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July 10, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Oil Country
Tubular Goods from India

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain oil country tubular goods (OCTG) in India, as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On December 23, 2013, the Department published its *Preliminary Determination* in the countervailing duty (CVD) investigation of OCTG from India.¹ On January 27, 2014, the Department published a preliminary affirmative determination of critical circumstances.² The Department released a post-preliminary analysis on May 8, 2014.³

The Department conducted verification of the questionnaire responses submitted by the Government of India (GOI), GVN Fuels Limited/Maharashtra Seamless Limited/Jindal Pipes

¹ See *Certain Oil Country Tubular Goods From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 78 FR 77421 (December 23, 2013) (*Preliminary Determination*).

² See *Certain Oil Country Tubular Goods From India and Turkey: Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigations*, 79 FR 4333 (January 27, 2014) (*Preliminary Determination of Critical Circumstances*).

³ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, Post-Preliminary Analysis of New Subsidy Allegations and of Programs that Needed Additional Information at the Preliminary Determination, May 8, 2014 (Post-Preliminary Analysis Memorandum).



Limited (GVN/MSL/JPL), and Jindal SAW Limited (Jindal SAW), from March 14 through April 2, 2014. Verification reports were issued on May 16, 2014.⁴

On May 27, 2014, U.S. Steel Corporation (Petitioner)⁵, the GOI, GVN/MSL/JPL, and Jindal SAW submitted their case briefs.⁶ Rebuttal briefs from all parties were also timely received.⁷ At the request of several parties,⁸ the Department conducted a hearing on June 25, 2014.⁹

The “Subsidy Valuation Information” and “Analysis of Programs” sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. Additionally, we analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below. A list of the comments is given below. Based on the comments received and our verification findings, we made certain modifications to the findings in the *Preliminary Determination* and Post-Preliminary Analysis, which are discussed in this memorandum.

LIST OF ISSUES:

- Comment 1: Whether Adverse Inferences are Warranted when Determining the POI value of Jindal SAW’s Company-Wide Sales and Company-Wide Export Sales
- Comment 2: Whether the Appropriate Financial Statements Were Used in Calculating Jindal SAW’s Sales Value and Denominator
- Comment 3: Whether MSL’s Reported Sales Values Should be Adjusted
- Comment 4: Whether Certain Sales Should be Excluded from the Value of GVN’s Export Sales
- Comment 5: Whether the Denominator Used to Calculate Jindal SAW’s *Ad Valorem* Subsidy Rate for the Duty Drawback Scheme Should be Revised

⁴ See Memoranda to the File dated May 16, 2014, Verification Reports pertaining to the GOI, Jindal SAW, and GVN/MSL/JPL.

⁵ The petition in this investigation was filed by Maverick Tube Corporation, United States Steel Corporation, Boomerang Tube, Energex Tube, a division of JMC Steel Group, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA Inc.

⁶ See Letter from U.S. Steel, “Countervailing Duty Investigation on Certain Oil Country Tubular Goods from India,” May 27, 2014 (Petitioner Case Brief); see also Letter from the GOI, “Countervailing Duty Investigation on imports of Certain Oil-Country Tubular Goods from India – Submission of Case Brief,” May 27, 2014 (GOI Case Brief); see also Letter from GVN/MSL/JPL, “Oil Country Tubular Goods from India; Case Brief of GVN Fuels Limited,” May 27, 2014 (GVN Case Brief); see also Letter from Jindal SAW, “Administrative Case Brief of Jindal SAW Ltd.,” May 27, 2014 (Jindal SAW Case Brief).

⁷ See Letter from U.S. Steel, “Countervailing Duty Investigation on Certain Oil Country Tubular Goods from India,” June 4, 2014; Letter from the GOI, “Countervailing Duty Investigation on imports of Certain Oil-Country Tubular Goods from India – Submission of Rebuttal Brief,” June 2, 2014; Letter from GVN/MSL/JPL, “Oil Country Tubular Goods from India; Rebuttal Brief of GVN Fuels Limited,” June 4, 2014; Letter from Jindal SAW, “Administrative Case Rebuttal Brief of Jindal SAW Ltd.,” June 4, 2014.

⁸ See Letter from U.S. Steel, “Oil Country Tubular Goods from India,” January 22, 2014; see Letter from GVN Fuels Limited, “Oil Country Tubular Goods from India; Hearing Request,” January 22, 2014; see Letter from Jindal SAW Limited, “OCTG from India: Request for Hearing,” January 17, 2014.

⁹ See Memorandum, “Public Hearing Regarding Countervailing Duty Investigation of Certain Oil Country Tubular Goods from India,” June 17, 2014.

- Comment 6: Whether Deemed Exports Should Be Included in the Denominator When Calculating the Subsidy Rates for Duty Drawback or Other Programs
- Comment 7: Whether the Advance Authorization Scheme is an Countervailable Subsidy
- Comment 8: Whether Jindal SAW's Reported Benefits Under the Advance Authorization Program (AAP) are Countervailable
- Comment 9: Whether AFA is Warranted When Countervailing Jindal SAW's Use of the Advance Authorization Program (AAP)
- Comment 10: Whether Jindal SAW's Pre- and Post-Shipment Financing is Countervailable Because It Is Based on Commercial Loans
- Comment 11: Whether Jindal SAW's EPCG Benefits Received by Divisions Producing Non-OCTG Products are Countervailable
- Comment 12: Whether Benefits Received by Jindal SAW Under the Focus Product Scheme Should be Countervailed
- Comment 13: Whether Benefits Received by Jindal SAW Under the Export Oriented Unit (EOU) Scheme Should Be Countervailed
- Comment 14: Whether Provisional Measures Should Be Applied to Jindal SAW's Imports of Subject Merchandise
- Comment 15: Whether the SGUP Entry Tax is a Countervailable Subsidy
- Comment 16: Whether the SGOM PSI-2007 or PSI-1988 are Countervailable Subsidies
- Comment 17: Whether the Provision of Hot-Rolled Steel by the Steel Authority (SAIL) of India is a Countervailable Subsidy
- Comment 18: Whether to Adjust Benchmark and Freight in the Subsidy Rate Calculation for Hot-Rolled Coil from SAIL at Less Than Adequate Remuneration
- Comment 19: Whether the Benefit Calculation for the SGOM Sales Tax Deferral Program is Incorrect

III. CRITICAL CIRCUMSTANCES

Section 705(a)(2) of the Act provides that the Department will determine that critical circumstances exist in a CVD investigation if: (A) the alleged countervailable subsidy is inconsistent with the Subsidies and Countervailing Measures Agreement (SCM Agreement) (*i.e.*, so called "prohibited subsidies"),¹⁰ and (B) there have been massive imports of the subject merchandise over a relatively short period.

On December 18, 2013, Petitioners filed amendments to the petitions, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of OCTG.¹¹

¹⁰ See section 771 (8)(A) of the Act. The SCM Agreement is the agreement referred to in section 101(d)(12) of the Uruguay Round Agreements Act, 19 USC 3551(d)(12).

¹¹ See Letter from Petitioners, "Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from India," December 18, 2013 (Amendment India) and "Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from Turkey," December 18, 2013 (Amendment Turkey).

The Alleged Countervailable Subsidy is Inconsistent with the SCM Agreement

The SCM Agreement prohibits “subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance.”¹² We find that subsidies provided under the following four programs are contingent upon export performance and countervailable: 1) Advance License Program/Advance Authorization Program; 2) Export Promotion Capital Goods (EPCG) Program; 3) Pre-Shipment and Post-Shipment Export Financing; and, 4) Duty Drawback Program.¹³

There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during a relatively short period (comparison period) increase by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later.¹⁴ Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.¹⁵ In addition, the Department expands the periods as more data are available.

Thus, the Department concluded in the *Preliminary Determination of Critical Circumstances*, that critical circumstances exist with respect to OCTG from India produced and exported by Jindal SAW, but not for the other mandatory respondent GVN, or “all other” producers and exporters from India. Our analysis was based on data reported by the two mandatory respondents Jindal SAW and GVN/MSL/JPL which did not include data for all other producers and exporters from India.

Therefore, we revised our analysis to include imports from all other producers and exporters from publicly available information. Our analysis for this final determination indicates that imports from Jindal SAW, as well as imports from “all other” producers and exporters from India were massive. Imports from GVN were not massive. Therefore, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports from Jindal SAW. In addition, we find that critical circumstances exist for “all other” exporters of OCTG from India. We continue to find for this final determination that critical circumstances do not exist with respect to GVN. *See Jindal SAW Final Calculation Memorandum; see also GVN/MSL/JPL Final Calculation Memorandum.*

¹² See SCM Agreement, Article 3.1(a).

¹³ See *Preliminary Determination of Critical Circumstances* at 4333. We note that we inadvertently included the SGOM Sales Tax Program at that time. See also post-preliminary analysis memorandum, “Duty Drawback.”

¹⁴ See 19 CFR 351.206(i). Since the Department typically uses monthly import/shipment data in its analysis, if a petition is filed in the first half of the month, the Department’s practice has been to consider the month in which the petition was filed as part of the comparison period.

¹⁵ *Id.*

IV. SUBSIDY VALUATION INFORMATION

A. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2012, through December 31, 2012.

B. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. In this proceeding, the AUL is 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.¹⁶ In the initial questionnaire, the Department notified the respondents that the AUL is 15 years and requested data accordingly. Although Jindal SAW responded that the Department should use a company-specific AUL of 18 years, it failed to establish that the IRS tables "do not reasonably reflect the company-specific AUL for the industry or the country-wide AUL for the industry under investigation."¹⁷ See 19 CFR 351.524(d)(2)(i).¹⁸

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). In accordance with 19 CFR 351.524(b)(2), we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits have been allocated to the year of receipt rather than over the AUL.

C. Cross-Ownership and Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned

¹⁶ See *U.S. Internal Revenue Service Publication 946 (2008)*, "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

¹⁷ In its first supplemental questionnaire, the Department requested that Jindal SAW provide its calculation of the company-specific AUL, in accordance with 19 CFR 351.524(d)(2)(iii), and tie the depreciation figures used in that calculation to its financial statements. Jindal SAW's calculation of the company-specific AUL was based on only the last two fiscal years of the company.

¹⁸ "The Secretary will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77-10, 1977-1, C.B. 548 (RR-38)), as updated by the Department of Treasury. The presumption will apply 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, subject to the requirement, in paragraph (d)(2)(ii) of this section, 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. If this is the case, the Secretary will use company-specific or country-wide AULs to allocate non-recurring benefits over time (see paragraph (d)(2)(iii) of this section)."

affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.¹⁹

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁰

The O.P. Jindal Group, the D.P. Jindal Group, and the B.C. Jindal Group

GVN, MSL, JPL, and Jindal SAW, which belong to various Jindal family members, formally separated over a period of time, resulting in three separate groups of companies.²¹ The groups of companies are referred to as the O.P. Jindal Group, the D.P. Jindal Group, and the B.C. Jindal Group. According to the respondents, these groups are not legal entities, but informal titles designating the family members that own and manage the companies within these groups.²² The Jindal family tree demonstrates that Mr. O.P. Jindal (now deceased) and Mr. B. C. Jindal are sons of the late Mr. Net Ram Jindal. Each brother created his own separate group of companies. Mr. B.C. Jindal's son, Mr. D.P. Jindal, then separated from his father and created his own group

¹⁹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁰ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²¹ See GVN first supplemental response at 2-3, "B.C. Jindal and O.P. Jindal separated and created their own group of companies, respectively. Mr. D.P. Jindal is the son of Mr. B.C. Jindal, from whom he separated and created his own group of companies"

²² *Id.* at 2.

of companies.²³ GVN, MSL, and JPL belong to the D.P. Jindal Group and, Jindal SAW to the O.P. Jindal Group. Further, Mr. O.P. Jindal (during his life-time) handed over the management of each of the distinct corporate entities (that were spin-offs) from his original company to several sons; accordingly, Jindal SAW is headed by Mr. P.R. Jindal.²⁴ One of the companies in the B.C. Jindal Group – Jindal India Ltd. – is also a producer and exporter of OCTG, but not a respondent in this investigation. Apart from the respondent companies, each group has a number of other companies involved in varied businesses.²⁵

According to the respondents, each group is run independently of the others, without any sharing of facilities, board members, or proprietary information.²⁶ Although there is some inter-group cross-shareholding, such ownership does not amount to a majority shareholding or control. Further, although companies in one group sold merchandise to companies in the other groups, including inputs for subject merchandise during the POI, these transactions are reported to have been made at arm's length between vendor and supplier.²⁷ Regardless of the portion of inputs for the production of OCTG provided by the suppliers of their total sales (of the O.P. Group), the purchasers of these inputs MSL or JPL (of the D.P. Group), would not be able to exercise any leverage over these suppliers, because the inputs do not constitute the suppliers' sole businesses.²⁸ The familial relationships among the owners of the members of these groups, the small percentages of common ownership, and the purchaser-supplier relationship found between these companies are not a sufficient basis to find cross-ownership under 19 CFR 351.525(b)(6).²⁹ Based on the record information and verification, in accordance with 19 CFR 351.525(b)(6), we find no cross-ownership exists among the three groups of companies. Therefore, consistent with the *Preliminary Determination*, we find that cross-ownership does not exist between the O.P. Jindal Group, the D.P. Jindal Group, and the B.C. Jindal Group.

GVN, MSL, JPL

GVN responded to the Department's questionnaire stating it was not a producer of subject merchandise but an exporter of the merchandise produced by its affiliates MSL and JPL.³⁰ GVN stated that all three companies were part of the D.P. Jindal Group, adding that the group was known as such because Mr. D.P. Jindal and his immediate family owned shares in each of the companies either directly or indirectly.³¹ Ms. Rachna Jindal, daughter-in-law of Mr. D.P. Jindal, is a director of Stable Trading Co. Ltd., a shareholder of GVN.³² Other shareholders of the

²³ *Id.* at 2-3.

²⁴ See Jindal SAW first supplemental response at 2.

²⁵ See MSL first supplemental response at Exhibit MS1-1(e), GVN initial response at Exhibit G-1(a), and Jindal SAW second supplemental response.

²⁶ See GVN first supplemental response at 3.

²⁷ *Id.* at 3-4.

²⁸ See MSL first supplemental response at 10 and Exhibit MS1-1(a); see also Jindal SAW initial response.

²⁹ See *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) and accompanying Issues and Decision Memorandum (IDM) at 6-7 (explaining that, in addition to "primary" familial relations among owners, a combination of other factors were necessary to find cross-ownership).

³⁰ See GVN initial response at 1.

³¹ *Id.* at 3.

³² See MSL first supplemental response at Exhibit MS1-1(g).

companies that own GVN are also visible in their financial statements.³³ Although none of GVN's directors are related to Mr. D.P. Jindal, GVN is engaged exclusively in one activity – the export trading of material - both subject and non-subject merchandise - supplied by MSL and JPL.³⁴ Although GVN reported it was initially registered as a non-banking finance company and has an investment division, it stated that it diversified its activities into exports of pipe and ceased to be a non-banking finance company during 2012.³⁵ Further, GVN stated that its board of directors does not have much involvement with the regular operations of the company, and that these tasks were managed by the Deputy General Manager of Exports in coordination with MSL staff.³⁶ GVN added that there have been meetings between senior executives among GVN, MSL, and JPL with respect to the development, production, sale and distribution of subject merchandise.³⁷

MSL responded to the Department's questionnaire stating it was a producer of subject merchandise. MSL identified two companies as its wholly-owned subsidiaries, stating that although cross-ownership otherwise exists between them, these subsidiaries were not involved in any way with subject merchandise. MSL also noted that it held a 49.89 percent share in a joint venture, Hydril Jindal International Pvt. Ltd. (Hydril Jindal). According to MSL, its joint venture partner held the majority voting shares in Hydril Jindal. During the POI, Hydril Jindal did premium threading for MSL on a tolling basis for a small percentage of the subject merchandise sold by MSL. Hydril Jindal also purchased some merchandise from MSL during the POI which it further processed and re-sold. MSL withdrew from the joint venture after the POI, in August 2013.³⁸ MSL also reported purchasing inputs from O.P. Jindal Group companies used in the production of subject merchandise.³⁹ Lastly, MSL stated that it and other members of the D.P. Jindal Group acknowledge that they are affiliated under the Department's definition as they are all directly or indirectly ultimately owned by Mr. D.P. Jindal. MSL suggested that it should be treated as a single entity along with GVN and JPL for duty deposit and assessment purposes because the business operations of the three companies are intertwined through the sharing of sales information, involvement in product and pricing decisions, involvement in production decisions, and the sharing of facilities.⁴⁰

In its questionnaire response, JPL reported that it produces subject and non-subject merchandise. JPL reported that only a minuscule portion of subject merchandise was sold by JPL during the POI, which was finished by MSL on a tolling basis and thereafter exported to the United States by GVN.⁴¹ JPL reported having three subsidiaries during the POI, but noted that none of the subsidiaries produced subject merchandise or supplied inputs for the production of subject merchandise.⁴² JPL also reported purchasing inputs from O.P. Jindal Group companies.⁴³

³³ See GVN first supplemental response at Exhibits GS1-5.

³⁴ *Id.* at 6.

³⁵ See GVN initial response at 5.

³⁶ See GVN first supplemental response at 6.

³⁷ *Id.* at 7.

³⁸ See MSL initial response at 6-7.

³⁹ See MSL first supplemental response at 10.

⁴⁰ See MSL initial response at 4.

⁴¹ See JPL initial response at 10.

⁴² *Id.* at 6.

Finally, similar to MSL, JPL acknowledged affiliation among the D.P. Jindal Group companies directly or indirectly ultimately owned by Mr. D.P. Jindal. JPL suggested that it should be treated as a single entity along with GVN and MSL for duty deposit and assessment purposes for the same reasons noted by MSL.⁴⁴

In evaluating the above information we find that Mr. D.P. Jindal and his immediate family are the majority shareholders of MSL and JPL either directly or indirectly through companies in which the immediate family has significant shareholdings.⁴⁵ Further, Mr. D.P. Jindal is the chairman of both MSL and JPL, while his sons Mr. Saket Jindal and Mr. Raghav Jindal are directors of JPL. In addition, Mr. Saket Jindal is also the Managing Director of MSL.⁴⁶ Mr. D.P. Jindal and family members also hold positions as directors of the various companies that have shareholdings in MSL and JPL.⁴⁷ Thus, we find MSL and JPL meet the standard of cross-ownership through common ownership and control, pursuant to the language in the *CVD Preamble* and in 19 CFR 351.525(b)(6)(vi), in that MSL and JPL can use or direct the assets of the other in the same ways it can use its own assets.⁴⁸ With respect to GVN, record information indicates this company is also cross-owned with MSL and JPL. As noted, GVN is exclusively engaged in the export trading of merchandise supplied by MSL and JPL. During the POI, GVN also conducted its operations in coordination with MSL. Moreover, both MSL and JPL indicated their business operations are intertwined through the sharing of sales information, involvement in product and pricing decisions, involvement in production decisions, and the sharing of facilities. Further, verification confirmed that GVN was also partially owned and was controlled by the D.P. Jindal family.⁴⁹ Thus, consistent with the *Preliminary Determination* and as confirmed at verification,⁵⁰ we find that GVN is also cross-owned with MSL and JPL. Accordingly, we are attributing subsidies received by MSL and JPL to the combined sales of the two companies, in accordance with 19 CFR 351.525(b)(6)(ii), and “cumulating” those subsidies with subsidies received by GVN, in accordance with 19 CFR 351.525(c).⁵¹

Jindal SAW

Jindal SAW responded to the Department’s questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.⁵² Jindal SAW further reported that the O.P. Jindal Group was undergoing restructuring. Jindal SAW stated it is the ultimate holding/parent company for

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 3-4.

⁴⁵ See MSL first supplemental response at Exhibit MS1-1(c) and MS1-1(d).

⁴⁶ See GVN first supplemental response at Exhibit GS1-1(a) Part 2.

⁴⁷ See MSL first supplemental response at Exhibit MS1-1(g).

⁴⁸ See GVN supplemental response dated March 4, 2014; see also GVN/MSL/JPL Verification Report at 2-3

⁴⁹ See GVN/MSL/JPL Verification Report at 3.

⁵⁰ *Id.*

⁵¹ In the *Preliminary Determination*, the Department found the producers MSL and JPL and the exporter GVN to be cross-owned. Benefits received by either of the producers are attributed to their combined total sales (the two producers had no exports in their own right). Benefits received by GVN the exporter are attributed to its export sales (it had no domestic sales). The subsidy rates determined for GVN and MSL/JPL in this manner are then “cumulated” (*i.e.*, added together) to determine one rate for the cross-owned companies.

⁵² See Jindal SAW initial response at 5.

all operations.⁵³ While Jindal SAW has several subsidiaries, these companies are not involved in the production or sale of subject merchandise or the production of inputs used in subject merchandise. Moreover, record information as well as verification⁵⁴ confirmed there is no cross-ownership between Jindal SAW (and its affiliates) and the other members of the O.P. Jindal Group (no single family member owns more than five percent of the shares in Jindal SAW or also in any of the other members; there are no board members or senior executives shared by Jindal SAW and the other members).⁵⁵ Therefore, consistent with the *Preliminary Determination*, we are attributing subsidies received by Jindal SAW to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

D. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Determination Calculation Memoranda" prepared for this investigation.⁵⁶

E. Benchmarks and Discount Rates

We are investigating loans that the respondents received under the Export Financing program, unfulfilled export obligations under the Export Promotion Capital Goods (EPCG) program, which the Department treats as loans, and non-recurring, allocable duty waivers under the same program (*see* 19 CFR 351.524(b)(1)). For programs requiring the application of a benchmark interest rate or a discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) states that 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). Finally, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government owned special purpose bank for purposes of calculating benchmark rates.⁵⁷

⁵³ See Jindal SAW first supplemental response at 8-9.

⁵⁴ See Jindal SAW verification report at 3.

⁵⁵ *Id.* at 6.

⁵⁶ See Memoranda, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from India: GVN Fuels Limited/Maharashtra Seamless Limited/Jindal Pipes Limited. Final Determination Calculation Memorandum" and "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from India: Jindal SAW Limited. Final Determination Calculation Memorandum," both dated concurrently with this memorandum (collectively, Final Determination Calculation Memoranda).

⁵⁷ See, *e.g.*, *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film from India 2003 Review*) and IDM at Comment 3; *see also Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film from India 2005 Review*) and accompanying IDM at "Benchmark Interest Rates and Discount Rates" section.

