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MEMORANDUM TO: Paul Piquado
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 Results of
Countervailing Duty Administrative Review: Polyethylene
Terephthalate Film, Sheet, and Strip (PET film) from India; 2012

I. SUMMARY

The Department of Commerce (the Department) analyzed the case briefs submitted by Jindal Poly Films Limited (Jindal) and SRF Limited (SRF), and the rebuttal brief submitted by Polyplex USA LLC and Flex USA, Inc. (Domestic Interested Parties), in the 2012 administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India. As a result of this analysis, we made changes to the preliminary results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues in this review for which we received comments from parties:

- Comment 1: Whether There Has Been A Program-Wide Change for Pre-Shipment Export Financing in Foreign Currency and Adjustment of the Cash Deposit Rate.
- Comment 2: Whether The Department Wrongly Countervailed Export Promotion Capital Goods Scheme (EPCGS) Benefits That Apply To Non-Subject Merchandise.
- Comment 3: Whether the Department Used The Wrong Numerator To Calculate The POR Benefit For The Status Holder Incentive Scheme (SHIS).
- Comment 4: Whether The Department Made An Error In Calculating the POR Benefit for the SHIS.
- Comment 5: Whether the Value Added Tax (VAT) And Central Sales Tax (CST) Refunds Under the Industrial Promotion Subsidy (IPS) Of the State Government Of Maharashtra's (SGOM) Package Scheme Of Incentives (PSI) Is Countervailable.



II. BACKGROUND

On August 25, 2014, the Department published the preliminary results of the administrative review of the countervailing duty order on PET film from India.¹ The review covers two producers/exporters of the subject merchandise, Jindal and SRF. The period of review (POR) is January 1, 2012, through December 31, 2012. Jindal and SRF submitted timely filed case briefs on October 1, 2014. Domestic Interested Parties submitted a timely filed rebuttal brief on October 6, 2014. DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, Petitioners) did not submit a case brief or rebuttal brief with respect to the Preliminary Results 2012.

On November 10, 2014, the Department extended the deadline for the final results of review by 60 days to February 21, 2015. However, because February 21, 2015, falls on a Saturday, the deadline for the completion of the final results is now Monday, February 23, 2015.²

Scope of the Order

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

III. SUBSIDIES VALUATION INFORMATION

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 2006 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company-specific AUL or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(i) and (ii). In the IRS Tables, PET

¹ See Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2012, 79 FR 50616 (August 25, 2014) (Preliminary Results 2012).

² It is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

Film falls under the category “Manufactured Chemicals and Allied Products.” For that category, the IRS tables specify a class life of 9.5 years, which is rounded to establish an AUL of 10 years. SRF has not disputed this allocation period for this administrative review.³ In the 2003 administrative review, the Department determined that Jindal had rebutted the presumption and applied a company-specific AUL of 17 years for Jindal.⁴ Because there is no new evidence on the record that would cause the Department to reconsider this decision in this review, the Department continues to use an AUL of 17 years for Jindal in allocating non-recurring subsidies.

Benchmark Interest Rates

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

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

In prior reviews, the Department determined that U.S. dollar-denominated working capital demand loans (WCDL) are comparable to U.S. dollar-denominated pre-shipment export financing and post-shipment export financing, because these loans and WCDLs are used to finance both inventories and receivables.⁵ There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. In these final results, the Department calculated SRF’s and Jindal’s U.S. dollar-denominated short-term benchmark rates based on its U.S. dollar-denominated WCDLs. We derived an annual weighted average of the interest rates on SRF’s and Jindal’s commercial loans, weighted by the principal amount of each loan.

³ See SRF Initial Questionnaire Response (February 26, 2014) (SRF IQR) at 145.

⁴ See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006) (PET Film Final Results of 2003 Review), and accompanying Issues and Decision Memorandum (IDM) at “Subsidies Valuation Information.”

⁵ See Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 70 FR 46483, 46485 (August 10, 2005) (PET Film Preliminary Results of 2003 Review), unchanged in PET Film Final Results of 2003 Review, and accompanying IDM at “Benchmarks for Loans and Discount Rate.”

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

Pursuant to 19 CFR 351.505(a)(2)(iii), in selecting a comparable loan if a program under review is a government-provided, long-term loan program, the preference would be to use a loan for which the terms were established during, or immediately before, the year in which the terms of the government-provided loan were established. Pursuant to 19 CFR 351.505(a)(2)(ii), the Department will not consider a loan provided by a government-owned special purpose bank to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. As such, the Department does not use loans from the IDBI, Industrial Finance Corporation of India (IFCI), or Export-Import Bank of India (EXIM) as a basis for a commercial loan benchmark.⁶

In this review, SRF and Jindal did not have comparable commercial long-term rupee-denominated loans for all required years; therefore, for those years for which we did not have company-specific information, and where the relevant information was on the record, we relied on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii). When there were no comparable long-term, rupee-denominated loans from commercial banks either during the year under consideration or the preceding year, we used national average long-term interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from the International Financial Statistics, a publication of the International Monetary Fund (IMF Statistics).⁷ Finally, 19 CFR 351.524(d)(3) directs us regarding the selection of a discount rate for the purposes of allocating non-recurring benefits over time. The regulations provide several options in order of preference. The first among these is the cost of long-term fixed-rate loans of the firm in question, excluding any loans which have been determined to be countervailable, for each year in which non-recurring subsidies have been received. The second option directs us to use the average cost of long-term, fixed-rate loans in the country in question. Thus, for those years for which SRF and Jindal, respectively, did not report any long-term fixed-rate commercial loans, we used the yearly average long-term lending rate in India from the IMF Statistics.

⁶ See PET Film Final Results – 2003, and accompanying Issues and Decision Memorandum at Comment 3. Further, the Department previously has determined that the Industrial Finance Corporation of India (IFCI) and the Export-Import Bank of India (EXIM) are government-owned special purpose banks. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008) and accompanying Issues and Decision Memorandum at “Benchmark Interest Rates and Discount Rates.”

