POR to calculate a net countervailable subsidy of 0.35 percent ad valorem.

In the current review, Jindal argues that the State of Maharashtra (SOM) sales tax law under which Jindal did not pay or collect sales taxes, was repealed in 2005 and was replaced by a value-added tax (VAT). Furthermore, Jindal states that the exemption of sales tax on purchases has not been replaced by any other scheme of the GOI. Thus, Jindal contends that this meets the requirements of a program-wide change under section 351.526 of the Department's regulations. See Jindal's Original Questionnaire Response, at 85. Exhibits S1-18(b) and S1-18 of Jindal's First Supplemental Questionnaire Response provide notification of the SOM VAT Tax Act, 2002, published in the SOM Gazette on March 9, 2005, effective date April 1, 2009, and an excerpt of section 95 of the SOM VAT Act, stating that the SOM Sales Tax Act has been repealed, respectively. Further, Jindal states that, under the VAT regime, its exemption from collecting sales tax on sales, available under the Package Scheme of Incentives of Maharashtra, continues until May 26, 2011, for Jindal. See Jindal's Original Questionnaire Response, at 84. However, they note that the exemption from sales tax on purchases is no longer available.

The GOI, in its original response confirms that the Bombay Sales Tax Act, 1959, has been repealed, and that a VAT regime (provided for under SOM VAT Rules, 2005) has been

introduced. Further, the GOI argues that no benefits are available under the previous scheme. See GOI's Original Questionnaire Response, at 50.

Consistent with prior segments of this proceeding, the Department countervailed sales tax exemptions on a respondent's purchases. In the instant review, Jindal and the GOI reported that a Central Sales Tax (CST) exemption applied to interstate transactions and that Jindal did not pay CST on its interstate purchases which are also not subject to VAT. Pursuant to 19 CFR §351.510, sales tax exemptions provide a benefit to the extent that a firm pays less in sales taxes than it would absent the program. Therefore, the Department continues to countervail the sales tax exemption applicable to Jindal's purchases from other states.

In addition, consistent with Hot-Rolled from India, the Department is not countervailing Jindal's VAT exemption. See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum, at Comment 20 (Hot-Rolled From India 2006 Review). Finally, the Department finds that the criteria for finding a program-wide change have not been met, as Jindal had claimed in its Original Questionnaire Response, at 85, with the termination of the SOM State Sales Tax Act and the introduction of the VAT Act. (See 19 CFR §351.526). Despite the 2005 repeal of its state sales tax law and related enactment of a VAT system, the SOM continued to provide a CST exemption on Jindal's interstate purchases during the POR, although in-state purchases were covered under the VAT system. Moreover, Jindal reportedly will not be fully subject to the VAT system until 2011. Therefore, because the VAT system has not been fully implemented, we will continue countervailing CST exemptions on interstate purchases, and in any subsequent review, we intend to also evaluate the operations of the SOM's VAT system. For a more detailed discussion on the interested parties' comments, see Comment 4, below.

B. Programs Determined To Be Not Used

Based on the questionnaire responses, we determined that Jindal did not apply for or receive benefits during the POR under the programs listed below:

1. Duty Free Replenishment Certificate (DFRC) (GOI)
2. Target Plus Scheme (GOI)
3. Capital Subsidy (GOI)
4. Exemption of Export Credit from Interest Taxes (GOI)
5. Loan Guarantees (GOI)
6. Income Tax Exemption Scheme (Sections 10A) (GOI)

7. Duty Entitlement Passbook Scheme (DEPS/DEPB)
8. State of Maharashtra (SOM) Electricity Duty Exemption
9. State Sales Tax Incentive Programs other than from the SOM, Uttaranchel, and State of Gujarat
10. Octroi Refund Scheme (SOM)
11. Waiving of Loan Interest by SICOM Limited (SOM)
12. State Sales Tax Incentives-Section 4-A of the Uttar Pradesh Trade Tax Act
13. State of Uttar Pradesh Capital Incentive Scheme
14. SOG Infrastructure Assistance Schemes
15. Capital Incentive Scheme of Uttaranchel

