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May 20, 2011

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

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Countervailing Duty New Shipper 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 New Shipper Review, 75 FR 81574 (December 28, 2010) (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, SRF Limited (SRF). Below is a complete list of issues raised by interested parties in their case and rebuttal briefs:

Comment 1: Whether SRF's Single Sale and its U.S. Customer Are Indicative of a Bona Fide Sale
Comment 2: Whether the Price and Quantity of SRF's New Shipper Sale Are Indicative of a Bona Fide Sale
Comment 3: Whether SRF's PET Film Entry Was Re-sold for a Profit
Comment 4: Whether to Countervail SRF's Additional EPCGS Licenses
Comment 5: The Appropriate Average Useful Life of Physical Assets to be Applied
Comment 6: SEZ Land Concession
Comment 7: Exemption of Stamp Duty on Land Purchase as a Recurring Benefit
Comment 8: Countervailability of SRF's Advance Licenses

Comment 9: Countervailability of SRF's Advance Licenses Pertaining to Non-Subject Merchandise
Comment 10: Calculation of the Rupee Denominated Short-Term Benchmark Interest Rate

II. Subsidies Valuation Information

Period of Review (POR)

January 1, 2009, through December 31, 2009.

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 2006 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). In the IRS Tables, PET Film falls under the category "Manufactured Chemicals and Allied Products." For that category, the IRS tables specify a class life of 9.5 years, which is rounded to establish an AUL of 10 years. In the preliminary results of this countervailing duty new shipper review, the Department determined that SRF had not rebutted the presumption set forth in 19 CFR 351.524(d)(2)(i) and that its proposed AUL should not be used to determine the allocation period for non-recurring subsidies. Therefore, the Department used the IRS tables for the preliminary results of review. Although SRF provided additional information on this issue subsequent to the preliminary results, for these final results we find that SRF has not provided sufficient information to rebut the presumption and we will continue to rely on the IRS tables. For a full discussion of the Department's consideration of the appropriate AUL, see the Department's position on Comment 6, below.

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 would pay on a comparable commercial loan that the company could obtain on the market. Also, 19 CFR 351.505(a)(3)(i) states 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 and a U.S. dollar-denominated short-term benchmark rate to determine benefits received under the Pre-Shipment Export Financing program. For further information regarding this program, see the "Pre-Shipment and Post-Shipment Export Financing" section below.

In prior reviews of this case, the Department determined that Inland Bill Discounting (IBD) loans are more comparable to pre-shipment export financing and post-shipment export financing loans than other types of rupee-denominated short-term loans. See, e.g., Notice of 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 Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006), and accompanying Issues and Decision Memorandum (PET Film Final Results of 2003 Review). In the 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, 53390-91 (October 22, 2001) (PET Film Preliminary Determination), unchanged in 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 "Benchmarks for Loans and Discount Rates," the Department determined that, in the absence of IBD loans, cash credit (CC) loans are the next most comparable type of short-term loans to pre-shipment export financing than other types of loans, for rupee-denominated pre-shipment export financing, because, like pre-shipment export financing, CC loans are denominated in rupees and take the form of a line of credit which can be drawn down by the recipient. There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. SRF reported receipt of pre-shipment export financing. However, SRF did not obtain IBD loans during the POR. SRF did take out CC short-term loans during the POR. Therefore, for these final results, we used SRF's weighted average CC loans as the basis for the short-term rupee-denominated benchmarks for all pre-shipment financing.

Further, in prior reviews, the Department determined that U.S. dollar-denominated working capital demand loans (WCDL) are comparable to U.S. dollar-denominated pre-shipment export financing and post-shipment export financing, because these loans and WCDLs are used to finance both inventories and receivables. See PET Film Preliminary Results of 2003 Review, 70 FR at 46484, unchanged in PET Film Final Results of 2003 Review, at "Benchmarks for Loans and Discount Rate." There is no new information or evidence of changed circumstances which would warrant reconsidering this finding.

SRF reported only one U.S. dollar-denominated short-term loan during the POR. However, SRF did not obtain any WCDL during the POR. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), the Department is using a national average dollar-denominated short-term interest rate, as reported in the International Monetary Fund's publication International Financial Statistics (IMF Statistics) for SRF.

SRF received exemptions from import duties and central sales taxes (CST) on the importation of capital equipment under the Export Promotion Capital Goods Scheme (EPCGS) and the Special Economic Zones (SEZ) programs, which we determined to be non-recurring benefits in accordance with 19 CFR 351.524(c). Thus, unless an exception applies, the Department must identify an appropriate discount rate for purposes of allocating the non-recurring benefits over time.

Pursuant to 19 CFR 351.505(a)(2)(ii) the Department will not consider a loan provided by a government-owned special purpose bank to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. See PET Film Final Results 2003 Review, Issues and Decision Memorandum, at Comment 3. Further, in 2005 review, the Department determined that the Industrial Finance Corporation of India (IFCI) and the Export-Import Bank of India (EXIM) are government-owned special purpose banks. 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 "Benchmark Interest Rates and Discount Rates" (PET Film Final Results of 2005 Review). As such, the Department does not use loans from the IDBI, IFCI, or EXIM, if reported by the respondents, as a basis for a commercial loan benchmark.

In this review, SRF 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, and where the relevant information was on the record, 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 long-term interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from the IMF Statistics. Finally, 19 CFR 351.524(d)(3) directs us regarding the selection of a discount rate for the purposes of allocating non-recurring benefits over time. The regulations provide several options in order of preference. The first among these is the cost of long-term fixed-rate loans of the firm in question, excluding any loans which have been determined to be countervailable, for each year in which non-recurring subsidies have been received. As the second option the regulations direct us to use the average cost of long-term, fixed-rate loans in the country in question. Thus, for those years for which SRF did not report any long-term fixed-rate commercial loans, we used the yearly average long-term lending rate in India from the IMF Statistics.

The Department's position on the parties' comments regarding the rupee-denominated short-term benchmark interest rate is discussed in Comment 11, below.

Denominator

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program at issue. As discussed in further detail below, we determine that the benefits received by SRF under all but one of the programs found countervailable, were tied to export performance. Therefore, for those programs, except as cited below for pre- and post shipment export financing and the advance license program, we use total export sales, including deemed exports, as the denominator for our calculations. See 19 CFR 351.525(b)(2). Because pre-shipment and post-shipment export financing requires that the recipient demonstrate physical exports, we used total export sales net of deemed exports. SRF stated that the Advance License(s) for subject merchandise was for physical exports only,[1] we used total export sales of subject merchandise net of deemed exports. Further, for the one program that was not tied to export performance, the Union Territory Sales Tax Exemption program, we have used SRF's total sales of subject merchandise as the denominator in our calculations, because the benefit was earned on the purchase of inputs for the production of subject merchandise only.

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

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, and may be obtained in Indian rupees and in foreign currencies. 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

[1] See SRF's First Supplemental Response of September 8, 2010 SQR1-SRF, at 32; SRF Case Brief of February 1, 2011, at 11-12.

contribution pursuant to section 771(5)(D)(i) of the Tariff Act of 1930, as amended (the 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 to the extent that the interest rates provided under these programs are lower than comparable commercial loan interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. See 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.

SRF reported 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 tied to a company's total exports rather than exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit by the value of SRF's total exports, net of deemed exports, during the POR. See 19 CFR 351.525(b)(2). On this basis, we determine the countervailable subsidy from pre-shipment export financing for SRF to be 0.12 percent ad valorem.

2. Advance License Program (ALP)

Under the ALP, aka Advance Authorization scheme,[2] 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 Government of India (GOI). During the POR, SRF 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 during 2005. 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, based on the information submitted by the GOI and examined during previous reviews of this proceeding, and no information having been submitted for this review that demonstrates that the GOI has revised its laws and procedures governing this program since then, systemic issues continued to exist in the ALP system during the POR. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 3; 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 1. In the 2005 review, the Department specifically stated that it continues to find the ALP countervailable based on

[2] See Government of India Original Response of May 27, 2010 (QR-GOI), at 19.

> 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.

PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 3.

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 producers' accounting systems or financial statements. Id.

In this review, SRF pointed to the revisions addressed in the above referenced 2005 administrative review of the order, stating that the GOI introduced certain measures in order to strengthen the supervision and monitoring of the ALP.[3] Further, in response to the Department's request, SRF submitted "a complete set of documents submitted to the" Directorate General of Foreign Trade (DGFT), to demonstrate that the export obligation under the ALP license has been fulfilled. The cited documents include copies of SRF's application for redemption and its documentation received from the DGFT and the Indian Customs at the time of redemption.[4] This information includes the application for redemption, which contains the import and export data from the ALP license, a back-up detail on imports and exports made by SRF, SRF's Appendix 23 as submitted to the GOI, which lists the total quantity consumed for the exported product, and the total quantity authorized.[5] All of SRF's documents were certified by an accountant. The total values of the GOI redemption document reflect the import and export data SRF reported to the GOI. However, we note that the actual consumption and export data deviate from those specified in the original license, indicating that the GOI does not have an effective monitoring system in place.[6]

The GOI submitted a "detailed note," which, it states, contains the step-by-step procedures, including management, enforcement and maintenance, involved in the issuance of an ALP and in the discharge of its export obligation.[7] Specifically, in this note, the GOI states that the holder of an advance license is required to produce the relevant Bank Certificate of export and realization, along with a copy of the shipping bill(s) containing the details of the shipment (physical exports) or a copy of the invoice duly signed by the unit receiving the material and their jurisdictional

[3] See SRF's Original Questionnaire Response of June 10, 2010 (QR-SRF), at 65-66, and Exhibits 31(a)-(c).
[4] See SQR1-SRF, at 32-33 and Exhibits S1-23(a) and (b).
[5] See SQR1-SRF, at Exhibit S1-23(a) and (b).
[6] See QR-SRF, at Exhibit 29(a).
[7] See QR-GOI, at 20 and Exhibit 1.

excise authorities (deemed exports) for redemption of the ALP. It further states that, before discharging the bank guarantee against the ALP, the Indian Customs verifies that the details of exports as given in the redemption certificate are in accordance with their records.[8]

The Department requested that the GOI submit a complete set of documentation with respect to SRF's export obligation under the ALP, or any other company's complete set of documentation, but in its response, the GOI deferred to the respondent.[9] Thus, to date the Department has not received from the GOI a complete set of documents, which would include documents from each Indian Government entity involved in the processing of the redemption of an export obligation under the ALP. The GOI has not provided SRF's relevant Bank Certificate(s) of export and realization, along with a copy of the shipping bill(s) containing the details of the shipment (physical exports) or a copy of the invoice duly signed by the unit receiving the material and their jurisdictional excise authorities (deemed exports) for redemption of the ALP. As such, the record does not include supporting documentation that demonstrates that Indian Customs verified that the details of exports as given in the redemption certificate are in accordance with the records maintained by Indian Customs with respect to imports and exports. Further, copies of those specific customs records have also not been submitted by the GOI.