⁷ See preliminary results calculation memoranda for SRF and Jindal.

Denominator

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program at issue. As discussed in further detail below, we determine that the benefits received by SRF under all of the programs found countervailable, were tied to export performance. We further determine that the benefits received by Jindal under all but three of the programs found countervailable, were tied to export performance. Therefore, for those programs tied to export performance, except as cited below for pre-shipment export financing and duty drawback (DDB), we use total export sales, including deemed exports, as the denominator for our calculations.⁸ Because pre-shipment export financing requires that the recipient demonstrate physical exports, we used total export sales net of deemed exports. Likewise, because we are able to tie the benefits earned under the DDB to exports of subject merchandise to the United States, we used exports of subject merchandise to the United States as the denominator. For the three programs not tied to export performance, state and union territory sales tax incentive programs and the SGOM package scheme of incentives (PSI) 1993 and 2007, we used total sales as the denominator. For detailed discussion of the sales denominator of the IPS, please see Comment 5 below.

IV. ANALYSIS OF PROGRAMS

Programs Determined to be Countervailable

1. Pre- and Post-Shipment Export Financing

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

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

⁸ See 19 CFR 351.525(b)(2).

In the original investigation, the Department determined that the pre-shipment and post-shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Tariff Act of 1930, as amended (Act) as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act inasmuch as the interest rates, which are determined by the RBI, provided under these programs are lower than commercially available interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance.⁹

With respect to the rupee-denominated export financing, RBI previously capped the interest rate that commercial banks could charge on these loans.¹⁰ However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and set only a floor rate for these loans.¹¹ 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.¹²

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.¹³ However, effective May 5, 2012, banks are free to determine the interest rates on export credit in foreign currency, to provide export credit to exporters at internationally competitive rates under the programs of Pre-shipment Credit in Foreign Currency (PCFC) and Rediscounting of Export Bills Abroad (EBR).¹⁴

SRF and Jindal reported that they did not receive any post-shipment export financing during the POR.¹⁵ However, both companies reported receiving pre-shipment export financing in U.S. dollars during the POR.¹⁶ With regard to pre-shipment loans, the benefit conferred is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (*i.e.*, the short-term

⁹ See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002) (PET Film Final Determination), and accompanying IDM at "Pre-Shipment and Post-Shipment Financing."

¹⁰ Id., and accompanying IDM at "Pre-Shipment and Post-Shipment Export Financing."

¹¹ See Government of India (GOI) Initial Response, dated March 5, 2014 (GOI IQR), at 6-9; 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 17; and Certain Oil Country Tubular Goods From India: Final Affirmative Countervailing duty Determination and Partial Final Affirmative Determination of Critical Circumstances, 79 FR 41967 (July 18, 2014) (OCTG India), and accompanying IDM, at 25.

¹² GOI IQR at Exhibit 3, p. 31.

¹³ See GOI IQR at 9 and Exhibit 3, p.26 and 33-36.

¹⁴ Id., at 9-10 and Exhibit 3, pp. 33-35.

¹⁵ See SRF IQR at 16, and Jindal IQR at 22 and Jindal SQR1 at 8-9 and 14.

¹⁶ Id.

benchmark). Because pre-shipment loans are not tied to exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit received by SRF and Jindal under this program during the POR by the value of the respective company's total exports sales net of deemed exports during the POR.¹⁷ On this basis, we determined the net countervailable subsidy from pre-shipment export financing for SRF to be 0.00 percent ad valorem, and for Jindal to be 0.00 percent ad valorem during the POR.

However, effective May 5, 2012, banks are free to determine the interest rates on export credit in foreign currency, to provide export credit to exporters at internationally competitive rates under the programs of PCFC and EBR.¹⁸ As a result, we have previously found that the GOI terminated the foreign currency export financing program on May 5, 2012.¹⁹ In Shrimp from India, the GOI supported its claim with a copy of the "Master Circular - Rupee / Foreign Currency Export Credit & Customer Service To Exporters," issued by RBI.²⁰

As explained below, 19 CFR 351.526(a) permits the Department to take account of program-wide changes in setting the countervailing duty deposit rate in certain circumstances. When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be no residual benefits under the program 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. For further discussion regarding this issue, see Comment 1 below.

2. Export Promotion Capital Goods Scheme (EPCGS)

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

¹⁷ See 19 CFR 351.525(b)(2).

¹⁸ See GOI IQR, at 9-10 and Exhibit 3, pp. 33-35.

¹⁹ See Shrimp from India and accompanying IDM at "Export Financing Program."

²⁰ Id.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are countervailable export subsidies because: (1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone in not collecting import duties; (2) respondents receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act.²¹ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is the Department's practice to treat any balance on an unpaid liability as a contingent liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).²² The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring . . .".²³ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these exemptions as non-recurring benefits.

SRF reported that it imported capital goods under the EPCGS in the years prior to the POR. SRF received various EPCGS licenses, which it reported were for the production of subject merchandise and non-subject merchandise. SRF provided complete license documentation on the record of this review, including copies of the original licenses issued by the GOI.²⁴ Thus, based on the information and documentation submitted by SRF, we were able to determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that SRF benefitted from some EPCGS license(s) over its AUL.

As stated in the Preliminary Results 2012, Jindal reported that it imported capital goods under the EPCGS in the years prior to and during the POR. Jindal received various EPCGS licenses,

²¹ See PET Film Final Determination, and accompanying IDM at "EPCGS."

²² Id.

²³ See Countervailing Duties: Final Rule, 63 FR 65348, 65393 (November 25, 1998); see also PET Film Final Determination, and accompanying IDM at Comment 5. In the event a respondent has met its export obligation in full, as certified by the GOI, we treat the corresponding unpaid customs duties as a grant pursuant to 19 CFR 351.505(d)(2).