In accordance with these regulations and the Department's previous examination of these subsidy programs, we used, where available, the respondents' fixed-rate long-term commercial loans, and the respondents' weighted-average rate of short-term commercial borrowing, depending on the non-recurring or recurring nature of the subsidy program. In the few instances where contemporaneous long-term loans from commercial lenders were not available, we relied on long-term lending rates published by the International Monetary Fund in *International Financial Statistics*,⁵⁸ which are comparable in structure and currency, in accordance with 19 CFR 351.505(a)(2).

Discount Rates

For allocating the benefit from non-recurring grants under the EPCG program and the State of Maharashtra Sales Tax Deferment Scheme, as part of the Sales Tax Incentive under Part-I of the 1988 Scheme, we used the long-term rupee-denominated interest rate benchmark for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A).

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available (*i.e.*, "adverse facts available" (AFA)) when a party has failed to cooperate by not acting to the best of its ability in complying with a request for information. Section 776(b) of the Act authorizes the Department to use as AFA information from the petition, the final determination, or a previous administrative review, or other information placed on the record.

GOI

For the reasons explained below, the Department determines that AFA is warranted pursuant to sections 776(a) and (b) of the Act because, by not responding to our requests for information, the GOI failed to cooperate to the best of its ability.

Although the GOI filed a response to the initial questionnaire, the Department informed the GOI, in accordance with section 782(d) of the Act, that the response was deficient in several respects and the Department issued an extensive supplemental questionnaire.⁵⁹ The GOI did not provide

⁵⁸ See Preliminary Calculation Memoranda.

⁵⁹ See Letter from the Department, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from India: Supplemental Questionnaire," November 8, 2013.

a timely response to the supplemental questionnaire and did not request an extension of time to file its response until six days after the supplemental questionnaire was due, at which time its counsel requested an extension by email.⁶⁰ The Department did not grant the extension because the request was untimely and the GOI did not provide good cause for making the untimely request. We further determine that, pursuant to 19 CFR 351.302(b), good cause for granting the GOI a retroactive extension does not exist. In addition, the GOI did not provide a response to a request from the Department for a full questionnaire response with respect to a cross-owned affiliate of MSL/GVN, JPL. See “Initiation and Case History” section in the *Preliminary Determination*, and accompanying PDM.⁶¹

Here, the GOI failed to provide requested information by the deadlines, within the meaning of section 776(a)(2)(B) of the Act. 19 CFR 351.302(b) states that a party may request an extension for a deadline set by the Department, but such extension requests must be filed in writing, before the deadline for the submission. The GOI did not file a timely extension request in advance of the deadlines. Moreover, it did not inform the Department, pursuant to section 782(c)(1) of the Act, of any difficulty in submitting the requested information. Instead, the GOI filed a request for extension six days after the deadline for the supplemental questionnaire. The Department rejected the untimely request in accordance with 19 CFR 351.302(c) and (b).⁶²

Further, section 782(e) of the Act does not apply, because the GOI did not submit information by the appropriate deadlines and did not act to the best of its ability. By failing to answer fully the questionnaire and to respond timely to the supplemental questionnaire, we determine that the GOI failed to provide information by the deadlines and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(B) and 776(a)(2)(C) of the Act. We further find that an adverse inference is warranted under section 776(b) of the Act. The GOI failed to cooperate to the best of its ability when it failed to respond timely to the supplemental questionnaire, and to timely request an extension despite being reminded of the applicable deadline.

When a government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.⁶³ In this investigation, the GOI’s failure to respond to the deficiency questions included in the supplemental questionnaire impeded the Department’s ability to determine whether five programs benefitting the respondents are countervailable: Advance License Program/Advance Authorization Program, Export Promotion Capital Goods Program, Pre-Shipment and Post-Shipment Export Financing, Provision of Hot-Rolled Steel by

⁶⁰ See Email from Mr. Sharad Bhansali of APJ-SLG, Counsel to Government of India, November 21, 2013.

⁶¹ Preliminary Determination Memorandum accompanying *Preliminary Determination*.

⁶² See Letter from the Department, “Countervailing Duty Investigation of Oil Country Tubular Goods from India: Untimely Extension Requests by the Government of India (GOI),” November 26, 2013.

⁶³ See, e.g., *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006), in which the Department relied on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D) and 771(5A)(D)(iii) of the Act, respectively).

the Steel Authority of India, Ltd. at Less Than Adequate Remuneration, and State Government of Maharashtra Sales Tax Program. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to these programs and determining that the GOI is providing a financial contribution and that there is specificity. In calculating the amount of the benefit received, we relied on information provided by the respondent companies.

Jindal SAW

The Department also determines that the application of facts otherwise available is warranted with respect to Jindal SAW because it withheld information that was requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. Further, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to our requests for information, Jindal SAW failed to act to the best of its ability. Although Jindal SAW provided sales figures for its Nashik division for the POI, it did not provide the same information on a company-wide basis despite repeated requests.⁶⁴ As described below, the Department made several attempts to obtain Jindal SAW's sales information on a company-wide POI basis.

In the initial questionnaire, we asked Jindal SAW to provide its company-wide sales information, on an FOB basis. The initial questionnaire asked for sales information for "Jindal SAW" (*i.e.*, the entire company), not just for Nashik, which is Jindal SAW's OCTG division. In its initial response, Jindal SAW informed the Department that it was providing responses to the questionnaire only for the Nashik unit as it believed no other information was relevant.⁶⁵ Further, Jindal SAW provided in the response only its POI sales figures for the Nashik division, explaining its methodology for arriving at the reported FOB values, and a reconciliation to the financial statements.⁶⁶ Additionally, in explaining its procedure for deriving the reported sales values, Jindal SAW indicated that it uses an integrated financial accounting system.⁶⁷

The Department then again requested in its first supplemental questionnaire that Jindal SAW revise its sales for the POI on a company-wide basis. To ensure clarity in the Department's request, we included a chart identifying the breakouts of sales required for the whole company as well as for its Nashik division.⁶⁸ In addition, we asked Jindal SAW to revise its sales reconciliation, starting with the financial statements for fiscal years 2011-2012 and 2012-2013,⁶⁹ tying the "financial results" from the "statement of profit and loss" to the reported POI totals and to the sales figures for the Nashik division provided in Exhibit 12 of its initial questionnaire response.⁷⁰ In its response, Jindal SAW provided a sales reconciliation which again reconciled only the Nashik division's POI sales to both years of its financial statements. In this same

⁶⁴ See the Department's questionnaires to Jindal SAW: initial questionnaire dated August 28, 2013, at section III-4; first supplemental questionnaire dated November 8, 2013, at questions 14 and 21; fifth supplemental questionnaire dated February 25, 2014, at question 2.

⁶⁵ See Jindal SAW initial response dated October 31, 2013, at 6-7.

⁶⁶ *Id.* at Exhibits 10-12.

⁶⁷ *Id.* at 19-20.

⁶⁸ See the Department's first supplemental questionnaire dated November 8, 2013, at page 3, question 21.

⁶⁹ Jindal SAW's fiscal year is from April through March.

⁷⁰ *Id.* at questions 14 and 21.

reconciliation, Jindal SAW provided the total sales by fiscal year for all of its divisions, but did not provide this information on a POI basis or on an FOB basis,⁷¹ nor did it provide information concerning the physical exports or deemed exports of these other divisions.^{72,73} Thus, this “new” information amounted simply to total sales figures for the company for two fiscal years – information already apparent from the company’s financial statements. Although Jindal SAW argues that the revised sales information it provided in its supplemental questionnaire response “is not exactly in the format prescribed,”⁷⁴ this was more than just a format error. Rather, Jindal SAW, in fact, provided none of the company-wide sales information requested by the Department beyond the total sales of each division. In other words, the Department never received from Jindal SAW its company-wide total sales or its company-wide export sales or any of the break-outs requested, such as physical exports or deemed exports, on an FOB basis for the January through December 2012 period.

Meanwhile, because the Department needed the missing POI sales information for its calculations in the *Preliminary Determination* and for its post-preliminary analysis, the Department derived an estimate of the POI company-wide sales based on Jindal SAW’s 2011-2012 audited financial statements.⁷⁵ These financial statements provide a company-wide total sales value for the fiscal year, but they do not indicate POI values, FOB values, physical exports or deemed exports. In order to estimate company-wide physical and deemed exports, the Department assumed that such exports occur on a company-wide basis in the identical proportion to total sales as they occur on a Nashik-division basis (*i.e.*, we assumed the ratio of exports to total sales for the entire company was identical to the ratio of exports to total sales for Nashik). As noted, Jindal SAW had reported the physical and deemed exports for the Nashik-division, but not for any of the several other divisions in the company.⁷⁶

After the *Preliminary Determination*, the Department gave Jindal SAW one more opportunity to provide the missing information, and in an additional supplemental questionnaire requested: “As previously requested in the first supplemental questionnaire, question number 21, please revise your sales reporting to include the company-wide sales figures.”⁷⁷ Jindal SAW responded: “See Exhibit 90 for Jindal SAW’s company wide sales figures.”⁷⁸ Exhibit 90, however, was simply a resubmission of the total sales figures by unit already submitted in response to the first supplemental questionnaire, which, as discussed above, did not provide significant information the Department had requested (POI values, FOB values, physical exports, deemed exports). As noted above, the Department uses this information to attribute subsidies received by the company, as the denominator in its subsidy rate calculations.

⁷¹ Depending on how values are booked in a company’s accounting records, a company may have to make certain adjustments for freight charges, etc. in order to derive FOB values from its financial statements.

⁷² Physical exports are goods that physically leave the country, whereas “deemed exports” refer to those transactions in which goods supplied do not leave the country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. See GOI Foreign Trade Policy at 8.1 at Exhibit 4 of GOI initial response.

⁷³ See Jindal SAW first supplemental response at Exhibit 43.

⁷⁴ *Id.* at 15 and Exhibit 46.

⁷⁵ See Jindal SAW preliminary determination calculation memorandum at 2 and Jindal SAW post-preliminary analysis calculation memorandum at 2.

⁷⁶ *Id.*

⁷⁷ See the Department’s fifth supplemental questionnaire dated February 25, 2014, at question 2.

⁷⁸ See Jindal SAW fifth supplemental response dated March 10, 2014, at 1.

As a consequence, the Department was only able to verify the total sales, export sales (physical and deemed), domestic sales, and FOB adjustments for the Nashik division. At verification, the Department confirmed that Jindal SAW has used integrated accounting software since January 1, 2011, *i.e.*, one year prior to the POI. “Integrated software” is defined as multiple software applications or services that appear to run as one software package for ease-of-use. Such software is able to call on or import data real-time from another software source to perform specialized functions. This information is relevant because it indicates that Jindal SAW has the ability to call on data for the total company, or by division. Jindal SAW explained that it prepares financial statements on a quarterly, half-yearly, and annual basis, in accordance with the Indian GAAP.⁷⁹ There is also one chart of accounts for the entire company.⁸⁰ As indicated in the verification report, Jindal SAW explained to the verifiers its methods of searching the system, such as the types of codes to use in the accounting system to retrieve data at certain levels of consolidation (*e.g.*, at unit-specific levels and at the company-wide level). Jindal SAW further explained that each unit (or plant) has its own code and that the various modules within the system are fully integrated. In that context, Jindal SAW explained the account information flows into the general ledgers and trial balances and onward for preparation of the unit-wise financial statements, which are consolidated into the company’s financial statements. Jindal SAW also provided a chart with the various business segments, the activities conducted in each, as well as the inputs and outputs used by the respective segments.⁸¹ *See also* comment 1 in the “Analysis of Comments” section below.

Because Jindal SAW has an integrated financial system, the Department sees no reason why Jindal SAW was incapable of providing the sales information requested on a company-wide basis. The company-wide financial statements demonstrate that Jindal SAW obviously has the ability to consolidate sales information across units and plants and does so on a quarterly basis (the POI of this investigation covers the fourth quarter of the 2012 fiscal year and the first three quarters of the 2013 fiscal year). While Jindal SAW’s company-wide financial statements do not indicate sales on an FOB basis, or physical or deemed exports, the company’s chart of accounts indicates this information is maintained on both a unit-specific and a company-wide basis.

At verification, Jindal SAW demonstrated how it queried its accounting system using the relevant codes in order to report the correct information for the Nashik division.⁸² We see no reason why it could not have queried these same accounts for the several other divisions or for the company as a whole. While Jindal SAW indicates in its rebuttal brief that the verification exhibit demonstrates the burdensomeness of this exercise, the Department disagrees, seeing the Nashik-level reconciliation at verification as being a standard exercise of querying the correct accounts (albeit a couple dozen accounts) for the correct time period. The results of those queries are then summed to derive the information the Department requested for POI values, FOB values, and physical and deemed exports. Accordingly, we disagree that providing the

⁷⁹ *See* Jindal SAW Verification Report at 4.

⁸⁰ *Id.*, at Verification Exhibit 4.

⁸¹ *Id.*, at 4.

⁸² *Id.*, at Verification Exhibit 14.

requested sales information for the Nashik division was particularly arduous, as characterized by Jindal SAW.⁸³

During verification, the Department observed that Jindal SAW was able to query its integrated accounting system to provide data for its non-Nashik divisions. For example, with the exception of the ALP/AAP program, Jindal SAW provided information regarding all benefits that had been provided to all units across the company.⁸⁴ As another example, the verification report notes several instances where the company was able to provide trial balance and general ledger results for various accounts for various unit codes (*e.g.*, it provided duty drawback information for three units).⁸⁵ The report contains no instances of the company being unable to provide company-wide or unit-specific information for any of the accounts we requested to be queried.

Given the several export subsidies at issue in this investigation (*i.e.*, subsidies that require a company to demonstrate it has exported certain products in certain amounts), benefitting several divisions, it is hard to understand how information concerning its export levels across all divisions is not readily available to Jindal SAW.

Without the appropriate denominators, it is not possible to calculate accurately the subsidy rates for the following programs: Pre- and Post-Shipment Export Financing (PPS), Export Promotion Capital Goods Scheme (EPCGS), State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives 2007, SGOM Sales Tax Program, and State Government of Uttar Pradesh (SGUP) Exemption from Entry Tax. We provided Jindal SAW several opportunities to provide this information. Accordingly, in reaching our determination for the above programs, we have based the rates on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, the Department determines that Jindal SAW did not cooperate to the best of its ability because it did not provide its sales information in the form and manner requested.

Section 782(c) of the Act provides that if a party is unable to or has difficulties in responding to the Department's requests for information, it must "promptly after receiving a request from {the Department}" notify the agency that it is unable to submit the information, and must further provide a "full explanation and suggested alternative forms in which such party is able to submit the information. . . ." Here, Jindal SAW did not provide any explanation in any of its submissions for why it could not provide company-wide FOB sales information and deemed and physical exports for the POI. In its first response, Jindal SAW only informed the Department that it was providing responses to the questionnaire only for the Nashik unit as it believed no other information was relevant.⁸⁶ It did not provide an explanation for why it could not provide the information requested for other divisions. Similarly, in its response to the first supplemental questionnaire, Jindal SAW only additionally provided its total sales figures for the company for two fiscal years – information already apparent from the company's financial statements,⁸⁷ but

⁸³ See Jindal SAW Rebuttal Brief at 6; *see also* Jindal SAW first supplemental response at 14-15.

⁸⁴ See Jindal SAW Verification Report for the various program-specific accounts queried and the review of various accounts at 15.

⁸⁵ See Jindal SAW Verification Report at 7.

⁸⁶ See Jindal SAW initial response dated October 31, 2013, at 6-7.

⁸⁷ *Id.*, at exhibit 6.

not any explanation for why it could not provide the company-wide FOB sales information, and deemed and physical exports for the POI. While Jindal SAW explained its methodology for the deemed exports it reported for the Nashik division in Exhibit 46, the only other explanation it provided was “While the chart at Exhibit 46 is not exactly in the format prescribed above, due to the manner in which Jindal SAW maintains its accounts, however, it has attempted at Exhibit 46 to provide as much detail as requested by the chart delineated above.”⁸⁸ There was no explanation why Jindal SAW could not provide its company-wide figures. The Department then provided a third opportunity to Jindal SAW asking: “As previously requested in the first supplemental questionnaire, question number 21, please revise your sales reporting to include the company-wide sales figures.”⁸⁹ Jindal SAW responded: “See Exhibit 90 for Jindal SAW’s company wide sales figures.”⁹⁰ In Exhibit 90, Jindal SAW provided its unit-wise sales for the 2011-12 and 2012-13 fiscal years from its financial statements. Exhibit 90 did not contain the company-wide sales for the POI on an FOB basis. Jindal SAW argues that it explained why it could not provide the sales information requested.⁹¹ But as noted above there is no record of any explanation of why it could not provide its company-wide POI sales on an FOB basis. The data provided in the financial statements is not usable because they are on a fiscal year basis, whereas the Department needs the information on a POI basis. Moreover, it is not on an FOB basis. Thus, using figures from either of the financial statements would not be reflective of the POI sales figures and would not result in an accurate subsidy rate. Consequently, an adverse inference is warranted in the application of facts available. Accordingly, as AFA, we will use Jindal SAW’s Nashik division total sales and export sales (physical and deemed) where the company-wide total sales and the company-wide export sales are required.

In addition, the Department made repeated requests to Jindal SAW to report its use of the ALP/AAP program on a company-wide basis. In response to the initial questionnaire Jindal SAW responded only with respect to benefits received by its Nashik division. The Department then asked Jindal SAW in a supplemental questionnaire: “Confirm that the reporting in Exhibit 49(a) is for the Nashik division only, and merchandise under investigation or not, or whether it is company-wide, both subject and non-subject.”⁹² Jindal SAW responded that Exhibit 49(a) pertained to the Nashik division only and exhibit 49 covered subject and non-subject merchandise.⁹³ Again, the Department asked Jindal SAW with respect to the Advance Authorization Scheme “Please revise the benefit information reported for this program to include benefits provided to all divisions.”⁹⁴ In its response Jindal SAW stated “These figures have already been provided as part of Exhibit 49.”⁹⁵ Jindal SAW did not report the use of its ALP/AAP licenses by its other divisions in exhibit 49. The Department asked Jindal SAW on two separate occasions to report all benefits earned under the ALP/AAP during the POI on a

⁸⁸ See Jindal SAW first supplemental response at 15.

⁸⁹ See the Department’s fifth supplemental questionnaire dated February 25, 2014, at question 2.

⁹⁰ See Jindal SAW fifth supplemental response at 1.

⁹¹ See Jindal SAW rebuttal brief at 5.

⁹² See Jindal SAW second supplemental response at question 11.

⁹³ *Id.* at 7.

⁹⁴ See the Department’s fifth supplemental questionnaire dated February 25, 2014, at 2, “Advance Authorization Program.”

⁹⁵ See Jindal SAW fifth supplemental response at 18.

company-wide basis,⁹⁶ and both times, Jindal SAW failed to provide the information. Therefore, for licenses that are not tied to any specific product and can be used by any of Jindal SAW's divisions, as AFA, we are assuming the entire value of the license benefited the production of the Nashik division during the POI.⁹⁷ See comment 9 in the "Analysis of Comments" section below. We continue not to countervail benefits provided under any license tied to non-subject merchandise.

VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following.

A. Programs Determined To Be Countervailable

GOI Programs

1. Advance License Program/Advance Authorization Program

In several prior investigations, the Department determined that import duty exemptions provided under the Advance License Program (ALP)/Advance Authorization Program (AAP) are countervailable export subsidies.⁹⁸ Under this program, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. In *PET Film from India 2007 Review*, the Department found 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, in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste. Nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts. Thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon export.

⁹⁶ See Department's initial questionnaire at III-6, second supplemental questionnaire dated November 25, 2013, at question 2, and fifth supplemental questionnaire dated February 25, 2014, at "Advance Authorization Program."

⁹⁷ Jindal SAW second supplemental response at Exhibit 80.

⁹⁸ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) (*PET Film from India 2007 Review*) and accompanying IDM at "Advance License Program;" see also *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) (*Hot-Rolled from India 2006 Review*) and accompanying IDM at "Advance License Program."

We continue to find this program countervailable for this final determination. *See* comment 7 in the “Analysis of Comments” section below. Further, as explained above, relying on AFA, we determine that the GOI provided financial contributions under this program, and that this program is specific. Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties normally provides a recurring benefit. Thus, we are treating the benefit provided under the ALP/AAP program as a recurring benefit.

MSL provided information on its use of this program and we have used that information to calculate the amount of benefits received.⁹⁹ Jindal SAW, however, did not provide complete information on its use of this program. Whereas Jindal SAW provided information for its Nashik division and the Department used this information in the *Preliminary Determination*, the company did not provide details of the use of this program by its other divisions. Unless the ALP licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5), the Department will consider the company’s ALP licenses to benefit all of the company’s exports. Therefore, for MSL, we have divided the total value of the duties exempted under the ALP/AAP licenses¹⁰⁰ during the POI by the total export sales of MSL and its cross-owned affiliate producer JPL. For Jindal SAW, we excluded licenses which could be tied at the point of bestowal to non-subject merchandise.¹⁰¹ For the remainder licenses, because Jindal SAW did not report the benefits received by its other divisions, we have used, as AFA, the total benefit that Jindal SAW could have received based on the ceiling amount indicated on the licenses, and attributed it to the Nashik division. In the *Preliminary Determination*, we calculated a subsidy rate for Jindal SAW based on the import detail it reported for the Nashik division.¹⁰² *See* comment 9 in the “Analysis of Comments” section below. Thus, we divided Jindal SAW’s total benefit calculated for those licenses by its Nashik division’s export sales. On this basis, we determine countervailable subsidy rates under the ALP/AAP program of 2.41 percent *ad valorem* for GVN/MSL/JPL and 11.95 percent *ad valorem* for Jindal SAW.¹⁰³

2. Duty Drawback

As explained in the *Preliminary Determination*, the Department did not initially initiate an investigation of a duty drawback program, but the respondents reported receiving duty drawback (DDB) under a program countervailed in a previous investigation (the Duty Entitlement Passbook Scheme).¹⁰⁴ Section 775 of the Act provides that if the Department “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition . . . then the {Department} (1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program

⁹⁹ *See* MSL initial response at 23.

¹⁰⁰ *Id.*, at 27-28.

¹⁰¹ *See* Jindal SAW second supplemental response at exhibit 80, which contains the licenses and specifies the products to be produced under each license.

¹⁰² *See* Jindal SAW preliminary determination calculation memorandum at 4.

¹⁰³ *See* final determination calculation memoranda.

¹⁰⁴ *See Preliminary Determination* and accompanying PDM, at 25-26; *see also Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*) and accompanying IDM at 12, “Duty Drawback.”

appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding....”