Thus, for these final results, the Department was unable to examine the totality of documents involved in the processing of an Application for Redemption of Advance License, as examined by the DGFT and the Indian Customs, to assess the monitoring procedures in place. The Department was unable to determine 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. Therefore, there is insufficient record evidence demonstrating the functionality and accuracy of the GOI's monitoring procedures to ensure that the inputs imported duty free were consumed in the production of subject merchandise exported, in accordance with the established PET Film SION. Moreover, contrary to the GOI's claim that the present ALP scheme permits for monitoring which inputs listed in the SION are actually consumed in the production of the exported product, the GOI did not address the concerns the Department had in the 2005 review with respect to the formulation and verification of the PET Film SION. In particular, the Department verified in PET Film Final Results 2005 Review that the GOI did not require the producer to tie the inventory and consumption data to the producer's accounting systems and financial statements in order to verify the accuracy of the producer's data, or to account for waste normally incurred in the production. See PET Film Final Results 2005 Review, Issues and Decision Memorandum, at Comment 3. In fact, the GOI states in its response that it considers "that the system need not provide for determination of 'what amounts of inputs have actually been consumed' and whether an excess has been allowed in a particular situation and in a given case, as an exporter is required to provide on annual basis a copy of the consumption register Appendix-23, duly certified by a Chartered Accountant."[10]

Further, the Department determined in the 2005 review that the GOI, in its revisions to the ALP, did not address the Department's concerns that it has no specific procedure in place to monitor

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[8] Id., at 31.
[9] See GOI First Supplemental Response of August 10, 2010 (SQR1-GOI), at 18-19 and GOI Second Supplemental Response of September 22, 2010 (SQR2-GOI), at 13.
[10] See QR-GOI, at 37.

that these finished products are ultimately exported. Specifically, the Department determined that Appendix 23 does not differentiate and identify sales as being either physical exports, deemed exports, or sales to intermediate suppliers, nor does it segregate imported inputs from domestically procured ones, nor does it differentiate the exported product produced from these inputs by separately identifying physical exports from deemed exports. In this new shipper review, neither the GOI nor SRF claimed that the laws and procedures underlying the ALP had changed with respect to "deemed exports." Appendix 23, as submitted by SRF to the GOI, does not indicate any changes to the Appendix 23 examined in the 2005 review, and thus still does not address the Department's concern regarding deemed exports.[11] Thus, with respect to physical exports versus deemed exports, the GOI still has not demonstrated that it has a reliable monitoring system in place to determine which inputs, and in which amounts, are consumed in the production of the exported product. See 19 CFR 351.519(a)(4).

Because there is no evidence on the record demonstrating that the systemic deficiencies in the ALP system, identified above, have been resolved, 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 provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit. Under this program, during the POR, SRF 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.

SRF received various ALP licenses, which it reported separately for the production of subject merchandise and non-subject merchandise.[12] Since the Preliminary Results, in response to the Department's second supplemental questionnaire, SRF provided additional information regarding its ALP licenses.[13] The information provided demonstrates that the licenses were tied at the point of approval to the production of a particular product within the meaning of 19 CFR 351.525(b)(5), and we are now able to determine that the one license SRF reported to be issued for subject merchandise only was, in fact, for subject merchandise. We are now also able to determine for all but one of the remaining licenses reported, that the licenses were approved for products other than subject merchandise. For one license, the documentation provided does not similarly establish that at the point of approval the license was for non-subject merchandise. Therefore, for purposes of these final results, we are determining that this license is for subject

[11] See SQR1-SRF, at Exhibit S1-23(a).
[12] See QR-SRF, at Exhibit 30, and SQR1-SRF, atS1-22(a).
[13] See SQR2-SRF, at Exhibit S2-12.

merchandise. For these final results, we will measure the benefit to subject merchandise only, and calculate the subsidy rate using exports of subject merchandise as the denominator.

To calculate the subsidy, we first determined the total value of import duties exempted during the POR for SRF under licenses tied to subject merchandise. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act. We then divided the resulting benefit by the total value of SRF's export sales of subject merchandise, net of deemed exports. On this basis, we determine the countervailable subsidy provided under the ALP to be 0.34 percent ad valorem.

The Department's position on the parties' comments regarding the ALP program is discussed in Comments 9 and 10, below.

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 an interest penalty.

In the investigation, the Department determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D); (2) provides two different benefits under section 771(5)(E) of the Act; and (3) is specific pursuant to section 771(5A) (A) and (B) of the Act because the program is contingent upon export performance. See, e.g., PET Film Final Determination, Issues and Decision Memorandum, at "EPCGS." Because there is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable, we continue to find that this program is countervailable for these final results.

Since the unpaid duties are a liability contingent on subsequent events, under the EPCGS, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future, as a contingent liability interest-free loan pursuant to 19 CFR 351.505(d)(1). See PET Film Final Determination, Issues and Decision Memorandum, at "EPCGS." These contingent-liability loans constitute the first benefit under the EPCGS. 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) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.[14]

SRF reported that it imported capital goods under the EPCGS in the years prior to the POR. SRF received various EPCGS licenses that it reported were for the production of subject merchandise and non-subject merchandise. Information provided by SRF indicates that some of the licenses were issued for the purchase of capital goods and materials to be used in the production of both subject and non-subject merchandise.[15] Based on the information and documentation submitted by SRF, 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 SRF's EPCGS licenses benefit all of the company's exports.

SRF met the export requirements for certain EPCGS licenses prior to December 31, 2009, and the GOI has formally waived the relevant import duties. For most of its licenses, however, SRF has not yet met its export obligation as required under the program. Therefore, although SRF received a deferral from paying import duties when the capital goods were imported, the final waiver on 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 SRF's capital equipment imports where its export obligation was met prior to December 31, 2009, we considered the total amount of duties waived, i.e., the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit and treated these amounts as grants pursuant to 19 CFR 351.504. 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 SRF'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 the total value of duties waived, for each year in which the GOI granted SRF an import duty waiver. For any years in which the waivers were less than 0.5 percent of SRF's total export sales, we allocated the waiver to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of SRF's total export sales in that year, we allocated the value of the waivers using the allocation period for non-recurring subsidies to be the AUL prescribed by the IRS tables, in accordance with 19 CFR 351.524(d)(2)(i). See "Allocation Period" section, above. For purposes of allocating the value of the waivers over time, we used the appropriate discount rate

[14] See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 75 FR 6634 (February 10, 2010) and accompanying Issues and Decision Memorandum at Comment 9.

[15] See Exhibits 16 and 18(a), QR-SRF. In its second supplemental response, SRF reported additional EPCGS licenses, for which it provided insufficient back-up information on endorsement of products to be imported and exported, and official waiver of export obligation from the GOI. See SRF's Second Supplemental Questionnaire Response of December 27, 2007 (SQR2-SRF), at 27 and Exhibit S2-16.

for the year in which the GOI officially waived the import duties. See "Benchmark Interest Rates and Discount Rates" section, above.

As noted above, import duty reductions or exemptions that SRF 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), PET Film Final Determination, 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), and accompanying Issues and Decision Memorandum at "Export Promotion Capital Goods Scheme (EPCGS)."

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 SRF would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation. See, e.g., PET Film Preliminary Results of 2003 Review, 70 FR at 46488, unchanged PET Film Final Results of 2003 Review.

As stated above, under the EPCGS program, the time period for fulfilling the export requirement 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 (i.e., the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (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 "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 in which the capital good was imported and summed these amounts to determine the total benefit for each company.

The 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, 2009, 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 received by SRF under the EPCGS program by SRF's total exports to determine a countervailable subsidy of 0.09 percent ad valorem.

The Department's position on the parties' comments regarding the EPCGS is discussed in Comment 5, below.

4. Special Economic Zones (SEZs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs)

In the original questionnaire, we asked the GOI and SRF whether SRF had received benefits under the EPZs/EOUs program. This program was found to have been not used in the original investigation. See PET Film Final Determination, Issues and Decision Memorandum, at "Programs Determined to be Not Used." Aspects of EOUs were subsequently found countervailable in Indian PET Resin Final Determination. See Indian PET Resin Final Determination, Issues and Decision Memorandum, at e. to g. In its questionnaire response, the GOI stated that this program had been converted into a different program, the SEZ program. The GOI explained that the conversion of the EPZs/EOUs to the SEZ program was via the Special Economic Zones Act, 2005, effective February 2006 (SEZ Act). The GOI stated that this is not a new program, but rather a renaming of the EPZs/EOUs.[16] This new shipper review is the first review under this order in which this program was reported to be used by a respondent. SRF reported that it first received approval to set up an SEZ from the Development Commissioner[17] in August 2003 and commenced production in October 2004.[18] Subsequently, SRF expanded its SEZ unit twice, in 2007 and in 2009.[19]

The GOI explained that the nature of an SEZ is to provide a long-term and stable policy framework with a minimal regulatory regime and to provide an expeditious and single window clearance mechanism for all eligible to apply for an SEZ. An SEZ may be established jointly or individually by the Central Government, the State Government or a person, i.e., companies like SRF, to manufacture goods or provide services, or both, as well as to serve as a Free Trade and Warehousing Zone.[20] Companies/persons or Governments that want to set up an SEZ in an identified area, can submit their proposal to the relevant State Government. To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services. Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production. In return, the companies inside the SEZ are eligible to receive various forms of assistance.

Companies in a designated SEZ may receive the following benefits: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of CST thereon; (3) exemption from the services tax for the services consumed within the SEZ;[21] (4) exemption from stamp duty for all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty and cess thereon on the sale or supply to the

[16] See SQR1-GOI, at 11-12.
[17] The Central Government of India may appoint any of its officers of a certain rank to the position of Development Commissioner of one or more SEZs.
[18] See SQR1-SRF, at Revised Exhibit 9(a)(I).
[19] See QR-SRF, at Exhibits 19(a) and (b), and SQR1-SRF, at 26-27.
[20] See QR-GOI, at 15 and SQR1-GOI, at 12.
[21] The Department previously determined central excise duty exemptions to be 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."

SEZ unit; (6) income tax exemptions under the Income Tax Exemption Scheme Section 10A;[22] and (7) discounted land in an SEZ.[23]

In this new shipper review, SRF reported that it produced subject and non-subject merchandise in an SEZ unit located in Indore during the POR. Specifically, SRF reported using the SEZ program to obtain: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of CST thereon; (3) exemption from stamp duty of all transactions and transfers of immovable property, or documents related thereto within the SEZ; (4) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit; (5) income tax exemptions under Income Tax Exemption Scheme Section 10A; and (6) discounted land in an SEZ.[24]

Since eligibility for the SEZ program is contingent upon export performance, we find that the assistance provided under the SEZ program is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

a. <u>Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material</u>

Companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts and packing material duty-free in exchange for committing to export all of the products it produces, excluding rejects and certain domestic sales. Additionally, such companies have to achieve an NFE calculated cumulatively for a period of five years from the commencement of production.

We determine that the duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material, provide a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of duty payments. This SEZ program confers benefits in the amounts of exemptions of customs duties not collected in accordance with section 771(5)(E) of the Act.

With regard to these import duty exemptions provided on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not claim or provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Specifically, the GOI does not appear to have in place, and does not apply a system that is reasonable and effective for the purposes intended, to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act. Absent such information, the Department finds that all of the import duty exemptions provided under this category of the

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[22] <u>See</u> QR-GOI, at 16 and QR-SRF, at 50-51.
[23] <u>See</u> SQR1-SRF, at Exhibits S1-20(a)-20(c).
[24] <u>See</u> QR-SRF, at 50-58.

SEZ program are countervailable. Based on the information provided by SRF in its "Executed Legal agreement for SEZ Unit" with the GOI, until an SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties.[25] SRF has not yet met its export requirement under this program[26] and will owe the unpaid duties if the export requirement is not met. 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 SRF at the time of importation. We determine the benefit to be the interest that SRF 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 (i.e., the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (i.e., under the SEZ 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 Interest Rates and Discount Rates" section above for each year in which capital goods were imported as the benchmark.

