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July 31, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

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

### Summary

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India in response to a request from the domestic interested parties, DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc. (collectively, Petitioners) and SRF Limited (SRF). The period of review (POR) is January 1, 2011 through December 31, 2011. We preliminarily determine that SRF benefitted from countervailable subsidies during the POR.

### Background

On July 1, 2002, the Department published in the Federal Register the CVD order on PET film from India.<sup>1</sup> On July 2, 2012, the Department published a notice of opportunity to request an administrative review of the CVD order.<sup>2</sup> Both Jindal Poly Films Limited (Jindal) and SRF timely filed a request for administrative reviews on July 30, 2012. On July 31, 2012, Petitioners filed a timely request for review of Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Polyplex Corporation Ltd. (Polyplex), SRF, and Jindal. On August 30, 2012, the

<sup>1</sup> See Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India, 67 FR 44179 (July 1, 2002).

<sup>2</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 77 FR 39216 (July 2, 2012).



Department initiated a CVD administrative review on the aforementioned respondents.<sup>3</sup> Following initiation, the Department selected Jindal and Polyplex, the two largest exporters of subject merchandise, for individual examination based on U.S. Customs and Border Protection (CBP) import data during the POR.<sup>4</sup> On November 30, 2012, the Department issued the initial CVD questionnaire to the Government of India (GOI), Jindal and Polyplex. Also on that day, both Petitioners and Jindal withdrew their requests for an administrative review for Jindal. In addition to Jindal, Petitioners withdrew their request for Ester, Garware, and Polyplex. Petitioners' and Jindal's November 30, 2012, withdrawal requests were submitted within the 90-day period and thus are timely.<sup>5</sup> The Department issued its initial questionnaire to SRF on December 6, 2012. On January 11, 2013, the Department rescinded the review for Ester, Garware, Jindal and Polyplex.<sup>6</sup>

The GOI and SRF filed their responses to the Department's initial questionnaire on January 14, 2013, and February 11, 2013, respectively. On March 27, 2013, the Department extended the deadline for the preliminary results of review by 120 days until August 2, 2013.<sup>7</sup> The Department issued supplemental questionnaires to SRF and the GOI on April 25, 2013, and May 3, 2013, respectively. The GOI filed its supplemental response on May 31, 2013, and SRF filed its supplemental response on June 3, 2013. The Department issued a second supplemental questionnaire to SRF on June 4, 2013. SRF filed its second supplemental questionnaire response on June 21, 2013.

### **Scope of the Order**

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided

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<sup>3</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 52688 (August 30, 2012).

<sup>4</sup> See Memorandum to Barbara Tillman, Director, Office 6, Import Administration: Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Selection of Respondents for Individual Examination (November 29, 2012).

<sup>5</sup> The 90th day fell on November 28, 2012; however, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for filing a withdrawal request was November 30, 2012. See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy" (October 31, 2012).

<sup>6</sup> See Polyethylene Terephthalate Film, Sheet and Strip From India: Partial Rescission of Countervailing Duty Administrative Review; 2011, 78 FR 2369 (January 11, 2013).

<sup>7</sup> See Memorandum to Edward C. Yang, Senior Director, China/Non-Market Economy Unit: Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review (March 27, 2013).

for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

### **Period of Review (POR)**

January 1, 2011 through December 31, 2011.

### **Subsidies Valuation Information**

#### **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. SRF has not disputed this allocation period for this administrative review.<sup>8</sup>

#### **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 dollar-denominated short-term loan benchmark rate to determine benefits received under the Pre-Shipment Export Financing program. For further information regarding this program, see the "Pre- and Post-Shipment Export Financing" section below.

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<sup>8</sup> See SRF Initial Questionnaire Response (February 11, 2013) (SRF QR) at 15.

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.<sup>9</sup> There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. In these preliminary results, the Department calculated SRF's U.S. dollar-denominated short-term benchmark rates based on its U.S. dollar-denominated WCDLs. We derived an annual weighted average of the interest rates on SRF's commercial loans, weighted by the principal amount of each loan.