The DDB program provides rebates of duties or taxes chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export goods.¹⁰⁵

Specifically, the duties and tax “neutralized” under the program are (i) the customs and union excise duties on inputs and (ii) the service tax in respect of input services.¹⁰⁶ The DDB is generally fixed as a percentage of the FOB price of the exported product.¹⁰⁷

Import duty exemptions on inputs for exported products are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.¹⁰⁸ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.¹⁰⁹ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.¹¹⁰ If such a system does not exist, if it is not applied effectively, or if the government in question does not carry out an examination of the actual inputs involved to confirm which are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.¹¹¹

Regarding its establishment of applicable DDB rates, the GOI stated the following in *Shrimp from India*:¹¹²

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the Government. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.¹¹³

However, “based on the GOI’s questionnaire responses and lacking the documentation to support that the GOI has a system in place,” we concluded in that investigation that “the GOI had not supported its claim that its system is reasonable or effective for the purposes intended.”¹¹⁴

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See 19 CFR 351.519(a)(1)(ii).

¹⁰⁹ See, e.g., *PET Film from India 2005 Review*, and accompanying IDM at “Duty Entitlement Passbook Scheme (DEPS/DEPB).”

¹¹⁰ *Id.*

¹¹¹ See 19 CFR 351.519(a)(4)(i)-(ii).

¹¹² See *Shrimp from India*, and accompanying IDM at 12-13, “Duty Drawback.”

¹¹³ *Id.* at 12-13.

¹¹⁴ *Id.*

As explained in the *Preliminary Determination*, the GOI failed to provide information regarding the DDB reported by respondents Jindal SAW and JPL in its initial questionnaire response,¹¹⁵ and then failed to respond at all to our first supplemental questionnaire, which asked specifically about the DDB program.¹¹⁶ The GOI failed to respond to the first supplemental questionnaire despite being reminded of the deadline by email and telephone.¹¹⁷ On November 21 and 26, 2013, we received requests from the GOI for an extension of the deadline for the first supplemental questionnaire, which had already passed. The Department declined to grant the requests due to their untimeliness.¹¹⁸ Nevertheless, after the deadline had already passed, the GOI filed its response to the first supplemental questionnaire. The Department removed the untimely response from the record of this proceeding, in accordance with 19 CFR 351.302(d).¹¹⁹

Despite the GOI's failure to respond to the first supplemental questionnaire, in the *Preliminary Determination*, we noted that, because the initial questionnaire had not specifically addressed the DDB program, we would provide the GOI with an additional opportunity to demonstrate the adequacy of its DDB system under 19 CFR 351.519(a).¹²⁰ At the same time, we specifically identified the information that was needed.¹²¹ We then issued a post-preliminary questionnaire addressing the DDB program, among other issues. However, in its response to the Department's post-preliminary questionnaire, the GOI again failed to provide the necessary information.

Specifically, in the post-preliminary January 9, 2014 questionnaire, we requested the following information:¹²²

Jindal SAW and GVN reported receiving subsidies under this program (*see* Jindal SAW's October 31, 2013 questionnaire response at 33 and GVN's October 31, 2013 questionnaire response at 43). In previous investigations, the GOI has stated that duty drawback rates are determined following a specified procedure that is undertaken by an independent committee appointed by the GOI. The GOI has further explained that the committee makes its recommendations after: (1) discussions with stakeholders including Export Promotion Councils and Trade Associations; (2) soliciting from individual exporters data including procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios, and FOB values of exported products; and, (3) collecting corroborating data from Central Excise and Customs field offices.

¹¹⁵ See GOI initial response dated November 5, 2013.

¹¹⁶ See *Preliminary Determination* and accompanying PDM at 25-26; *see also* GOI first supplemental questionnaire dated November 5, 2013, at questions 50 to 53.

¹¹⁷ See Memorandum to File, "Deadline for Questionnaire Responses from the Government of India," November 19, 2013.

¹¹⁸ See Letter from the Department, "Untimely Extension Requests by the Government of India (GOI)," November 26, 2013.

¹¹⁹ See Letter from the Department, "Rejection of Untimely Filed Supplemental Questionnaire Response and Removal from the Record," December 9, 2013.

¹²⁰ See *Preliminary Determination*, and accompanying PDM at 26.

¹²¹ *Id.*

¹²² See Letter from the Department to the GOI, "Countervailing Duty Investigation of Certain Oil-Country Tubular Goods from India: Post Preliminary Determination Supplemental Questionnaire," January 9, 2014.

Please provide a copy of the recommendations and supporting documents for the drawback rates applicable to subject merchandise during the POI. Please also complete the Standard Questions Appendix.

On January 28, 2014, we received the GOI's response. While the GOI completed the Standard Questions Appendix, it did not provide a copy of the recommendations and supporting documents for the drawback rates applicable to subject merchandise during the POI.

Because the Department requires these recommendations and supporting documents, which the GOI failed to provide, in order to fully evaluate whether the rates determined are reasonable and effective for the purposes intended, and to confirm that the actual inputs involved are consumed in the production of the exported product, including normal allowances for waste, we determine that the GOI has not demonstrated that its system is reasonable or effective for the purposes intended.

As explained above, under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the POI constitutes a benefit. Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred on the dates of exportation of the shipments for which the pertinent drawbacks were earned.¹²³ We calculated the benefit on an as-earned basis. Drawbacks under the program are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at the time of exportation that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

GVN and Jindal SAW reported that they received drawbacks under the DDB program during the POI.¹²⁴ We are able to tie the benefits received to specific markets, in accordance with 19 CFR 351.525(b)(4) and (5). Therefore, we calculated the subsidy rates using the value of all DDB rebates that were earned on U.S. sales during the POI.¹²⁵ We divided the total amounts by GVN's total exports to the United States during the POI. In addition, we were able to tie Jindal SAW's benefit earned on exports of subject merchandise to the United States which we divided by the company's exports of subject merchandise to the United States. On this basis, we determine a countervailable subsidy rate of 1.73 percent *ad valorem* for GVN, and a countervailable subsidy of 3.57 percent *ad valorem* for Jindal SAW.¹²⁶ We addressed parties' arguments with respect to this program in comments 5 and 6 below in section VII "Analysis of Comments."

¹²³ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Cut-To-Length Carbon Quality Steel Plate from India*, 64 FR 73131, 73134 and 73140 (December 29, 1999) (*Steel Plate Final Determination*).

¹²⁴ See GVN initial response dated November 1, 2013, at Exhibit 8(a)-(e), Jindal SAW initial response dated October 31, 2013, at 33-37 and Exhibits 21 & 22 (a-d) and Jindal SAW first supplemental response dated November 19, 2013, at 24-30.

¹²⁵ See, e.g., *Steel Plate Final Determination*, 64 FR at 73134 and 73140.

¹²⁶ See final determination calculation memoranda.

3. Export Promotion Capital Goods (EPCG) Program

In several prior investigations, the Department has determined that import duty reductions or exemptions provided under the EPCG program are countervailable export subsidies.¹²⁷ The EPCG program provides for a reduction of or exemption from 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 six times the duty saved within a period of six 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.

As explained above, we determine, relying on AFA, that the GOI provided a financial contribution under this program, and that the program is specific. MSL, JPL and Jindal SAW provided information on their use of this program and we have used that information to calculate the amount of benefits received.¹²⁸

Under the EPCG program, 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 practice¹²⁹ 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).¹³⁰ Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCG program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble 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"¹³¹ In accordance with 19 CFR 351.524(c)(2)(iii) and past

¹²⁷ See, e.g., *Shrimp from India* and accompanying IDM at 14-17; see also *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 from India Final Determination*) and accompanying IDM at "EPCGS."

¹²⁸ See MSL initial response at 23 and Jindal SAW initial response at 40-42 and Exhibits 24 and 25.

¹²⁹ See *PET Film From India 2007 Review* and accompanying IDM at "3. Export Promotion Capital Goods Scheme (EPCGS)." See also *Shrimp from India* and accompanying IDM at "5. Duty Incentives under the Export Promotion Capital Goods (EPCG) Program."

¹³⁰ *Id.*

¹³¹ See *Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998).

practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.¹³²

Information provided by the respondents indicates that their EPCG licenses were issued for the purchase of capital goods for the production of both subject and non-subject merchandise.¹³³ However, this information does not allow us to tie particular EPCG licenses to particular products within the meaning of 19 CFR 351.525(b)(5). As such, we are attributing the EPCG benefits received by the respondents to their total exports. With respect to parties arguments on this program, see comment 11 in the “Analysis of Comments,” section VII below.

MSL met the export obligations for certain EPCG licenses prior to December 31, 2012 (the last day of the POI), and the GOI has formally waived the relevant import duties.¹³⁴ For a number of their licenses, however, the respondents had not yet met their export obligations.¹³⁵ Therefore, although the respondents received a deferral from paying import duties for the capital equipment imports, the final waiver of the obligation to pay the duties had not yet been granted for a number of these imports.

To calculate the benefit received from the GOI’s formal waiver of import duties for the respondents’ capital equipment imports where the export obligations were met prior to December 31, 2012, we considered only the amount of basic customs duties waived. The record indicates that the additional duty (CVD),¹³⁶ the Education Cess on CVD, and the Special Additional Duty (SAD) are creditable under India’s VAT system (*i.e.*, they are refunded regardless of whether a firm uses the EPCG program). Therefore, we adjusted our calculations by excluding the additional duty (CVD), the Education Cess on CVD, and the SAD when the data was provided. We treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in *PET Film from India 2007 Review*, we determine the year of receipt of the benefit to be the year in which the GOI formally waived the respondents’ outstanding import duties.¹³⁷ Next, we performed the “0.5 percent test,” as described under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted the respondents an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of the respondent’s total export sales, we expensed the value of the duty waived to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of the respondent’s total export sales in that year, we allocated the value of the waived duties using the allocation period of 15 years. For purposes of allocating the value of the waived duties over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties.

As noted above, import duty reductions or exemptions received for capital equipment imports for which the respondents had not yet met their export obligations may have to be repaid to the GOI

¹³² See, e.g., *PET Film from India 2007 Review* and accompanying IDM at Comment 9.

¹³³ See MSL initial response at 36, JPL initial response at 24, and Jindal SAW initial response at 40-42 and Exhibits 24 and 64 (identifying non-specific HTS).

¹³⁴ See MSL initial response at 40 and Exhibit M-11(f).

¹³⁵ See Jindal SAW second supplemental response.

¹³⁶ “Cenvatable” and levied under section 3(1) of the Customs Tariff Act, 1975, of India.

¹³⁷ See *PET Film from India* and accompanying IDM at Comment 5.

if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liabilities as interest-free loans.¹³⁸

The amount of the unpaid duty liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, which had not been officially waived by the GOI as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondents would have paid during the POI had they borrowed the full amount of the duty reduction or exemption at the time of importation.¹³⁹

As stated above, the time period for fulfilling the export requirement expires six 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. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POI from the formally waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) interest due on the contingent-liability loans for imports of capital equipment that have unmet export requirements during the POI. We divided the total benefit received by the respondents under the EPCG program by the respondents’ total export sales during the POI. Accordingly, we determine a countervailable subsidy rate of 0.12 percent *ad valorem* for GVN/MSL/JPL and a countervailable subsidy rate of 0.61 percent *ad valorem* for Jindal SAW.¹⁴⁰

4. Pre-Shipment and Post-Shipment Export Financing

In several prior investigations, the Department has previously determined that import duty reductions or exemptions provided under the Export Financing program are countervailable export subsidies.¹⁴¹ The GOI provides pre-shipment and post-shipment export financing to make short-term working capital available to exporters at internationally comparable interest rates. The financing is denominated in Indian rupee (INR) and in foreign currencies (*e.g.*, U.S. dollars).

¹³⁸ See 19 CFR 351.505(d)(1); see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*) and accompanying IDM at “EPCGS” and *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate Resin From India*, 70 FR 13460 (March 21, 2005) (*PET Resin from India*) and accompanying IDM at “Export Promotion Capital Goods Scheme (EPCGS).”

¹³⁹ 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, 46488 (August 10, 2005) (unchanged in *PET Film from India 2003 Review*).

¹⁴⁰ See preliminary Determination calculation memoranda.

¹⁴¹ See, *e.g.*, *Shrimp from India* and accompanying IDM at 17 and *PET Film Final Determination* and accompanying IDM at “Pre-Shipment and Post-Shipment Export Financing.”

- a) With respect to the rupee-denominated export financing, the Reserve Bank of India (RBI) previously capped the interest rate that commercial banks could charge on these loans.¹⁴² However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and set only a floor rate for these loans.¹⁴³ At the same time, the RBI instituted an interest subvention program for certain exporting companies, including small and medium enterprises. In order to receive this interest assistance, the interest rate on the rupee-denominated export financing had to be less than the bank's benchmark prime lending rate minus 4.5 percent. Thus, rupee-denominated pre-shipment and post-shipment export financing that was eligible for the subvention was subject to an interest-rate cap. None of the respondent companies reported receiving export financing in Indian rupees.
- b) With respect to export financing denominated in foreign currencies, the RBI requires banks to fix interest rates with reference to LIBOR, EURO LIBOR, or EURIBOR; these rates are subject to caps, with the size of the cap depending on the duration of the loan.¹⁴⁴ We determine that pre-shipment and post-shipment export financing denominated in foreign currencies provides a financial contribution and is specific, relying on AFA, for the reasons explained above in the "Use of Facts Available and Adverse Facts Available" section. MSL reported it used pre-shipment financing in foreign currency during the POI,¹⁴⁵ and Jindal SAW reported it used pre-shipment and post-shipment financing. We have used the reported information to calculate the amount of benefits received.¹⁴⁶

To measure the benefit conferred by the pre-shipment and post-shipment export financing in foreign currency, we compared what the companies paid for their loans to what they would have paid according to the short-term loan benchmarks described above. We divided the interest savings each company received during the POI by the company's exports, net of deemed exports during the POI.¹⁴⁷

On this basis, we determine GVN/MSL/JPL did not receive a benefit for pre-shipment financing denominated in U.S. dollars. For Jindal SAW, we determine a countervailable subsidy rate of 0.43 percent *ad valorem* for pre-shipment and post-shipment financing denominated in U.S. dollars.¹⁴⁸

We have previously found that the GOI terminated the foreign currency export financing program on May 5, 2012. Specifically, as of that date, the RBI is not involved in setting interest rates (caps or floors) for these loans.¹⁴⁹ In *Shrimp from India*, the GOI supported its claim with a copy the "Master Circular - Rupee / Foreign Currency Export Credit & Customer Service To

¹⁴² See, e.g., *PET Film from India* and accompanying IDM at "Pre-Shipment and Post-Shipment Export Financing."

¹⁴³ See *Shrimp from India* and accompanying IDM at 17.

¹⁴⁴ See *Shrimp from India* and accompanying IDM at 17-18.

¹⁴⁵ See MSL initial response at 43.

¹⁴⁶ See Jindal SAW second supplemental response at Exhibit 78c.

¹⁴⁷ See preliminary determination calculation memoranda.

¹⁴⁸ *Id.*

¹⁴⁹ See *Shrimp from India* and accompanying IDM at "Export Financing Program."

Exporters,” issued by RBI, which specified that “banks are free to determine the interest rates on export credit in foreign currency with effect from May 5, 2012.”¹⁵⁰

As explained above, 19 CFR 351.526(a) permits the Department to take account of program-wide changes in setting the deposit rate in certain circumstances. When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be no residual benefits and that if a replacement program has been implemented the benefits under the replacement program be calculable.

In *Shrimp from India*, the GOI reported that the maximum term for pre-shipment credits in foreign currencies was 360 days prior to shipment, and the maximum term for post-shipment credits in foreign currencies was six months from the date of shipment. Thus, the last day on which the respondents could have paid reduced interest on their foreign currency export financing was April 30, 2013 (360 days after May 5, 2012). Therefore, no residual benefits exist beyond that date. Moreover, the GOI has not implemented a replacement program. Consequently, in accordance with 19 CFR 351.526(a)(2) and (d), we will adjust the cash deposit rates as necessary to exclude the foreign currency denominated export financing benefits.

5. Income Tax Exemption Program Under Section 80-IA of the Income Tax Act

According to the Government of India (GOI), under Section 80-IA of the Income Tax Act, 1961, a company may deduct 100 percent of the profits derived from a specified eligible business undertaking from its taxable income.¹⁵¹ The deduction may be claimed for any ten consecutive years out of a period of fifteen years from the first year of operation. Among the five types of eligible businesses identified in sub-section (4) of section 80-IA are: (iv) an undertaking which is set up for the generation and distribution of power during a specific time period, which starts transmission or distribution of power by laying a network of new lines, or which undertakes substantial renovation and modernization of the existing network; and (v) an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, subject to certain conditions.¹⁵²

A company claiming a benefit under section 80-IA is required to submit an audited return with supporting documents to an agency of the Ministry of Finance, which assesses the documents and approves or denies the claim¹⁵³. The GOI did not provide data on program use by industrial classification and stated it does not maintain usage information at an aggregate level.¹⁵⁴

The GOI and MSL reported that MSL used this program for its wind power project.¹⁵⁵ MSL recorded deductions under this program on its income tax return for financial year 2011-12, the

¹⁵⁰ *Id.*

¹⁵¹ See GOI post-preliminary supplemental response dated January 31, 2014, at 1.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 7 and 2.

¹⁵⁵ *Id.* at 2; see also MSL initial response dated November 1, 2013 at 56.

return filed by the company during the POI. Jindal SAW also used this program as indicated on its tax returns.¹⁵⁶

Because information provided by the GOI indicates that financial assistance under this program is expressly limited by law to enterprises engaging in five specific activities, we find this program to be *de jure* specific under section 771(5A)(D)(i) of the Act. The tax deductions are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act. Under 19 CFR 351.509(a), the benefit is equal to the difference between the income tax actually paid and the income tax that would have paid absent the program. To calculate the subsidy rate, we divided the benefit by the total sales of MSL and its cross-owned affiliate producer JPL during the POI. On this basis, we determine the countervailable subsidy rate for GVN/MSL/JPL under this program to be 0.02 percent *ad valorem*.¹⁵⁷ With respect to Jindal SAW, although the company used the program, we determine that no benefit exists during the POI under this program.¹⁵⁸

6. Provision of Hot-Rolled Steel by the Steel Authority of India, Ltd. at Less Than Adequate Remuneration

The Department has countervailed the provision of hot-rolled steel at LTAR by Steel Authority of India, Ltd. (SAIL) in past proceedings.¹⁵⁹ As explained above, the GOI failed to cooperate to the best of its ability in this investigation, and therefore we determine, relying on AFA, that the provision of hot-rolled steel from SAIL constitutes a financial contribution and that there is specificity. MSL and JPL provided information on their use of this program and we have used that information to calculate the amount of benefits received.¹⁶⁰ MSL and JPL reported purchasing hot-rolled coil from SAIL as well as from private suppliers.¹⁶¹ Jindal SAW reported no purchases of hot-rolled coil from SAIL.¹⁶² We addressed parties' arguments with respect to this program in section VII below "Analysis of Comments," Comment 17.

In order to calculate the benefit to MSL and JPL, we compared each individual purchase from SAIL to a benchmark specific to the grades and to the month of the purchase in accordance with 19 CFR 351.511(a)(2)(i). The hierarchy of 19 CFR 351.511(a)(2)(i) requires the Department "to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties" In accordance with that hierarchy, we determined each monthly benchmark by calculating the average price paid to private suppliers that month for hot-rolled coil, weighting each price by the quantity purchased. We summed the benefits for all transactions – ignoring

¹⁵⁶ See Jindal SAW verification report at 15.

¹⁵⁷ See GVN/MSL/JPL final determination calculation memorandum.

¹⁵⁸ See Jindal SAW initial response at Exhibit 7.

¹⁵⁹ See *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying IDM at "Use of Facts Otherwise Available and Adverse Facts Available."

¹⁶⁰ See MSL initial response at 65-67 and Jindal SAW initial response at 52.

¹⁶¹ See MSL initial response at 65-67 and JPL initial response at 40 and Exhibit J-8(b).

¹⁶² See Jindal SAW third supplemental response at 3.

transactions for which the price paid to SAIL exceeded the benchmark – to calculate the total benefit for the program. We divided the total benefit by the combined total sales in the POI of MSL and JPL to derive a countervailable subsidy rate of 0.10 percent *ad valorem* for GVN/MSL/JPL.¹⁶³

Programs by State Government of Maharashtra (SGOM)

7. SGOM Sales Tax Program

In prior investigations, the Department has determined that sales tax exemptions, deferrals, and sales tax loans provided under the SGOM Sales Tax program are countervailable export subsidies.¹⁶⁴ In *Hot-Rolled Steel*, the Department found that sales tax exemptions, deferrals, and sales tax loans, in the form of interest-free loans, were provided under the SGOM's sales tax program. As explained above, we determine on the basis of AFA, that the GOI provided a financial contribution under this program and that the program is specific. MSL and Jindal SAW provided information on their use of this program and we have used that information to calculate the amount of benefits received.¹⁶⁵ We then divided the benefit amounts received by the relevant total sales amounts during the POI for MSL, and the Nashik division total sales for Jindal SAW. See comment 1 in the "Analysis of Comments" section below. We calculated countervailable subsidy rates of 0.25 percent *ad valorem* for GVN/MSL/JPL and of 0.21 percent *ad valorem* for Jindal SAW.¹⁶⁶

8. SGOM Subsidies Under the Package Scheme of Incentives of 2007

The GOI reported that the Package Scheme of Incentives of 2007 (PSI-2007) was brought into effect on April 1, 2007.¹⁶⁷ This program was initially scheduled to be in effect until March 31, 2011, but was extended through subsequent amendments and then terminated effective March 31, 2013.¹⁶⁸ Under the PSI-2007, incentives are offered to encourage dispersal of industries to the less industrially developed areas of the state of Maharashtra to achieve higher and sustainable economic development. Pursuant to this objective, Annexure I of the PSI-2007 places all "*talukas*," i.e., district subdivisions, into six different development zones: A, B, C, D, D+, and "no industry." The GOI claims the categorization methodology, found in paragraph 1.3 of the PSI-2007, follows objective criteria. The zones cover the entire state of Maharashtra. Benefits under the PSI-2007 vary by zone.¹⁶⁹

¹⁶³ See final determination calculation memoranda.

¹⁶⁴ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) and accompanying IDM at "State Government of Maharashtra Programs (SGOM), Sales Tax Program)."

¹⁶⁵ See MSL initial response at 23, Jindal SAW initial response at 57-58, and Jindal SAW first supplemental response at Exhibit 66.

¹⁶⁶ See final determination calculation memoranda.