IV. Analysis of Comments

Comment 1: Allocation of Benefit for License Number P/J/3092819

Jindal takes issue with how the Department allocated the benefit for license number P/J/3092819 (reported in Exhibit 22 (b) of Jindal's Responses). Jindal points out that it fulfilled its export obligation under this license during the POR. Accordingly, the Department used its standard methodology and treated the exempted duties for this EPCGS license as a grant. Then, Jindal explains, the benefit was calculated by allocating the grant over the AUL and adding the interest benefit on the unutilized balance of the grant. However, Jindal contends, the Department has mistakenly allocated the grant starting in the year 2007 instead of starting the allocation period in 1995 and 1996 (the years the goods were imported duty-free). Starting the allocation from 2007, Jindal argues, will result in an "erroneous allocation of the benefit for 28 years." Instead of allocating the unpaid duties as a grant as of 2007, the year in which Jindal fulfilled its export obligation, Jindal insists that the benefit of the allocation should start from the year in which the respective duty-free imports were made. See Jindal's Case Brief (December 22, 2009), at 2-3 (Jindal's Case Brief).

Petitioners refute Jindal's claim that the Department wrongly allocated the benefit in the amount of the duties saved over 28 years instead of Jindal's 17- year AUL for license number P/J/3092819. Jindal, Petitioners contend, fails to provide any authority or reason why the allocation of the benefit should start with the year of importation of the product. Petitioners state that Jindal fulfilled its obligation under that license during the POR, and the Department,

consistent with its approach in prior reviews of this proceeding,³ correctly treated the full amount of the waived duties as a grant received in 2007, the year the GOI officially granted the waiver. Because the benefits passed the 0.5 percent test, Petitioners explain, the Department allocated the benefit over Jindal's 17-year AUL. Therefore, Petitioners argue that the Department should not revise its benefit calculation for license number P/J/3092819. See Petitioners' Rebuttal Brief (January 4, 2010), at 3-5 (Petitioners' Rebuttal).

Department Position:

The Department correctly applied its grant allocation methodology for the above license. In 2007, Jindal fulfilled its export obligation under this license, and the GOI officially granted a waiver of the full amount of the unpaid duties. Until the GOI waives the payment of duties, companies have a contingent liability to pay such duties. The Department's regulations with respect to contingent liability interest-free loans clearly state that "{i}f, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself." See 19 CFR §351.505(d)(2). The time of receipt of the benefit is considered to be "the date on which the firm received the grant." See 19 CFR §351.504(b). Thus, the Department considers the year in which the GOI officially grants a waiver of the full amount of unpaid duties, as the year in which the grant was bestowed. The Department has consistently applied this approach to the EPCGS Program since the original investigation of this proceeding, and all subsequent reviews of this order, as well as in other Indian CVD cases. See, e.g., PET Film Final Results of 2004 Review. See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determination: Polyethylene Terephthalate Film Sheet, And Strip (PET film) From India, 66 FR 53389, 53394 (October 22, 2001) (unchanged in the Final Determination, 67 FR 34905 (May 16, 2002)); see also, Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 20240, 20247 (April 20, 2001) (unchanged in the Final Determination, 66 FR 49635 (September 28, 2001)).

The record of this review shows that for the license referenced above, the GOI granted the official waiver of the full amount of all unpaid duties in 2007. Further, in the Preliminary Results, we determined this grant to be a non-recurring benefit within the meaning of 19 CFR 351.524(c), and allocated the waived unpaid duties over Jindal's AUL, which is 17 years (see Average Useful Life (AUL) section, above), in accordance with 19 CFR 351.524(b)(2), beginning with the year 2007. There is no new information on the record, and Jindal, in its argument, did not cite to any record evidence or legal basis for the Department to change its established approach. Therefore, we have not revised our method for calculating the benefit for this license for these final results.

³ Petitioners reference the Preliminary Results, 74 FR at 39635, in which the Department is referencing the PET Film Final Determination, Decision Memorandum at Comment 5.