²⁴ See SRF IQR at Exhibit 18(a) and SRF's First Supplemental Response (July 14, 2014) (SRF SQR1) at Exhibit S1-17.a.-17.a.3.

which it reported were for the production of: (1) subject merchandise, and (2) non-subject merchandise. After reconsidering the information provided by Jindal on the record of this review, we still find that the information on the licenses indicates that some of the licenses were issued for the purchase of capital goods and materials that could be used in the production of both subject and non-subject merchandise.²⁵ Specifically, information included in Jindal's most recent supplemental response indicates that the GOI approved certain licenses for export of both subject and non-subject merchandise. Based on the information and documentation submitted by Jindal, we cannot determine, as Jindal now argues, that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that all of Jindal's EPCGS licenses benefit all of the company's exports.²⁶

SRF and Jindal met the export requirements for certain EPCGS licenses prior to December 31, 2012, and the GOI formally waived payments of the relevant import duties. For most of its licenses, however, Jindal has not yet met its export obligation as required under the program.²⁷ Therefore, although Jindal received a deferral from paying import duties when the capital goods were imported, the final waiver of the obligation to pay the duties has not yet been granted for many of these imports.

All of SRF's and Jindal's license(s) provided benefits in the form of deferred duties. To calculate the benefit received from the GOI's formal waiver of import duties on SRF's and Jindal's capital equipment imports where their export obligation was met prior to December 31, 2012, we considered the total amount of duties waived (net of required application fees) to be the benefit, and treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived SRF's and Jindal's outstanding import duties.²⁸ Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted SRF and Jindal an import duty waiver. We did not identify any years in which the value of the waivers exceeded 0.5 percent of SRF's total export sales in that same year. As a result, we expensed the value of the waived duties to the year of receipt. With respect to Jindal, for those license(s), which were not expensed in the year of receipt, we then calculated the benefit from these allocable grants using the methodology set forth in 19 CFR 351.504 to determine the benefit in the POR from these grants. We summed the benefits from these grants to determine the total benefit for Jindal of these waivers.

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

²⁵ See Jindal Initial Questionnaire Response (March 5, 2014) (Jindal IQR) at 42 and Exhibits 20(a), 20(b), 20(c), 22(a), and 22(b), and Jindal First Supplemental Response (June 24, 2014) (Jindal SQR1) at Exhibit S1-1 and S1-20(b).

²⁶ Note: To alleviate the burden of reporting for Jindal, the Department granted Jindal limited reporting of the license documentation. Thus, the analysis of the EPCGS license documentation is based on a sample of license documents. See Letter from Jindal to the Department (June 10, 2014).

²⁷ See SRF IQR at 35 and 39, and Jindal IQR at 47 and 51.

²⁸ See PET Film Final Determination, and accompanying IDM at Comment 5.

obligations under the licenses are not met.²⁹ Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest-free loan.

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty deferrals for which the respondent applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we find the benefit to be the interest that Jindal would have paid during the POR on the full amount of the duty deferral at the time of importation.³⁰ As stated above, under the EPCGS program, the time period for fulfilling the export commitment expires eight years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.*, under the EPCGS program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). As the benchmark interest rate, we used the weighted-average interest rate from all comparable commercial long-term, rupee-denominated loans for the year in which the capital good was imported. See the “Benchmarks for Loans and Discount Rate” section above for a discussion of the applicable benchmark. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the license was approved and summed these amounts to determine the total benefit to Jindal from these interest-free loans.

Thus, the total benefit received under the EPCGS is the sum of: (1) the benefit attributable to the POR from the formally waived duties for imports of capital equipment for which respondents met export requirements by December 31, 2012, and (2) interest due on the contingent liability loans for imports of capital equipment that have not met export requirements. We then divided the total benefit by Jindal’s total exports to determine a subsidy of 2.18 percent ad valorem. For more information on the attribution of Jindal’s benefits under this program to subject versus non-subject merchandise, see Comment 2 below.

3. Duty Drawback (DDB) Program

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.³¹ Specifically, the duties and tax “neutralized” under the program are (i) the customs and union

²⁹ See 19 CFR 351.505(d)(1); PET Film Final Determination, and accompanying IDM at “EPCGS”; see also Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005) (Indian PET Resin Final Determination), and accompanying IDM at “d. Export Promotion Capital Goods Scheme (EPCGS).”

³⁰ See, e.g., PET Film Preliminary Results of 2003 Review, 70 FR at 46488 (unchanged in PET Film Final Results of 2003 Review); see also Indian PET Resin Final Determination, and accompanying IDM at “d. Export Promotion Capital Goods Scheme (EPCGS).”

³¹ See GOI IQR at 62 and Exhibit 23; see also OCTG India, and accompanying IDM at “Duty Drawback;” see also Shrimp from India, and accompanying IDM at 12 (“Duty Drawback”).

excise duties on inputs and (ii) the service tax in respect of input services.³² The DDB is generally fixed as a percentage of the FOB price of the exported product.³³

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.³⁴ 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.³⁵ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.³⁶ 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 full amount of any exemption, deferral, remission or drawback is countervailable.³⁷

Regarding its establishment of applicable DDB rates, the GOI stated the following:³⁸

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the GOI. The committee makes its recommendations after discussions with all stake holder 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 exports 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.³⁹

As submitted by the GOI, Rule 3(2) of the Drawback Rules 1995, states that in determining the amount of drawback, “the Central Government shall have regard to” the average quantity and value of an input, component or intermediate product, whether produced in India or imported, the import duties or excise duties paid thereon, as well as account for waste, re-use or sale of a by-product, and packing and input services rendered.⁴⁰

In its first supplemental questionnaire, the Department asked the GOI to discuss in detail how it was determined to include PET film in the list of products eligible for duty drawback, and to provide all documentation from all entities involved in the process for including PET film and the applied DDB rate(s). The Department also asked the GOI to include all documentation from

³² See GOI IQR at 62 and Exhibit 23.