¹⁶⁷ See GOI post-preliminary determination supplemental response at 9.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

While MSL and Jindal SAW both reported participating under this program, they did so under different provisions. MSL benefitted through its plant located in a “C”-zone sub-district of the Raigad district of Maharashtra.¹⁷⁰ Jindal SAW reported that it participated in the PSI-2007 under the provisions for “mega projects.”¹⁷¹ According to paragraph 5.10, “Mega Projects:”

The quantum of incentives within the approved limit will be decided by the High Power Committee under the chairmanship of Chief Secretary, Government of Maharashtra. The Infrastructure Committee under the chairmanship of the Chief Minister of Maharashtra will have the power to customize and offer special/extra incentives for the prestigious Mega Projects on a case to case basis.¹⁷²

a. Exemption from Electricity Duty for up to 15 Years

MSL reported not using this program.¹⁷³ Jindal SAW reported receiving exemptions under this program for a seven-year period including the POI.¹⁷⁴ According to the GOI, the electricity duty exemption, pursuant to paragraph 5.3 of the PSI-2007, applies for a 15-year period for new projects in C, D, D+, and “no industry” zones and a 10-year period for new projects in other parts of the state. However, these fixed periods do not apply to mega projects. Paragraph 3.11 of the PSI-2007 provides that, with respect to mega projects, the eligible period will be set by the “Higher Power Committee” or “Infrastructure Sub-Committee” of the SGOM.¹⁷⁵

Pursuant to paragraph 4.1(4) of the PSI-2007, an application must be submitted on or before the date of commencement of commercial production. Such applications may be filed only after a unit completes all the effective steps specified in paragraph 3.4 of the PSI-2007. If there is a delay, the period of entitlement is curtailed proportionately. Under the provisions of paragraph 3.1 of the PSI-2007, the SGOM issues an eligibility certificate after ascertaining that the eligible unit has complied with the provisions of the scheme and has commenced production. Paragraph 6 of the PSI-2007 provides for a monitoring and review procedure. Benefits can only be claimed after the eligibility certificate has been issued.

The GOI reported that Jindal SAW received benefits under this program for the establishment of a mega project in one of the zones.¹⁷⁶ The applicable eligibility period determined for Jindal SAW is seven years.¹⁷⁷ We determine that electricity duty exemptions under the PSI-2007 are countervailable because: 1) the program is specific within the meaning of section 771(5A)(D)(iv) of the Act, as benefits are limited to projects located in certain designated geographical regions within the state of Maharashtra; 2) the SGOM has foregone revenue otherwise due and, thus, the exemption constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act; and 3) pursuant to section 771(5)(E) of the Act, there is a

¹⁷⁰ See MSL initial response at 93-94.

¹⁷¹ See Jindal SAW initial response at 63 and Exhibits 33-34.

¹⁷² See GOI post-preliminary determination supplemental response at Exhibit 2.

¹⁷³ See MSL initial response at 92.

¹⁷⁴ See Jindal SAW first supplemental response at Exhibit 67.

¹⁷⁵ See GOI post-preliminary determination supplemental response at 9.

¹⁷⁶ *Id.* at 15.

¹⁷⁷ *Id.* at 17.

benefit in the amount of duty exempted for electricity charges. To calculate the subsidy rate, we divided the reported benefit by the total Nashik division sales of Jindal SAW during the POI. *See* comment 1 in the “Analysis of Comments” section below. On this basis, we calculated a subsidy rate of 0.40 percent *ad valorem* for Jindal SAW.

b. Exemption from Stamp Duty

Similar to electricity duty exemptions discussed above, a waiver of stamp duty is provided by paragraph 5.4 of the PSI-2007.¹⁷⁸ Under the scheme, new projects as well as expanding existing projects will be exempt from stamp duty up to March 31, 2013, in the less developed C, D, D+ and “no industry” zones. In zones A and B, stamp duty exemptions are available only for certain projects.¹⁷⁹

Applicants are required to demonstrate that they have been allotted land in one of the eligible zones. The SGOM then issues an approval certificate. This certificate forms the basis for the exemption of stamp duty payment.¹⁸⁰

The GOI and MSL reported that MSL received an exemption from stamp duty for the purchase of land from the Maharashtra Industrial Development Corporation for its Mangaon plant in the Raigad district (located in a “C” zone).¹⁸¹ Jindal SAW reported it did not use this program.¹⁸² We determine that the waiver of stamp duty under the PIS-2007 is countervailable because: 1) the program is specific within the meaning of section 771(5A)(D)(iv) of the Act because benefits are limited to industries located in certain designated geographical regions within the state of Maharashtra; 2) the SGOM has foregone revenue otherwise due and, thus, the exemption constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act; and 3) pursuant to section 771(5)(E) of the Act, there is a benefit in the amount of stamp duty waived. Fees associated with capital assets, such as land, are treated as a non-recurring benefit under 19 CFR 351.524(b) and (c)(2)(i). Therefore, we applied the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2) and found that the amount of uncollected stamp duties was less than 0.5 percent of total sales during the year in which the benefit was received. Therefore, we determined the entire benefit should be expensed before the POI.

c. Industrial Promotion Subsidy (IPS)

The IPS, at paragraph 5.1, is also part of the PSI-2007 and, as with the preceding two programs, is offered for new or expanding projects.¹⁸³ The extent of the benefits is determined by the zone the project is located in or by whether the project qualifies as a “mega project.” The amount of the subsidy is also linked to the fixed capital investment.¹⁸⁴

¹⁷⁸ *See* post-preliminary determination supplemental response at 18.

¹⁷⁹ *Id.* at 18.

¹⁸⁰ *Id.* at 21.

¹⁸¹ *Id.* at 21 and MSL initial response at 93.

¹⁸² *See* Jindal SAW initial response at 66.

¹⁸³ *See* GOI post-preliminary determination supplemental response at Exhibit 2, 13-14.

¹⁸⁴ *Id.*

Jindal SAW reported participating in the IPS and receiving an eligibility certificate from the SGOM dated July 14, 2010.¹⁸⁵ According to the SGOM's *Modalities of Sanction and Disbursement of Industrial Promotion Subsidy to Mega Projects under the PSI 2001 and PSI 2007*, at 1.1:

“Industrial Promotion Subsidy” in respect of Mega Projects under PSI 2001 & 2007 means an amount equivalent to the percentage of “Eligible Investments” which has been agreed to as a part of the customized package, or the amount of tax payable under Maharashtra Valued Added Tax Act (MVAT) 2002 and Central Sales Tax (CST) Act, 1956 by the eligible Mega Projects in respect of sale of finished products eligible for incentives before adjustment of set off or other credit available for such period as may be sanctioned by the State Government, less the amount of benefits by way of Electricity Duty exemption, exemption from payment of Stamp Duty, refund of royalty and any other benefits (as may be specified by the Government) availed by the eligible Mega Projects under PSI 2001/2007, whichever is lower.¹⁸⁶

Jindal SAW is eligible for this benefit for seven years. Within that time the benefit may not exceed 75 percent of the project's capital investment.¹⁸⁷ Jindal SAW states the annual amount of the benefit is determined by SGOM each year through an annual application. Because its project in Maharashtra meets the criteria of a “mega project,” Jindal SAW was allowed to propose the means through which it would receive its benefits. It chose refund of state VAT and CST payments.¹⁸⁸ Thus, the amount of the benefit determined each year is based on the state VAT and CST Jindal SAW paid that year.

We find that this program provides a financial contribution in the form of revenue foregone by the SGOM pursuant to section 771(5)(D)(ii) of the Act.

Under the SGOM's VAT system, taxpayers are required to remit VAT collected from customers (output VAT) to the SGOM.¹⁸⁹ Before doing so, they reduce the amount of output VAT collected by the amount of VAT they have paid to their own suppliers (input VAT).¹⁹⁰ Alternatively, instead of crediting output VAT with input VAT in this manner, they may receive a rebate of input VAT paid to their suppliers.¹⁹¹ Either way, the net amount of VAT the taxpayer pays to the SGOM equals the difference between output VAT and input VAT. Under the IPS program as applied to Jindal SAW, however, that amount is refunded.¹⁹² A refund for this amount would not be available absent the IPS program. Likewise, under the SGOM's CST system, the taxpayer pays to the SGOM the difference between the CST it collects from its customers and the CST it pays to its suppliers.¹⁹³ Under the IPS program as applied to Jindal

¹⁸⁵ See Jindal SAW initial response at Exhibits 33-34.

¹⁸⁶ See GOI initial response at Annexure 5.

¹⁸⁷ See Jindal SAW first supplemental response at 64.

¹⁸⁸ See Jindal SAW fifth supplemental response at 2-4.

¹⁸⁹ See GOI post-preliminary determination supplemental response at 27.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² See Jindal SAW fifth supplemental response at 2-4.

¹⁹³ *Id.*

SAW, however, that amount is also refunded; a refund that would not be available absent the IPS program. The excessive refund of VAT provides a benefit under 19 CFR 351.510(a) (the refunded output VAT is only collected on domestic sales) and the remission of CST otherwise due provides a benefit under 19 CFR 351.509(a).

Pursuant to section 771(5A)(D)(iv) of the Act, the program is specific because it is limited to certain geographical regions within the state of Maharashtra. In order to calculate the benefit, we divided the total amount of the refunds Jindal SAW received during the POI by its Nashik division total sales during the POI. See comment 1 in the “Analysis of Comments” section below. On this basis, we determined a countervailable subsidy rate of 1.61 percent *ad valorem* for Jindal SAW.

9. State Government of Uttar Pradesh (SGUP) - Exemption from Entry Tax for the Iron and Steel Industry

Although JPL stated it had not availed itself of any benefit under the state government of Uttar Pradesh (SGUP) programs, it stated the entry tax for hot-rolled coil purchased during the POI was zero percent. JPL stated that there is no “program” as entry taxes on inter-state purchases are set by a tariff schedule just as duties on international trade are set by harmonized tariff schedules. According to JPL, the zero entry tax set for hot-rolled coil purchases under the SGUP schedule is no more a countervailable subsidy than would be a zero import duty rate set by any country’s HTS for a particular input.¹⁹⁴

Our examination of the documentation submitted by the respondents and the GOI indicates there is a countervailable subsidy program specific to users of iron and steel products.¹⁹⁵ In particular, the zero rate for hot-rolled coil is established by an amendment to the relevant SGUP tariff schedule. The SGUP tariff schedule establishes duties for all iron and steel products. However, the amendment provides an exception to the existing tariff schedule specifically for five itemized iron and steel products, and therefore creates a specific duty exemption for these products.¹⁹⁶

Because the financial assistance provided by the program is expressly limited by law to users of five specific items of iron and steel, we find the program to be *de jure* specific under section 771(5A)(D)(i) of the Act. We find that this program provides a financial contribution in the form of revenue foregone by the SGUP pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax refund, pursuant to section 771(5)(E) of the Act. To determine the subsidy rate, we divided the amount of the benefits by the combined total sales of MSL and JPL. On this basis, we determine a countervailable subsidy rate of 1.04 percent *ad valorem* for GVN/MSL/JPL. Although Jindal SAW maintained it had not availed of benefits under this program,¹⁹⁷ verification confirmed the company had received benefits.¹⁹⁸ We

¹⁹⁴ See JPL post-preliminary supplemental response dated January 28, 2014, at 10-12

¹⁹⁵ *Id.* at Exhibits JS2-1(a) and (b); see also GOI post-preliminary determination supplemental response at Exhibit 16 and Exhibit 15 at pages 192 and 206-208.

¹⁹⁶ See GOI post-preliminary determination supplemental response at Exhibit 16.

¹⁹⁷ See Jindal SAW third and fifth supplemental responses dated January 21, 2014 and dated March 10, 2014. See also Jindal SAW post-preliminary responses dated January 21, 2014, at 3, and March 10, 2014, at 13-14.

¹⁹⁸ See Jindal SAW Verification Report at 14.

therefore divided Jindal SAW's benefits under this program by the company's Nashik division total sales during the POI. *See* comment 1 in the "Analysis of Comments" section below. On this basis, we determine a countervailable subsidy rate of 0.33 percent for Jindal SAW.¹⁹⁹ We addressed parties' arguments on this program in comment 15 of section VII "Analysis of Comments," below.

B. Programs Determined To Be Not Used or Not to Confer a Benefit During the POI

We determine that the respondents did not apply for or receive measurable benefits during the POI under the following programs:

1. Accelerated Depreciation Allowed by the Government of India for Wind Power Generation

MSL reported depreciating assets used in renewable energy projects over four years. MSL also reported that the assets at issue were fully depreciated before the POI. All losses resulting from the depreciation of these assets were carried forward and offset against otherwise taxable income before the POI.²⁰⁰ Therefore, there is no beneficial effect on taxable income during the POI and no benefit to MSL. No other company under investigation reported using this program.

2. SGOM Provision of Land for LTAR

MSL reported entering a long-term lease with the Maharashtra Industrial Development Corporation (MIDC) that was still in effect during the POI. In addressing allegations that land is provided at LTAR, the Department examines, in accordance with 19 CFR 351.511(a), evidence of whether the price paid by the respondent is consistent with prices charged for similar land on similar terms, assuming such prices are available. For example, in *Steel Wire Rod from Germany*, the Department determined that a land lease in the port area, issued by the Government of the Free and Hanseatic City of Hamburg (GOH), was not countervailable because we found that the respondent in that investigation paid a standard rate charged by the GOH to all enterprises leasing similar land, and that the lease contained the same terms as all other similar lease agreements signed with enterprises in the port area.²⁰¹

In this investigation, the record demonstrates that the price paid by MSL reflects prevailing market conditions. In particular, MSL submitted a sale deed for land it purchased for itself from a private party in the vicinity of the land leased from MIDC (the tract it purchased from the private party is located in "village Bhagad" and the tract it leased from the MIDC is located in the "Bhagad Industrial Area;" both are in "Taluka – Mangaon, District Raigad").²⁰² Comparing the lump sum payment for the 95-year lease to MIDC to the purchase price paid to the private party indicates the per-unit price cost of land paid to MIDC was significantly higher. While the price difference might be attributable to the fact that the MIDC lease is for property in an

¹⁹⁹ *See* final determination calculation memoranda.

²⁰⁰ *See* MSL post-preliminary response dated January 28, 2014 at 5.

²⁰¹ *See Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Germany*, 62 FR 54990, 55003 (October 22, 1997) (*Steel Wire Rod from Germany*).

²⁰² *See* MSL initial response at Exhibits M-22(b)-(d).

“industrial area” and the land purchased from the private party is in a “village,” the other differences – insofar as they are significant – indicate the price paid to MIDC should be lower, not higher, than the price paid to the private party. In particular, the MIDC transaction is a lease encumbered by significant restrictions regarding what the lessee may do with the land; the purchase from the private party means MSL holds the land free and clear of such encumbrances. There is no other information on the record concerning the “market-determined price” for the land leased from the MIDC. Accordingly, the Department determines that the price paid by MSL reflects prevailing market conditions. Because there is no benefit under 19 CFR 351.511 there is no need to consider whether the provision of land by the MIDC constitutes a financial contribution or whether it is specific.

3. SGOM Capital Subsidy for Wind Energy Generation

To meet the increasing demand for electricity in Maharashtra, the SGOM adopted a policy to give priority to non-traditional energy generation. The policy is contained in Government Resolution No.NCP-1097/CR-57/Energy-7, dated March 12, 1998. According to the policy, eight sites in the state have been selected for wind energy generation, and additional sites are under consideration. The SGOM provides various forms of assistance through this policy. Paragraph 7 of the policy provides that a wind energy generation project will be granted the status of a small scale industry and that 30 percent of the project’s investment, subject to a maximum of two million rupees, will be paid by the Maharashtra Energy Development Agency to the investors in the wind energy generation project.²⁰³ The GOI and MSL reported that MSL received a grant under this program for MSL’s wind power project in the Satara district of Maharashtra.²⁰⁴ Although MSL applied for the grant upon commissioning its wind power project in 2002, it received the funds in March 2007. MSL stated that there was no separate approval date for the grant and thus it reported the date on which the grant was received, March 22, 2007, as the approval date of the grant.²⁰⁵

Because the financial assistance provided by the program is expressly limited by law to enterprises engaging in wind energy generation, we find the program to be *de jure* specific under section 771(5A)(D)(i) of the Act.²⁰⁶ We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.²⁰⁷ We consider grants to be non-recurring benefits, in accordance with 19 CFR 351.524(c). We examined the amount received to determine whether it exceeded 0.5 percent of the company’s sales in the year of approval (the year of receipt) in order to determine whether the benefit should be allocated over time or expensed in the year of receipt. Because the grant was less than 0.5 percent of the combined sales of MSL and JPL during the year of approval (receipt), it is

²⁰³ See GOI post-preliminary determination supplemental response at 29 and Exhibit 5.

²⁰⁴ *Id.* at 30; see also MSL initial response at 100.

²⁰⁵ See MSL initial response at 103.

²⁰⁶ See, e.g., *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 75 FR 55745 (September 14, 2010) at “R&D Grants Under the Act on the Promotion of the Development of Alternative Energy.”

²⁰⁷ See 19 CFR 351.504(a).

expensed in the year of receipt. Thus, MSL/JPL did not receive a benefit during the POI under this program.

4. Subsidies Provided by the State Government of Uttar Pradesh

a. Long-Term Interest Free Loans Equivalent to the Amount of VAT and CST Paid

Although Jindal SAW was eligible to borrow under this program before and during the POI, it did not do so. No other respondent reported using or being eligible to use this program during the AUL. Therefore, we determine the program to be not used.

b. Interest Free Loans Under the SGUP Industrial Development Promotion Rules 2003.

Although Jindal SAW was eligible to borrow under this program before and during the POI, it did not do so. No other respondent reported using or being eligible to use this program during the AUL. Therefore, we determine the program to be not used.

Other Programs Determined to Be Not Used

Based on the results of verification, we continue to find, as we did in the *Preliminary Determination*, that the respondents did not apply for or receive any countervailable benefits during the POI under the following programs:

GOI Programs

Duty Exemption/Remission Schemes

1. Duty Free Import Authorization (DFIA) Scheme

Subsidies for Export Oriented Units

2. Duty Free Import of Goods, Including Capital Goods and Raw Materials
3. Reimbursement of Central Sales Tax (CST) Paid on Goods Manufactured in India
4. Duty Drawback on Fuel Procured from Domestic Oil Companies
5. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)

Other Countervailable Subsidies Provided by the GOI

6. Market Development Assistance (MDA) Scheme
7. Market Access Initiative
8. Focus Product Scheme
9. GOI Loan Guarantees
10. Status Certificate Program
11. Income Tax Exemption Program Under Section 80-IB of Income Tax Act
12. Target Plus Scheme

Subsidies for Producers and Exporters Located in Special Economic Zones

13. Duty Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material
14. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components Consumables, Intermediates, Spare Parts and Packing Material
15. Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
16. SEZ Income Tax Exemption
17. SEZ Service Tax Exemption
18. Steel Development Fund
19. Provision of Captive Mining Rights for Iron Ore
20. Provision of Captive Mining Rights for Coal
21. Provision of High-Grade Iron Ore for LTAR

Programs by State Government of Andhra Pradesh (SGAP)

Subsidies under SGAP Industrial Investment Promotion Policy (IIPP)

22. Grant Under the SGAP IIPP: 25 percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
23. Grant Under the SGAP IIPP: Reimbursement of Power at the Rate of Rs.0.75 per Unit
24. Grant Under the SGAP IIPP: 50 percent Subsidy for Expenses Incurred for Quality Certification
25. Grant Under the SGAP IIPP: 50 percent Subsidy on Expenses Incurred in Patent Registration
26. Grant Under the SGAP IIPP: 25 percent Subsidy on Cleaner Production Measures
27. Tax Incentives Under the SGAP IIPP: 100 percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages
28. Tax Incentives Under the SGAP IIPP: 25 percent Reimbursement on Value Added Tax, CST, and State Goods and Services Tax
29. Tax Incentives Under the SGAP IIPP: Exemption from the SGAP Non-agricultural Land Assessment
30. Provision of Goods and Services for LTAR Under the SGAP IIPP: Provision of Infrastructure for Industries Located More Than 10 Kilometers from Existing Industrial Estates or Development Areas
31. Provision of Goods and Services for LTAR Under the SGAP IIPP: Guaranteed Stable Prices and Reservation of Municipal Water

Subsidies Provided by the Andhra Pradesh Industrial Investment Corporation (APIIC)

32. APIIC's Allotment of Land for LTAR
33. APIIC's Provision of Infrastructure

Programs by State Government of Gujarat (SGOG)

- 34. SGOG's Exemptions and Deferrals on Sales Tax for Purchases of Goods
- 35. SGOG's VAT Remission Scheme Established on April 1, 2006
- 36. Provision of Land Use Rights for LTAR under the Gujarat Industrial Development Corporation Estate Scheme
- 37. SGOG's Critical Infrastructure Project Scheme
- 38. SGOG's Scheme for Assistance to Industrial Parks/Industrial Estates Set Up by Private Institutions
- 39. Gujarat Industrial Investment Corporation Financing
- 40. SGOG SEZ Act: Exemptions from Payment of Sales Tax, Stamp Duty and Registration Fees

Programs by State Government of Maharashtra (SGOM)

- 41. Electricity Duty Exemptions Under the Package Scheme Incentives 1993
- 42. Refunds of Octroi Under the Package Scheme of Incentives 1993 (Octroi Refund Scheme)
- 43. Octroi Loan Guarantees
- 44. Waiving of Loan Interest by SICOM
- 45. Investment Subsidies
- 46. Infrastructure Mega Projects Under the Maharashtra Industrial Policy 2006

Programs by State Government of Haryana

- 47. Reduced VAT Rates for Inputs and Raw Materials
- 48. Land and Infrastructure Provided in HSIIDC Industrial Estates for LTAR

C. Programs Determined Not To Exist

SGOM CST Refunds Under the SGOM Package Scheme of Incentives of 2007

In the Post-Preliminary Analysis Memorandum, we found that this program did not exist. As noted in the Post-Preliminary Analysis Memorandum,²⁰⁸ Jindal SAW chose to receive its capital subsidy under the PSI-2007 through annual VAT and CST refunds; however, there was no evidence of a separate scheme to provide such refunds. Based on the results of verification at the SGOM,²⁰⁹ and the lack of any new information, we affirm our finding from the *Post-Preliminary Analysis*.

²⁰⁸ See Post-Preliminary Analysis Memorandum at 14.

²⁰⁹ See GOI Verification Report.