SRF received exemptions from import duties and central sales taxes (CST) on the importation of capital equipment and discounts on land fees under 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)(iii), in selecting a comparable loan if a program under review is a government-provided, long-term loan program, the preference would be to use a loan for which the terms were established during, or immediately before, the year in which the terms of the government-provided loan were established. 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.<sup>10</sup> As such, the Department does not use loans from the IDBI, IFCI, or EXIM 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 either during 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 International Financial Statistics, a publication of the

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<sup>9</sup> See 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), 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 at "Benchmarks for Loans and Discount Rate" (PET Film Final Results – 2003).

<sup>10</sup> See PET Film Final Results – 2003, and accompanying Issues and Decision Memorandum at Comment 3. Further, the Department previously has 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."

International Monetary Fund (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. The second option directs 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.

### **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-shipment export financing, we use total export sales, including deemed exports, as the denominator for our calculations.<sup>11</sup> Because pre-shipment export financing requires that the recipient demonstrate physical exports, we used total export sales net of deemed exports.

### **Analysis of Programs**

#### **Programs Preliminarily Determined to be Countervailable**

##### **1. Pre- and Post-Shipment Export Financing**

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

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital

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<sup>11</sup> See 19 CFR 351.525(b)(2).

program used to finance export receivables. In general, post-shipment loans are granted for a period of not more than 180 days.

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

In the original investigation, the Department determined that the pre-shipment and post-shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Tariff Act of 1930, as amended (Act) as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act inasmuch as the interest rates, which are determined by the RBI, provided under these programs are lower than commercially available interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance.<sup>12</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.<sup>13</sup>

SRF reported that it did not receive any post-shipment export financing during the POR. However, it did report receiving pre-shipment export financing in U.S. dollars during the POR. With regard to pre-shipment loans, the benefit conferred is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (*i.e.*, the short-term benchmark). Because pre-shipment loans are not tied to exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit received by SRF under this program during the POR by the value of SRF's total exports sales net of deemed exports during the POR.<sup>14</sup> On this basis, we determined the net countervailable subsidy from pre-shipment export financing for SRF to be 0.20 percent ad valorem during the POR.

## **2. 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

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<sup>12</sup> See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002) (PET Film Final Determination), and accompanying Issues and Decision Memorandum at "Pre-Shipment and Post-Shipment Financing."

<sup>13</sup> The GOI noted that it de-regulated the interest rates on rupee-denominated pre- and post-shipment export financing, by switching from the Base Prime Lending Rate to the Base Rate system, effective July 1, 2010. See the GOI's Initial Questionnaire Response at 6 and Annexure B (January 14, 2012) (GOI QR). Because SRF reported that it did not receive any rupee-denominated pre- or post-shipment export financing, we did not examine those changes in this CVD administrative review.

<sup>14</sup> See 19 CFR 351.525(b)(2).

imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are countervailable export subsidies because: (1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone for not collecting import duties; (2) respondents receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act.<sup>15</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is the Department's practice to treat any balance on an unpaid liability as a contingent liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).<sup>16</sup> 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 . . .".<sup>17</sup> In accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

SRF reported that it imported capital goods under the EPCGS in the years prior to the POR. SRF received various EPCGS licenses, which it reported were for the production of subject merchandise and non-subject merchandise. SRF provided complete license documentation on the record of this review, including copies of the original licenses issued by the GOI.<sup>18</sup> Thus, based on the information and documentation submitted by SRF, we were able to determine that the EPCGS licenses are tied to the production of a particular product within the meaning of

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<sup>15</sup> See PET Film Final Determination and accompanying Issues and Decision Memorandum at "EPCGS."

<sup>16</sup> Id.

<sup>17</sup> See Countervailing Duties: Final Rule, 63 FR 65348, 65393 (November 25, 1998).

<sup>18</sup> See SRF QR at Exhibit 18 and 18(a) and SRF's First Supplemental Response (June 3, 2013) (SRF SQR1) at Exhibit S1-9 and S1-10.

19 CFR 351.525(b)(5). As such, we find that some of SRF's EPCGS license(s) benefit from the company's exports of subject merchandise.