³³ *Id.*, at 69.

³⁴ See 19 CFR 351.519(a)(1)(ii).

³⁵ See, e.g., PET Film Final Determination, and accompanying IDM at “Duty Entitlement Passbook Scheme (DEPS/DEPB).”

³⁶ *Id.*; see also 19 CFR 351.519(a)(4).

³⁷ See 19 CFR 351.519(a)(4)(i)-(ii).

³⁸ See GOI IQR at 76-79; see also Shrimp from India, and accompanying IDM, at 12-13, “Duty Drawback.”

³⁹ See GOI IQR at 76-79.

⁴⁰ *Id.*

the Export Promotion Councils, Trade Associations, and individual exporters, as well as the data on procurement prices of inputs (indigenous and imported), applicable duty rates, consumption ratios and FOB values of exports products, as well as corroborating data collected from Central Excise and Customs field formations. However, the GOI only repeated that the rates are determined following a specified procedure, undertaken by an independent committee appointed by the GOI.

According to the GOI, the independent committee:

“makes its recommendations after discussions with all stake holder 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 exports 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.”⁴¹

After the preliminary results, we asked the GOI one more time to provide detailed information and supporting documentation, such as verification procedures and reports, or how certain numbers and percentages were arrived at, but the GOI still did not provide the information.⁴²

For these final results, we still find that these statements by the GOI are not supported by any data collected or committee reports to support the above claim. Based on the GOI’s questionnaire responses and lacking the documentation to support that the GOI has a system in place, we conclude for these final results that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.⁴³

Under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the full amount of customs and excise duties and service taxes rebated during the POR 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.⁴⁴ 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).

The GOI, SRF and Jindal reported that they received drawbacks under the DDB program during the POR.⁴⁵ We are able to tie the benefits received to specific markets and to specific products, in accordance with 19 CFR 351.525(b)(4) and (5). Therefore, we calculated the subsidy rates

⁴¹ See GOI IQR at 76-77 and GOI First Supplemental Questionnaire (July 21, 2014) (GOI SQR1), at 32-33.

⁴² See GOI Second Supplemental Questionnaire (September 12, 2014) (GOI SQR2), at 6-10.

⁴³ *Id.*; see also Shrimp from India, and accompanying IDM at 12-13.

⁴⁴ 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).

⁴⁵ See GOI IQR at 62, SRF IQR at 74 and Exhibit 31(b) and SRF SQR1 Exhibit S1-5, and Jindal IQR at 2 and 17-19, and Exhibit 26(a).

using the value of all DDB rebates that were earned on U.S. sales of subject merchandise during the POR.⁴⁶ We divided the total amounts of benefit earned by each company's total exports of subject merchandise to the United States during the POR. On this basis, we determine a countervailable subsidy rate of 0.04 percent ad valorem for SRF, and a countervailable subsidy of 3.17 percent ad valorem for Jindal.⁴⁷

4. Status Holder Incentive Scrip (SHIS)

The SHIS scheme was introduced in 2009 with the objective to promote investment in upgrading technology in specific sectors.⁴⁸ Status Holders under the GOI's listing of specific exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of an import duty credit. The SHIS license can only be used for imports of capital goods and it can be transferred to another Status Holder for the import of capital goods.⁴⁹

In Steel Threaded Rod from India Final,⁵⁰ the Department determined this program to be countervailable because it provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because duty free import of goods represents revenue forgone by the GOI. Further, the Department determined that it is specific under sections 771(5A)(A) and (B) of the Act because it is limited to certain exporters. A benefit is also provided under the SHIS program under 771(5)(E) and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.

Import duty exemptions under this program are solely provided for the purchase of capital equipment.⁵¹ The preamble of the Department's 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...."⁵² In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁵³

Jindal reported that it received SHIS licenses to import capital goods duty-free during the POR. Information provided by Jindal indicates that its SHIS licenses scripts were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by Jindal to the company's total exports.⁵⁴

⁴⁶ See, e.g., Steel Plate Final Determination, 64 FR at 73134 and 73140.

⁴⁷ See preliminary results calculation memoranda for SRF and Jindal.

⁴⁸ See GOI IQR at 80-89 and Exhibits 6 and 7, and GOI SQR at 37.

⁴⁹ Id.

⁵⁰ See Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances, 79 FR 40712 (July 14, 2014) (Steel Threaded Rod from India Final), and accompanying IDM, at "Status Holder Incentive Scrip."

⁵¹ Id.

⁵² See Countervailing Duties, 63 FR at 65393.

⁵³ See Steel Threaded Rod from India Final, and accompanying IDM at "Status Holder Incentive Scrip."

⁵⁴ See Jindal IQR at 94 and Exhibit 27, and Jindal SQR1 at 28-32 and Exhibit S1-29.

The SHIS license fixes the amount of the non-recurring benefit to be provided to the recipient.⁵⁵ Although the Department's regulations stipulate that we will normally consider the benefit as having been received as of the date of exportation, see 19 CFR 351.519(b)(1), because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the face value of the SHIS licenses, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.⁵⁶

We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which Jindal received the SHIS license and determined to allocate the benefits across the AUL.⁵⁷ We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). On this basis, we determine a countervailable subsidy of 0.19 percent ad valorem for Jindal.

The GOI stated that this program was discontinued effective April 1, 2013; however, companies may apply for licenses for up to three years after the program has ended (i.e., through 2016).⁵⁸ Additionally, because this program applies to capital goods and the AUL in this proceeding is ten years, and for Jindal, specifically, 17 years,⁵⁹ companies may receive residual benefits from this program through at least 2026, and Jindal through 2033.⁶⁰ For a discussion on the appropriate numerator used and correction of an inadvertent error in calculating the benefit under SHIS, see Comments 3-4.