D. Program Determined To Be Terminated

Duty Entitlement Passbook Scheme (DEPS) and Successor Programs

The GOI reported that the DEPS program was terminated effective October 1, 2011. Although Petitioners' comments suggest the program was still supplying benefits subsequent to the termination,²¹⁰ we determine that there could have been no residual benefits during the POI because the DEPS benefit is earned at the time of export.²¹¹

E. Program Determined To Be Not Countervailable

1. SGOM VAT Refunds Under the SGOM Package Scheme of Incentives of 2007

The GOI clarified in its post-preliminary supplemental questionnaire response that the VAT refund mechanism is independent of the PSI-2007 and of any other development plan. Thus, it is not linked to the level of economic development of a region nor does it vary across the zones established by the PSI-2007. Specifically, the GOI states "that the PSI-2007 does not include any refund scheme," as can be ascertained from a review of the PSI 2007.²¹²

According to the GOI, effective April 1, 2005, most Indian states, including Maharashtra, have implemented VAT systems. Under the SGOM VAT system, "every buyer who is buying material and paying VAT is entitled to a credit of the VAT tax paid on purchases."²¹³ The taxpayer applies the credit against the VAT it collects from its customers or, instead, it may receive a refund of the VAT paid on material purchased.²¹⁴ In response to our question, the GOI provided the relevant SGOM tax act excerpt and implementing regulation supporting this claim regarding the operation of the SGOM system.²¹⁵ Therefore, regardless of refunds for so-called "input VAT," the taxpayer is relieved of the burden of its input VAT.²¹⁶ Under the SGOM VAT system, the Department finds no benefit for refunds of input VAT:

{U}nder a normal VAT system, a producer pays input VAT on its purchases from suppliers and collects output VAT on its sales to customers. The producer merely conveys the tax forward and the ultimate tax burden is borne by the final (non-producing) consumer. This is achieved through a reconciliation mechanism in which the input VAT paid is offset against the output VAT collected. Any excess output VAT is remitted by the producer to the government. Any excess input VAT is refunded back to the producer by the government or credited to the producer to offset against future input VAT, as the case may be. Under this mechanism, the producer ultimately keeps no surplus output VAT and pays no excess input VAT. Thus, the net VAT incidence to the producer is

²¹⁰ See Letter from Petitioners, November 14, 2013, at 9.

²¹¹ See *PET Film from India 2005 Review* and IDM at "Duty Entitlement Passbook Scheme (DEPS/DEPB)."

²¹² See GOI post-preliminary determination supplemental response at 26-27 and Exhibit 2.

²¹³ See GOI initial response at 35.

²¹⁴ See GOI post-preliminary determination supplemental response at 27.

²¹⁵ *Id.* at 26.

²¹⁶ As discussed above, under the IPS designed for Jindal SAW, the SGOM also refunds the difference the amount by which output VAT exceeds input VAT. That amount is countervailable, as explained above.

ultimately zero, with the actual VAT burden conveyed forward to the final, non-producing consumer.²¹⁷

Thus, there is no difference to the taxpayer if it receives a rebate of its input VAT, a credit against its output VAT, or is exempted from paying the input VAT in the first place.²¹⁸

VII. ANALYSIS OF COMMENTS

Comment 1: Whether Adverse Inferences are Warranted when Determining the POI value of Jindal SAW's Company-Wide Sales and Company-Wide Export Sales

Petitioner

- Despite repeated requests Jindal SAW failed to report its company-wide sales on a POI basis.
- Because Jindal SAW's reported information was not useable, the Department had to substitute the information by calculating an estimate.
- As a result of Jindal SAW's reporting of only limited information and repeated failures to provide information in the form and manner requested, the Department was unable to verify the required information.
- The Department's verification report reflects Jindal SAW had the ability to easily provide the sales information requested.
- Further, the Department should not use its preliminary estimates based on financial statements because, as evident, they do not serve as a basis to accurately calculate the subsidy rate.
- Jindal SAW's failure to put forth maximum efforts and to act to the best of its ability warrants the application of AFA.
- Any other approach by the Department, other than the application of AFA, would result in an inaccurate calculation, ignore Jindal SAW's continued intransigence on the issue, and encourage non-compliance.
- In addition, evidence on the record indicates that the sales values reported in Jindal SAW's financial statements cannot serve as a basis to accurately determine the company's *ad valorem* subsidy rates for the final determination because the reporting of the sales value is not within the required terms of sale.

Jindal SAW rebuttal

- The Department should not reject Jindal SAW's reported sales values and benefit information, and assign a CVD rate based on AFA because Jindal SAW has fully cooperated through the submission of extensive questionnaire responses and supporting documentation, and the hosting of an on-site verification which confirmed the validity of its information and yielded no material discrepancies.

²¹⁷ See *Shrimp from India* and accompanying IDM at 26.

²¹⁸ *Id.* at 27. (The Department recognized the possibility that there may be some difference to the taxpayer owing to the "time value of money;" *i.e.*, exemptions mean the taxpayer does not have to wait for a rebate and thus saves actual or imputed interest. Exemptions are not at issue in this case.)

- Jindal SAW discussed the limitations of its accounting system to report the POI sales data and delineated the reasons why it could not provide the detailed data. The preparation of the total sales values reported and verified required a manual review of the financial records, demonstrating Jindal SAW's level of cooperation. Because of Jindal SAW's unfamiliarity with U.S. CVD law, it was unaware on an objective level, which level of data to maintain to satisfy the Department's statutes and regulations. On a subjective level, Jindal SAW could not have "failed to maintain" the required records because it is not required to do so in the normal course of business.
- The Department deemed the information on the record useable for the Preliminary Determination.

Department's Position: As noted above in section V, "Use of Facts Otherwise Available and Adverse Inferences," the Department requested on three separate occasions that Jindal SAW provide its company-wide sales figures for the POI: First in the initial questionnaire, second in the first supplemental questionnaire, and third in the fifth supplemental questionnaire.²¹⁹ In response to all three requests Jindal SAW did not provide the POI company-wide sales information. Nor did Jindal SAW provide an explanation in its responses as to why it could not provide the information. Not only did Jindal SAW fail to explain itself with respect to the Department's three requests, but Jindal SAW never contacted the Department directly or through some other venue, to discuss or try to explain, why it would be impossible to meet the Department's request. As noted above, section 782(c) of the Act provides that if a party is unable to or has difficulties in responding to the Department's requests for information, it must "promptly after receiving a request from {the Department}" notify the agency that it is unable to submit the information, and must further provide a "full explanation and suggested alternative forms in which such party is able to submit the information. . . ." Here, Jindal SAW did not provide any explanation in any of its submissions for why it could not provide company-wide FOB sales information and deemed and physical exports for the whole company during the POI.

As such, the Department was never notified by Jindal SAW about any specific difficulties as to why it would not be able to provide the information. Jindal SAW also did not contact the Department to discuss what it would be able to provide and in what format. Jindal SAW argues that it "specifically delineated the reasons why it could not respond to the Department's specific request, but that it was providing detailed sales value and benefits at the level at which it maintains data."²²⁰ In making this argument, Jindal cites to the verification report at exhibit 14, its fifth supplemental response (dated March 10, 2014) at exhibit 90, and the explanation provided in its initial questionnaire response (at pages 17-22). However, none of the cited submissions provide any explanation for why Jindal SAW could not provide the requested information. In the initial questionnaire response, Jindal SAW stated it was responding to the Department's questionnaire only with respect to the Nashik division as the other information was not relevant. Specifically, Jindal SAW informed the Department that "to its knowledge none of the affiliated companies are engaged in the production, marketing, selling and research and

²¹⁹ See the Department's initial questionnaire dated August 28, 2013, at Section II, B; the Department's first supplemental questionnaire dated November 8, 2013, at questions 21; and, the Department's fifth supplemental questionnaire dated February 25, 2014, at question 2.

²²⁰ See Jindal SAW Rebuttal Brief at 5.

development activities with respect to the merchandise under consideration, thus all the responses to this questionnaire are being provided for only the Nashik unit”²²¹ In the same response, Jindal SAW then provided the Department with the POI sales figures for the Nashik division, its methodology for arriving at the reported FOB values for the Nashik division, and a reconciliation to the financial statements.²²² In its first supplemental response, Jindal SAW explained how it derived its sales information for the Nashik division. While Jindal SAW did explain its accounting process and the manual steps it took to derive the information it submitted for the Nashik division, Jindal did not explain why it could not take these manual steps to derive some or all of the information requested for all of the other divisions.²²³ In addition, in explaining its procedure for deriving the sales values reported, Jindal SAW indicated that it uses an integrated financial accounting system software.²²⁴

In the first supplemental questionnaire, the Department requested that Jindal SAW revise its sales reporting for the POI on a company-wide basis. To ensure clarity to the Department’s instructions, the supplemental questionnaire provided a chart identifying all types of sales to be reported. In addition, the Department asked Jindal SAW to revise its sales reconciliation, starting with the financial statements for fiscal year 2011-2012 and for 2012-2013, beginning with the “financial results” to the “statement of profit and loss” of both, to the POI totals, etc. to the detail provided in Exhibit 12 of the response.²²⁵ In its response to the Department, Jindal SAW provided a sales reconciliation which again reconciled the Nashik division’s POI FOB sales only, which it then reconciled to both years of its financial statements. In this same reconciliation, Jindal SAW was able to provide the total sales by division and fiscal year for all of its divisions. However, again Jindal SAW only provided a complete POI sales reconciliation for its Nashik division,²²⁶ and failed to provide the same reconciliation company-wide for the POI and on an FOB basis. In the same response Jindal SAW also revised its sales reporting to the detail of subject and non-subject merchandise and explained that “while the chart at Exhibit 46 is not exactly in the format prescribed above, due to the manner in which Jindal maintains its accounts, however, it has attempted at Exhibit 46 to provide as much detail as requested by the chart delineated above.”²²⁷

After the *Preliminary Determination*, the Department gave Jindal SAW one more opportunity to provide the missing information, and issued a fifth supplemental questionnaire. In response to the Department’s request to report its sales figures in accordance with question 21 of the first supplemental questionnaire, Jindal SAW submitted its unit-wise total sales figures for fiscal years 2011-2012 and 2012-2013,²²⁸ as was already submitted in the first supplemental response while providing its sales reconciliation.

²²¹ See Jindal SAW initial response dated October 31, 2013, at 6.

²²² *Id.* at Exhibits 10-12.

²²³ *Id.* In that response, Jindal SAW then provided the Department with the POI sales figures for the Nashik division, its methodology for arriving at the reported FOB values for the Nashik division, and a reconciliation to the financial statements.

²²⁴ *Id.* at 19-20.

²²⁵ See Jindal SAW first supplemental response at questions 14 and 21.

²²⁶ *Id.* at Exhibit 43.

²²⁷ *Id.* at 15 and Exhibit 46.

²²⁸ See Jindal SAW fifth supplemental response dated March 10, 2014, at Exhibit 90.

Jindal SAW maintains that it attempted to provide this explanation verbally at verification, but that “the Department did not include this explanation in its report.”²²⁹ We note that section 782(c) of the Act requires that parties notify the Department of their difficulties “promptly after receiving a request from the administering authority.” We determine that any explanation Jindal SAW attempted to provide verbally at verification did not comply with the requirement in section 782(c) of the Act that parties notify the agency promptly after receiving a request for information.

Rather, for the first time Jindal SAW explained in its brief that it did not maintain the information and records required to respond to the Department in its normal course of business.²³⁰ Specifically, Jindal SAW contended it was not able to report total sales figures “because of the limitations of its accounting system.”²³¹ However, as indicated in the verification report, Jindal SAW has a fully integrated accounting system, and the entire company has one chart of accounts, with codes for each plant and at a consolidated level,²³² that would allow Jindal SAW to calculate sales information for each of its divisions on an FOB basis.²³³ As also noted in the verification report, the company prepares financial statements according to Indian GAAP on a quarterly, half-yearly, and annual basis.²³⁴ Further, the Department was able to verify that the accounting system tracked data such as benefits for other divisions. Specifically, the Department verifiers were able to test the completeness of Jindal SAW’s reporting of benefits received under certain subsidy programs by the Nashik division, as well as other divisions of Jindal SAW. Those programs included “Duty Drawback Scheme” and the “Exemption from Entry Tax provided by the SGUP.” As the verification report states, “{w}e queried the ***** system of the Kosi Kalan division for the purchases. . . .”²³⁵ Thus, though Jindal SAW argues that it simply did not have the information that the Department requested, the record, as outlined above, demonstrates that Jindal SAW did have and could provide us with the detailed sales information, as requested in the questionnaires.

Finally, we note that Indian companies participating in GOI and state subsidy programs have to maintain records at varying levels of detail to account for their subsidies, and Jindal SAW reported receiving subsidies under the EPCGS, ALP, EOU, FOCUS, and numerous state programs for other divisions, for which it needs to track its exports, physical and/or deemed, its EO and its imports of goods and services.²³⁶ Again, these facts indicate that Jindal SAW would have been able to provide the requested sales information, *i.e.*, on an FOB basis, total sales, export sales (physical and deemed), sales to the United States (physical and deemed), sales of subject merchandise to the United States (physical and deemed) on a company-wide basis..²³⁷

²²⁹ Jindal SAW Rebuttal Brief at page 8.

²³⁰ Jindal SAW Rebuttal Brief at page 5.

²³¹ *Id.*, at page 7.

²³² See Jindal SAW Verification Report at 4.

²³³ *Id.* at Verification Exhibit 14, which includes a consolidated chart of accounts.

²³⁴ *Id.* at 4.

²³⁵ *Id.* at 15

²³⁶ *Id.* at Verification Exhibit 14.

²³⁷ See Jindal SAW first supplemental response at questions 14 and 21.

Jindal SAW argues that it “put forth its maximum efforts” and “responded to each and every one of the Department’s requests for information.”²³⁸ To the contrary, as explained above, Jindal SAW did not respond to the Department’s requests for company-wide sales information on an FOB basis for the POI, deemed exports, and physical exports for all divisions. Jindal SAW further contends that the “one and only flaw” in the data it submitted was that it “was not presented in the exact tabular format requested,” and that this is not sufficient cause for applying adverse inferences.²³⁹ We disagree with Jindal SAW that the only flaw in its reporting was that the information was not presented in the exact tabular format as we requested. Rather, the problem is that Jindal did not provide the requested information at all, beginning with the company-wide POI total sales of Jindal, so the Department had to base part of its rate calculations on an estimate of what the requested sales values may be.

In fact, Jindal SAW concedes that its responses to the Department’s questionnaire were not “as complete or clear as it would have liked due to its unfamiliarity with the complexities of U.S. countervailing duty law and the Department’s specific and detailed information requirements.”²⁴⁰ However, we note again that at no point in the proceeding did Jindal SAW request clarification regarding information that the Department requested, or provide a detailed explanation for why it could not provide this information. Further, as noted above, record evidence indicates that—despite its protestations—Jindal SAW does track the information necessary to provide the Department.²⁴¹ Jindal SAW references the “countless hours expended by Jindal SAW staff to provide this information in the specified format and exacting detail required by the Department.”²⁴² While it might have been burdensome for Jindal SAW to take the manual steps necessary to report this information for other divisions as it did for the Nashik division, it could have done so to comply with the Department’s request for information.

The Department requires the POI company-wide sales on an FOB basis in order to accurately calculate Jindal SAW’s subsidy rate.²⁴³ Without the appropriate denominators, it is not possible to calculate accurately the subsidy rates for the following programs: Pre- and Post-Shipment Export Financing (PPS), Export Promotion Capital Goods Scheme (EPCGS), State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives 2007, SGOM Sales Tax Program, and State Government of Uttar Pradesh (SGUP) Exemption from Entry Tax.

In the *Preliminary Determination* the Department used what information was on the record and noted it was doing so because it did not have the required information. However, the Department made clear that it still required the POI company-wide sales information in its post-preliminary supplemental questionnaire in which it again requested the information. Jindal SAW now argues that the Department has the sales information it needs in the form of Jindal SAW’s audited financial statements, and that the sales figures were “verified via the sales reconciliation exercise performed by Department staff at verification.”²⁴⁴ Jindal SAW further argues that the

²³⁸ Jindal SAW Rebuttal Brief at page 5.

²³⁹ *Id.*, at page 8.

²⁴⁰ *Id.*, at page 2.

²⁴¹ See Verification Exhibit 14.

²⁴² Jindal SAW Rebuttal Brief at page 2.

²⁴³ See 19 CFR 351.525(a).

²⁴⁴ Jindal SAW Rebuttal Brief at page 8.

information provided “was not so incomplete that it could not serve as a basis for reaching the applicable determination because the Department was able to use the reported sales figures” in its preliminary and post-preliminary determinations.²⁴⁵

We disagree with Jindal SAW that the sales information on the record and used in the *Preliminary Determination* and the Post-Preliminary Determination “was not so incomplete that it could not serve as a basis for reaching the applicable determination.” The Department used an estimate of the actual sales values missing from the record of this proceeding, for all its rate calculations requiring that information. As a result, the rates the Department calculated on that basis were inaccurate because they were based on estimates, not on actual sales numbers. The sales information limited to the Nashik division is at the level of detail required by the Department and was verified for its accuracy. Thus, it constitutes the more reliable information.

Accordingly, we find that Jindal SAW withheld information that was requested of it and significantly impeded the proceeding within the meaning of section 776(a)(2)(A) and 776(a)(2)(C) of the Act. Further, Jindal SAW failed to cooperate to the best of its ability, in accordance with sections 776(b) of the Act. Absent the required information, the use of AFA is warranted.

Comment 2: Whether the Appropriate Financial Statements Were Used in Calculating Jindal SAW’s Sales Value and Denominator

Jindal SAW

- The Department used Jindal SAW’s 2011-2012 financial statements for the total sales value as the denominator in its countervailing duty rate calculations, when it should have used the 2012-2013 financial statements.
- Jindal SAW’s fiscal year is from April through March. With the POI covering January 2012 through December 2012, Jindal SAW’s financial statements for 2012-2013 would cover nine months of the POI, instead of the three months in the 2011-2012 financial statements.
- This has caused a cascading error in the calculated total export sales value by the Department. Therefore, the Department should recalculate the total export figure based on Jindal SAW’s 2012-2013 financial statements.

Petitioner rebuttal

- Jindal SAW’s claim to use its 2012-2013 financial statements for company-wide sales is absurd. The Department should apply AFA for its failure to report its total POI sales.

Department’s Position: The Department used the 2011-2012 financial statements in the *Preliminary Determination* as a temporary measure because it did not have the company-wide sales figures. At that time we noted that Jindal SAW had not provided the required information and therefore we were using the 2011-2012 financial statements.²⁴⁶ We intended to provide Jindal SAW with an additional opportunity to provide the required information and, subsequently did so in a supplemental questionnaire. We are unable to use the 2011-2012 or

²⁴⁵ *Id.*, at page 9.

²⁴⁶ See preliminary determination calculation memorandum for Jindal SAW at 2.

2012-13 financial statements because they each contain data for only some months of the POI, but not the whole POI. As discussed above, Jindal SAW did not provide information for the entire POI, and therefore we determine that Jindal SAW did not cooperate to the best of its ability, in accordance with sections 776(a)(2) and 776(b) of the Act. The Department determined that, as AFA, we will use Jindal SAW's Nashik division total sales and export sales (physical and deemed) where the company-wide total sales and the company-wide export sales are required. *See* section V above 'Use of Facts Otherwise Available and Adverse Inferences.' *See also* Comment 1, above.

Comment 3: Whether MSL's Reported Sales Values Should be Adjusted

Petitioner

- The Department should use the correct sales value for MSL when calculating subsidy rates, based on a worksheet obtained at verification.

Department's Position: We adjusted the sales value in the applicable calculations for the final determination. *See* GVN/MSL/JPL Final Calculation Memorandum.

Comment 4: Whether Certain Sales Should be Excluded from the Value of GVN's Export Sales

Petitioner

- GVN included certain sales, as the reconciliation shows, in its reported sales but did not include the benefit related to those sales.
- The Department is required to attribute an export subsidy only to products exported by a firm.

GVN rebuttal

- GVN reported duty drawback resulting from certain sales that are included in the sales reported. Therefore, those certain sales must remain in the denominator.
- Those certain sales and resulting benefit must correspondingly either be excluded or included in the denominator as well as the numerator of the subsidy rate calculation.

Department's position: We are in agreement with both parties that in a subsidy rate calculation, the benefit in the numerator should correspond to the sales from which the benefit arose, in the denominator. Therefore, in accordance with 19 CFR 351.525(b)(4) and (5), we have used subject merchandise exported to the United States during the POI as the denominator and duty drawback benefits received from those exports as the numerator.

Comment 5: Whether the Denominator Used to Calculate Jindal SAW's *Ad Valorem* Subsidy Rate for the Duty Drawback Scheme Should be Revised

Petitioner

- Consistent with prior practice, the Department should use DDB benefits earned on exports of subject merchandise to the United States and not benefits earned by Jindal SAW on all exports.

- Likewise, the Department should also use as the denominator Jindal SAW's exports of subject merchandise to the United States and not total exports which were estimated in the post-preliminary calculation.
- Jindal SAW has provided the necessary information and it is possible for the Department to identify benefits tied to subject merchandise exports to the United States.
- With regard to the denominator, the Department should use Jindal SAW's reported figure and not accept its minor correction at verification, because it does not constitute a "minor correction." Further, it would obviate the need to estimate company-wide export sales.
- The above suggested methodology is consistent with 19 CFR 351.525(b)(4) because the Department is "able to tie benefits for subject merchandise to specific markets."²⁴⁷
- The above would also be consistent with the methodology used for the other respondent, GVN

Jindal SAW rebuttal

- Jindal SAW did not manipulate or inaccurately report its exports sales value to the United States, as explained in the minor corrections at verification, which had no effect on the cumulative sales value totals.
- This correction is not new information since the total for export and domestic sales were on the record prior to verification.
- The Department used those export and total sales values in its preliminary and post-preliminary analysis, which indicates that the reported sales values were sufficient to satisfy 19 CFR 351.525(b)(2).
- The Department correctly and accurately calculated the *ad valorem* subsidy rate for Jindal SAW's benefits received under the duty drawback program in its Post-Preliminary Analysis.²⁴⁸
- Jindal SAW reported company-wide duty drawback benefits received during the POI based on the Department's request; however, the level of detail maintained by the different units on this benefit vary significantly.
- The Department stated in the Post-Preliminary Calculation Memorandum that "the Benefits earned under this program by other divisions were not specified by individual transaction and destination."²⁴⁹
- The specific duties and taxes under the scheme are (i) Customs and union Excise Duties with respect to inputs and (ii) service tax with respect to input services, and not all duty drawback is refunded.
- Jindal SAW is eligible to receive duty drawback benefits on its sales to all export markets, and each division accounts for the duty drawback received in its division books and records.