SRF met the export requirements for EPCGS license(s) tied to subject merchandise prior to December 31, 2011, and the GOI has formally waived payments of the relevant import duties. 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, 2011, we considered the total amount of duties waived (net of required application fees) to be the benefit, and treated these amounts as grants pursuant to 19 CFR 351.504. 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.<sup>19</sup> Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted SRF an import duty waiver. All of SRF's license(s) tied to subject merchandise had values of less than 0.5 percent of SRF's total export sales and were expensed in the year of receipt. Therefore, we determine that SRF did not receive any benefits from this program during the POR.

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

This program was found countervailable in SRF's new shipper review.<sup>20</sup> An SEZ may be established jointly or individually by the Central Government, the State Government or a person, to manufacture goods or provide services, or both, as well as to serve as a Free Trade and Warehousing Zone. Entities that want to set up an SEZ in an identified area may 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; (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 SEZ unit; (6) income tax exemptions under the Income Tax Exemption Scheme Section 10A;<sup>21</sup>

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<sup>19</sup> See PET Film Final Determination and accompanying Issues and Decision Memorandum, at Comment 5.

<sup>20</sup> See Polyethylene Terephthalate Film, Sheet and Strip From India: Final Results of Countervailing Duty New Shipper Review, 76 FR 30910 (May 27, 2011), and accompanying Issues and Decision Memorandum (SRF New Shipper Review) at 13-19.

<sup>21</sup> See GOI QR at 35-56.



and (7) discounted land in an SEZ.

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.<sup>22</sup>

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. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material*

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.

In the SRF New Shipper Review, the Department determined that, 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). Thus, the Department determined that 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.<sup>23</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.<sup>24</sup>

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<sup>22</sup> See SRF QR at 49-61.

<sup>23</sup> See SRF New Shipper Review and accompanying Issues and Decision Memorandum at 14-15.

<sup>24</sup> See GOI QR at 54; see also GOI First Supplemental Response (May 31, 2013) (GOI SQR1) at 31-32.

Further, 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.<sup>25</sup> SRF has not yet met its export requirement under this program<sup>26</sup> 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 0.30 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 capital goods, raw materials, 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

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<sup>25</sup> See SRF QR at 45 and Exhibit 21(a) and Exhibit 21(b).

<sup>26</sup> *Id.* at Exhibit 19(a) and 19(b).

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 that was tied to its purchases of capital goods in the years 2004 through 2010, and found that each year’s uncollected CST was less than 0.5 percent of total export sales for each year. Therefore, each annual benefit from 2004 through 2010 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.<sup>27</sup>

The Department found this program countervailable in the SRF New Shipper Review.<sup>28</sup> Specifically, the Department found that for 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. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to treat 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 0.31 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 Government of Madhya Pradesh has made amendments and imposed various types of Stamp Duty.<sup>29</sup> These amendments include the Stamp Duty, Surcharge on Stamp Duty, Gram Panchyat Taxes, and Municipalities Tax.<sup>30</sup> Further, SRF states that under Section 13(2) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the transfers of immovable property or documents related thereto within the SEZ shall be exempt from the stamp duty, and that SRF has been exempted from payment of the stamp duty on its land lease deed.<sup>31</sup>

In the SRF New Shipper Review, the Department determined that the program provides a financial contribution in the form of revenue foregone by the State Government of Madhya

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<sup>27</sup> See 19 CFR 351.524(b)(2).

<sup>28</sup> See SRF New Shipper Review and accompanying Issues and Decision Memorandum at 15-16.

<sup>29</sup> See SRF QR at 52.

<sup>30</sup> Id. at 52-53.

<sup>31</sup> Id. at 51-52 and Exhibit 24(b); see also GOI QR at 37 and Annexure G and GOI SQR1 at Annexure M1, page 112.

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. The Department further determined that the SEZ exemption from stamp duty/taxes provides a non-recurring benefit under 19 CFR 351.524(c)(2)(i).<sup>32</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

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.<sup>33</sup> 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 for which electricity duty is exempted must be located within the SEZ as approved by the GOI. In addition, SRF provided an exhibit including the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 and the Madhya Pradesh Ordinance No.18 of 200 -- the state's laws governing the taxation of electricity, which establish the applicable rates of electricity duty and cess,<sup>34</sup> demonstrating that this program is within the control of the state government.

In the SRF New Shipper Review, the Department determined 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. The Department also determined that the SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).<sup>35</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

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<sup>32</sup> See SRF New Shipper Review and accompanying Issues and Decision Memorandum at 16 and Comment 7.