We calculated the benefit from these exemptions by multiplying the value of the item imported by the applicable duty rates for customs duty and cess, and multiplied these amounts by the appropriate interest rate. We then summed the results, and divided that total by SRF's exports to determine the countervailable subsidy of 0.44 percent ad valorem.

b. Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material

Under this program, SRF was exempt from paying CST on raw materials, capital goods and other goods, such as packaging materials procured domestically. We determine that the exemption from payment of CST on purchases of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of CST payments. This SEZ program confers benefits in the amount of CST not collected, in accordance with section 771(5)(E) of the Act. Specifically, the benefit associated with domestically purchased materials is the amount of CST due and uncollected on those purchases by SRF during that period.

Normally, uncollected indirect taxes, such as the CST, are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the purchase of capital goods. Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods 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 uncollected CST that was tied to the purchase of capital goods during the POR was less than 0.5 percent of total export sales during the POR. We also performed the "0.5 percent test" on SRF's uncollected CST on its purchases of capital goods in 2008, 2007, 2006, 2005 and 2004, and found that each year's

[25] See QR-SRF, at 58 and Exhibit 21(a); see also id. Exhibit 20(c).
[26] See QR-SRF, at Exhibit 19(b) and SQR2-SRF, at Exhibit S2-9.

uncollected CST was less than 0.5 percent of total export sales for each year. Therefore, each annual benefit for 2004-2008 was allocated to the year of receipt and the only benefit attributable to the POR was the amount of the uncollected CST on purchases of capital goods under this program during the POR. See 19 CFR 351.524(b)(2).

With regard to the CST exemptions on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.518. Absent such information, the Department finds that all of the CST exemptions provided under this category of the SEZ program are countervailable. Therefore, we are treating all other CST exemptions on all purchases (other than capital goods) as recurring benefits pursuant to 19 CFR 351.524.

To calculate the benefit, we summed the total value of uncollected CST for capital goods purchased during the POR and the total value of uncollected CST due on all other purchases during the POR. We then divided this amount by the total value of SRF's export sales during the POR. On this basis, we determine the countervailable subsidy provided to SRF through the CST exemptions under the SEZ program to be 0.53 percent ad valorem.

c. *Exemption from Stamp Duty of all Transactions and Transfers of Immovable Property within the SEZ (Stamp Duty)*

According to SRF, "{t}he Indian Stamp Act, 1899, is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899, with amendments to the same to suit the transactions peculiar to each State," and the state of Madhya Pradesh has made amendments and imposed various types of Stamp Duty. These amendments include the Stamp Duty, Surcharge on Stamp Duty (under Madhya Pradesh Upkar Adhiniyam), Gram Panchyat Taxes (under Madhya Pradesh Panchayat Raj Adhiniyam, 1993), and Municipalities Tax (under Madhya Pradesh Municipalities Act, 1961). Further, SRF states that under Section 13(2) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the transfers of immoveable property or documents related thereto within the SEZ shall be exempt from stamp duty, and that SRF has been exempted from payment of stamp duty on its land lease deed.[27]

In response to the Department's request to explain how the GOI monitors the exemption from stamp duty, the GOI explained that the documents on which stamp duty is being exempted must relate to the transfer of immovable property within the SEZ. In addition, the GOI provided an exhibit containing the applicable rates of stamp duty. [28]

For these final results, we determine that the program provides a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. In the Preliminary Results, the Department determined that the SEZ exemption from stamp duty/taxes provides a recurring benefit under 19 CFR 351.524(c). However, based on further analysis of the information provided on the record of this review, and

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[27] See QR-SRF, at 57 and Exhibit 26(b) and SQR1-SRF, at 29-30.
[28] See SQR1-GOI, at 16 and Exhibit 6.

the comments received by interested parties, for these final results we determine this benefit to be non-recurring under 19 CFR 351.524(c)(2)(i). The Department's position on the parties' comments regarding the stamp duty program is discussed in Comment 8, below.

To calculate the benefit, we first calculated the value of the uncollected stamp duties and taxes, as listed above, which SRF did not pay upon registration of the land deed for the SEZ, by multiplying the value of the immovable property by the tax rates provided. As discussed above, pursuant to 19 CFR 351.524(c)(2)(i), we will treat SRF's uncollected stamp duties due on the lease of the SEZ land 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 value of uncollected stamp duties on the lease of the SEZ land was less than 0.5 percent of total export sales during the year in which the benefit was received. Therefore, we allocated the benefit received on stamp duty to the year it was received. As a result, there is no benefit from this exemption to SRF during the POR.

d. Exemption from Electricity Duty and Cess thereon on the Sale or Supply to the SEZ Unit

SRF reported that under Section 11(4) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the supply of electricity to an SEZ is exempt from electricity duty and cess.[29] In response to the Department's request to explain its monitoring procedure, the GOI cited to Section 11(4) of The Indore Special Economic Zone (Special Provisions) Act, 2003, stating that the unit to which electricity duty is exempted should be located within the Special Economic Zone as approved by the GOI. In addition, the GOI provided an exhibit including the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 and the Madhya Pradesh Ordinance No.18 of 200, i.e., the state's laws governing the taxation of electricity.[30]

For these final results, we determine that the electricity duty and cess exemptions provide a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. We also determine that the SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).

To calculate the benefit, we first calculated uncollected electricity duty and cess which SRF did not pay during the POR, by multiplying the monthly billed amount of electricity consumed by the tax rates provided. We then divided this amount by SRF's total export sales during the POR to calculate a countervailable subsidy of 0.18 percent ad valorem.

e. SEZ Income Tax Exemption Scheme (Section 10A)

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

[29] See QR-SRF, at 58 and Exhibits 27(a) and (b).
[30] See SQR1-GOI, at 16 and Exhibit S1-7.

> Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software 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 such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee.[31]

In its first supplemental response, the GOI also provided a copy of the "Special provision in respect of newly established undertakings in free trade zones, etc.; 10A."[32]

According to SRF, a company located in an SEZ does not have to file a formal application to make the deduction under the program, and the plant started production on or after April 2001.[33] 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, 2011 and subsequent years."[34]

Based on the information above, we determine that, 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 payable by SRF, pursuant to section 771(5)(E) of the Act. We also determine that the SEZ income tax exemption provides a recurring benefit under 19 CFR 351.524(c).

To determine the benefit, we calculated the amount of income tax SRF would have had to pay on the income tax return filed during the POR less the amount SRF actually paid during the POR. See 19 CFR 351.509(c). We divided this benefit by SRF's total export sales during the POR, to determine a countervailable subsidy of 1.29 percent ad valorem.

f. Discounted Land Fees in an SEZ

The Indore SEZ, where SRF has its plant, is located in the State of Madhya Pradesh and as such, the relevant State SEZ Act of Madhya Pradesh State, i.e., the Indore Special Economic Zone (Special Provisions) Act, 2003, applies.[35] The State Government of Madhya Pradesh is in control of SRF's land lease agreement within the SEZ. SRF reported that, because its SEZ unit is a Mega Project by virtue of its large investment, totaling more than 25 crores (250,000,000 rupees), the State Government of Madhya Pradesh has allowed a one-time concession of 75 percent of the lease premium on the land.[36] This is confirmed by the directive of the Government of Madhya Pradesh, Department of Commerce, Industry and Employment Ministry, submitted by SRF.[37] Information provided by SRF confirms that SRF obtained a one-time discount of 75 percent on the first year's annual all-inclusive lease premium.[38]

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[31] See QR-SRF, at Exhibit 33(a).
[32] See SQR1-GOI, at Exhibit S1-7.
[33] See QR-SRF, at 77.
[34] See QR-GOI, at 26.
[35] See QR-SRF, at 50.
[36] See SQR1-SRF, at 25.
[37] See id. at 25 and Exhibits S1-20(a), (b)(English translation of the Madhya Pradesh Directive in Supplement to SQR1-SRF of September 8, 2010, and (c).
[38] See Exhibit S1-20(a), at 3 and Exhibit S1-20(c).

Based on the information above, we determine that, pursuant to section 771(5)(D)(ii) of the Act, the State Government of the State of Madhya Pradesh provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the actual land premium that would be payable absent this program and the actual amount paid by SRF, net of advances, i.e., down payments on the lease made by SRF, pursuant to section 771(5)(E) of the Act. In the Preliminary Results, the Department determined that the discount of the land premium in an SEZ scheme provides a recurring benefit under 19 CFR 351.524(c), because we understood that the premium is paid, and the discount is received, annually. However, based on the information submitted by SRF in its second supplemental response received after the Preliminary Results, and comments submitted by interested parties, we have re-reconsidered this decision. Specifically, the documentation provided by SRF shows that this discount is a one-time occurrence, given at the time of the original land lease agreement, i.e., the 75 percent discount is applied only to the first year's annual all-inclusive lease premium. As such, we determine this benefit to be non-recurring under 19 CFR 351.524(c)(2)(i). The Department's position on the parties' comments regarding the discounted land fees in an SEZ is discussed in Comment 7, below.

We find that the amount of the discount, as reported by SRF, is the benefit. Pursuant to 19 CFR 351.524(c)(2)(i), we will treat this discount as a non-recurring benefit. We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), and found that the value of the SEZ land concession exceeds 0.5 percent of SRF's total export sales in the year the concession was granted. Therefore, we allocated over the AUL, using the appropriate discount rate. See "Allocation Period" and "Benchmark Interest Rates and Discount Rates" sections, above. We then divided the benefit allocated to the POR by SRF's total export sales during the POR, to determine a countervailable subsidy of 0.04 percent ad valorem.[39]

5. Union Territories Sales Tax Exemption

This program allows sellers located in a Union Territory not to collect CST on their sales outside the Union Territory. In the 2005 administrative review, the Department determined this program to be countervailable. The Department found that this program provides 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, this program is specific because they are limited to certain geographical regions within the respective states or territories administering the programs. 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 "Union Territories Central Sales Tax (CST) Program."

In this new shipper review, the GOI reported that SRF did not participate in this program, and stated that it obtained such information from SRF.[40] SRF reported that it did not receive any benefits under the Union Territory CST program. However, SRF did report purchases for which

[39] See SQR1-SRF, at Exhibit S1-20(c).
[40] See QR-GOI, at 24 and SQR1-GOI, at 25 and 26.

the supplier did not collect CST.[41] SRF stated in its response that it was not charged CST "because of a sales tax exemption applied for and availed of by the seller," and that SRF is not "required to keep track of the program under which the seller has not charged sales tax…"[42] We determine that the uncollected CST on SRF's purchases provides a recurring benefit under 19 CFR 351.510(a) and (c) and 19 CFR 351.524(c).

To calculate the benefit, we first calculated the total CST exemption SRF received during the POR by multiplying the purchase value by the applicable tax rate to determine the amount that would have been paid on SRF's purchases during the POR absent this program. We then divided this amount by SRF's total sales of subject merchandise during the POR to calculate a countervailable subsidy of 0.01 percent ad valorem.

B. Programs Determined To Be Not Used

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

GOI Programs

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 from the GOI
6. Duty Entitlement Passbook Scheme (DEPS/DEPB)

State Programs

7. State Sales Tax Incentive Schemes
8. Octroi Refund Scheme State of Maharashtra (SOM)
9. Waiving of Interest on Loans by SICOM Limited (SOM)
10. State of Uttar Pradesh (SUP) Capital Incentive Scheme
11. Infrastructure Assistance Schemes (State of Gujarat)
12. Capital Incentive Scheme Uttaranchel

[41] See QR-SRF, at 69 and Exibit 32.
[42] See QR-SRF, at 71-72.