Comment 2: EPCGS Benefits on Capital Goods Used for Non-Subject Merchandise

Jindal maintains that the Department erroneously included in the benefit calculation for EPCGS licenses covering capital goods that were not only used in the production of: (i) subject merchandise (PET Film), but also in the production of (ii) non-subject metalized PET film, as well as non-subject BOPP film. Jindal contests the Department's finding in the Preliminary Results, arguing that Jindal, in its original questionnaire response, clearly indicated and emphasized, through headers and column indicators and footnotes in the spreadsheet, that “{t}hese capital goods cannot be used in the production of subject merchandise and do not confer any benefit on the subject merchandise.” See Jindal's Original Questionnaire Response, at 44 and Exhibits 20(a), 20(b) 22(a), 22(b), and 20(c). Jindal also takes issue with the Department's statement that “... some of the licenses were issued for the purchase of capital goods and materials used in the production of both subject and non-subject merchandise, or were reported as such in a prior review.” See Preliminary Results, 74 FR at 39635. Jindal argues that it clearly explained in the prior 2004 review that:

‘EPCG licenses used for production of both subject and non-subject merchandise’ for the reason that, during 2004, Jindal's Yarn division at Gulaothi, which was producing polyester filament yarn (non-subject merchandise), was in operation and yarn-grade PET chips produced at the Nashik chips division (NSK1) were being transferred to the Gulaothi POY division. Since the EPCG licenses obtained for producing chips at the Nashik division were being used for producing both types of chips, film grade chips used for subject merchandise, as well as yarn grade chips used for non-subject merchandise, in earlier POR responses, Jindal categorized its EPCG licenses other than those that were used exclusively for production of non-subject merchandise (*i.e.*, BOPP film).

See Jindal's Second Supplemental Questionnaire Response, at 9-10; and Jindal's Case Brief, at 3-4.

Jindal now claims that, during the current POR, there were no operations at the Yarn division of Gulaothi, and the entire quantity of PET chips produced at the Chips division of Nashik (NSK1) was film grade and was exclusively used in the production of subject merchandise (PET film in NSK 2 & NSK 4). Hence, according to Jindal, during the current POR, all of the EPCG licenses relating to NSK1, NSK2 and NSK4 (converted from the EOU scheme) as well as the Khanvel EPCG licenses were categorized as “used in the production of subject merchandise” because these EPCG licenses are now exclusively used in the production of subject merchandise, Jindal contends. Jindal's Case Brief, at 4-5.

Jindal also contends that the Department should exclude the benefit on duties saved on imports of capital goods used exclusively for non-subject merchandise (BOPP film) as reported in Jindal's Exhibit 20(c) and used by the Department in its worksheet titled “EPCGS-NonSM.” See Memorandum To File From Elfi Blum: Preliminary Results of the 2007 Countervailing Duty Administrative Review of the order on Polyethylene Terephthalate Film, Sheet and Strip

(PET film) from India; Calculations for the Preliminary Results: Jindal Poly Films of India Limited (Jindal) (July 31, 2009) (Preliminary Results Calculation Memorandum), at Attachments Exhibits 20(a), 20 (b), 22 (a) & 22 (b); and Jindal's Case Brief, at 5.

Petitioners disagree with Jindal that the Department wrongly included benefits, which Jindal claims solely related to the production of non-subject merchandise, in its benefit calculations under the EPCGS. According to Petitioners, Jindal's challenge to the Department's determination rests solely on Jindal's categorization of certain EPCGS benefits as pertaining to non-subject merchandise. Petitioners state that the Department assessed the underlying evidence, and based on its totality, correctly determined that the record evidence did not provide a substantial basis from which to conclude that particular EPCGS benefits are tied to the production or sale of a particular product or sale thereof, in accordance with 19 CFR §351.525(b)(5). Additionally, Petitioners argue that Jindal failed to address the Department's finding that there were inconsistencies between Jindal's reporting for production and the GOI's license endorsements. Petitioners clarify that the Department looks only to "the stated purpose of the subsidy . . . at the time of bestowal." See Countervailing Duties: Final Rule, 63 FR 65348, 65403 (November 25, 1995); MTZ Polyfilms, Ltd. v. United States, No. 08-00089, Slip Op. 09-118 at p. 17, and Petitioners' Rebuttal, at 5-6. In addition, Petitioners point out that the Department's determination is also consistent with that reached in the 2004 review. See PET Film Final Results of 2004 Review, at Comment 2), and Petitioners' Rebuttal, at 5.

Department Position:

In its responses and case brief, Jindal has argued that the Department should determine whether the benefits from a license are tied to a particular product based on whether the capital goods covered by the license were used in the production of subject- or non-subject merchandise during this POR.

In accordance with the Department regulations, "{i}f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." See 19 CFR §351.525(b)(5). However, in making such a determination, the Department analyzes:

". . . the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince."

Countervailing Duties: Final Rule, 63 FR at 65403.