²⁴⁷ *Shrimp from India* and accompanying IDM at Section IV.A.4.

²⁴⁸ See Post-Preliminary Analysis Memorandum.

²⁴⁹ See Memorandum from Elfi Blum, "Countervailing Duty Investigation of Oil Country Tubular Goods from India; Jindal SAW Post-Preliminary Calculation Memorandum," May 9, 2014 (Jindal SAW post-preliminary calculation memorandum).

- The duty drawback received is not recorded on a market or country specific basis for all divisions in the normal course of business. Thus, the correct denominator can only be Jindal SAW's total export sales.
- The Department verified the information and determined it to be the correct basis upon which to calculate its post-preliminary analysis.
- Because the post-preliminary analysis was issued three weeks before the briefs were due and barely two months before the final determination, such a radical change in methodology would deprive Jindal SAW of administrative due process.

Department's Position: In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market,²⁵⁰ as the Department did in its duty drawback calculations for GVN in the post-preliminary analysis.²⁵¹ While Jindal SAW reported earning duty drawback on exports of non-subject merchandise, and subject merchandise to multiple countries, Jindal SAW also was able to properly identify exports of subject merchandise to the United States.²⁵² Thus, we can identify and verify the benefits tied to exports of subject merchandise to the United States, and we will use those benefits for our rate calculations for Jindal SAW.

Further, we accepted and verified Jindal SAW's minor correction with respect to the total export sales value to the United States.²⁵³ Therefore, we are using the total export sales of subject merchandise to the United States. While we are changing our rate calculations for this program, we disagree with Jindal SAW that we have radically changed or altered our methodology at so late a date that Jindal SAW does "not have time to review or analyze any changes to the Department's methodology."²⁵⁴ First, the Department's regulations, at 19 CFR 351.525(b)(4) and (5), are very clear in defining the Department's methodology in the attribution of benefits, and we are attributing benefits for the duty drawback program in line with our regulations. Second, Jindal SAW itself reported the benefit received on exports of subject merchandise, clearly identifying the destination of the export. As required by 19 CFR 351.525(b)(4) and (5), the Department will attribute benefits received to products exported to the United States. Lastly, the Department determines that a time frame of three weeks leaves ample time for the parties to analyze and examine the findings of the Department's post-preliminary analysis, and to provide comments in their briefs. The Department had provided ample notice of the due dates for the filing of case briefs in its *Preliminary Determination*.²⁵⁵ Further, the Department provided extensions of the time limits to file case and rebuttal briefs based on requests received.²⁵⁶

²⁵⁰ See *Shrimp from India* and accompanying IDM at Section IV.A.4.

²⁵¹ See Jindal SAW initial response at 6.

²⁵² *Id.* at Exhibit 22(a).

²⁵³ See Jindal SAW Verification Report at 1-2.

²⁵⁴ Jindal SAW Rebuttal Brief at page 14.

²⁵⁵ See *Preliminary Determination* and accompanying PDM at 27.

²⁵⁶ See Letter to the Department, "Extension to Briefing Schedule," May 19, 2014. See also Letter to the Department, "Extension to Deadline for Filing of Rebuttal Briefs," May 30, 2014.

Comment 6: Whether Deemed Exports Should Be Included in the Denominator When Calculating the Subsidy Rates for Duty Drawback or Other Programs

GVN

- The Department has erred in failing to include deemed exports in the denominator, when duty drawback is applicable to both physical and deemed exports.
- GVN has reported since the beginning that it is eligible for DDB on both physical and deemed exports.
- The GOI has also confirmed that DDB is paid on physical exports as well as deemed exports.²⁵⁷
- Given that the record demonstrates that both physical and deemed exports are eligible for duty drawback, the Department should correct its calculation to include deemed exports.
- The Department correctly used physical and deemed exports in the ALP/AAP program and should use the same approach here.
- As demonstrated in the example,²⁵⁸ the rate calculated by the Department is higher than the actual subsidy received.
- Article 19.4 of the WTO Subsidies Agreement prohibits any countervailing duty from being levied on any imported product in excess of the amount of the subsidy found to exist.
- Lastly, the Department has used total exports as the denominator for Jindal SAW whereas it has used exports of subject merchandise to the United States for GVN. The Department should use a consistent methodology for all respondents.

GOI

- Pursuant to Article 19.4 of the WTO Subsidies Agreement, no countervailing duty may be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized exported product.
- Since the DDB scheme applies to both deemed exports as well as actual exports, the denominator should also include deemed exports, otherwise the denominator is artificially reduced and does not properly reflect the per unit subsidization.
- Increasing the rate artificially in such a manner is contrary to the Department's obligation under WTO Article 19.4 to not impose countervailing duty in excess of the amount of the subsidy found to exist.

Petitioner rebuttal

- Contrary to the GOI and respondents' claims, duty drawback subsidies are properly attributable to the value of exports of subject merchandise to the United States, exclusive of deemed export sales.
- As the Department has found under the DDB scheme, the GOI "provides rebates of duties or taxes chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export{ed} goods."²⁵⁹ The DDB benefit is "fixed as

²⁵⁷ See GOI post-preliminary supplemental response dated January 31, 2014, at 37.

²⁵⁸ GVN Case Brief at Exhibit 1.

²⁵⁹ *Shrimp from India* and accompanying IDM at section IV.A.4.

a percentage of FOB price of the exported product” and is “conferred as of the date of exportation of the shipment for which the pertinent drawbacks are earned.”²⁶⁰

Accordingly the subsidy rate is calculated on exports of subject merchandise to the United States by the value of such exports.

- This methodology is consistent with 19 CFR 351.525(b)(4).
- Thus, any deemed export sales are completely irrelevant to the calculation of the subsidy rate for the DDB scheme.
- Similarly, there is no merit in the GOI’s claims regarding the inclusion of deemed exports in the denominator for other programs as well because such subsidies are contingent on actual physical exports and therefore properly attributable to a respondent’s export sales, net of deemed exports.²⁶¹
- The Department previously explained in regard to AAP subsidies, that it will require evidence of the use of deemed exports to meet AAP subsidies’ export obligation before it will attribute those benefits to such deemed export sales. The GOI failed to provide any reasons why the same analysis should not apply here.

Department’s Position: The Department applied a consistent methodology, in accordance with 19 CFR 351.525(b)(4) and (5), which provides that if a subsidy is tied to sales to a particular market or to a particular product, the Department will attribute the subsidy only to products sold by the firm to a particular market and/or product. In the Post-Preliminary Determination, the Department clearly stated, in describing its benefit calculation for this program that it was able to tie GVN’s benefits earned on subject merchandise exported to the United States.²⁶² The Department only included the benefit earned on GVN’s actual physical exports of subject merchandise to the United States in its benefit calculation, which it then divided by GVN’s exports of subject merchandise to the United States to arrive at the calculated rate.

While the Department, in its normal analysis, identifies the type and monetary value of the subsidy in question at the time the subsidy is bestowed and is not required to examine the effects of subsidies, *i.e.*, trace how benefits are used by companies,²⁶³ we agree with Petitioner, that in this case, GVN was able to provide the benefit information with sufficient detail to tie the benefits in accordance with 19 CFR 351.525(b)(4) and (5), and this is consistent with the Department’s practice.²⁶⁴ Thus, for the final determination we continue to base our calculation on exports of subject merchandise to the United States.

²⁶⁰ *Id.*

²⁶¹ *PET Film from India*, 78 FR 48147 (August 7, 2013) and accompanying IDM at “pre- and post-shipment export financing.”

²⁶² Memorandum to Mark Hoadley from Myrna Lobo and Linjung Wang, “Countervailing Duty Investigation of Certain Oil Country Tubular Goods from India; Post Preliminary Analysis Calculation Memorandum – GVN Fuels Limited/Maharashtra Seamless Limited/Jindal Pipes Limited,” May 12, 2014 at 2.

²⁶³ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of the Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007) (*PET Film from India 2004 Review*); see also *Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 65 FR 5536, 5548 (February 4, 2000).

²⁶⁴ See *Shrimp from India* and accompanying IDM at 14, “4. Duty Drawback.”

Comment 7: Whether the Advance Authorization Scheme is an Countervailable Subsidy

GOI

- The Department's reliance on *PET Film from India 2004 Review*²⁶⁵ and conclusion that no new information or evidence of changed circumstances had been submitted to warrant revisiting its finding is incorrect.
- The AFA standard cannot be applied to take on record an older regulation or law, which no longer exists or does not exist in the same form during the POI. The facts on the record in this case are different from *PET Film from India 2004 Review*.
- The GOI filed the amended public notice in its questionnaire response²⁶⁶ which contained amendments not on the record in *PET Film from India 2004 Review*. The amendments make quite clear, in case of excess the customs duty unpaid has to be paid plus interest. In *PET Film from India 2004 Review* the Department reached its countervailability determination on the basis of: a) the GOI did not identify whether an examination took place to ensure that inputs listed in the Standard Input Output Norms (SION) were actually consumed in the production of the exported product; b) the GOI did not demonstrate that a mechanism exists to evaluate SIONs to determine whether they remain reasonable over time; c) the GOI could not identify the number of companies in 2003 (or even one company) that failed to meet the export commitments or was penalized for failing to meet export requirements; d) the GOI could not provide SION calculations for PET Film or demonstrate that the process outlined in the GOI regulations was actually applied in calculating the SIONs; and e) the ALP/AA scheme covered deemed exports.
- The Regional Authority in India compares the exporter's information provided in Appendix 23, certified by a Chartered Accountant with that of norms allowed and actual quantity imported. This requirement is new from *PET Film from India 2004 Review*, and the Department may not simply choose to ignore it.
- The AA scheme is not a countervailable subsidy because the scheme is a valid duty drawback scheme compatible with the WTO Subsidies Agreement.²⁶⁷
- Pursuant to WTO Footnote 1, the GOI, like other WTO members, is permitted to remit duties suffered on an exported product from duties or taxes borne by the like product when designed for domestic consumption, to the extent there is no excess remission.
- Pursuant to WTO Annex II, the Department as an investigating authority is required to proceed in the following sequence: first determine whether the GOI has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts; second, examine the system to see whether it is reasonable, effective, and based on generally accepted commercial practices; and third, where a system is not available, or not reasonable, or where instituted and reasonable but found not to be applied, a further examination based on actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred.
- The Department should sequentially examine the facts placed on this record, and reach an independent conclusion whether the AA complies with the requirements of putting in place an effective verification system.

²⁶⁵ *PET Film from India 2004 Review* and accompanying IDM at 6; and *PET Film from India 2003 Review*.

²⁶⁶ "Public Notice No.60 (RE-2005)/2004-2009 (India)" in Appendix 8 of the GOI initial response.

²⁶⁷ SCM Agreement at footnote 1 and Annexure II.

- The Department has erred in classifying the entire exemption on payment of duty as an actionable subsidy. Benefit within the meaning of Article 1.1(b) of the WTO Subsidies Agreement is confined to excess payment. The Department may verify from respondents' records as to whether they received any excess payment.

GVN

- The Department should not decline to take into account record information that is relevant to the evaluation of this program.
- The record that existed in PET Film from India has been updated and supplemented in this investigation. The updated record and not facts derived from seven years ago, should form the core of the Department's analysis.
- Respondents fully agree with the GOI that the AA scheme has a reasonable and effective system in place, in accordance with 19 CFR 351.519(a)(4).
- Respondents support GOI in requesting that the Department examine this verification mechanism to determine whether the AA program has evolved sufficiently so it should no longer be viewed as a countervailable program.

Petitioner rebuttal

- The GOI did not cooperate to the best of its ability and impeded the Department's investigation of the ALP/AA by failing to provide the information at the level of detail and as comprehensively as requested; and by failing to respond within the deadlines established.
- The GOI argues to only countervail any "excess" duties remitted on imports of inputs instead of the entire amount of import duty exemptions; however, due to the lack of information on the monitoring procedures, any "excess" in duty exemptions cannot be determined.
- The Department requested information on the ALP/AA, including the application process, Appendix 23 forms, and how the GOI uses the information on the appendix in coordination with the industry/product/company specific SION, to monitor compliance of the program; as well as the formulation process of those SIONs.
- The arguments raised by the GOI have been addressed and examined in *PET Film From India New Shipper Review*,²⁶⁸ where the Department determined that there were no changes to the monitoring procedures that would warrant reconsidering its findings.

Department's Position: We disagree with the GOI and continue to find the Advance License Program (ALP)/Advance Authorization (AA) countervailable. As explained in the *Preliminary Determination* and above at section III "Use of Facts Otherwise Available and Adverse Inferences," the Department based its countervailability determination for this program on adverse facts available because of the lack of cooperation on the part of the GOI by withholding information important to our analysis.

Further, in explaining our countervailability determination of the ALP/AA program in this investigation, we relied on *PET Film from India 2007 Review*, which, in turn, relied on *PET Film*

²⁶⁸ See *PET Film from India New Shipper Review*, 76 FR 30910 (May 27, 2011) at Comment 8.

from *India 2005 Review*.²⁶⁹ Contrary to the GOI's and GVN's claim that in this investigation our determination was based on out-of-date information, in *PET Film from India 2005 Review*, the Department examined and verified on-site all changes to the ALP/AA, as then reported by the GOI, and their respective implementation. This included the information submitted and relied on in its argument, in Appendix 8 of the initial questionnaire to this investigation. The documentation submitted by the GOI was no new information. Specifically, *PET Film from India 2005 Review* includes an examination of the workings of Appendix 23 and the above public notice, as referenced by the GOI,²⁷⁰ and the Department determined that the GOI still did not have a system in place that was reasonable and effective for the purposes intended. In this context, the Department specifically stated that it "still ha{s} 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."²⁷¹

In the *PET Film from India 2005* decision, the Department based the determination on an on-site verification with the GOI and the Directorate General of Foreign Trade (DGFT) at the end of 2007, where it interviewed government officials concerning the changes noted by the GOI in its case brief with respect to the monitoring and enforcement procedures. In the 2005 review, the Department examined the amendments to the existing laws and regulations included in the Indian Foreign Trade Policy and the Handbook of Procedures, such as the amended public notice No. 60 (RE-2005)/2004-2009, and examined the workings of the changes the GOI lists in its brief.²⁷² At that verification, Department officials examined each and every change and amendment made to the laws and regulations to arrive at its decision. Therefore, we continue to find that there is no new information on the record of this investigation with respect to the administration of the ALP/AA that would warrant re-considering the Department's countervailability determination. Further, as noted above, the GOI in this investigation failed to respond to our supplemental questionnaire, and therefore failed to avail itself of the opportunity to provide new information pertaining to this program in this investigation.

Accordingly, we continue to find that the ALP/AA confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this

²⁶⁹ See *PET Film from India 2005 Review* and accompanying IDM at Comment 3.

²⁷⁰ *Id.* at 22, Comment 3.

²⁷¹ *PET Film from India 2005 Review* and accompanying IDM at Comment 3.

²⁷² See *PET Film from India 2005 Review* and accompanying IDM at 3.

program is specific under section 771(5A)(A)-(B) of the Act because it is contingent upon export.

Comment 8: Whether Jindal SAW's Reported Benefits Under the Advance Authorization Program (AAP) are Countervailable

Jindal SAW

- The duties foregone are not a present benefit to Jindal SAW since it did not actually receive the benefit during the POI. It is, in effect, a deferred payment obligation on which the company incurs interest when it fails to meet its export obligation (EO).
- In accordance with section 771(5)(B)(i) of the Act, there is no financial contribution until the export obligation is fulfilled, because Jindal SAW remains contingently liable for the duties not paid upon importation.
- 19 CFR 351.503(b)(1) states that “the Department normally will consider a benefit to be conferred where a firm pays less for its inputs that it otherwise would pay in the absence of the government program.”
- None of the conditions are met because the Department cannot countervail theoretical or potential benefits that Jindal SAW may receive when its export obligations are met.
- There is no actual benefit foregone by the GOI that the Department can legally countervail or calculate an *ad valorem* subsidy rate until Jindal SAW met its EO.
- The Department should find that Jindal SAW did not avail itself of benefits under the AAP during the POI because it has yet to fulfill its EO to demonstrate that there is actually a duty foregone by the GOI.
- The Department incorrectly calculated an *ad valorem* rate by using the Nashik division's export sales as the denominator.
- Jindal SAW's licenses were used solely for deemed exports during the POI, and not for actual exports to the United States or other countries.
- Thus, any calculation of an *ad valorem* rate should be based on total sales.

Petitioner rebuttal

- Jindal SAW's claims that it purportedly remains “contingently liable for the unpaid duties” until it has met its “export obligations” are baseless.
- Jindal SAW is wrong in its reasoning that import duty exemptions constitute only “potential” benefits that cannot be “definitively quantified” until the AAP subsidy export obligations are met at some future date.
- The Department has previously found that exemptions from import duties under AAP constitute a financial contribution and confer a benefit within the meaning of section 771(5)(D) and 771(5)(E) of the Act, that is received at the time that eligible duty-free imports are made.
- Under AAP, companies receive a benefit immediately upon making such imports because they are able to obtain imports for less than they would otherwise pay if the import duties were levied.
- Moreover, the exact amount of benefit, *i.e.*, the amount of duties exempted, is known at the time of import.

Department's Position: We disagree with Jindal SAW's argument that it did not actually receive a benefit during the POI because Jindal SAW remains contingently liable for the duties not paid upon importation until its export obligation for that license is fulfilled. As stated in *Hot-Rolled from India 2006 Review*,²⁷³ advance licenses are quantity based licenses because they rely on product specific standard input-output norms (SION) developed to provide an estimation of the inputs needed to produce the export product. Therefore, unlike the value-based licenses, which specify an amount of duty reduction at the time the license is received, the amount of duty reduction with the ALP/AA is not known until the date the license is used and the inputs imported duty free.²⁷⁴ Accordingly, for an advance license, the benefit is received on the date the license is used, *i.e.*, the date the input is imported duty free. Thus, the timing of the benefit for an advance license is the date the license is used. Here, record evidence demonstrates that Jindal SAW used its licenses during the POI, and record evidence also shows the amount of duty reduction that Jindal SAW received for its imports under those licenses during the POI. This duty reduction was obtained at the time of import of the input product, and it is then that the benefit is earned. The benefit is earned at importation because Jindal SAW did not pay the full duties due at that time, and thus was conferred the benefit. Furthermore, the ALP/AA allows for the duty free importation of inputs used in the production of the exported product, rather than capital goods and spare parts, and thus the inputs may be consumed before any contingent liability under the ALP/AA license is fulfilled. Last, the Department has determined that the GOI does not have a system in place that confirms which inputs are consumed in the production of the exported products and in what amounts, making normal allowance for waste, and that the system is not reasonable and effective for the purposes intended. Thus, Jindal SAW is relying on a system that the Department has determined to not be reliable for monitoring the export obligation (EO), which Jindal SAW claims to be a contingent liability. Accordingly, we continue to find that Jindal SAW's benefits under its ALP/AA licenses were earned at the time of the duty-free importation of the input.

In addition, we disagree with Jindal SAW's argument that the calculation of an *ad valorem* rate for this program should be based on total sales, because Jindal SAW's licenses were used solely for deemed exports during the POI. As explained above at section I "Advance License Program/Advance Authorization Program," and as described by the GOI, the ALP/AA is an export program.²⁷⁵ Therefore, in accordance with 19 CFR 351.525(b)(2), the Department will attribute export subsidies only to products exported by a firm. Chapter 5.5(ii) and (iv) and Chapter 8 of the Indian Foreign Trade Policy 2009-2014 state that a firm operating under this program may fulfill its EO through deemed exports.²⁷⁶ Thus, while a selected number of Jindal SAW's ALP/AA licenses indicate that the EO is to be fulfilled in the form of deemed exports,²⁷⁷ they still constitute exports for purposes of fulfilling Jindal SAW's EO under the licenses.

²⁷³ See *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14 2008) (*Hot-Rolled from India 2006 Review*) and accompanying IDM at Comment 22.

²⁷⁴ See *PET Film from India 2007 Review* at "2. Advance License Program."

²⁷⁵ See GOI initial response at Annexure 4, "Foreign Trade Policy 2009-2014, Chapter 4.1.3: Advance Authorization."

²⁷⁶ *Id.*

²⁷⁷ See Jindal SAW first supplemental response dated November 19, 2013, at Exhibit 80.

Further, in *PET Film from India 2004 Review*,²⁷⁸ the Department stated that “companies can apply for and are bestowed licenses based on either physical or deemed exports,” and, “{a}s such, we find that “deemed export” sales should be included in the export sales denominator for the ALP program only when the Respondents applied for and were bestowed licenses during the POR based on both physical exports and deemed exports.”²⁷⁹ In other words, EOs may be fulfilled, depending on how a license was bestowed, on export sales and/or deemed exports, but not on domestic sales. Hence, Jindal SAW’s claim that we should use total sales as the denominator in our calculations is inappropriate. Therefore, for the final determination, we continue to use Jindal SAW’s export sales of the Nashik division, inclusive of deemed export sales, in the denominator for our rate calculations for this program.

Comment 9: Whether AFA is Warranted When Countervailing Jindal SAW’s Use of the Advance Authorization Program (AAP)

Petitioner

- The AAP exporters may import duty-free certain specified quantities of materials in exchange for agreeing to make certain exports at a later date.
- Because the benefit is received at the time the duty-free imports are made, the Department treated the AAP subsidies as recurring subsidies the participating company received when making eligible imports.
- The respondent must demonstrate that the subsidies received, are tied to the production of a particular product. If the AAP subsidies are not tied, the Department’s practice is to countervail all AAP subsidies received during the POI and attribute the benefits to the respondent’s total export sales.
- The Department asked Jindal SAW to report its benefits under this program on a company-wide basis on two separate occasions but Jindal Saw refused to provide that information, claiming to have provided relevant information.
- At verification Jindal acknowledged to have imported raw inputs under additional AAP licenses during the POI but declined to provide the additional information on grounds of not having fulfilled the EO for those licenses.
- The application of AFA is warranted because of Jindal SAW’s refusal to act to the best of its ability to provide complete and timely information in response to the Department’s requests for complete POI benefit information on a company-wide basis.
- Jindal SAW withheld information which impeded with the Department’s investigation of the AAP subsidies and, as a result, was not able to verify respondent’s claim that the other AAP licenses used during the POI were tied to the production of non-subject merchandise.
- Jindal’s claim that it did not receive any additional benefit because the EO of the AAP licenses was not fulfilled, served as an excuse to justify its non-compliance with the Department’s requests for this information.
- Jindal SAW’s questionnaire responses and verification findings demonstrate that it maintains detailed records of its participation in the AAP subsidies and has the ability to

²⁷⁸ See *PET Film from India 2004 Review* and accompanying IDM at Comment 1.