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

This program was found countervailable in SRF's new shipper review.⁶¹ An SEZ may be established jointly or individually by the Central Government, the State Government or a person, to manufacture goods or provide services, or both, as well as to serve as a Free Trade and Warehousing Zone. Entities that want to set up an SEZ in an identified area may submit their proposal to the relevant State Government. To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services. Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production. In return, the companies inside the SEZ are eligible to receive various forms of assistance.

⁵⁵ Id., Jindal SQR1 at 32-33 and GOI IQR at 83.

⁵⁶ The Department determined, and was upheld by the CIT in Essar Steel v. United States, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (Essar Steel) in the similar but discontinued GOI program, that the Duty Entitlement Passbook Scheme ("DEPS") benefits were conferred when earned, rather than when the credits were used.

⁵⁷ See final results calculation memorandum for Jindal, at Attachment 1.

⁵⁸ See GOI SQR1 at 41 and GOI IQR at 81-83; see also Steel Threaded Rod from India Final, and accompanying IDM at "Status Holder Incentive Scrip."

⁵⁹ See "Allocation Period" section, above.

⁶⁰ Note that Jindal's company-specific AUL is 17 years; see "Allocation Period," section above.

⁶¹ See Polyethylene Terephthalate Film, Sheet and Strip From India: Final Results of Countervailing Duty New Shipper Review, 76 FR 30910 (May 27, 2011) (SRF New Shipper Review), and accompanying IDM at 13-19.

Companies in a designated SEZ may receive the following benefits: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of Central Sales Tax (CST) thereon; (3) exemption from the services tax for the services consumed within the SEZ; (4) exemption from stamp duty for all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit; (6) income tax exemptions under the Income Tax Exemption Scheme Section 10A;⁶² and (7) discounted land in an SEZ.

SRF reported that it produced subject and non-subject merchandise in an SEZ unit located in Indore during the POR. Specifically, SRF reported using the SEZ program to obtain: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of CST thereon; (3) exemption from stamp duty of all transactions and transfers of immovable property, or documents related thereto within the SEZ; (4) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit; (5) income tax exemptions under Income Tax Exemption Scheme Section 10A; and (6) discounted land in an SEZ.⁶³

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

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

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

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

In the SRF New Shipper Review, the Department determined that, with regard to these import duty exemptions provided on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not claim or provide any information to

⁶² See GOI IQR at 37-61 and Exhibits 17-21.

⁶³ See SRF QR at 45-66.

demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Thus, the Department determined that the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act.⁶⁴ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to find this program countervailable.⁶⁵

Further, based on the information provided by SRF in its “Executed Legal Agreement for SEZ Unit” with the GOI, until an SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties.⁶⁶ SRF has not yet met its export requirement under this program⁶⁷ and will owe the unpaid duties if the export requirement is not met. Therefore, consistent with 19 CFR 351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties to be an interest-free loan made to SRF at the time of importation. We determine the benefit to be the interest that SRF would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation.

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

We calculated the benefit from these exemptions by multiplying the value of the item imported by the applicable duty rates for customs duty and cess, and multiplied these amounts by the appropriate interest rate. We then summed the results, and divided that total by SRF’s exports to determine the countervailable subsidy of 1.23 percent *ad valorem*.

b. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Materials

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

⁶⁴ See SRF New Shipper Review, and accompanying IDM at 14-15.

⁶⁵ See GOI IQR at 55-57.

⁶⁶ See SRF IQR at Exhibit 21(a).

⁶⁷ Id.

materials is the amount of CST otherwise due to the GOI on those purchases by SRF during that period.

Normally, exemptions from paying indirect taxes, such as the CST, are considered to provide recurring benefits. However, a portion of the CST exempted in this program is tied to the purchase of capital goods. Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. However, when we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), we found that the amount of CST not collected CST tied to the purchase of capital goods during the POR was less than 0.5 percent of total export sales during the POR. We also performed the “0.5 percent test” on the amount of CST not collected by the GOI that was tied to SRF’s purchases of capital goods in the years 2004 through 2010, and found that the amount of unpaid CST in each year was less than 0.5 percent of total export sales for that year. Therefore, each annual benefit from 2004 through 2012 was expensed in the year of receipt and the only benefit attributable to the POR was the amount of the CST not collected by the GOI on purchases of capital goods under this program during the POR.⁶⁸

The Department found this program countervailable in the SRF New Shipper Review.⁶⁹ Specifically, the Department found that for the CST exemptions on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.518. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to treat all other CST exemptions on all purchases (other than capital goods) as recurring benefits pursuant to 19 CFR 351.524.

To calculate the benefit, we summed the total value of CST not collected by the GOI on all purchases during the POR. We then divided this amount by the total value of SRF’s export sales during the POR. On this basis, we determine the countervailable subsidy provided to SRF through the CST exemptions under the SEZ program to be 0.39 percent ad valorem.

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

According to SRF, “[t]he Indian Stamp Act, 1899, is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899, with amendments to the same to suit the transactions peculiar to each State,” and the State Government of Madhya Pradesh has made amendments and imposed various types of Stamp Duty.⁷⁰ These amendments include the Stamp Duty, Surcharge on Stamp Duty, Gram Panchyat Taxes, and Municipalities Tax.⁷¹ Further, SRF states that under Section 13(2) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the transfers of immovable property or documents related thereto within the SEZ shall be

⁶⁸ See 19 CFR 351.524(b)(2).

⁶⁹ See SRF New Shipper Review, and accompanying IDM at 15-16.

⁷⁰ See SRF IQR, at 54-55 and Exhibit 24(a) and (b).

⁷¹ Id.

exempt from the stamp duty, and that SRF has been exempted from payment of the stamp duty on its land lease deed.⁷²

In the SRF New Shipper Review, the Department determined that the program provides a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act.⁷³ The Department further determined that the SEZ exemption from stamp duty/taxes provides a non-recurring benefit under 19 CFR 351.524(c)(2)(i).⁷⁴ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to find this program countervailable.