For the Department to make a determination that the benefit from an EPCGS license should be attributed to a particular product, it normally first examines the original license, and its stated purpose at the point of bestowal, as endorsed or amended by the GOI. See, e.g., Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review, 63 FR 13626, 13631 (March 20, 1998), stating "that 'a subsidy is tied' when the intended use is

known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy.” In this instant case, the Department has complete license documentation for 11 out of 20 licenses.⁴ Based on our analysis of those licenses, we find that capital goods on licenses reported by Jindal to be only used in the production of subject merchandise were originally granted for the production of both subject merchandise and non-subject merchandise. Likewise, the capital goods listed in the approved licenses for subject merchandise were not solely tied to the production of subject merchandise. In light of these inconsistencies between the product indicated on the license issued by the GOI, and Jindal’s categorization in reporting, we find the information on the record is insufficient to make a determination that licenses were tied solely to non-subject merchandise. The Department identified such inconsistencies between Jindal’s reported use of a license versus the stated purpose of license, as issued by the GOI in the Preliminary Results Calculation Memorandum, at 4-5, giving Jindal the opportunity to comment on in its case brief. However, Jindal failed to address that issue in its case brief.

In addition to those inconsistencies mentioned in the Preliminary Results Calculation Memorandum, Jindal reported in one exhibit that all EPCGS licenses were used for the production of non-subject merchandise, but then indicated in the same exhibit that one license is exclusively used in the production of subject merchandise.

Therefore, for these final results, we continue to divide the entire benefit from all of Jindal’s EPCGS licenses by Jindal’s total export sales to calculate the subsidy rates.

Comment 3: Deduction of Certain Application Fees Paid on EPCGS Licenses

Jindal argues that the Department, in the Preliminary Results, failed to deduct application fees paid for certain EPCG issued in and prior to 2004. Jindal notes that the Department did not deduct the license application fee for licenses issued on or before 2004 on the grounds that the application fee paid on or before 2004 had already been allowed as a deduction in that administrative review. However, Jindal contends that, because the benefit is being calculated as the interest saved on unpaid duties for the current review period, the duty saved must be net of application fees, irrespective of the fact that the application fee was already allocated vis-à-vis interest saved in the 2004 review. Therefore, Jindal claims, the Department should deduct the application fees for all licenses at issue in this review, including those issued in and prior to 2004. Jindal’s Case Brief, at 5-6.

Petitioners did not comment on this issue.

⁴ Jindal requested limited reporting in response to certain questions issued by the Department, and the Department agreed to reduce respondent’s burden of providing extensive documentation. See Memorandum To File From Elfi Blum: Countervailing Duty Administrative Review of the Order on Polyethylene Terephthalate Film Sheet, and Strip (PET Film) from India; Limited Reporting of Information Originally Requested in the Department’s Second Supplemental Questionnaire (June 30, 2009).

Department Position:

The Department treats these unpaid duties from the importation of capital goods and materials as contingent liability long-term loans, in accordance with 19 CFR 351.505(d). In the Preliminary Results, the Department deducted application fees from the principal of these contingent liability loans as an allowable offset, pursuant to section 771(6)(A) of the Act, for those loans, *i.e.*, EPCGS licenses, which Jindal obtained after the most recently completed administrative review of Jindal, *i.e.*, those licenses issued after 2004. See Preliminary Results Calculation Memorandum, at 5.

In its case brief, Jindal argues that the Department should deduct the application fees for all licenses in this review, because the benefit is calculated as the interest saved on unpaid duties, and to determine the interest saved on the unpaid duties in the current review, all application fees must be deducted from all licenses, including those issued in and prior to 2004.

For these final results the Department has revised the calculations with respect to the benefit amount, as calculated on certain EPCGS licenses that the GOI issued prior to 2005. Specifically, we deduct the relevant application fees (as an offset) from the unpaid duty amounts that we use in our benefit calculations. For those EPCGS licenses treated as contingent liability loans, we will deduct the relevant application fees from the “principal” (*i.e.*, unpaid duties). For those EPCGS licenses which the GOI has formally waived the duties, we will deduct the relevant application fees from the amount of unpaid duties that is allocated.