<sup>33</sup> See SRF QR at 53 and Exhibit 25(b), and GOI QR at 37-38.

<sup>34</sup> See SRF QR at Exhibit 25(b), and GOI SQR1 at Annexure M1, page 111.

<sup>35</sup> See SRF New Shipper Review and accompanying Issues and Decision Memorandum at 17.

To calculate the benefit, we first calculated the 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)***

In accordance with Section 10A of the Indian Income Tax Act, 1961, companies in an SEZ are allowed to deduct profits derived from the export sales of an SEZ, as defined in the Foreign Trade Policy, from its taxable income. Specifically, Section 10A states that:

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.<sup>36</sup>

In the SRF New Shipper Review, the Department determined 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 determined that the SEZ income tax exemption provides a recurring benefit under 19 CFR 351.524(c).<sup>37</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

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.<sup>38</sup> We divided this benefit by SRF's total export sales during the POR, to determine a countervailable subsidy of 1.83 percent ad valorem.

***f. Discounted Land Fees in an SEZ***

The GOI states that, in accordance with Chapter II, Rule 5, of the SEZ Rules, "States which have the SEZ units, have specific provisions in respect of exemption from the State and local taxes, levies and duties . . . ."<sup>39</sup> The Indore SEZ, where SRF has its plant, is located in the State of Madhya Pradesh and as such, the State SEZ Act of Madhya Pradesh State, i.e., the Indore Special Economic Zone (Special Provisions) Act, 2003, applies.<sup>40</sup> The State Government of Madhya

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<sup>36</sup> Id., at 17-19. See also SRF QR at Exhibit 26(a).

<sup>37</sup> Id.

<sup>38</sup> See 19 CFR 351.509(c).

<sup>39</sup> See GOI QR at 49, and GOI SQR1 at Annexure M1, page 108.

<sup>40</sup> Id.; see also SRF QR at 59-60 and Exhibit 27(a).

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, the State Government of Madhya Pradesh has allowed a one-time concession of 75 percent of the lease premium on the land.<sup>41</sup> This is confirmed by the directive of the Government of Madhya Pradesh, Department of Commerce, Industry and Employment Ministry, submitted by SRF.<sup>42</sup>

In the SRF New Shipper Review, the Department determined that, pursuant to section 771(5)(D)(ii) of the Act, the State Government of Madhya Pradesh provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the 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. Further, the 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, the Department determined this benefit to be non-recurring under 19 CFR 351.524(c)(2)(i).<sup>43</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable. To determine the benefit, we multiplied the lease premium by the amount of the discount provided on the lease. We then 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.<sup>44</sup> We then divided the benefit allocated to the POR by SRF's total export sales during the POR, to determine a countervailable subsidy of 0.02 percent *ad valorem*.<sup>45</sup>

### **Programs Preliminarily 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
2. Target Plus Scheme
3. Capital Subsidy

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<sup>41</sup> See SRF QR at 60-61.

<sup>42</sup> *Id.* at Exhibit 27(b).

<sup>43</sup> See SRF New Shipper Review and accompanying Issues and Decision Memorandum at 18-19.

<sup>44</sup> See "Allocation Period" and "Benchmark Interest Rates and Discount Rates" sections of this memorandum, *supra*.

<sup>45</sup> See SRF SQR1 at Exhibit S1-20(c).

4. Exemption of Export Credit from Interest Taxes
5. Loan Guarantees from the GOI
6. Advance License Program
7. Duty Entitlement Passbook Scheme
8. Union Territories Sales Tax Exemption

#### State Programs


9. State Sales Tax Incentive Schemes
10. Octroi Refund Scheme State of Maharashtra (SOM)
11. Waiving of Interest on Loans by SICOM Limited (SOM)
12. State of Uttar Pradesh Capital Incentive Scheme
13. Infrastructure Assistance Schemes (State of Gujarat)
14. Capital Incentive Scheme Uttaranchel
15. Capital Incentive Schemes (SOM)
16. Electricity Duty Exemption Scheme (SOM)


## Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the preliminary results of the review in the Federal Register.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

  
\_\_\_\_\_  
Date