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

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

SRF reported that under Section 11(4) of the Indore Special Economic Zone (Special Provisions) Act, 2003, the supply of electricity to an SEZ is exempt from electricity duty and cess.⁷⁵ In response to the Department's request to explain its monitoring procedure, the GOI cited to Section 11(4) of the Indore Special Economic Zone (Special Provisions) Act, 2003, stating that the unit for which electricity duty is exempted must be located within the SEZ as approved by the GOI.⁷⁶ In addition, SRF provided an exhibit including the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 and the Madhya Pradesh Ordinance No.18 of 200 -- the state's laws governing the taxation of electricity, which establish the applicable rates of electricity duty and cess,⁷⁷ demonstrating that this program is within the control of the state government.

In the SRF New Shipper Review, the Department determined that the electricity duty and cess exemptions provide a financial contribution in the form of revenue foregone by the State

⁷² Id. at 45-55 and Exhibit 24(b); see also GOI IQR at 5 and Exhibits 18 and 21.

⁷³ See SRF New Shipper Review, and accompanying IDM at 16.

⁷⁴ Id., and accompanying IDM at 16 and 35 (Comment 7).

⁷⁵ See SRF IQR at 55 and Exhibits 25(a) and (b).

⁷⁶ See GOI IQR at 40-41 and Exhibit 18.

⁷⁷ See SRF IQR at 55 and Exhibits 25(a) and (b), see also GOI IQR at 40-41 and Exhibit 22.

Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. The Department also determined that the SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).⁷⁸ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to find this program countervailable.

To calculate the benefit, we first calculated the uncollected electricity duty and cess which SRF did not pay during the POR by multiplying the monthly billed amount of electricity consumed by the tax rates provided. We then divided this amount by SRF's total export sales during the POR to calculate a countervailable subsidy of 0.21 percent ad valorem.

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

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

Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee.⁷⁹

In the SRF New Shipper Review, the Department determined that, pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone.⁸⁰ The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by SRF, pursuant to section 771(5)(E) of the Act.⁸¹ We also determined that the SEZ income tax exemption provides a recurring benefit under 19 CFR 351.524(c).⁸² There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to find this program countervailable.

To determine the benefit, we calculated the amount of income tax SRF would have had to pay absent this program on the income tax return filed during the POR. We then subtracted the amount of income tax that SRF actually paid during the POR.⁸³ We divided this benefit by

⁷⁸ See SRF New Shipper Review, and accompanying IDM at 17.

⁷⁹ Id.; GOI IQR at 41-51 and SRF IQR at 56-62.

⁸⁰ See SRF New Shipper Review, and accompanying IDM at 18.

⁸¹ Id.

⁸² Id.

⁸³ See 19 CFR 351.509(c).

SRF's total export sales during the POR, to determine a countervailable subsidy of 0.14 percent ad valorem.

f. Discounted Land Fees in an SEZ

The GOI states that, in accordance with Chapter II, Rule 5, of the SEZ Rules, "States which have the SEZ units, have specific provisions in respect of exemption from the State and local taxes, levies and duties" ⁸⁴ The Indore SEZ, where SRF has its plant, is located in the State of Madhya Pradesh and as such, the State SEZ Act of Madhya Pradesh State, *i.e.*, the Indore Special Economic Zone (Special Provisions) Act, 2003, applies. ⁸⁵ The State Government of Madhya Pradesh is in control of SRF's land lease agreement within the SEZ. SRF reported that, because its SEZ unit is a Mega Project by virtue of its large investment, the State Government of Madhya Pradesh has allowed a one-time concession of 75 percent of the lease premium on the land. ⁸⁶ This is confirmed by the directive of the Government of Madhya Pradesh, Department of Commerce, Industry and Employment Ministry, submitted by SRF. ⁸⁷

In the SRF New Shipper Review, the Department determined that, pursuant to section 771(5)(D)(ii) of the Act, the State Government of Madhya Pradesh provides a financial contribution in the form of revenue forgone. ⁸⁸ The benefit equals the difference between the land premium that would be payable absent this program and the actual amount paid by SRF, net of advances, *i.e.*, down payments on the lease made by SRF, pursuant to section 771(5)(E) of the Act. ⁸⁹ Further, the discount is a one-time occurrence given at the time of the original land lease agreement, *i.e.*, the 75 percent discount is applied only to the first year's annual all-inclusive lease premium. As such, the Department determined this benefit to be non-recurring under 19 CFR 351.524(c)(2)(i). ⁹⁰ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to find this program countervailable. To determine the benefit, we multiplied the lease premium by the amount of the discount provided on the lease. We then performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), and found that the value of the SEZ land concession exceeds 0.5 percent of SRF's total export sales in the year the concession was granted. Therefore, we allocated over the AUL, using the appropriate discount rate. ⁹¹ We then divided the benefit allocated to the POR by SRF's total export sales during the POR, to determine a countervailable subsidy of 0.02 percent ad valorem.

⁸⁴ See GOI IQR at 52.

⁸⁵ *Id.*; see also SRF IQR at 62-63.

⁸⁶ *Id.* SRF IQR at 62-63.

⁸⁷ *Id.*, at Exhibit 27(b).

⁸⁸ See SRF New Shipper Review, and accompanying IDM at 19.

⁸⁹ *Id.*

⁹⁰ *Id.* at 18-19.

⁹¹ See "Allocation Period" and "Benchmark Interest Rates" sections of this memorandum, supra.

6. State and Union Territory Sales Tax Incentive Programs

Certain state governments in India grant exemptions or deferrals from collecting sales taxes in order to encourage regional development. These incentives allow privately-owned (i.e., not 100 percent owned by the GOI) manufacturers, that are in selected industries and are located in the designated regions, to sell goods without charging or collecting state sales taxes on their sales.⁹²

In the original CVD investigation, we determined that the operation of these types of state sales tax programs confer countervailable subsidies.⁹³ Specifically, the Department found that these programs provide a financial contribution in the form of revenue foregone by the respective state governments pursuant to section 771(5)(D)(ii) of the Act, and confer a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(A) and (D)(iv) of the Act, these programs are specific because they are limited to certain geographical regions within the respective states administering the programs.