Comment 4: Benefits Through Refunds of the VAT

Jindal states that the Department, in the Preliminary Results at State and Union Territory Sales Tax Incentive Programs, issued the following statement:

“In addition, the Department intends to issue another questionnaire to Jindal and the GOI to further investigate the existence of an additional benefit through the reimbursement of the VAT, following the preliminary results of review.”

See Preliminary Results 74 FR at 39638.

Jindal argues that it has fully responded to all of the Department’s request for information on this issue. Furthermore, Jindal argues that, consistent with prior Department decisions, VAT refunds on purchases do not confer any benefit. See, e.g., Certain Hot Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum, at Comment 20. In that determination, Jindal claims that the Department determined that VAT refunds do not confer any benefit. *Id.* Therefore, Jindal argues that the Department should continue to uphold this decision in this review.

Petitioners disagree with Jindal that VAT refunds do not result in any benefit to Jindal. Peitioners argue that Jindal, in its case brief, failed to rebut the Department’s preliminary

determination that residual tax benefits exist, because “Jindal does not have to collect sales taxes or VAT on its sales until May 26, 2011.” See Preliminary Results, 74 FR at 39638. Therefore, Petitioners insist, the Department should continue to find that Jindal received benefits from the VAT refunds. See Petitioners’ Rebuttal, at 7.

Department Position:

In the Preliminary Results, the Department, consistent with prior segments of this proceeding, countervailed sales tax exemptions on a respondent’s purchases. See, e.g., Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 18542, 18547 (April 8, 2004) (unchanged in the final results, 69 FR 51063). In the instant review, Jindal and the GOI reported that a Central Sales Tax (CST) exemption applied to inter-state transactions and that Jindal did not pay CST on its interstate purchases (these sales are also not subject to VAT). Pursuant to 19 CFR §351.510, sales tax exemptions provide a benefit to the extent that a firm pays less in sales taxes than it would absent the program. Therefore, the Department continues to countervail the sales tax exemption applicable to Jindal’s purchases from other states.

In addition, consistent with Hot-Rolled from India, the Department is not countervailing Jindal’s VAT exemption. See Hot-Rolled From India 2006 Review, Issues and Decision Memorandum, at Comment 20. Similar to Hot-Rolled From India 2006 Review, information on the record of this review indicates that the VAT refunds claimed by Jindal were consistent with the amount of VAT previously paid by Jindal on its purchases. See Jindal’s Second Supplemental Questionnaire Response, at Exhibit S2-42(a), and Jindal’s Third Supplemental Questionnaire Response (September 2, 2009), at 11-12 and Exhibits S3-51(a) and (b). Finally, the Department finds that the criteria for finding a program-wide change have not been met, as Jindal had claimed in its Original Questionnaire Response, at 85, with the termination of the SOM State Sales Tax Act and the introduction of the VAT Act. (See 19 CFR §351.526). Despite the 2005 repeal of its state sales tax law and related enactment of a VAT system, the SOM continued to provide a CST exemption on Jindal’s interstate purchases during the POR, although in-state purchases were covered under the VAT system. Moreover, Jindal reportedly will not be fully subject to the VAT system until 2011. Therefore, because the VAT system has not been fully implemented, we will continue countervailing CST exemptions on interstate purchases, and in any subsequent review, we will also evaluate the operations of the SOM’s VAT system. For a more detailed discussion on the interested parties’ comments, see Comment 4, below.

Comment 5: Countervailability of the ALP under the GOI’s New Monitoring Procedures

Jindal states that the Department had previously found India’s Advance License Program (ALP) to not be countervailable, citing to the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001) (Final Determination Hot-Rolled From India), and accompanying Issues and Decision Memorandum, at 6. Jindal continues that the Department has since reversed its long-standing position that the ALP was not a subsidy and has decided to countervail all duty exemptions

under the ALP in their entirety because systematic deficiencies in the program continue to exist, and the ALP confers a countervailable subsidy. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review, 74 FR 39631, 39633–34 (August 7, 2009) (Preliminary Results). See Jindal’s Case Brief, at 7.