13. Capital Incentive Schemes (SOM)

14. Electricity Duty Exemption Scheme (SOM)

IV. Analysis of Comments

Comment 1: Whether SRF's Single Sale and its U.S. Customer Are Indicative of a Bona Fide Sale

Petitioners argue that SRF's U.S. sale was not bona fide and the Department should rescind the new shipper review. SRF argues in its rebuttal brief that its sale was bona fide. Each set of arguments is addressed in this comment as well as in Comments 2 and 3. Significant portions of these arguments involve discussion of business proprietary information (BPI). Therefore, the full summary of, and the Department's positions on, these arguments, in addition to our full analysis of the bona fides of SRF's sale, are included in the memorandum, "Memorandum from Toni Page to Dana S. Mermelstein Re: Bona Fide Analysis of the Sale in the Antidumping Duty New Shipper Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited," (Final Bona Fides Memorandum) issued concurrently with this Issues and Decision Memorandum.

First, Petitioners note that SRF had only one sale during the POR. Petitioners argue that, in previous determinations, the Department has found that a single sale was bona fide for the preliminary results, but not for the final results, and should do the same here, citing Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333 (CIT 2005) (New Donghua). To support its claim, according to Petitioners, the Court of International Trade (CIT) has held that, "in one sale reviews, there is, as a result of the seller's choice to make only one shipment, little data from which to infer what the shipper's futures selling practices would look like. This leaves the door wide to the possibility that the sale may not, in fact be typical…" See New Donghua, 374 F. Supp. 2d at 1344 (quoting Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1263 (Ct. Int'l Trade 2005)) (TTPC). Petitioners also cite Shandong Chenhe Int'l Trading Co. v. United States; 2010 Ct. Intl. Trade LEXIS 136 (CIT Nov. 22, 2010) (Chenhe), where the CIT held that "while plaintiff's reliance on a single sale need not be fatal, a single sale leaves little to review"). Petitioners also argue that SRF acted as both exporter and importer of record for its new shipper sale, an action that, Petitioners claim, does not present an accurate picture of SRF's typical sales activity.

According Petitioners, SRF's choice of U.S. customer also indicates that the new shipper sale was atypical. Petitioners contend that the timing of the U.S. customer's formation and the fact that the U.S. customer did not have any other business transactions after the POR purchase should not be considered typical commercial sales activity.[43] Petitioners contend that the U.S. customer's choice to do business with SRF does not make sense considering: 1) that SRF was a risky choice because the company had not previously shipped to the United States; 2) the uncertainty of potential U.S. antidumping (AD) and countervailing duty (CVD) liabilities for the shipment; and 3) that one of the owners of the U.S. customer's company previously worked for

[43] See SRF's September 8, 2010 First Supplemental Questionnaire Response (1st SQR) at Attachment A-1, p. 1.

another established Indian exporter of PET Film.[44] Petitioners conclude that based on information on the record of this case, one can infer that the U.S. customer's purchase from SRF was made to obtain a favorable result in the instant new shipper review and to limit SRF's dumping liabilities.

SRF disagrees with Petitioners' arguments regarding the bona fide nature of its new shipper sale. SRF maintains that the facts of the court cases cited by Petitioners are different from the facts of the instant new shipper review. For instance, SRF notes that in the review underlying New Donghua, the Department found that the sale was not bona fide because the sales price was aberrationally high and because the U.S. customer did not re-sell the imported merchandise. See New Donghua, 374 F. Supp. 2d at 1336, 1340. SRF argues that in Chenhe, the Department found that the high price and low quantity of the new shipper sale was atypical of the U.S. customer's normal commercial practices. See Chenhe, 2010 Ct. Intl. Trade LEXIS 136 at *8-9. SRF argues that, in TTPC, the Department found that sale to be not bona fide, and the Court of International Trade (CIT) agreed, because: 1) the average unit value (AUV) of the sale was higher than other imports of the same product; 2) the seller was not paid for the new shipper sale until nine months after the payment due date, which was inconsistent with the company's normal business practices; and 3) the Department noticed inconsistencies in the U.S. Customs and Border Protection (CBP) documentation for the import of the merchandise. See TTPC, 366 F. Supp. 2d at 1248. SRF concludes that none of the factors in the aforementioned court cases are present in the instant new shipper review.

With respect to Petitioners' argument that a single sale cannot be used to determine the bona fide nature of a new shipper, SRF notes the Department's regulations at 19 CFR 351.214(f)(2)(i) provides for "rescission of a new shipper review if the Secretary finds, in pertinent part, that there has not been an entry and sale …" According to SRF, the use of the indefinite article "an" in the regulation clearly indicates that one sale is all that is required for a new shipper review to proceed. SRF argues further that there are numerous examples of the Department's practice to base new shipper reviews on a single sale. SRF notes that in Pipe and Tube from Turkey, the Department found the single sale under review to be a commercially reasonable and bona fide transaction. See Notice of Final Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 71 FR 43444 (August 1, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (Pipe and Tube from Turkey). In that case, the Department also stated that "single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices." See id. In addition, SRF submits that the Court upheld the Department's determination in Pipe and Tube from Turkey. See Allied Pipe and Tube Conduit Corp. v. United States, 556 F. Supp. 2d 1350, 1355 (CIT 2008).

As additional examples, SRF highlights the fact that the Department has recently used a single sale to determine the bona fides of new shippers in Fresh Garlic From the People's Republic of China: Final Results of New Shipper Review, 75 FR 61130, 61131 (October 4, 2010) (Fresh Garlic from the People's Republic of China) and Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews, 75 FR

[44] See 1st SQR at Attachment A-1, pp. 1-6.

72794 (November 26, 2010). SRF concludes that, although a single sale may be more carefully scrutinized than multiple sales, the correct finding in this case is that the sale was commercial.

In response to the specific arguments made by Petitioners regarding the commercial viability of its sale, SRF argues that Petitioners have provided no evidence that would justify a finding that the sale was not bona fide, and that, if Petitioners had such information, they should have brought it forward during the review process. SRF states that it has made sales of PET Film to the United States since the POR. However, SRF argues, even if no additional sales had been made, the fact that only one sale was made is not grounds for the Department to rescind the new shipper review. SRF further notes that the Department recognized that the sale was made towards the end of the POR, but "does not by itself indicate that SRF's sale was not made on a bona fide basis," quoting the Memorandum from Toni Page to Thomas Gilgunn, RE: Bona Fide Nature of the Sale in the Countervailing Duty New Shipper Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited (December 21, 2010) (Preliminary Bona Fides Memorandum) at 3. In addition, SRF notes, it submitted information demonstrating that it made sales of subject merchandise to the United States subsequent to the POR.[45]

Next, SRF argues that there is nothing unusual about an exporter acting as its own importer of record. SRF notes that CBP regulations permit a non-resident corporation to enter merchandise and act as its own importer of record, and cites 19 CFR 141.18. In addition, SRF argues that this is a common practice for exporters that are subject to AD or CVD orders because U.S. buyers may be reluctant to take the risk of importing from companies subject to AD or CVD duties. SRF argues that the Memorandum to All Interested Parties From Toni Page, International Trade Compliance Analyst: Antidumping and Countervailing Duty New Shipper Reviews of Polyethylene Terephthalate Film, Sheet, and Strip from India: U.S. Customs Entries from December 2009 to Present (April 13, 2011) (Post-Preliminary CBP Data Memorandum) supports its claim that acting as the importer of record is a standard procedure for the company. SRF believes that other Indian exporters are also serving as both the exporter and the importer of record. Because other exporters have acted as importer of record, SRF concludes that such action cannot be construed as presenting an inaccurate picture of the company's typical sales activity. SRF states that it undertook the risk of being the importer of record to make the sale because it is not an established exporter to the United States like other Indian PET Film exporters. If the Department were to consider importer of record status as a negative in its bona fides analysis, it would undermine the new shipper review provisions because exporters would not be able to enter the U.S. market without protecting the U.S. buyer from unanticipated increases in the duties. SRF concludes that this behavior is typical of a new shipper and cannot be viewed as negating the bona fides of a sale.

SRF disagrees with Petitioners' argument that the circumstances surrounding SRF's U.S. customer do not indicate typical commercial activity. According to SRF, the fact that its U.S. customer was formed in July 2009 and then purchased PET Film from SRF several months later certainly does not present any unusual circumstances and the timing of the incorporation of its U.S. customer provides no reason to question its operations as not commercial or not at arm's-length. SRF also takes issue with Petitioners' argument regarding the fact that SRF's U.S.

[45] See Polyethylene Terephthalate Film, Sheet and Strip from India: Reply of SRF Limited to the Department Letter of February 11, 2011 (February 25, 2011) at Attachment 1.

customer did not purchase PET Film from another Indian exporter of PET Film that previously employed one of the owners of SRF's U.S. customer. SRF argues that this fact is not evidence that the new shipper review sale was not commercial in context, maintaining that suppliers and buyers are regularly seeking out new producers and new customers and it is not unusual for a company that has previously done business with one company to choose to do business with another. In SRF's view, the U.S. customer's choice to purchase from SRF was purely a commercial decision made by the customer based on its past knowledge of, and acquaintance with, SRF.

Finally, SRF disagrees with Petitioners' contention that the choice to purchase PET Film from SRF was risky due to the uncertainty of the potential AD and CVD duties. Pointing out that all exporters of PET Film from India are subject to AD and CVD duties and that the transaction did not present a risk to its U.S. customer because SRF acted as the importer of record, SRF concludes that the behavior of both the company and its U.S. customer are indicative of good business practices, and are not typical or not commercial.

Department Position: Where a review is based on a single sale, exclusion of that sale as non-bona fide necessarily must end the review. See TTPC 366 F. Supp. 2d at 1249. To determine whether a sale in a new shipper review is unrepresentative or extremely distortive, and therefore excludable as non-bona fide, the Department employs a totality of the circumstances test. See, e.g., Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd., 69 FR 47405, 47406 (August 5, 2004). In examining the totality of the circumstances, the Department looks to whether or not the transaction is "commercially unreasonable" or "atypical of normal business practices." See New Donghua, 374 F. Supp. 2d at 1333, 1339 (citing Windmill Int'l Pte., Ltd. v. United States, 193 F. Supp. 2d 1303, 1313 (Ct. Int'l Trade 2002) (Windmill)); see also TTPC, 366 F. Supp. 2d at 1249-50.

In evaluating whether or not a sale is commercially reasonable, the Department considers, inter alia, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) receipt of payment; (5) whether the goods were resold at a profit; and (6) whether the transaction was made on an arms-length basis. See TTPC, 366 F. Supp. 2d at 1250; see also New Donghua, 374 F. Supp. 2d at 1339; Windmill, 193 F. Supp. 2d at 1310; Am. Silicon Techs. v. United States, 110 F. Supp. 2d 992, 995 (Ct. Int'l Trade 2000) (Silicon Techs). Therefore, the Department considers a number of factors in its bona fide analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." New Donghua, 374 F. Supp. 2d at 1342, citing Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.

The Department continues to find that SRF's sale was a bona fide sale. In reference to Petitioners' argument that SRF's single POR sale cannot be used to determine the bona fide nature of the new shipper, we note that the Department has used a single sale to conduct a bona fides analysis. See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty New Shipper Reviews, 76 FR 16604, 16606 (March 24, 2011). The Department looks to the totality of the circumstances in conducting its bona fides analysis and, contrary to Petitioners' argument, does not rescind a new shipper review on the sole basis that a company had a single sale during the POR, although it does consider this element in comparison with other factors. The CIT cases to which Petitioners cite do not hold that a single sale cannot be the basis of a new shipper review. See, e.g., New Donghua, 374 F. Supp. 2d at 1343-44 (holding that the actions of the company's U.S. customer demonstrated that the sale was not commercially reasonable). Furthermore, SRF had subsequent sales after the POR sale, which detracts from Petitioners' argument that SRF made one sale for the sole purpose of minimizing its trade remedy liabilities. The CBP information regarding SRF's subsequent sales demonstrates to the Department that SRF's new shipper review POR sale was not a "one-off" sale and was indicative of SRF's commercial behavior. See Post-Preliminary CBP Data Memorandum at Attachment 1.