Jindal reported not having to pay state sales tax and central sales tax for certain purchases of inputs and supplies from certain locations within India for both subject- and non-subject merchandise.⁹⁴ To calculate the benefit, we first calculated the total sales tax reduction or exemption Jindal received during the POR by subtracting taxes paid from the amount that would have been paid on its purchases during the POR absent these programs. We then divided this amount by Jindal's total sales during the POR to calculate a net countervailable subsidy of 0.36 percent ad valorem.

7. State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives (PSI) 1993 and 2007

Under the PSI, 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 zones cover the entire state of Maharashtra. Benefits under the PSI-2007 vary by zone.⁹⁵ The Department previously determined this program to be countervailable.⁹⁶

The GOI has amended or extended the PSI from time to time. Under the PSI of 2007 (PSI-2007), brought into effect on April 1, 2007, the program was initially scheduled to be in effect

⁹² See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007), and accompanying IDM at "State Sales Tax Incentive Programs."

⁹³ See PET Film Final Determination, and accompanying IDM at "State of Maharashtra Programs" and "State of Uttar Pradesh Programs: Sales Tax Incentives;" see also PET Film Final Results of 2005 Review, and accompanying IDM at "State Sales Tax Incentive Programs."

⁹⁴ See Jindal IQR at 78-83 and Exhibit 26.

⁹⁵ See Jindal IQR at 72-75 and Exhibits 215(a), (b), and (c) and SQR1 at 31-36 and Exhibits S-30 and S-31.

⁹⁶ See OCTG India, and accompanying IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007."

until March 31, 2011, but was extended through subsequent amendments and then terminated effective March 31, 2013.⁹⁷

Jindal reported that it participated in the PSI under the provisions for “mega projects,” and specifically the Industrial Promotion Subsidy (IPS) under this program.⁹⁸ 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.⁹⁹

Industrial Promotion Subsidy (IPS)

The IPS, at paragraph 5.1, is part of the PSI-2007 and is offered for new or expanding projects.¹⁰⁰ The Department has previously determined this program to be countervailable.¹⁰¹ 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.¹⁰²

As stated in OCTG India, 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.¹⁰³

Jindal is eligible for benefits under this program for seven years. The annual amount of the benefit is determined by SGOM each year through an annual application. Because its project in

⁹⁷ Id.

⁹⁸ See Jindal IQR, at 70-75 and Jindal SQR1, at 32.

⁹⁹ Id., at Exhibit 25(a); see also OCTG India, and accompanying IDM at “SGOM Subsidies Under the Package Scheme of Incentives of 2007.”

¹⁰⁰ See Jindal IQR at Exhibit 25(a).

¹⁰¹ Id.; see also OCTG India, and accompanying IDM at “SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy.”

¹⁰² See Jindal IQR at Exhibit 25(a)

¹⁰³ See OCTG India, and accompanying IDM at “SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy.”

the State of Maharashtra meets the criteria of a “mega project,” Jindal was allowed to propose the means through which it would receive its benefits. It chose exemption from state VAT and CST payments.¹⁰⁴ Thus, the amount of the benefit determined each year is based on the state VAT and CST Jindal would have paid that year, absent this program.

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.¹⁰⁵ 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). Alternatively, instead of crediting output VAT with input VAT in this manner, they may receive a rebate of input VAT paid to their suppliers. 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, however, that amount is refunded.¹⁰⁶ 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. Under the IPS program as applied to Jindal, however, that amount is also refunded; a refund that would not be available absent the IPS program.¹⁰⁷ 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. The benefit is the difference between the output VAT minus the input VAT, and CST refunds Jindal received during the POR. In order to calculate the rate, we divided the total amount of the benefit Jindal received during the POR by its total sales during the POR. On this basis, we determined a countervailable subsidy rate of 1.77 percent ad valorem for Jindal. For a further analysis of Jindal’s comments and the countervailability of this program, see Comment 5 below.

Program Determined To Be Terminated

1. Duty Entitlement Passbook Scheme (DEPS/DEPB)

India’s DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, DEPS/DEPB enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash.¹⁰⁸ Under this program, all exporters are eligible to earn

¹⁰⁴ See Jindal SQR1 at 32-37 and Exhibits S-30 and S-31.

¹⁰⁵ See OCTG India, and accompanying IDM at “SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy.”

¹⁰⁶ See Jindal SQR1, at 36.

¹⁰⁷ See Jindal SQR at 35-36.

¹⁰⁸ See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008) (PET Film Final Results 2005 Review), and accompanying IDM at “Duty Entitlement Passbook Scheme (DEPS/DEPB).”

DEPS/DEPB credits on a post-export basis, provided that the GOI has established a standard input-output norm for the exported product. DEPS/DEPB credits can be applied to subsequent imports of any materials, regardless of whether they are consumed in the production of an exported product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized on the export sales from which the DEPS credits are earned.¹⁰⁹ According to the GOI, DEPS/DEPB was terminated effective October 1, 2011.¹¹⁰ The GOI provided the relevant copy of the Ministry of Finance circular terminating the DEPS/DEPB for shipment made on or after October 1, 2011. The GOI also stated that there is no successor program to DEPS.¹¹¹

When a subsidy program is terminated, in accordance with 19 CFR 351.526(d), there must also be no residual benefits and the government must not have implemented a replacement program for the terminated program. In Shrimp from India, the Department determined that no residual benefits from DEPS existed after September 30, 2011.¹¹² Therefore, we determine that the DEPS is terminated effective October 1, 2011. Further, because we determined in Shrimp from India that the DEPS provided no residual benefits after September 30, 2011, we also find that no exporters of subject merchandise, including SRF and Jindal, received benefits under this program, as of September 30, 2011.