Jindal contends that the Department, in finding “systemic deficiencies,” is failing to recognize that during the POR, under the ALP a company could import duty free only those inputs that were specified in the Advance License based on the SION. Accordingly, the Advance License itself specifies the quantity allowed to be imported and the quantity of the product to be exported. Jindal states that at the time of each importation and exportation, an entry was made on the respective Advance License. Thus, Jindal argues that at the time of importation and exportation, the GOI could observe that the duty-free input actually imported under the Advance License was exactly the same as specified in the Advance License. Further, Jindal explains that when a license expires, the license holder must submit the license to the GOI for redemption along with the following details: (1) Bank Certificate of export and Realization in the form given at Appendix-22 or Foreign Inward Remittance Certificate (FIRC), in the case of direct negotiation of documents, or Appendix-22B, in the case of offsetting of export proceeds; (2) EP copy of the shipping bill(s) containing details of the shipment effected; (3) a statement of export, giving details of the exports by shipping bill, indicating the export with the shipping bill number, date, FOB value as per the shipping bill and a description of the exported product; (4) a statement of imports, indicating bill of entry-wise items of import, the quantity of the specific import and its CIF value; and (5) Appendix 23, Register for Maintenance of Consumption and Stocks of Imported Raw Materials/Components by the Actual Users, which is certified by the Superintendent, Central Excise and Customs, Government of India. See Jindal’s Case Brief, at 7-8.⁵

Jindal argues that based on these documents the GOI ensures itself that the duty-free inputs specified in the license based on the specified SIONs were to be consumed in the production of goods exported and in the quantity specified in the Advance License. The requirement of submission of the complete data for importation and exportation against the license reasonably ensures that the GOI applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and that the ALP is reasonable and effective for the purposes intended as is required by the Department’s regulations.

Jindal argues that the Department appears to be focusing on the SION to the exclusion of all other elements of the program, even though in the absence of a SION, the workings of the ALP ensure that there would still be oversight of the imports and exports, as the Advance License

⁵ Jindal stated in its first supplemental response that per the Handbook of Procedures, the GOI is obligated to verify the Appendix 23 for Advance Licenses an exporter want to redeem. However, Jindal did not redeem any of its Advance Licenses during the POR, and not up to the point of filing the response. See Jindal’s First Supplemental Questionnaire Response, at 22. Jindal’s Third Supplemental Questionnaire Response, at Exhibit S2-40(b), includes a spreadsheet accounting for imported inputs by Jindal under a specific license. However, it does not list any consumption. Jindal did not place the other documents listed in its case brief on the record of this review.

indicates what has been imported and what has been exported. In sum, Jindal contends:

- (a) The ALP contains procedures that allow the GOI to confirm what inputs are consumed in the production of the exported products and the system and procedures are effective;
- (b) If the Department insists on focusing on the SION, the GOI does have a procedure to fix the SION, and these SION form the basis for linking the amount of materials that may be imported duty-free in advance to the exported finished products that have been produced with such inputs; and
- (c) What material is to be imported and in what quantities is specified in the Advance License. While the materials and quantity limits are based on the SION, what may be imported is, in fact, based on the license itself. The product to be exported and in what quantities is also specified in the Advance License. At the time of redemption of the Advance License, both the details of the importation and exportation have to be provided to the GOI. The GOI, at the time of redemption, observes that the quantity imported as per the SION has been consumed in the production of the exported goods. At the time of redemption of the Advance License, the GOI verifies the actual consumption based on consumption records maintained as per Appendix 23 of the Handbook of Procedures of the Foreign Trade Policy. Further, if the actual consumption is less than the imports allowed as per the SION, then the licence holder has to pay customs duty on the unutilized value of the imported materials along with interest at the rate of 15% per year. Thus, the GOI is following an effective system of verifying that the duty-free goods imported are consumed in the production of exported goods at the time of redemption of the Advance License. This is a system that is reasonable and effective for the purposes intended under 19 C.F.R. §351.519(a)(4) to confirm which inputs, and in what amounts, are consumed in the production of the exported products. See Jindal’s Case Brief, at 9-11.

In view of the foregoing, Jindal argues that the Department should find the ALP to be not countervailable.

Petitioners refute Jindal’s claim that the Department erred in finding the ALP to be countervailable. The Department, Petitioners point out, found an absence of record evidence “demonstrating the functionality and accuracy of the GOI’s new monitoring procedures to ensure that the inputs imported duty free were consumed in the production of subject merchandise exported, in accordance with the newly established PET Film SION.” See Preliminary Results, 74 FR at 39538. Furthermore, Petitioners argue that Jindal failed to address key deficiencies in the GOI’s ALP procedures that the Department identified in the Preliminary Results. These deficiencies included: (1) the GOI’s failure to require Jindal to tie its inventory and consumption to Jindal’s accounting systems and financial statements, or to account for waste; (2)

inconsistencies between the inputs listed in the revised SIONs for PET Film and certain input items listed as allowed to be imported under an Advance License, as reported by Jindal. These flaws, Petitioners conclude, render the GOI's ALP procedures unreliable, and were ignored in Jindal's case brief.