Regarding Petitioners' argument that the "circumstances surrounding" SRF's U.S. customer are "hard to reconcile with typical commercial activity,"[46] our evaluation of SRF's original and supplemental questionnaire responses, as well as information received from the U.S. customer, indicate that the transaction was conducted on an arms-length basis. See Preliminary Bona Fides Memorandum at 5. In reference to Petitioners' argument regarding the formation of SRF's U.S. customer, the Department acknowledges that the U.S. customer was newly-established during the POR.[47] However one of the owners has previous experience in the PET Film industry.[48] Thus, even though the timing of the company's formation might raise concerns, the prior industry involvement of one of the U.S. customer's principals weighs against a finding that the company was formed just to facilitate the sale under review. In response to Petitioners' claim that the U.S. customer did not have any other business after the POR, the Department determines that this information is not a sufficient basis to find the sale not bona fide. The Department's further findings regarding SRF's U.S. customer are BPI in nature; therefore, please see Final Bona Fides Memorandum at Comment 1. BPI regarding the sale price and quantity also does not provide sufficient basis to find the sale not bona fide, this indicates that neither SRF nor its customer were setting up a sale that was not typical or commercial. See the Department Position on Comment 2, below. In addition, the Department's analysis of the BPI regarding the U.S. customer further supports a conclusion that SRF's sale was bona fide. See Final Bona Fides Memorandum at Comment 1.

Finally, Petitioners' speculation that the U.S. customer's choice to do business with SRF is suspicious does not lead to a conclusion that that the sale was not typical or not commercial. The Department notes that, even though SRF had not previously sold PET Film in the United States, the company is a long established manufacturer and seller of PET Film.[49] Furthermore, the production of PET Film requires significant investment in plant and equipment; therefore, it is not easy for a producer to easily enter or exit the industry. As for Petitioners' point that one of the U.S. customer's owners had previously worked for another established Indian exporter of PET Film and yet chose not to purchase from that Indian manufacturer, the Department notes that any and all imports of PET Film from India are subject to AD and CVD duties, and so the U.S. customer's choice to purchase PET Film from another producer and exporter is not suspicious and does not call into question whether SRF's sale was commercial. See Notice of

[46] See Petitioners' Case Brief at 3.
[47] See SRF's June 10, 2010 Questionnaire Response (SRF QR) at Attachment A-1.
[48] See id.
[49] See SRF QR at 4.

Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 44175 (July 1, 2002). The totality of the circumstances demonstrate that the sale was made on a bona fide basis, and information regarding the U.S. customer and the fact that there is a single sale during the POR do not detract from the finding that the sale is bona fide. See the Final Bona Fides Memorandum for a discussion of the BPI facts regarding the totality of circumstances for SRF's POR sale.

Comment 2: Whether the Price and Quantity of SRF's New Shipper Sale Are Indicative of a Bona Fide Sale

Petitioners contend that the price and quantity of the new shipper sale is indicative of a non-bona fide sale. Petitioners argue that the price and quantity of SRF's new shipper sale should not be compared to the price and quantity of other Indian imports of PET film during the new shipper review POR, because the issue is what SRF's sale says about SRF's own future commercial behavior in the U.S. market. Petitioners also include a chart comparing the quantity of SRF's single POR entry to the total number of entries and aggregate quantity of PET Film by other Indian exporters to the United States during the POR, demonstrating the differences between the quantity of SRF's entry and those of the other Indian PET exporters. See Preliminary Bona Fides Memorandum at Attachment 1 and Petitioners' Case Brief at 5. Petitioners further argue in their comments to the Department's Post-Preliminary CBP Data Memorandum that the prices and quantities of SRF's sales after the POR are vastly different from the price and quantity of its POR sale and thus show that the single POR sale was not typical of SRF's future selling practices.[50]

SRF disagrees with Petitioners' argument that the price and quantity of its new shipper sale were not commercial. SRF argues that the Department did not err in its bona fides analysis by comparing the price and quantity of SRF's single entry to the average prices and total quantity of the multiple PET Film entries made by other Indian exporters during the POR. SRF counters that its entry quantity was small compared to the overall entry quantities of the other Indian PET Film exporters because SRF made only one sale during the POR, and argues that what is relevant is that SRF's one entry was in a commercial quantity. To support its position, SRF used the chart in Petitioners' case brief to show the average quantity per entry of PET Film for all Indian exporters of subject merchandise.[51] According to SRF, this establishes that its POR entry quantity was in line with the POR entry quantities of the other Indian PET Film exporters on a per entry basis.

[50] See Petitioners' Post-Preliminary CBP Comments at 3.
[51] See SRF's Rebuttal Brief at 16.

SRF takes issue with Petitioners' statement that the "AUV data of other exporters are less probative than comparisons of SRF's own export AUVs, as the issue here is what SRF's POR sale says, if anything, about SRF's own future commercial behavior in the U.S. market."[52] SRF proposes that Petitioners make this observation because they disagree with the Department's preliminary findings that SRF's AUV was not exceptionally high or low compared to the AUVs of other Indian PET film imports during the POR. SRF counters that the Department's preliminary bona fides analysis of its AUV was correct and offers insight into SRF's future commercial behavior.

Finally, SRF disagrees with Petitioners' comparison of the U.S. sale's AUV with the AUV of its export sales to other markets. SRF argues that there are limitations to analyzing the bona fides of its U.S. sale based on such a comparison because SRF sells to non-U.S. markets based on a duty unpaid basis while it sold to the United States on a duty paid basis.[53] SRF further states that its sales to other markets could include different products with different values than its sale to the United States. In addition, SRF notes that the exchange rates of the U.S. and of the other countries to which it exports play a role in AUVs. According to SRF, if AD/CVD deposits were deleted from the value reported on the U.S. sale, the AUV of the U.S. sale would be comparable to the AUV of sales to all export markets. Regarding Petitioners' comparison of the quantity of SRF's total export sales to SRF's sale to the United States, SRF argues that the quantity of a single sale is, of course, going to be less than the totality of all sales.

Department Position: The Department continues to find that the price and quantity of SRF's sale to the United States were within the normal range for shipments of PET Film to the United States during the POR, and that the POR sale was in line with subsequent sales made by SRF after the POR. Contrary to Petitioners' argument that the Department should instead determine what SRF's sales indicate about its own future commercial behavior rather than comparing SRF's sales to other PET Film exporters, the Department will, in the course of a bona fides analysis, compare a respondent's selling price and quantity during the POR to the sales made by other exporters during the POR, and if other export sales have been made by the new shipper, to those sales prices and quantities. If the price and quantity of the new shipper sale are aberrational when compared with the prices and quantities of other exporters of subsequent sales by the new shipper, this is indicative that the new shipper sale is not bona fide. See, e.g., TTPC, 366 F. Supp. 2d at 1250-58; see also Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 68 FR 62053 (October 31, 2003) and accompanying Issues and Decision Memorandum at Comment 1. The Department finds that comparing SRF's AUV to the AUVs of other Indian manufacturers/exporters of PET Film during the POR is an appropriate indicator of SRF's commercial behavior.

The Department has compared SRF's POR sale to the POR sales of other PET Film exporters to determine whether the sale under review is bona fide. In addition, we examined SRF's subsequent POR sales of subject merchandise. We agree with SRF that the price and quantity of its single sale were in line with the price and quantity of other Indian PET Film exporters during the POR. In addition, CBP information placed on the record of this new shipper review shows that SRF made subsequent sales of subject merchandise to the United States. The price and

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[52] See Petitioners' Case Brief at 4.
[53] See SRF's Rebuttal Brief at 13.

quantity information from SRF's subsequent sales, when compared to SRF's POR sale, supports our finding that the company's POR sale is not aberrational. See Post-Preliminary CBP Data Memorandum at Attachment 2 and Final Bona Fides Memorandum at Comment 2. The Department disagrees with Petitioners' argument that the comparison of the price, quantity, and resultant AUV for SRF's U.S. sale to the price, quantity and resultant AUV for its export sales of foreign like product to all markets shows that SRF's U.S. sale was not bona fide. A comparison of the two AUVs is not useful because, among other reasons, there are differences between delivery terms and exchange rates for sales to other markets. However, the information regarding SRF's total export sales quantity and value of subject merchandise reinforces the fact that SRF is a genuine seller of PET Film and whose entry sale to the United States is bona fide.

Comment 3: Whether SRF's PET Film Entry Was Re-sold for a Profit

According to Petitioners, the Department was mistaken in concluding that the PET Film was re-sold at a profit. See Preliminary Bona Fides Memorandum at 5. In support of their argument, Petitioners note that the Department used the price the U.S customer paid to SRF for the PET Film shipment and then added the amount of duties, brokerage, and other fees SRF paid to the purchase price. The Department then compared the sum of the price and the fees to the price the U.S. customer received from its ultimate customer, a comparison that showed a small profit. See id. at 5. According to Petitioners, the Department's analysis fails to account for the outbound U.S. freight charge paid in full by the U.S. customer to ship the merchandise to its ultimate customer.[54] Petitioners state that including this freight charge produces a total cost not fully recovered by the price the U.S. customer paid for the merchandise. Petitioners conclude that because SRF's U.S. customer did not re-sell the PET Film for a profit, the sale was not bona fide.

SRF disagrees with Petitioners' claim that the PET Film shipment was not re-sold for a profit. According to SRF, not only did the U.S. customer make a profit on the re-sale, but the profit on the re-sale was considerably more than what the Department calculated. On this point, SRF agrees with Petitioners that the Department's calculation was flawed; SRF agrees with Petitioners that the Department did forget to take into account the outbound freight paid by its U.S. customer. However, according to SRF, the error in the Department's calculation was to consider the charges for duties, brokerage and other fees as a cost to the U.S. customer. SRF argues that the Department should not have included the charges for duties and fees in its calculation because: 1) SRF assumed all of these costs as importer of record and 2) the sale was made on a delivery duty paid (DDP) basis. Therefore, SRF concludes that the amount of duties and fees should not have been included in the Department's profit calculation. SRF further argues that the duties were just a deposit and, as un-liquidated deposits, the amount of duties cannot be considered an actual cost until they are final. SRF notes that in the Preliminary Results, the Department calculated an AD margin of zero and a CVD rate of 3.57 percent. Therefore, any overpayments in the duties it deposited for this entry will be refunded by CBP with any interest.

SRF also maintains that the Department should use the invoice price paid by the U.S. customer and not the free on board (FOB) price listed in the CBP documentation as the starting price to

[54] See SRF's Response to the 2nd Supplemental Questionnaire Addressed to the Importer (December 6, 2010).

determine whether or not the PET Film was re-sold for a profit.[55] SRF argues that the commercial invoice amount paid by the U.S. customer includes freight, duties, and all the other costs paid by SRF to ship the subject merchandise to the United States. SRF concludes that if the Department uses the commercial invoice amount paid by its U.S. customer, and does not include the duties and fees SRF paid to CBP, then the calculation will show that the U.S. customer re-sold the PET Film for a profit.

Department Position: The Department continues to find that SRF's U.S. customer re-sold the PET Film for a profit. However, based on SRF's and Petitioners' comments, we have reconsidered our analysis of profit. First, contrary to Petitioners' and SRF's arguments, we did not include the charges for duties, brokerage and other fees in our calculation to determine if the PET Film shipment under review was re-sold for a profit. In the Preliminary Bona Fides Memorandum, the Department stated "{i}n addition, the entry documentation indicates that an antidumping duty fee plus various other fees were paid on this shipment." See Preliminary Bona Fides Memorandum at 5. Rather than use these charges in our calculation, we simply noted the fact that the fees were paid. Because it was a deposit and the CBP duties and fees could potentially be refunded, we do not generally include the estimated duties deposited as a cost for consideration in our profit analysis because they are an estimated liability and not an actual expense incurred.