²⁷⁹ *Id.* at 19.

access information on all of its AAP licenses and benefits received on a company-wide basis.

- Because Jindal SAW failed to act to the best of its ability in responding to the Department's requests for its AAP benefit information, the Department should apply AFA when determining the *ad valorem* subsidy rate for Jindal SAW from the AAP subsidies in the final determination.

Jindal SAW rebuttal

- Petitioner is incorrect in arguing that the Department should assign adverse fact available to Jindal SAW's reported benefits under the AAP, and incorporates arguments from its case brief by reference.
- The benefits reported by Jindal SAW are only estimated and potential benefits as no actual benefit has been received to date.
- The EO for none of those licenses reported for the Nashik division is fulfilled, and none of the licenses Jindal SAW used have been verified by the GOI.
- The GOI stated in its case brief that no benefit is conferred until its verification process is completed.
- Petitioner is factually incorrect when asking the Department to apply adverse facts available on Jindal SAW's unreported benefits because Petitioner failed to understand its and the GOI's explanations on the workings of this program.
- The Department officials confirmed that there was no inflow or outflow of cash or other type of income related to any active Advance Authorization license.

Department's Position: We addressed Petitioner's comment and Jindal SAW's rebuttal comment with respect to the timing when the benefits are earned under the ALP/AA above, in Comment 8, and determined that Jindal SAW's POI benefits under this program are earned upon importation of the input product and are neither an estimate nor potential benefit. Specifically, Jindal SAW received the benefit in the form of non-payment of duties due upon importation. Furthermore, the Department determined that the GOI does not have a reliable system in place for monitoring which input in what quantity are consumed in the export product, and this renders Jindal SAW's argument with respect to the unfulfilled EO moot.

The Department asked Jindal SAW on two separate occasions to report all benefits earned under the ALP/AA during the POI on a company-wide basis,²⁸⁰ and both times, Jindal SAW failed to comply with our request. However, Jindal SAW did provide supporting documentation for all its ALP licenses,²⁸¹ which was subsequently verified by the Department.²⁸² Based on the information on the record, we were able to tie all but two licenses to specific non-subject products.²⁸³ Thus, we will exclude those product specific licenses from our benefit calculations for this program. As discussed in the Department's verification report for Jindal SAW, these two

²⁸⁰ See the Department's second supplemental questionnaire dated November 25, 2013, at question 2 and Jindal SAW initial response dated October 31, 2013, at ALP.

²⁸¹ See Jindal SAW second supplemental response dated December 5, 2013, at Exhibit 80.

²⁸² See Jindal SAW Verification Report at 6 and Jindal SAW second supplemental response at Exhibits 56, 71, and 80.

²⁸³ *Id.*

licenses which we are unable to tie to any product are so-called annual licenses that were used by the Nashik division but could also be used by any division of Jindal SAW.²⁸⁴ Those licenses are not tied to any specific product and may be used by any of Jindal SAW's divisions listed in the attachment of the licenses. The license itself specifies the total currency value of imports that can be imported duty free and the amount of EO (export obligation) under this license.²⁸⁵ Because Jindal SAW failed to provide the Department with the company-wide benefits earned on its ALP/AA licenses, we have used the total currency face value indicated on the licenses to calculate the benefit.

Comment 10: Whether Jindal SAW's Pre- and Post-Shipment Financing is Countervailable Because It Is Based on Commercial Loans

Jindal SAW

- The Department should not countervail Jindal SAW's reported pre- and post-export financing loans because they were obtained from commercial banks at commercial rates and terms, as documented on the record of this investigation, and verified by the Department.
- In the Preliminary Determination, the Department incorrectly presumed that Jindal SAW's reported loans were from government banks at reduced interest rates, and thus, constituted a countervailable subsidy.
- Pursuant to 19 CFR 351.505(a)(1), in case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market.
- Jindal SAW's pre- and post-shipment export financing loans are commercial loans because they are from commercial institutions from a commercial market, in accordance with 19 CFR 351.505(a)(2)(ii). Under the same regulation, the Department will treat a loan from a government-owned bank as a commercial loan, unless it is provided at non-commercial terms or at the direction of the government.
- Even if the Department decides not to accept Jindal SAW's argument, it should correct the numerator, to account for a correction presented at verification with regard to the amount of interest paid for a certain loan.
- In addition, the Department should correct the denominator used to calculate the subsidization rate for the pre- and post-export financing by using a corrected sales denominator based on Jindal SAW's 2012-2013 financial report.

Petitioner rebuttal:

- The Department has consistently found that pre- and post-shipment export financing loans provided through commercial banks are a countervailable subsidy because the GOI

²⁸⁴ See Memorandum from Myrna Lobo and Lingjun Wang, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from India: Verification of Jindal SAW Limited," May 15, 2014 (Jindal SAW Verification Report) at 6.

²⁸⁵ Jindal SAW second supplemental response at Exhibit 80.

through the Reserve Bank of India (RBI) determines the interest rate commercial banks may charge for the financing.²⁸⁶

- Commercial banks are entrusted or directed by law to provide the subsidy to Indian companies at interest rates that are capped by the GOI through the RBI.
- The Department should reject Jindal SAW's claimed "minor correction" to the loan information reported.
- The correction did not constitute a minor correction of the information already on the record.
- Even if the Department accepted the information for examination, this does not guarantee that it will be useable for the final determination.
- Jindal SAW did not provide any documentation, such as loan documents and bank statements to show that the new amount was correct.

Department's Position: We disagree with Jindal SAW that the Department incorrectly presumed that Jindal SAW's reported loans were from the government banks at reduced interest rates, and thus constituted a countervailable subsidy. We agree with Petitioner that the commercial banks are entrusted or directed by law to provide the subsidy to Indian companies at interest rates that are capped by the GOI through the RBI.²⁸⁷ As determined in previous countervailing duty proceedings, the RBI requires commercial banks to provide pre- and post-shipment loans at interest rates set by the RBI. In *PET Film from India 2005 Review*, the Department determined that:

"[T]he RBI regulates all export credits and dictates ceilings on the short-term interest rates, as well as the rules that are applicable to all government-owned and commercial banks. Therefore, we measure the benefit from all loans obtained under the pre- and post-shipment program, whether provided by private or government-owned banks, as the loans are made at the direction of the RBI, and thus provide countervailable benefits. See Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 7916, 7919-20 (February 15, 2006) (unchanged in the final determination)."²⁸⁸

As stated above, although Jindal SAW obtained its pre- and post-shipment export financing from commercial banks, the lending was provided, and the interest rates were set at the direction of the RBI.²⁸⁹ The Department did not incorrectly presume that Jindal SAW's reported loans were from government banks at reduced rates, and was well aware that Jindal SAW's pre- and post-shipment export financing was obtained through commercial banks, albeit commercial banks operating at the direction of the RBI, which is a government entity. The GOI, through the RBI, regulates the nature of that specific financing scheme, the pre- and post-shipment export

²⁸⁶ See *PET Film from India 2006 Review* and accompanying IDM at Comment 1; and *Certain Lined Paper Products from India: Countervailing Duty Administrative Review; 2011*, and accompanying IDM at "Analysis of Programs."

²⁸⁷ See section 771(5)(B)(iii) of the Act.

²⁸⁸ See *PET Film from India 2005 Review* and accompanying IDM at 20, Comment 2.

²⁸⁹ See *Shrimp from India* and accompanying IDM at 17-18.

financing, *i.e.*, packing credits. Because the interest rates are capped through the RBI for that particular credit, the credit is provided at non-commercial terms and at the direction of the government.²⁹⁰ Thus, we continue to treat the benefits received by Jindal SAW due to the reduced interest rates it obtained for its pre- and post-shipment loans under this GOI program as a countervailable subsidy.

Also, we disagree with Petitioner that we should disallow a minor correction accepted at verification. Specifically, Jindal SAW had two corrections to this program: First, Jindal SAW reported an incorrect amount in the ‘interest paid’ column for one lender due to a formula error in the excel spreadsheet. The error provided a subtotal of the figures in the ‘interest paid’ column, instead of the correct amount of interest paid.²⁹¹ The Department accepted that correction at verification, and for the final determination, we revise our rate calculations for this program accordingly.

Second, during verification the Department officials also requested to review the ledger of “Interest on packing credit.” Jindal SAW provided the ledger at a later point in time during verification.²⁹² That ledger indicated a discrepancy in the interest amount Jindal SAW had reported paid during that particular month and the amount that was booked in the ledger. We did not accept this as a correction, and Jindal SAW did not provide the Department with any supporting documentation on the correction or error with respect to these interest payments. Therefore, we will not incorporate this correction in our benefit calculation for the final determination.

For discussion on the appropriate denominator for the Department’s rate calculations under this program, *see* section III above “Use of Facts Otherwise available and Adverse Inferences.”

Comment 11: Whether Jindal SAW’s EPCG Benefits Received by Divisions Producing Non-OCTG Products are Countervailable

Jindal SAW

- Based on the information provided at verification, the Department was able to observe that the benefits Jindal SAW receives under the EPCG program are tied to a particular product pursuant to 19 CFR 351.525(b)(5), and that the licenses are not transferable.
- Thus, the Department should not change its methodology of calculating Jindal SAW’s subsidy rate for this program.
- Subject to this investigation are OCTG from India, and the scope does not include all products produced by the other divisions of Jindal SAW.
- For that reason, the Department based its subsidy rate calculation on benefits received for the Nashik division on export sales by the Nashik division.
- The Nashik division’s role in the production of OCTG is well documented and verified, and on the record of this proceeding.

²⁹⁰ *See* 19 CFR 351.505(a)(2)(ii).

²⁹¹ Jindal SAW Verification Report at 2.

²⁹² *Id.* at 9.

- The Department reviewed all licenses issued to Jindal SAW and concluded that the “license is non-transferable to other locations and that capital goods imported had to be installed at the location specified in the annexure to the license.”²⁹³
- Jindal SAW’s licenses under the program are tied directly to the use of the equipment by the importing company at the unit or facility for which the license is obtained, and cannot be moved to other divisions or units.

Petitioner rebuttal

- Jindal SAW’s claims that it demonstrated to the Department at verification that the EPCGS licenses are tied to a particular product and are not transferable are unsupported by the record and the Department’s long-standing practice.
- The Department previously found that an EPCGS license is tied to a particular product based on the terms and conditions set forth by the GOI on the EPCGS license itself at the time of bestowal.
- When the complete documentation for all licenses of a respondent is not provided or where the licenses that were provided show that they were provided for subject- and non-subject merchandise, the Department will countervail the benefit from all licenses and attribute the benefit to a company’s total export sales.²⁹⁴
- Jindal SAW failed to provide the original licenses for all of the EPCGS licenses it reported, and thus failed to demonstrate that the licenses it reported received for other divisions were tied exclusively to the production of non-subject merchandise.
- Jindal SAW provided a license for another division it claims to be exclusively non-subject merchandise, however, that license includes an export product that includes subject merchandise.
- A license Jindal SAW claimed at verification was used exclusively by the Nashik division to produce OCTG, included the same product designation as a license for another non-subject merchandise division.
- Thus, Jindal failed to establish the basis for the Department to countervail only those EPCGS licenses that the company claims were tied exclusively to the production of subject merchandise at the Nashik division.

Department’s Position: We agree with Petitioner that Jindal SAW failed to establish that its EPCGS licenses are tied to a particular product. As the Department already noted in the *Preliminary Determination*, based on the information and documentation submitted by Jindal SAW, it was unable to determine whether the EPCGS licenses reported for the Nashik division are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5), that is, non-subject or both subject- and non-subject. Therefore, the Department determined that Jindal SAW’s EPCGS licenses reported for the Nashik division benefit all of the company’s exports from the Nashik division. Further, the benefit calculations for the *Preliminary Determination* were based on the benefit information on the record at that time.²⁹⁵ In its first supplemental questionnaire, Jindal SAW provided a list of “EPCG Benefits for Past 15

²⁹³ See Jindal SAW Verification Report at 8 and Verification Exhibit 10.

²⁹⁴ See *PET Film from India 2007 Review* and accompanying IDM at Comment 2; see also *PET Resin From India* and accompanying IDM at Comment 7.

²⁹⁵ See Jindal SAW preliminary calculation memorandum at 5.

Years,”²⁹⁶ on a company-wide basis. In this Exhibit 60, Jindal SAW identifies licenses bestowed for subject and non-subject merchandise and for both. Since then, the Department has obtained more detailed benefit information for those licenses in spreadsheet format, more suitable for the Department to calculate the benefit earned.²⁹⁷ Of those licenses, the Department noted at verification that two licenses from Exhibit 60 were not included in the new benefit calculation sheet.²⁹⁸ Subsequently, the Department identified two more licenses from Exhibit 60 were excluded from the benefit calculation spreadsheets which have been included in the benefit calculation.

In making a determination whether a subsidy is tied to a specific product or sale of a product, in accordance with 19 CFR §351.525(b)(5), the Department strictly looks at the point of bestowal of such subsidy:

“Rather we analyze the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince.”²⁹⁹

For the Department to make a determination whether the benefit for an EPCGS license is to be attributed to particular product, it normally first looks at the original license, and its intended purpose at the point of bestowal, as endorsed or amended by the GOI. In this instant case, Jindal SAW did not provide us with the necessary information, such as copies of all the original licenses, to determine whether the licenses were tied to subject or non-subject merchandise or both. Thus, the Department is unable to make a determination whether the licenses are tied to a specific product. Because the benefits are not tied to a particular product, we normally calculate Jindal SAW’s subsidy rate by dividing the company-wide benefit in duty savings by the total export sales of Jindal SAW. However, because Jindal SAW did not report its total export sales, as AFA, we will use the export sales of the Nashik division.

We disagree with Jindal SAW that, because the Department was able to observe that benefits Jindal SAW received were tied to particular products, they are not countervailable. As noted above, we tie the licenses at the point of bestowal, *i.e.*, when the licenses are issued, and not to the purchases of capital equipment or spare parts purchased at a future point in time. We confirmed Jindal SAW’s reporting of benefits received under the licenses at verification.³⁰⁰ However, we only reviewed a sample of the licenses at verification. Moreover, Jindal SAW reported it obtained licenses for subject as well as non-subject merchandise.³⁰¹

²⁹⁶ See Jindal SAW first supplemental response at Exhibit 60.

²⁹⁷ See Jindal SAW fifth supplemental response at Exhibit 103.

²⁹⁸ See Jindal SAW Verification Report at 9 and Jindal SAW fifth supplemental response at Exhibit 103.

²⁹⁹ See *CVD Preamble*, 63 FR at 65403.

³⁰⁰ See Jindal SAW Verification Report at 8.

³⁰¹ See Jindal SAW first supplemental response at Exhibit 60.

Comment 12: Whether Benefits Received by Jindal SAW Under the Focus Product Scheme Should be Countervailed

Petitioner

- Only after repeated requests Jindal SAW acknowledged participating in the FPS program, but still failed to provide the POI specific exports for which it earned FPS scrips.
- Thus, the Department had no information prior to verification concerning Jindal SAW's use of FPS during the POI, other than the total FPS benefit Jindal SAW reported.
- The GOI's statements at verification flatly contradict Jindal SAW's claim that "OCTG was not an eligible product during the POI" under the FPS program. The GOI confirmed that eligible products included carbon and alloy steel pipe and tube products classified under HS headings 7304, 7305, and 7306.
- The GOI also provided critical details that Jindal SAW completely omitted to report, such as exporters have twelve months from sales date within which to apply for scrips, and other details as provided from a query to its records, all of which definitively and conclusively refute Jindal SAW's denials of using the program.
- The application of AFA is clearly warranted because of Jindal SAW's repeated denials that it used the FPS program and its failure to provide complete and accurate responses to the Department's questions.
- The CAFC has held that the Department is fully justified in applying AFA where a respondent's repeated denials of use are contradicted by the record evidence.³⁰²
- Not applying AFA would only encourage similar non-compliance in the future.
- If the Department declines to apply AFA, it is obligated, at a minimum, to rely on the facts available and countervail the program based on the limited information Jindal SAW reported because the bases for the use of facts available have been met.
- Accordingly, if the Department does not apply AFA, it should use facts available and calculate a rate by dividing Jindal SAW's reported FPS subsidies by its total exports during the POI.

GOI rebuttal

- Petitioner misinterpreted information presented on the Department's verification report regarding the GOI and the GOI's verification exhibit, and incorrectly concluded that HS 7304, 7305 and 7306 exported to U.S. are eligible for the benefit.
- Table 2 is for Market Linked Focus Product Scheme, a separate and distinct program, for which benefit is linked to both HS heading and country and the United States is not an eligible country.
- Table 1 is for Focus Product Scheme for which benefit is linked to both HS heading and description. The description of HS 7305 and 73069019 indicates that they are not subject merchandise.

Jindal SAW rebuttal

- The reported benefits clearly pertain to merchandise not within this investigation's scope.

³⁰² *Essar Steel Ltd. v. United States*, 678 F. 3d 1268, 1274-1278 (Fed. Cir. 2012).

- This investigation's scope states that the HTS headings are not dispositive as they are an overly broad categories that include both within scope and out of scope merchandise.
- Petitioner misrepresented the information placed on the record by GOI. As GOI explained, there are different categories of FPS programs and HTS 7304 is only eligible for the benefits when it is exported to the group of countries as notified.
- GOI's verification exhibit shows that there is not a single mention of carbon alloy steel pipe or OCTG for any scrips that were issued within the POI; any scrips issued under HTS category 7304 and which could arguably be related to the OCTG were issued only in mid-2013 and later, which is well after the POI ended.

Department's position: The Focus Product Scheme (FPS) is an export promotion program with an objective to promote exports of products with high export intensity and/or employment potential (*i.e.*, focus product). Introduced in 2006, the scheme allows exporters to earn duty credit scrips on the FOB value of their exports. The scrips are then used to offset import duties or can be resold by the exporter. The Directorate General of Foreign Trade (DGFT) administers the FPS through Foreign Trade Policy 2009-2014 (FTP) that is carried out by Handbook of Procedures 2009-2014 (HBP).³⁰³

Published in HBP Appendix 37D, the GOI provides the list of eligible products and rates in two categories: 1) products to all countries; 2) products to specified countries (*i.e.*, Market Linked Focus Products). DGFT officials noted that exporters can claim credits under the FPS or the Market Linked Focus Products scheme, but not both. Prior to June 5, 2012, the GOI had published focus products in seven tables.³⁰⁴ Effective June 5, 2012, the DGFT consolidated the seven tables into two tables as follows:³⁰⁵

Products under HS 7304, 7305 and 7306 exported to United States were not eligible for the benefits during the POI, according to GOI's public notices and Appendix 37D in the Handbook of Procedures (HBP). Effective January 1, 2010, through a public notice,³⁰⁶ the GOI added the above HS codes in Table 6 titled "New Market Linked Focus Products" within Appendix 37D, which means those products are eligible for incentives under FPS when they are exported to the linked markets (*i.e.*, specific countries) according to GOI's Foreign Trade Policy (FTP).³⁰⁷ The United States is not an eligible country in the list of linked markets and therefore, exports of subject merchandise to the United States could not have received incentives under the FPS.

Prior to June 5, 2012, those HS codes together with other market linked focus products were listed in the two of seven tables in HBP Appendix 37D.³⁰⁸ Effective June 5, 2012, GOI updated

³⁰³ See GOI second post-preliminary supplemental response dated March 10, 2014, at 12 and Exhibit 6.

³⁰⁴ *Id.*

³⁰⁵ See GOI Verification Exhibit 3.1

³⁰⁶ See U.S. Steel Comments on GOI initial response dated November 14, 2013, at Exhibit 22; *see also* GOI Verification Exhibit 3.1.

³⁰⁷ See GOI initial response at Annexure 4, page 40. In this response, the GOI placed on the record the FTP and HBP (Annexure 4A) with effective date of August 27, 2009.

³⁰⁸ See GOI second post-preliminary supplemental response dated March 10, 2014, at Exhibit 6, in which the GOI provided updated FTP and HBP with effective date of June 5, 2012 (page 156-191) and not updated Appendix 37D (starting from page 192) with effective date of August 27, 2009. The updated Appendix 37D with effective date of June 5, 2012, was also placed on the record by the GOI in Verification Exhibit 3.1.

the FTP and HBP as well as corresponding Appendix 37D by consolidating eligible products into two tables: 1) products to all countries (Table 1); and 2) products to linked countries (Table 2).^{309,310} After the consolidation, HS code 7304, 7305 and 7306 are listed in Table 2 with linked markets unchanged.

Although Table 1 includes HS 7305, which could include some subject merchandise, based on the descriptions of the products for which scrips were issued as provided by the GOI³¹¹ together with Jindal SAW's detailed listing of exported products on which scrips were earned,³¹² we conclude that Jindal SAW did not receive any incentives on subject merchandise exported to the United States during the POI. Thus, we disagree with Petitioner that subject merchandise exported to the United States was eligible for benefits or Jindal SAW could have earned benefits for a prior period because it had 12 months from the sale date within which to apply for scrips. We also, therefore, determine that the application of AFA is not warranted.

Comment 13: Whether Benefits Received by Jindal SAW Under the Export Oriented Unit (EOU) Scheme Should Be Countervailed

Petitioner

- Although instructed in the Department's questionnaire, Jindal SAW did not provide benefit information on this program until a later response, stating that the Nashik division was the only production unit involved with subject merchandise and was not an EOU.
- EOU subsidies are "not tied to the export sales of a particular product or to sales to a particular foreign market" but are "contingent upon export activity, in general."³¹³
- Documents provided by Jindal SAW do not support its claim that the benefits provided to the EOU are product specific or unit specific.
- The GOI's Foreign Trade Policy and Jindal SAW make clear that the central criterion for eligibility for EOU benefits is the earning of adequate foreign exchange; other terms are not of consequence.
- Consistent with the regulations and prior practice, the Department should countervail EOU subsidies and attribute them to Jindal SAW's total export sales.

³⁰⁹ See GOI Verification Report at 8; see also GOI's second post-preliminary supplemental response dated March 10, 2014, at "Public Notice No. 1 (RE-2012)/2009-2014;" see also GOI Verification Exhibit 3.1, "Public Notice No. 06(RE-2012)/2009-2012."