Thus, consistent with prior administrative reviews under this order, and the CIT's recent ruling that the Department properly found that the ALP constitutes a countervailable subsidy, Petitioners contend that the Department should find the ALP to be countervailable.

Department Position:

There is no new information on the record of this review to warrant reconsideration of the Department's determination in the 2005 CVD administrative review that the deficiencies identified in the ALP system still exist. The Department continues to find that the ALP is countervailable because of the systemic deficiencies in the ALP identified in the Preliminary Results, citing to the final results of the 2005 CVD administrative review, *i.e.*, 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. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum at "Advanced License Program;" see also, Preliminary Results, 74 FR at 39633-39634. The Department's finding on the ALP has been affirmed by the CIT. See MTZ Polyfilms, Ltd. v. United States, 2009 Ct. Intl. Trade Lexis 123, *29, Slip. Op. 09-118 (CIT October 15, 2009).

Specifically, in PET Film Final Results of 2005 Review, the Department stated that it still had concerns with regard to several aspects of the ALP including: (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports. Further, in PET Film Final Results of 2005 Review, the Department found that the GOI lacks a system that is reasonable and effective for the purposes intended to confirm which inputs are consumed in the production of the exported products, and in what amounts, making normal allowances for waste, as required under 19 CFR §351.519. *Id.*

In the Preliminary Results, the Department found that neither the GOI nor Jindal had addressed any concerns the Department had in the 2005 review with respect to the formulation and verification of the PET Film SION. See Preliminary Results, 74 FR at 39633-34. In particular, the GOI did not require Jindal to tie the inventory and consumption data to Jindal's accounting systems and financial statements in order to verify the accuracy of Jindal's data, or to account for waste normally incurred in the production. In addition, in the current review the Department noted inconsistencies between the inputs listed in the revised SIONs for PET Film (H209 and H210), as reported in Exhibit 31(c) of Jindal's Original Questionnaire Response, and certain input items allowed to be imported under an advance license by Jindal. The Department stated

that it appears that several of the items imported, or allowed to be imported, under Jindal's advance licenses were not listed in the SIONs. See Jindal's Second Supplemental Questionnaire Response, Exhibit S2-39 (July 14, 2009) (Jindal's Second Supplemental Questionnaire Response). Jindal did not address any of these concerns in its case brief.

Second, in its case brief, Jindal reiterates and elaborates on the workings of the ALP since the GOI revised its procedures and the SIONs for PET film. However, Jindal fails to acknowledge or address the fact that it was unable to provide to the Department documentation demonstrating the implementation of the revisions in the monitoring system, including penalties. Specifically, among other documentation, the Department requested Jindal to provide a copy of the GOI's verification of Jindal's Appendix 23 consumption register for the actual quantity imported during the POR, against the quantities included in the SION for PET Film, as enumerated in paragraph 4.28(v) of the Handbook of Procedures 2004-2009. However, Jindal was unable to do so because none of its advance licenses had been redeemed for which it is required to maintain an Appendix 23, and which it has to file with the GOI with all other documentation listed above.

Thus, the Department has been unable to examine whether Appendix 23 is indeed effective in tracing the consumption of the quantities of inputs imported duty free to the quantities of subject merchandise exported, in accordance with the 2005 SION for PET Film. Furthermore, Jindal did not address the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits. Finally, no new information has been provided concerning the availability of ALP benefits for a broad category of "deemed" exports, and how the GOI's new procedures address this issue.

Jindal did not address concerns the Department had in 2005. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at "Advanced License Program," and Comment 3. Thus, we find there is no record evidence demonstrating the functionality and accuracy of the GOI's new monitoring procedures to ensure that the inputs imported duty free were consumed in the production of the subject merchandise that was exported, in accordance with 19 CFR §351.519(a)(4). Therefore, we continue to find that the ALP is countervailable.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are approved, we will issue and publish in the Federal Register the final results in accordance with these recommendations.

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date