However, the Department agrees with SRF that we should have used the invoice amount paid by the U.S. customer for the PET Film as the starting point for our analysis.[56] We also agree with Petitioners that we should have included the freight charge paid by SRF's U.S. customer to ship the merchandise to its ultimate customer. In our revised analysis, we first summed the invoice price and the freight charge paid by the U.S. customer. We then compared this new total to the re-sale price the U.S. customer charged, and received, from its customer. Using the revised analysis continues to show that the PET Film was re-sold for a profit. See the Final Bona Fides Memorandum for the BPI discussion of the Department's revision.

Comment 4: Whether to Countervail SRF's Additional EPCGS Licenses

Petitioners argue that SRF identified four additional EPCGS licenses in its second supplemental response and contend that, in addition to providing no convincing explanation as to why these licenses were not reported until its second supplemental response, SRF fails to substantiate its claims that these additional licenses pertain to non-subject merchandise only.[57] Accordingly, Petitioners urge the Department to treat the benefits under these licenses as attributable to all SRF exports, as it has with all other EPCGS license benefits. Further, Petitioners argue that SRF has not substantiated its assertion that SRF obtained a formal discharge of export obligations under certain licenses and, as such, the Department should treat those as a contingent liability interest-free loan pursuant to 19 CFR 351.505(d)(l). Finally, Petitioners believe that, to the extent the late disclosure of these licenses compromises the Department's ability to collect and use all necessary information for the CVD calculation, the Department would be justified in resorting to the use of facts available.

SRF counters that the Department should not penalize SRF for failure to provide information

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[55] See SRF QR at Attachment A-1.
[56] See id.
[57] See SQR1-SRF, at 27.

about certain EPCGS licenses sooner. SRF clarifies that, apart from stating that these licenses relate to non-subject merchandise, SRF has also explained that the respective licenses are very old licenses relating to another division of SRF which does not produce subject merchandise, and that they were initially overlooked. SRF contends that it has provided all information about these additional licenses, and has not hidden any information; therefore, the Department should reject Petitioners' arguments concerning the additional licenses and the application of facts available.

Department Position: In the context of responding to the Department's second supplemental questionnaire, SRF discovered four additional EPCGS licenses, which SRF explained, were overlooked when responding to the Department's previous questionnaires. Once detected, SRF provided relevant information about these additional licenses, such as the nature and date of the goods imported duty free, their value, and the duties saved, to the Department.[58] The timing of the disclosure of these licenses did not compromise the Department's ability to collect and use all necessary information for the CVD calculation and, as such, the application of facts available is not warranted.

We have fully examined the information provided by SRF with respect to these four additional licenses. SRF stated that all four licenses were for non-subject merchandise, and provided the license numbers and the dates they were issued. Id. However, SRF did not provide any supporting documentation, such as the original licenses and accompanying condition sheets for any of the four licenses, for the Department to determine the product for which the license was issued. Thus, in the absence of sufficient documentation confirming whether those four licenses were for subject or non-subject merchandise, we cannot tie the licenses to a particular product within the meaning of 19 CFR 351.525(b)(5), and we are treating the benefits under those licenses as attributable to all of SRF's exports. Thus, we continue to calculate the subsidy rate based on all benefits earned under all EPCGS licenses and all of SRF's exports. See section III.A.3, "Export Promotion Capital Goods Scheme (EPCGS)," above.

For two of those licenses, SRF provided a letter from the GOI, stating that the GOI had officially waived the import duties because SRF had fulfilled the relevant export obligations.[59] For the other two licenses, SRF did not provide such a letter. Therefore, SRF has not demonstrated conclusively that the GOI officially waived the import duties on those two licenses, and we determine it is appropriate to treat the outstanding duties as contingent liability loans, in accordance with 19 CFR 351.505(d)(l).

Comment 5: The Appropriate Average Useful Life of Physical Assets to be Applied

SRF states that, for the Preliminary Results, the Department considered the average useful life of SRF's capital assets to be 10 years, per the standard IRS depreciation rate table, notwithstanding the fact that SRF reported its actual, much longer, AUL. See Preliminary Results, 75 FR at 81575. SRF further states that the Department used the standard U.S. IRS depreciation tables, because SRF depreciated the PET Film plants and machinery of its two facilities at Kashipur and Indore at different rates, resulting in average useful lives of eight years and 19 years respectively.

[58] See SQR2-SRF, at Revised Exhibit 18(a).
[59] See SQR2SRF, at Exhibit S2-16.

Subsequent to the Preliminary Results, SRF, in a supplemental questionnaire response, further elaborated on, and clarified, the reasons why the depreciation for the two facilities differed [60] and why SRF's suggested AULs were appropriate for the purposes of allocating non-recurring subsidies. In addition, SRF points out that its calculated AUL is based on the depreciation rates in SRF's own books and records.[61] Accordingly, SRF argues, it has rebutted the presumption for using the IRS tables and, hence, the Department should use SRF's actual AUL for the final results of review.

Petitioners state that the Department should continue to use the IRS tables to determine the applicable AUL. Petitioners explain that the Department's presumption in favor of the IRS tables applies "unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under investigation ..."[62] According to Petitioners, SRF has not established that the IRS tables do not reasonably reflect the company-specific AUL. To the contrary, Petitioners contend, SRF's case brief merely refers to its second supplemental response, assuming that that response satisfies the requirements provided in the Department's regulations, which, Petitioners believe, it does not. According to Petitioners, SRF's second supplemental response confirms that SRF depreciated assets in its two plants at different rates, and that SRF's depreciation calculations are based largely on a "standard 5.28% rate" of depreciation.[63] This standard rate corresponds to an AUL of 18 years, and is used only because, in India, Schedule XIV of the Companies Act, 1956 prescribes such a rate under the straight-line depreciation method for a generic continuous process plant, Petitioners contend.[64] As a generic depreciation rate, Petitioners claim, the standard rate is not specific to SRF or to the Indian PET Film industry.[65] Thus, Petitioners argue, there is no basis for concluding that the standard rate, and its implied AUL, "reasonably reflect the company-specific AUL" for the assets actually used by SRF in the production of the subject merchandise, while the IRS tables do not. Accordingly, Petitioners argue, the Department cannot reasonably find that SRF has rebutted the presumption in favor of the IRS tables.

Department Position: In accordance with 19 CFR 351.524(d)(2), the Department has established a rebuttable presumption that the allocation period for non-recurring subsidies is the AUL prescribed by the IRS for renewable physical assets of the industry under consideration. A party can rebut the presumption if it can show that the IRS tables do not reasonably reflect the company-specific AUL or country-wide AUL for the industry, and that the difference between the company-specific AUL or country-wide AUL for the industry under investigation and the AUL in the IRS tables is significant. See 19 CFR 351.524(d)(2). Prior to the Preliminary Results, SRF provided information in an attempt to rebut the presumption and argued that the Department should use the company-specific AUL that it calculated. In the Preliminary Results, the Department stated that SRF did not rebut the presumption in accordance with 19 CFR 351.524(d)(2)(i) because SRF depreciated the PET Film plants and machinery of its two facilities at different rates, resulting in average useful lives of eight years and 19 years,

[60] See SQR2-SRF, at 1 to 3.
[61] Id. at 3.
[62] 19 CFR 351.524(d)(2)(i).
[63] See SQR2-SRF, at 1-3.
[64] See QR-SRF, at 15 and Exhibit 9(b).
[65] Id.

respectively, and had not fully explained why it used different depreciation periods. Preliminary Results, 75 FR at 81575. The Department also stated that it would continue to gather information and to further investigate SRF's AUL calculation.

In response to our request for further clarification, SRF provided after the Preliminary Results additional information regarding its AUL calculation. SRF calculated a plant-specific AUL for each of the two plants in the Packaging Film Division. Specifically, in its original response, SRF had stated that "{o}nly the productive assets (comprising plant and machinery and electrical equipment) relating to the Indore plant and Kashipur plant, producing the subject merchandise, have been included in the calculation of the AUL."[66] The Department asked SRF to tie the opening and closing balances, as well as the depreciation, as reported for the two plants for all years reported, i.e., for fourteen years, to SRF's financial statements. See, e.g., Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review, 64 FR 44489, 44491 (August 16, 1999). While SRF provided a table listing the opening and gross blocks[67] for all business divisions, including depreciation, for two fiscal years, SRF did not provide the requested information and did not tie those numbers to the company's financial statements for the years requested.[68] The Department's regulations specify that to rebut the presumption, the company must calculate an AUL for the company, not for individual plants; as such, SRF's plant-specific calculation, which does not reflect the entire company, is not sufficient to rebut the presumption. Furthermore, SRF has not provided an explanation or justification that would warrant considering a departure from the Department's examination of the AUL on a company-wide basis. Thus, the Department finds that SRF did not rebut the presumption in this case and, for these final results, we continue to rely on the IRS tables to determine the AUL.

Comment 6: Special Economic Zone (SEZ) Land Concession[69]

SRF notes that, for the Preliminary Results, the Department considered certain "discounted land fees," i.e., a land premium concession received from the State of Madhya Pradesh Government upon leasing land in the state, as a recurring subsidy. See Preliminary Results, 75 FR at 81582-83. This, SRF contends, is incorrect; because the premium is not paid annually, the benefit is non-recurring. SRF maintains that it explained in its second supplemental response, filed after the Preliminary Results, that the concession from the State Government was a one-time concession only, provided at the time of execution of the lease deed. Thus, the concession, SRF contends, was a reduction of a one-time, initial fee payable to the State in 2005, based on the lease deed date of January 20, 2005.[70]

SRF further argues that the second supplemental response also explains that the lease period was 99 years, and that the concession was given only in the year of execution of the lease (2005). Thereafter, SRF explains, SRF has to pay a market-rate rent for each year of the 99-year lease period.[71] With regard to the annual lease payments, SRF professes, there are no concessions

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[66] See QR-SRF, at 14.

[67] A gross block is the total value of all of the assets that a company owns. Value is determined by the amount it cost to acquire these assets, and it is not decreased to take into account the effects of depreciation.

[68] See SQR1-SRF, at Exhibit S1-6(a) and (b).

[69] Special Economic Zone (SEZ), formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs).

[70] See Exhibit S1-20 (a) of the 2nd Supplemental Response.

[71] See SQR2-SRF, at 17-20. SPR notes that, since the 2nd Supplemental Response was filed after the Preliminary

with respect to payment of any of these annual charges. The charges, SRF argues, are being paid according to the market rate rents in the State.[72] SRF continues that, if these payments were subject to concessions, then these benefits would be recurring and annual. However, SRF claims, these annual payments are not reduced in any manner from the market rates payable by all lessors in the State. The concession was only granted by the State to SRF in 2005 at the time of entering into a lease, SRF argues. Thus, this concession for land is not a recurring countervailable benefit, according to SRF. Further, SRF argues that any such non-recurring benefit would have to be spread over the 99 years of the lease period. Therefore, the Department should revise its findings from the Preliminary Results.

Furthermore, SRF notes that the Department has considered the land concession as being given to SRF owing to SRF's SEZ status. See Preliminary Results, 75 FR at 81582–83. As a result, SRF states, the Department allocated the benefit to export turnover only. However, SRF claims that this land concession is the result of SRF's Mega Project status, i.e., it is not dependent upon SEZ status, nor is it dependent on SRF's export performance.[73] SRF claims that a Mega Project that sells all its output in India would be eligible for the concession, provided simply that it meets the State's Mega Project criteria, and that SRF's SEZ status and its Mega Project are totally independent of each other. Hence, SRF concludes, to the extent the benefit resulting from SRF's locating its facility in the State might be considered countervailable, it is a domestic subsidy, not an export subsidy and, at most, should be allocated over the company's entire turnover, rather than over export turnover only.