³¹⁰ U.S. Steel also placed Appendix 37D with effective date of June 5, 2012 on the record. See U.S. Steel comments on the GOI's initial responses dated November 14, 2013, at 22 and Exhibit 23. On page 22, footnote 69 states that harmonized tariff codes 7304, 7305, and 7306 are in Table 1 at pages 362-364 in Exhibit 23. However, in that exhibit, Table 1 is followed by Table 2 that starts at page 355, which means those codes are not in Table 1, but in Table 2.

³¹¹ See GOI Verification Report, Exhibit 3.2.

³¹² See Jindal SAW Verification Report.

³¹³ *Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 26935 (May 12, 2014) and accompanying IDM at Comment 2.

Jindal SAW rebuttal

- Petitioner's arguments with respect to the reported benefits by Jindal SAW for its EOU are misguided, because the EOUs do not produce OCTG. The Department confirmed this at verification.
- The benefits received and production line used by the EOU are unit and product specific under 19 CFR 351.525(b)(5), and cannot be transferred to another unit.
- Petitioner's claim that there were transfers from the EOU to other divisions is not true. As stated in the EOU program itself and as discussed at verification, an EOU can only make a transfer of unused or surplus materials, and can do so only after paying the original duty that Jindal SAW did not pay when the materials first entered the EOU, and thus, there is no benefit.
- The scope does not include products other than OCTG, and the Department recognized this in the Post-Preliminary Analysis by not countervailing benefits reported under the EOU program.
- The Nashik division is not an EOU and thus cannot benefit from programs designed to be used exclusively by an EOU.
- The Department reviewed Jindal SAW's EOUs and concurrently that the Nashik Division is not an EOU.
- The Department reviewed Jindal SAW's accounting system and observed that all the reported benefits tied to the EOU program are specific to that facility.

Department's Position: Chapter 6 of the GOI's Foreign Trade Policy and the Handbook of Procedures together with Appendices contain the laws and regulations relating to EOUs. Contained in these appendices is Appendix form 14-I-E³¹⁴ providing the format for authorizing the establishment of an EOU, which requires the products to be manufactured and exported to be identified, in addition to net foreign exchange earnings requirements as well as other terms and conditions pertaining to the operation of the EOU. The company is also required to provide a legal undertaking or bond which the GOI exercises in case of default. Further, at verification we examined the original approval documents issued by the GOI to Jindal SAW, among which were the letters of permission and the green cards.³¹⁵ The letters of permission and green cards are vital documents that authorize the company to set up an EOU and to be eligible for EOU benefits. These documents identified and provided details of the specific factory and products to be produced at Jindal SAW's EOU locations. Therefore, we disagree with Petitioner that the EOUs in these instances cannot be tied to the export sales of a particular product. We do not need to address the other terms, because the letters of permission and the green cards can be tied to particular products at the time of authorization of the EOUs. Therefore, in the instant investigation, because the benefits received can be tied to non-subject merchandise at the point of bestowal, we determine benefits under this program are tied to non-subject merchandise.

Comment 14: Whether Provisional Measures Should Be Applied to Jindal SAW's Imports of Subject Merchandise

³¹⁴ See GOI post-preliminary response dated March 10, 2014, at Exhibit 5.

³¹⁵ See Jindal SAW fifth supplemental response dated March 10, 2014, at Exhibits 93 and 95. See also Jindal SAW Verification Report at 10-12.

Petitioner

- Jindal SAW's preliminary countervailing duty rate should be adjusted to include the post-preliminary analysis and countervailing duties should be applied for the full period covered by the Department's preliminary determination and affirmative critical circumstances finding.
- Pursuant to Section 703(d) of the Act, an affirmative preliminary determination requires the Department to order the posting of a cash deposit, bond, or other security for each entry of subject merchandise and to order suspension of liquidation. Further, where critical circumstances exist, the Act directs to apply suspension of liquidation retroactively to 90 days before the suspension date or the date of initiation of investigation.
- As the Department does with ministerial errors in a preliminary determination, it should amend the preliminary determination in this case and order suspension of liquidation and collection of cash deposits retroactively to 90 days prior to publication date of the preliminary determination.
- The statute requires such provisional measures to be imposed, and this investigation cannot be an exception simply because determinations with respect to Jindal SAW were made in a post-preliminary analysis. Failure to act denies Petitioners the relief they are entitled under the law and is contrary to the Department's legal obligations.

Jindal SAW rebuttal

- The Department should not apply provisional measures to Jindal SAW's imports of subject merchandise, because there is no statutory requirement to apply provisional measures to Jindal SAW's imports of subject merchandise.
- In the Preliminary Determination the Department found Jindal SAW's countervailable subsidies were *de minimis* and instructed the U.S. Bureau of Customs and Border Protection (CBP) not to suspend entries or collect estimated duty deposits for Jindal SAW.
- Subsequently, the Department instructed CBP to terminate the suspension of liquidation of entries during the "Gap period."
- The Department is statutorily prohibited from suspending entries or applying provisional measures during this period, until the ITC final determination.

Department's Position: In the *Preliminary Determination*, the Department calculated a *de minimis* countervailable subsidy rate for Jindal SAW pursuant to section 703(b)(4) of the Act. There is no statutory requirement for the Department to amend our *Preliminary Determination* or issue cash deposit instructions pursuant to section 703 of the Act, as a result of the Post-Preliminary Analysis Memorandum. This is consistent with the Department's practice with regard to post-preliminary analyses in past investigations.³¹⁶

The Department must impose provisional measures when it issues an affirmative preliminary or amended preliminary determination.³¹⁷ Preliminary determinations are provided for in the Act

³¹⁶ See, e.g., *Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010).

³¹⁷ See section 703(d) of the Act.

and must be issued by statutory deadlines.³¹⁸ The Department’s regulations provide for amended preliminary determinations to correct “ministerial errors.”³¹⁹ If the Department were to impose provisional measures pursuant to post-preliminary analyses – issued after the deadlines for preliminary and amended preliminary determinations had passed, and for non-ministerial matters, we would be essentially circumventing the statutory and regulatory schedule. The Department could, in effect, impose preliminary cash deposit requirements at any point in a proceeding before the final determination – thus completely ignoring the preliminary determination deadline. The purpose of post-preliminary analyses, therefore, is not to impose preliminary cash deposits in what would be an untimely manner, but, rather, to satisfy due process concerns. Post-preliminary analyses are intended to provide interested parties with a transparent statement of the Department’s tentative conclusions regarding issues that could not be addressed in time for the preliminary determination. This notice affords parties the opportunity to comment on those conclusions before the final determination. Therefore, we disagree with Petitioner that the imposition of provisional measures is required for post-preliminary analyses.

Comment 15: Whether the SGUP Entry Tax is a Countervailable Subsidy

GOI

- The GOI is extremely surprised that the SGUP exemption from entry tax is considered a countervailable subsidy. To describe the scheme as an exemption is misleading inasmuch as there is no “exemption from entry tax for the iron and steel industry.”
- There is no exemption. The decision by a sovereign government not to tax a set of goods cannot lead to the conclusion that such a decision represents an “exemption.”
- The SGUP cannot be required to subject each and every good to the same rate of levy. If there is a difference in rates between goods, the lower rate for certain goods does not mean there is a countervailable subsidy. Such an approach is inconceivable under the WTO Subsidies Agreement. It is also absurd and illogical.
- Every time a government decides not to tax a particular category of goods or subject certain goods to a lower rate, cannot lead to a conclusion that there is a countervailable subsidy. This would mean that all WTO members including the United States would have to subject all goods covered under the HTS to the same level of customs or excise duty.
- Article 1.1(a)(1)(ii) confirms that only revenue foregone that is otherwise due represents a financial contribution. SGUP does not forgo revenue here.
- The WTO has clearly stated that members, in principle, have sovereign authority to tax any particular categories it wishes; further, the member is also free not to tax.
- As explained at verification, the entry tax is a tax levied by enactment of state legislature. After considering which goods are largely consumed with movement in high volumes, the SGUP prepared the schedule of items subject to tax, thus enabling it to earn revenue by taxing a few items. However, it is not incumbent on member countries to offer explanations on why they prefer to subject certain goods to duties and not others.
- Further, an amendment to a tariff schedule cannot be considered an exception.

³¹⁸ *Id.*

³¹⁹ See 19 CFR 351.224(e).

GVN/MSL/JPL

- The SGUP has exclusive jurisdiction on setting entry tax; establishing such rates do not constitute a subsidy, even if the rate is set at zero. It is the government's prerogative to set rates as seen fit and to amend rates.
- Iron and steel is consumed by a myriad of industries; thus the zero rate is not confined to a particular class of users; hot-rolled coils are used by a number of steel industrial products.
- The SGUP has exercised its authority to generate income. It is incorrect to say that a zero rate is tantamount to providing a "tax refund."
- The SGUP has not reimbursed companies nor is there any tax forgiveness or deferral which might confer benefits. Thus, no "exemption" which is an ill-chosen name.
- WTO states only revenue foregone that is otherwise due represents a financial contribution. Here, there is no revenue foregone.

Petitioner rebuttal

- The GOI's contention that that the Department erred in finding entry tax exemptions specific, and finding revenue is foregone are without merit and should be rejected; rather, the GOI contends it is simply the exercise of the SGUP's sovereign authority to decide the specific products that will be subject to its entry tax system.
- The SGUP implemented a policy to promote the iron and steel industry, and identifies tax exemptions in its 2012 policy as "attractive financial incentives." The GOI also confirmed in its supplemental response that "the entry tax on Iron and Steel was considered as affecting the competitiveness of the Iron and Steel Industry of the state." These subsidies were intended by the SGUP to benefit specific enterprises and industries and are specific under 771(5A)(D)(i) of the Act.
- There is also financial contribution in the form of revenue foregone within the meaning of 771(5)(D)(ii) of the Act, in forgoing revenue that the SGUP would otherwise collect in order to favor its indigenous steel industry
- The Department has found similar tax exemptions in other cases to be financial contributions.³²⁰

Department's Position: We find this program to be countervailable because it meets the criteria of specificity under section 771(5A)(D)(i) of the Act, in that it was expressly limited by law to users of five specific iron and steel products; it provided a financial contribution in the form of revenue foregone by the SGUP pursuant to section 771(5)(D)(ii) of the Act; and, it confers a benefit equal to the amount of the tax refund, pursuant to section 771(5)(E) of the Act. The amendment provides an exception to the existing tariff schedule specifically for five itemized iron and steel products, and therefore creates a specific exemption for these products.³²¹ This is not a case where a taxing authority has simply set different tax rates for different entities or products. Rather, this is a case where the taxing authority specifically carved out five products

³²⁰ See, e.g., *PET Film from India 2007 Review* and accompanying IDM at "State and Union Territory Sales Tax Incentive Programs."

³²¹ See GOI post-preliminary determination supplemental response at Exhibit 16.

while subjecting all other products to a tax. As Petitioner notes, this was done to benefit the iron and steel industry.

Regarding the GOI's references to the SCM Agreement, the Department believes the Act and its regulations are fully consistent with its international obligations. The GOI's reference to Article 1.1(a)(1)(ii) of the SCM agreement is unfounded as the Department as well as other member countries routinely find tax exemptions to constitute revenue foregone. Moreover, the Department is not suggesting (as the GOI claims) that all goods must be taxed at the same rate, but that tax exemptions cannot be provided in a manner considered specific under the Act.

Comment 16: Whether the SGOM PSI-2007 or PSI-1988 are Countervailable Subsidies

GOI

- These programs are not specific under Section 771(5A)(D) of the Act.
- These programs also meet other requirements for subsidy to disadvantaged regions set forth under section 771(5B)(C).
- The mandatory respondents discharged their burden of proof as Jindal SAW stated that those programs were designed to increase investment in rural areas of the State.

Jindal SAW

- Jindal SAW concurs with the GOI's arguments.
- The Department's analysis is flawed because the statute specifically states that subsidies provided to disadvantaged regions shall be treated as non-countervailable.
- SGOM programs availed by Jindal SAW is a case of first impression that met all of the statutory criteria specified in Sections 771(5B)(C) and (5A)(D)(ii) of the Act.

Petitioner rebuttal

- Section 771(5A)(D)(ii) of the Act on which respondents rely is an exception only applicable to subsidies that might otherwise be specific as a matter of law under section 771(5A)(D)(i) of the Act; it does not apply to Section 771(5A)(D)(iv) of the Act.
- Even if Section 771(5A)(D)(ii) is relevant, respondents have failed to establish that any of the three criteria stated in that section are satisfied, as Jindal SAW's eligibility for PSI-2007 subsidies was determined by a SGOM High Power Committee which meets privately to exercise its discretion to approve subsidies and its meeting minutes are not available for verification.
- SGOM Sales Tax Deferments including PSI-1988 was found to be specific based on the application of AFA. The GOI has failed to challenge that determination and has provided no new information that would call it into question or that might establish that any of the criteria in Section 771(5A)(D)(ii) of the Act are satisfied.
- Respondents have also failed to meet any requirements of Section 771(5B)(C) of the Act.
 - The areas designated for eligibility were selected "to encourage dispersal of industries outside {the} Bombay-Thane-Pune belt," not because of their uniform and definable economic and administrative identity as required by the Act
 - The criteria used to identify the eligible areas are vague, not neutral and objective as required by the Act. PSI-2007 classified areas throughout the state according to whether their level of development is deemed to be "developed, less developed, lesser

developed, or least developed” without any reference to any criteria at all. Moreover, PSI-2007 listed ten lowest districts in the state on the Human Development Index but did not identify the index, or provide objective criteria that would enable that designation to be verified.

- The Act mandates that the economic development measurement to be based on a very specific measure of, *inter alia*, “per capita income” or a comparison with the average unemployment rate for the country. There is no indication in any of the information or arguments provided by the respondents that anything like these measurements was even attempted by the SGOM with respect to the subsidies at issue.
- The Act requires subsidies programs to include ceilings on the assistance amount that can be granted to a subsidized project. The assistance amount Jindal SAW received was at discretion of the SGOM’s High Power Committee. Further, PSI-2007 stated that the level of benefits available to “Mega Project” is decided by the “High Power Committee.”

Department’s Position: Regarding specificity, GOI and Jindal SAW relied on section 771(5A)(D)(ii) of the Act to argue whether the program was countervailable. However, section 771(5A)(D)(ii) of the Act outlines exceptions that are only applicable to subsidies that might otherwise be specific as a matter of law under section 771(5A)(D)(i) of the Act.

Here, as explained above, we found that PSI-2007 is specific under section 771(5A)(D)(iv) of the Act, because the benefits are limited to projects located in certain designated geographical regions within the State of Maharashtra. Further, we determined that SGOM Sales Tax Deferments including PSI-1988 is specific on the basis of AFA. With respect to the parties’ arguments concerning section 771(5B)(C) of the Act, that provision is no longer in effect.³²²

Comment 17: Whether the Provision of Hot-Rolled Steel by the Steel Authority (SAIL) of India is a Countervailable Subsidy

GOI

- The facts on the record are not sufficient to prove that SAIL is an “authority” within the meaning of the Act or a “public body” within the meaning of the SCM agreement.
- SAIL is a “public authority” designed by GOI’s majority shareholding. However, the majority shareholder of an entity does not demonstrate that government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with government authority, determinations held by the WTO Appellate Body in *US – Anti-Dumping and Countervailing Duties (China) (DS 379)*. The Appellate Body reports adopted by the Dispute Settlement Body are binding and must be unconditionally accepted by the parties to the particular dispute.
- It is necessary to examine the probative value of facts cited in the petitions against the test laid down in DS 379 report.
- Petitioners did not cite evidence to substantiate the statement that GOI uses its control to ensure SAIL supports development of the Indian steel industry. Further, Petitioners

³²² See section 771(5B)(G) of the Act.

placed a newspaper article in the Petition and cited it to state that under the GOI's pressure, SAIL declined to increase prices despite a strong demand; that article is merely 'suspicion' expressed by an unknown Mumbai-based trader. GOI strongly objects to such evidence being cited by Petitioner and relied upon by the Department. Further, the Department is obligated under the SCM Agreement to satisfy itself with the accuracy of the information supplied by interested parties.

- The SCM Agreement requires an investigating authority to give the interested parties the notice of the required information and ample opportunity to present all relevant evidence. Further, the Agreement does not permit the authority to resort to "adverse facts available," nor "draw adverse inference" from "facts available."

GVN

- GVN concurs with GOI's arguments.
- Purchases of hot-rolled steel from SAIL are made on commercial terms and at market prices.

Petitioner rebuttal

- The Department is bound to apply U.S. law, not determinations of the WTO Appellate Body or the provisions of WTO agreements or GOI's interpretation of the meaning and significance of those determinations and provisions.
- WTO decisions are limited to their facts and are not binding on the Department or the courts. WTO agreements only have legal effect to the extent implemented by duly passed legislation in the U.S.
- The Department's reliance on AFA is fully in compliance with the applicable requirements of U.S. law. GOI has failed twice to response the questions that would be crucial information to the Department's analysis. Further, the Department has the authority to apply AFA.
- SAIL is vested with government authority that satisfies the definition of "authority" within the meaning of the Act and the definition of "public body" set forth in the SCM Agreement. GOI owns at least 85 percent of SAIL and retains voting control of the Company. Further, like other government agencies, SAIL must comply with Indian Right to Information Act, 2005.
- SAIL actually exercises day-to-day government authority over "Steel Townships" and "Model Steel Villages" across India where it is responsible for providing medical care, sanitation, education, roads, and infrastructure and for establishing and operating schools and hospitals.
- SAIL acts as a government authority and is entrusted and directed to support various steel policies of the GOI. GOI's Ministry of Steel controls SAIL's operations which highlights SAIL is critical in implementing the ministry's National Steel Policy.
- While attempting to discredit an article from Steel Business Briefing placed in the Petition, GOI itself submitted hot-rolled steel market information from Steel Business Briefing and represented that the source is reliable for hot-roll steel pricing information.

Department's position: We requested the GOI to provide relevant information with regard to SAIL by including an "Information Regarding Input Producers in India Appendix" in the initial questionnaire.³²³ However, the GOI did not provide responses to any of the four questions listed in the Appendix.³²⁴ Subsequently, we provided the GOI another opportunity in a supplemental questionnaire to which it neither timely responded, nor requested an extension before the deadline.³²⁵ Because the GOI failed to cooperate to the best of its ability in this investigation, relying on AFA, we determined that SAIL is an "authority" and provides a financial contribution within the meaning of section 771(5)(B) of the Act, and further the program is specific. There is no further information on the record of this investigation to warrant a reconsideration of our *Preliminary Determination*.

Finally, we disagree with the GOI that there was insufficient information justifying initiation of an investigation into whether SAIL is an "authority." In fact, the petition was supported by much evidence indicating that the GOI exercises meaningful control over SAIL such that it might be considered an "authority."³²⁶

Comment 18: Whether to Adjust Benchmark and Freight in the Subsidy Rate Calculation for Hot-Rolled Coil from SAIL at Less Than Adequate Remuneration

GVN

- The monthly weighted average benchmark needs to be grade-specific.
- One of JPL's two private suppliers included freight from its plant to JPL's plant in the invoice value as demonstrated in verification exhibit 22. For this private supplier, the Department needs to exclude the freight cost from the landed cost for all the transactions.

Petitioner rebuttal

- MSL and JPL never provided definitions of the terms reported within "Grades" field. In fact, the "grades" reported are not at all consistent, even with regard to the hot-rolled steel provided by the same supplier to both MSL and JPL.
- MSL and JPL have failed to establish that the reported "grades" are connected in any way with price differences or any other factors that may affect comparability.
- MSL and JPL have failed to provide any information that would establish a verifiable link between the grades reported for SAIL and the grades reported for private suppliers.
- MSL's and JPL's questionnaire responses clearly indicated that freight was not included in the reported purchase prices. The only support for GVN's claim is a single invoice that was presented for the first time at verification. The invoice in question constitutes untimely new factual information and should be rejected on that basis.
- Even if the invoice was to be accepted, GVN fails to establish that any of the numerous other purchases reported by JPL and MSL as having been made on an "ex works" or "plant" basis in fact included delivery charges to their facilities.

³²³ See Letter to the Embassy of India, August 28, 2013.

³²⁴ See GOI initial response at 23, Annexure A, and Annexure 11.

³²⁵ See Letter to the Embassy of India, November 8, 2013, at 5-6.

³²⁶ See Petition Volume III at 51-55.

Department's position: We agree with Petitioner that neither MSL nor JPL provided a definition of the terms in the grade field, nor did they use the same terms. However, we disagree with Petitioner that MSL and JPL have failed to provide any information that would establish a verifiable link between the grade reported for SAIL and the grades reported for private suppliers. Further, we disagree with Petitioner regarding linkage between price and grades. Other factors may have affected the price, but for the benchmark we find that only the linkage between the price and grades are relevant. As such, we calculated a grade-specific monthly weighted average benchmark which demonstrates that in a given month unit price varies by grade.

We disagree with Petitioner that JPL's invoice is untimely new factual information. Further, the fact that purchases were made on an "ex works" basis is not relevant to JPL. At verification, we confirmed that the invoice amounts reported in Exhibit J-8(b), is the sum of the total material value, sales tax value and freight recovered value shown on the invoice for a considerable number of transactions. We randomly selected one invoice for SAIL and one invoice for a private supplier, as part of the verification exhibit. As such, we have deducted freight cost in our calculations for the final determination.

Comment 19: Whether the Benefit Calculation for the SGOM Sales Tax Deferral Program is Incorrect

GVN

- The Department should use Exhibit M-19(d), not Exhibit M-18, to calculate the subsidies received by MSL, because Exhibit M-18 summarizes the entitled amounts from four programs while Exhibit M-19(d) reports actual deferred amounts and payments.
- The Department should attribute the subsidies received by MSL to the combined sales of MSL and JPL, not MSL's sales alone, because the two companies's production is inter-dependent.

Petitioner rebuttal

- MSL failed to report complete information on the frequency and corresponding amount of repayments of deferred sales taxes under the subsidy program – information that the Department requires to accurately calculate the subsidy benefit.
- As a State sales tax exemption, this subsidy is tied by the SGOM to only those sales made by MSL's facilities in Maharashtra. Accordingly, this subsidy should only be attributed to MSL's sales.

Department's position: Exhibit M-19(d) contains the actual deferred amounts and payments and therefore is the correct exhibit to be used for the benefit calculation. However, MSL did not place the information in Excel format on the record, as it did for Exhibit M-18. For this final determination, we will use the correct information provided in Exhibit M-19(d) to calculate the benefit. Further, in accordance with the attribution methodology described above in section IV.C. "Cross-Ownership and Attribution of Subsidies" we used the combined sales of MSL and JPL.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If this recommendation is accepted, we will publish the final determination in the *Federal Register* and notify the ITC of our determination.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 10, 2014

Date