Petitioners counter that SRF attempts to draw an artificial distinction between countervailable SEZ subsidies and land concessions obtained through Mega Project status.[74] Petitioners argue that, in fact, the details of SRF's lease premium concession make clear that such benefits cannot be separated from the SEZ scheme, which is designed to benefit exports, i.e., a Mega Project in an SEZ.[75]

Department Position: In the Preliminary Results, the Department determined that the SEZ land concession is a recurring subsidy based on our interpretation of the information in the record at the time, namely, the lease deed for the SEZ land and the calculation of the "land concession" based on the annual lease expenses.[76] Preliminary Results, 75 FR at 81582-81583. Since the Preliminary Results, in response to the Department's supplemental questionnaire, SRF has provided information that shows this SEZ land concession was given to SRF only once at the time of the execution of the lease deed.[77] Specifically, the discount was applied only on the first year's annual lease premium. As such, the Department now finds that the SEZ land concession is a non-recurring benefit, pursuant to 19 CFR 351.524(c)(2)(i).

Results, it obviously could not have been taken into account for those results. Accordingly, SRF is not here repeating or quoting language from the 2nd Supplemental Response, which it would be doing had the Department misinterpreted that response.

[72] See SQR2-SRF, at 19.
[73] See SQR2-SRF, at 17-18.
[74] See SRF Case Brief, at 6.
[75] See SQR1-SRF, at Exhibit S1-20(c).
[76] See SQR1-SRF, at Exhibit S1-20(a) and S1-20(c).
[77] See SQR2-SRF, at 17.

In response to SRF's argument that the land concession was granted based on SRF's Mega Project status, and thus should be considered a domestic subsidy, we have reviewed all the information provided by SRF since the Preliminary Results.[78] While we agree with SRF that the Madhya Pradhesh directive regarding Mega Projects, Para No.4.2.4,[79] itself does not state that it is limited to SEZs, our review of the lease deed signed by SRF and the Indore SEZ shows clearly that the lease deed is for land in the Indore SEZ.[80] Thus, we must conclude that the land was approved for SRF based on establishing an SEZ unit in the Indore SEZ, and that the concession on land lease costs was given to SRF on the same basis. In addition, the "Madhya Pradesh Act, No.23 of 2003: The Indore Special Economic Zone (Special Provisions) Act, 2003" (Madhya Pradesh SEZ Act) clearly demonstrates that these benefits provided by the State of Madhya Pradesh to SRF have their basis in SRF's SEZ status.[81] Assistance provided on the basis of SRF's SEZ status is clearly conditioned on export performance, and is therefore specific as an export subsidy in accordance with sections 771(5A)(A) and (B) of the Act. Therefore, we continue to find the SEZ land concession to be an export subsidy.

Finally, SRF contends that any such non-recurring benefit would have to be allocated over the 99-year lease period. We disagree. We have identified this benefit as non-recurring, and we are treating it as a grant. Because it passes the 0.5 percent test, it is appropriate to allocate it over the number of years corresponding to the average useful life of renewable physical assets as defined in 19 CFR 351.524(d)(2). See 19 CFR 351.524(b). Since, as SRF itself has reported, this discount is not linked to, or dependent upon the term of the lease, and it occurred only once, it does not occur on an annual basis. Therefore, there is no reason to consider this discount as different from any other non-recurring benefit received by a company, and non-recurring benefits are allocated over the AUL of renewable assets in accordance with 19 CFR 351.524(d)(2).

Comment 7: Exemption from Stamp Duty in an SEZ on Land Purchase as a Recurring Benefit

SRF maintains that the Department also erroneously found that the exemption of stamp duty on land purchase received by SRF "provides a recurring benefit. . . ." See Preliminary Results, 75 FR at 81582. SRF argues that stamp duty is payable one time only at the time of execution of the lease deed and, hence, the exemption of that tax is a one-time, non-recurring event. SRF notes that "{t}his Stamp Duty (Under the Indian Stamp Act) is levied under the Stamp Act 1899 by the Collector office State Government on property value which is subject to registration."[82] Further, SRF claims that under that Stamp Act, a document is required to be registered only once and, hence, any stamp duty due is required to be paid only once. Accordingly, SRF says, any exemption of the duty occurs only one time; it is not recurring.

Further, SRF argues that, because the lease deed was executed in 2005 for a lease period of 99 years, as with the land discount, the benefit from the exemption of the stamp duty is also a one-

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[78] Id. at 17-18.
[79] See SQR1-SRF, at Exhibit S1-20(b). This Madhya Pradhesh directive defines the size of investments for eligibility, responsibilities of all parties, etc.
[80] See SQR1-SRF, at Exhibit S1-20(b).
[81] See QR-SRF, at Exhibit 20(c).
[82] See SQR1-SRF, at 30.

time, non-recurring event pertaining to 2005 only.[83] Hence, the benefit, if any, is in the nature of a non-recurring benefit to be spread over the 99 year lease period. The non-recurring benefit received in 2005 should, therefore, be subject to the Department's 0.50 percent test. Accordingly, SRF argues that, for purposes of applying the 0.50 percent test, as prescribed under 19 CFR 351.524(b)(2), the Department should divide by the relevant turnover.

Petitioners did not comment on this issue.

Department Position: The Department preliminarily determined that the exemption of SEZ Stamp duty is a recurring subsidy. See Preliminary Results, 75 FR at 81582. The Department based its finding on the information in the record at the time, the following documents submitted by SRF: the lease deed of the SEZ land and the calculation of the "land concession," based on the annual lease expenses.[84] SRF argues that the stamp tax is a one-time payment, due at the time of execution of the lease deed. Our further examination of the information on the record, including the Indian Stamp Act, shows that the stamp duty is payable one time, i.e., upon registering the land deed and, therefore, the exemption on the stamp duty is a non-recurring benefit. See 19 CFR 351.524(c)(2)(i). Specifically, Chapter V, Section 9, of The Indian Stamp Act, 1899, states that "{t}here shall be charged, levied, and paid a cess on transfers by way of sale, gift, lease for a period of thirty years or more or usufructuary mortgage, of vacant land and land used for the purpose of agriculture at the rate of five percentum of the amount of stamp duty with which instrument of each such transfer is chargeable in accordance with the relevant Article in Schedule I-A of Indian Stamp Act, 1899 (No.11 of 1899")."[85]

Accordingly, stamp duty becomes due only at the time of transfer of the immoveable property and, therefore, the exemption of the stamp duty is a non-recurring benefit under 19 CFR 351.524(c)(2)(i). We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), and found that the amount of uncollected stamp duties on the lease of the SEZ land by SRF was less than 0.5 percent of total export sales during the year in which the benefit was received. Therefore, for these final results, we allocated the benefit received on stamp duty the year it was received, i.e., the year of the of the land concession agreement between SRF and the Indore SEZ,[86] and we find that there was no benefit to SRF during the POR.

Comment 8: Countervailability of SRF's Advance Licenses

SRF argues that, for the reasons stated in its original response, the ALP is not a countervailable subsidy.[87] SRF cites the Preliminary Results as follows: "However, we note that the actual

[83] See SQR1-SRF, at Exhibit S1-20 (a).
[84] See SQR1-SRF, at Exhibit S1-20(a) and S1-20(c).
[85] See SQR-GOI, at Exhibit S1-6.
[86] See SQR1-SRF, at Exhibit S1-20(c).
[87] See QR-SRF, at 64 to 68. There, SRF states that the GOI amended the Foreign Trade Policy to incorporate the requirement of a review of the SION, as well as incorporating the requirement of submission of Appendix 23. The GOI verified the PET Film manufacturers and amended the SION for PET Film. The GOI is now requiring companies to maintain Appendix 23 for each Advance License and to submit the appendix at the time of redemption of the Advance License. Based on the export obligation undertaken by the exporter and on the SION, the quantity and value of duty-free allowable imports is determined. Upon completion of the export obligation, the actual consumption is compared with the norms. As a result, either duties have to be paid on the un-utilized value of the imported materials or the additional export has to be made to the extent that this un-utilized duty free imported

consumption and the export data deviate from those specified in the original license." Preliminary Results, 75 FR at 81577. SRF provided a summary of the consumption and export data specified in the original license as compared to the actual data.[88] From this summary, SRF states, it can be observed that the import quantity required by the license and the actual import quantity match exactly. Similarly, in the case of the export obligation, SRF notes that the actual exports were, in fact, more than the quantity specified in the license.[89] Thus, SRF concludes, if the actual export quantity is more than the quantity specified in the license, then there can be no question of excess remission.

SRF further notes that, with regard to deviation in values, the values can differ because of the expected purchase price and exchange rate at the time of issuance of the advance license as compared to the actual purchase price and exchange rate at the time of actual import. SRF continues that in this instance, the data show that the actual import value is less than the license import value, whereas the actual export value is more than the license export value. SRF believes that this further demonstrates that there is no excess remission in terms of value. However, what is more important, SRF argues, is the control of quantities, and the aforesaid data clearly demonstrate that there is no excess remission.

In the Preliminary Results, SRF points out, the Department stated that the GOI had not submitted an entire set of SRF's documents and, thus, the record did not demonstrate that the GOI's monitoring procedure ensures that inputs imported duty free are consumed in the production of the subject merchandise exported, in accordance with the newly established PET Film SION. Preliminary Results, at 75 FR at 81578. However, SRF contends, irrespective of what the GOI submitted, SRF did submit all the relevant documents, including its Appendix 23. SRF argues that these are the very same documents that the GOI would have submitted, and they clearly demonstrate that there is no excess remission of any import duty.

SRF continues that, in the Preliminary Results, the Department also raises the issue of advance licenses for "deemed exports." Id. SRF notes that none of SRF's advance licenses are for deemed exports, and that all the licenses reported are for actual physical imports. Thus, any gap in the monitoring system with respect to "deemed export" advance licenses is not relevant in this instance, SRF claims. Accordingly, SRF argues that the Department should reconsider its findings with respect to SRF's Advance Licenses and should, for the final results, determine that the licenses are non-countervailable.

Petitioners counter that SRF's contention that the Department erred in treating the ALP as a countervailable subsidy is unsubstantiated because SRF did not provide any legitimate basis for reversing the Department's longstanding approach to the ALP.[90] Petitioners state that, as noted in the Preliminary Results, the ALP is burdened by systemic deficiencies that, as shown by the record of this review, have not been remedied by the GOI. See Preliminary Results, 75 FR at 81578.

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material is consumed, so there is no excess remission of duties. Therefore, SRF alleges, with these revisions, the ALP meets the Department's criteria for non-countervailability.

[88] See SRF Case Brief, at 10.

[89] See QR-SRF, at Exhibit 29 (a), and SQR1-SRF, at Exhibit S1-23 (a).

[90] See SRF Case Brief, at 10.

Petitioners argue that SRF's efforts to explain away discrepancies between the export obligations in its license and actual consumption data fail to address a number of the key flaws identified by the Department.[91] Petitioners point out that the Department, after noting the GOI's refusal to provide a complete set of relevant documents, found "insufficient record evidence demonstrating the functionality and accuracy of the GOI's monitoring procedures to ensure that the inputs imported duty free were consumed in the production of the subject merchandise exported, in accordance with the newly established PET Film SION." Id. According to Petitioners, SRF's claim that, by providing Appendix 23 and other materials, it submitted "the very same documents that the GOI would have submitted," is nothing more than SRF's unsubstantiated assertion.[92] Further, Petitioners point out that the Department noted the corroboration of Appendix 23 as a key outstanding issue. See Preliminary Results, 75 FR at 81578. Petitioners contend that the documentation submitted by SRF fails to provide a basis for determining 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 ..." Id. Because of the persistent deficiencies in the ALP, Petitioners believe the Department should reject SRF's arguments and continue to treat SRF's advance licenses as countervailable.

Department Position: In the 2005 administrative review of this order, the Department determined that the legal and regulatory changes made by the GOI to the ALP did not alleviate the Department's concerns about the ALP's monitoring procedures and found that certain systemic deficiencies continued to exist, and did not satisfy 19 CFR 351.519. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 3. Specifically, the Department pointed to (1) the deficiencies in devising the SION for PET Film itself; (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 section III.A.2., Advance License Program (ALP) above. Since then, the GOI has not provided information that alleviates the concerns described above, and no additional changes were made by the GOI in the operations of the ALP; neither has the GOI reviewed or revised the SIONs for PET Film since then.[93]

In the Preliminary Results, the Department stated that SRF pointed to revisions in the ALP supervision and monitoring system made by the GOI.[94] However, those revisions to the monitoring system, as referenced by SRF in its questionnaire response and its case brief,[95] were examined by the Department in the 2005 review. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 3. As stated in the Preliminary Results, since that review, the GOI has not provided information that allays the concerns described above, and no additional changes were made by the GOI in the operations of the ALP; neither has the GOI reviewed or revised the SIONs for PET Film since then.[96] Because the revisions reported by SRF in its response have been examined and addressed previously, see PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 3, and Preliminary Results, 75

[91] See SRF Case Brief, at 10-11.
[92] See SRF Case Brief, at 11.
[93] See SQR1-SRF, at 31.
[94] See QR-SRF, at 65-66, and Exhibits 31(a)-(c).
[95] Id., see also SRF Case Brief, at 10.
[96] See SQR1-SRF, at 31.

FR at 81577-81578, and there is no new information on any additional changes to the monitoring system, the Department has not changed its position with respect to the ALP.

While the Department is aware that fluctuations in currencies may cause changes in the import and export values under a particular license, import and export quantities based on an accurate and reliable SION will not be changed by such currency fluctuation. The fact that, based on the documentation submitted by SRF, SRF imported the exact quantity of imports allowed under that ALP license for that specific PET Film SION, and exported more subject merchandise in quantity than it was obligated to under the license, does not overcome the flaws in the system for developing SIONs that render the import duty exemptions fully countervailable. Neither does SRF's statement that it had no excess remission in terms of value because it imported inputs less in value, but exported more in terms of value, than indicated by the license. As the Department clearly stated in the Preliminary Results, the GOI did not address the concerns the Department articulated in the 2005 review with respect to the formulation and verification of the PET Film SION. Preliminary Results, 75 FR at 81578. Namely, the GOI did not require the producer to tie the inventory and consumption data to the producer's accounting systems and financial statements in order to verify the accuracy of the producer's data, or to account for waste. Id. Thus, the allowable import quantities of inputs and the required export quantities of subject merchandise under an Advance License, which are based on a deficient PET Film SION, are unreliable. The GOI failed to demonstrate that it can reliably trace, and therefore ensure, that the inputs imported duty free are consumed in the production of the resulting product being exported.

Furthermore, contrary to SRF's claim that the data presented prove that there is no excess remission, i.e., all inputs imported duty free are consumed in the production of the exported product, SRF's statement highlights the deficiency of the ALP's monitoring system and Appendix 23. According to the data provided, SRF not only produced and exported more subject merchandise than was required under the license based on the inputs imported, but SRF produced more in metric tons than it imported inputs for the production. This points to either the SION being inaccurate with respect to the ratio of inputs to finished product or the administration of the Advance License Program being imprecise with respect to imports and exports.[97] This fact pattern documents that Appendix 23, the GOI's new tool for monitoring this program, is ineffective, and the GOI still does not have a reliable system in place for determining what inputs, in what amounts, are consumed in the production of exports.

Also, in the Preliminary Results, the Department stated that it was unable to examine the totality of documents involved in the processing of an Application for Redemption of Advance License, as examined by the DGFT and the Indian Customs, to assess the monitoring procedures in place. SRF claims that it provided for the record the same documents that the GOI would have submitted, including its Appendix 23, and that these documents clearly demonstrate that there is no excess remission of any import duty. As Petitioners pointed out, SRF's claim that it submitted "the very same documents that the GOI would have submitted," is unsubstantiated. Rather, the Department needed a full set of documents to corroborate Appendix 23 as part of the GOI's monitoring system. This includes the documentation of all actions taken by the responsible local DGFT office and the Indian Customs, and it includes evidence of their

[97] See SRF Case Brief, at 10.

procedures for monitoring, checking and counter checking imports and exports in quantity and value. The Department did not receive and, therefore, was unable to examine, the totality of documents involved in the processing of an Application for Redemption of Advance License, as examined by the DGFT and the Indian Customs. Thus, the Department is unable to assess the actual monitoring procedures in place, and to fully examine the functionality and accuracy of the GOI's monitoring procedures.

Even if SRF's reported licenses are for actual exports and, therefore, there is not an issue with respect to deemed exports for SRF in this POR, there is no evidence on the record demonstrating that the other systemic deficiencies in the ALP system previously identified by the Department have been resolved. Therefore, for these final results, we continue to find the ALP to be countervailable.

Comment 9: Countervailability of SRF's Advance Licenses Pertaining to Non-Subject Merchandise

In the Preliminary Results, the Department calculated the Advance License benefit by considering all advance licenses, those relating to both subject and non-subject merchandise. The Department's reasoning for considering all Advance Licenses, including those relating to non-subject merchandise, was stated to be as follows:

> SRF received various ALP licenses, which it reported separately for the production of subject merchandise and non-subject merchandise. However, because the original license(s) identify Polyester Film only, it cannot be established whether the licenses were issued for subject merchandise only, or for both subject and non-subject merchandise, *e.g.*, metalized film. Therefore, we were not able to determine whether the licenses were in fact tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Accordingly, we find that SRF's ALP licenses benefit all of the company's exports.

See Preliminary Results, 75 FR at 81578–79.

SRF contests the Department's reasoning, arguing that Advance Licenses are product specific and are based on SIONs in the license itself. The SION referenced in the license, SRF claims, therefore allows the Department to determine whether the license is tied to the production of a particular product. The only relevant Advance License, SRF contends, was issued for "Polyester Film" under SION 63/208, which is for plain polyester film.[98]

SRF argues that Advance Licenses are always product specific, i.e., covering inputs for that particular product, and as identified by the SION. The Advance License relevant to subject merchandise, SRF notes, is under SION H-208, which is mentioned on the license as 68/208 and is for plain Polyester Film only.

Further, SRF claims that the export obligation for imports under SION H-208 can be fulfilled only by exporting plain Polyester Film, i.e., subject merchandise, and not by exporting non-subject metalized film. Thus, SRF concludes, the observation of the Department in the

[98] See QR-SRF, at 2, Exhibit 29(a).

Preliminary Results that it cannot be established whether the licenses were issued for subject merchandise only, or for both subject and non-subject merchandise, does not hold true. Accordingly, SRF claims, the Department must take into account under which SION the license has been issued and, in this case, the only relevant license is the one pertaining to SION H-208. SRF declares that in this case, the export obligation is fulfilled by its exports of plain polyester film only, and therefore, a one-to-one correlation of the ALP benefit to a particular product within the meaning of 19 CFR 351.525(b)(5) exists. Therefore, SRF argues, the Department's finding should be limited to the Advance License(s) related to subject merchandise only, in the event of a determination of countervailability.

Petitioners maintain that SRF fails to cite to evidence properly on the record of this review that would substantiate its contention that all but one of SRF's Advanced Licenses are tied to non-subject merchandise.[99] Consequently, Petitioners urge the Department to continue to find that all of SRF's ALP licenses benefit all of the company's exports.

Department Position: In the Preliminary Results, the Department considered all of SRF's Advance Licenses reported in its benefit calculation because the Department was unable to establish whether the license(s) as approved, were tied to subject merchandise only, non-subject merchandise only, or for both subject and non-subject merchandise. See 19 CFR 351.525(b)(5). Since the Preliminary Results, SRF has provided, in response to the Department's request, complete supporting documentation, such as license condition sheets, for a specified number of ALP licenses that were selected by the Department, and which were reported by SRF as having been granted for non-subject merchandise.[100] The supporting documentation establishes that, at the point the GOI approved the licenses to SRF, the licenses were tied to a particular product. Specifically, the license documentation explicitly identifies the product to be exported and the inputs allowed to be imported duty-free under the license to manufacture the export product. For those approved for non-subject merchandise, we confirmed that none of the inputs identified on those licenses could be diverted to the production of subject merchandise (i.e., the listed inputs are not substitutable with the inputs required to produce PET Film). The licenses explicitly state that they are non-transferable.[101]

Because we can now tie the benefits to a particular product at the point of approval, we are measuring the benefit to subject merchandise only, and have calculated the rate using exports of subject merchandise as the denominator. We are including in our calculation the one license that SRF identified as approved for subject merchandise and the one license for which the documentation was incomplete and we were unable to identify from the information submitted by SRF, the particular product for which that license was granted. We are including this license because SRF has claimed that the licenses are tied to particular products, and has provided documentation to support its claim upon which the Department is relying. SRF has also indicated that no licenses are issued that cover both, subject and non-subject merchandise. As such, the fact that SRF did not provide the documentation that would show for this one license the product to which it was tied, leads the Department to conclude that this license is also for subject merchandise. Therefore, we are including it in our benefit calculation.

[99] Id.
[100] Id., see also SQR2-SRF, at Exhibit S2-12.
[101] During the POR, SRF did not produce PET chips, and relied on purchasing PET chips as its input to produce subject merchandise.

Comment 10: Calculation of the Rupee Denominated Short-Term Benchmark Interest Rate
SRF argues that the Department erroneously double-counted some of the information that the Department used in calculating a rupee-denominated short-term benchmark rate. According to SRF, the Department misunderstood SRF's reporting of fees, and thus incorrectly allocated the same one-time fees for the working capital facilities to all cash-credit loans of the working capital facilities repeatedly. See Memorandum to File from Elfi Blum: Preliminary Results of the 2009 Countervailing Duty New Shipper Review of the order on Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India; Calculations for the Preliminary Results: SRF Limited (SRF), at Attachment I.

SRF explains that, although the reported amount was the total amount sanctioned, SRF repeated the reporting of this sanctioned limit against the specified control numbers for consistency's sake. This, SRF maintains, was apparently misunderstood by the Department as stating a separate, new amount each time reported. When the Department then applied the fee to the repeated sanction limit, this resulted in repeated, and incorrect, allocation of the same one-time fee to all the cash credit loans when it should have been applied only once.

SRF submitted a revised worksheet to demonstrate the correction of this error, which shows that the short term benchmark interest rate will be reduced.[102] SRF urges the Department to correct its benchmark calculation and to use the corrected benchmark in its calculations.

Petitioners did not comment on this issue.

Department Position: For these final results, based on the information on the record of this review[103] and SRF's explanation in its case brief, we have revised our calculation of SRF's rupee denominated short-term benchmark to apply the allocated application fees only once to the loan amount.

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

[102] SRF Case Brief, at 10: "Note: This is not new information. It is merely a different representation of the Department's own worksheet, revised to correct the entries from SRF's worksheet that caused the confusion."
[103] See SQR1, Revised Exhibit 13(a).