Programs Determined To Be Not Used

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

GOI Programs

1. Duty Free Replenishment Certificate (DFRC)
2. Target Plus Scheme
3. Capital Subsidy
4. Exemption of Export Credit from Interest Taxes
5. Loan Guarantees from the GOI
6. Export Oriented Units
7. Focus Market Scheme/Focus Product Scheme
8. Advance License Program (ALP)/Advance Authorization Scheme (AAS)

State Programs

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

¹⁰⁹ Id.

¹¹⁰ See GOI IQR at 23 and Exhibits 5, 6 at Chapter 4 (Foreign Trade Policy (FTP), and 7 at Chapter 1 (Handbook of Procedures (HoP)); see also GOI SQR1 at S1-2.

¹¹¹ Id., GOI IQR at 23.

¹¹² See Shrimp from India, and accompanying IDM at 8-9.

13. Capital Incentive Scheme Uttaranchel
14. Capital Incentive Schemes (SGOM)
15. Electricity Duty Exemption Scheme (SGOM IPS 2007)

V. ANALYSIS OF COMMENTS

Comment 1: Whether There Has Been A Program-Wide Change for Pre-Shipment Export Financing in Foreign Currency and Adjustment of the Cash Deposit Rate

Jindal's and SRF's Case Briefs

- 19 CFR 351.526 provides that the Department “may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate”
- The regulations further state that if all five criteria of a program-wide change are met,¹¹³ the Department “would issue an affirmative determination, but would establish a cash deposit rate of zero.”
- Information placed on the record by the GOI indicates that a program-wide change occurred as reflected in the RBI Master Circular – Rupee / Foreign Currency Export Credit & Customer Service to Exporters, dated July 2, 2012.¹¹⁴
- This Master Circular established the base rate system for foreign currency export financing, i.e., the banks are free to charge interest above the base rate. Thus, the interest rate is no longer controlled by the RBI and does not provide any benefit to exporters.
- The GOI stated that to provide export credit to exporters at competitive rates under the pre- and post-shipment financing programs in foreign currency, effective May 5, 2012, banks are free to determine the interest rates on export credit in foreign currency.
- In Shrimp from India, the Department recognized that the program has been terminated and that the cash deposit rate for that program should be set to zero.

Domestic Interested Parties' Rebuttal Brief

Domestic Interested Parties did not comment on this issue.

Department's Position: 19 CFR 351.526(a) permits the Department to take program-wide changes into account when establishing countervailing duty cash deposit rates in certain circumstances. When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be

¹¹³ Jindal and SRF identify the five criteria as: (1) the change must occur before the preliminary results of review; (2) the Department must be able to measure the change; (3) the change must not be limited to an individual firm or firms; (4) no residual benefits can exist under the program; and (5) no substitute program can exist.

¹¹⁴ Note that this Master Circular, RBI/ 2012-13/74 DBOD No.DIR.BC.06/04.02.002/2012-13, dated July 2, 2012, consolidates many pre-existing circulars and encompasses the termination of both Rupee and foreign currency denominated pre- and post-shipment export financing. (See Jindal SQR1 at Exhibit S8.) The sole program at issue in this comment is the program for pre-shipment export financing in foreign currency, as both respondents reported not receiving any post-shipment export financing benefits or export financing in Indian rupees.

no residual benefits and that if a replacement program has been implemented the benefits under the replacement program be calculable.

We agree with Jindal that in Shrimp from India, the Department determined that the GOI terminated its pre-and post-shipment export financing program in foreign currency, effective May 5, 2012, and that as of that date the RBI is no longer involved in setting interest rates (caps or floors) for these loans.¹¹⁵ In addition, the Department determined that no residual benefits existed beyond April 30, 2013 (360 days after May 5, 2012), and the GOI has not implemented a replacement program. Accordingly, in Shrimp from India, we adjusted the cash deposit rates to exclude foreign currency loans received under the pre- and post-shipment export financing program.

The GOI and respondents have placed information on the record of this review that supports the same conclusion here regarding the pre-shipment export financing program benefits reported by Jindal and SRF.¹¹⁶ Consequently, in accordance with 19 CFR 351.526(a) and (d), we are adjusting the cash deposit rates to exclude the foreign currency denominated export loan benefit.

Comment 2: Whether The Department Wrongly Countervailed Export Promotion Capital Goods Scheme (EPCGS) Benefits That Apply To Non-Subject Merchandise

Jindal's Case Brief

- The Department used all of the Exhibits submitted by Jindal under the EPCGS to calculate a benefit for the program, even though Jindal clearly stated that a specific Exhibit (Exhibit 20(c)) listed imports of capital goods under EPCGS that were used only in the production of non-subject merchandise.
- Jindal's initial response specifically stated that "{t}hese capital goods cannot be used in the production of subject merchandise and do not confer any benefit on the subject merchandise."
- The heading of Jindal's Exhibit 20(c) states that that Exhibit contains EPCGS licenses used for the production of non-subject merchandise.
- Likewise, the respective column indicates whether the equipment is for subject- or non-subject merchandise, and is marked as non-subject merchandise for the whole exhibit.
- The foregoing demonstrates that none of the imports listed in Exhibit 20(c) could be used for subject merchandise. As a result, Exhibit 20(c) should not have been used to calculate a benefit conferred on subject merchandise since the subsidies were tied to the production of particular products that were not subject merchandise.
- 19 CFR 351.525(b)(5) provides that "{i}f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product."
- Thus, Exhibit 20(c) was tied to the production of non-subject merchandise, and the Department should eliminate that Exhibit from its EPCGS subsidy calculations.

¹¹⁵ See Shrimp from India, and accompanying IDM at "Export Financing;" see also OCTG India, and accompanying IDM at "Pre-Shipment and Post-Shipment Export Financing."

¹¹⁶ See GOI IQR at 7, 9-10, 15, and 20 and Exhibits 3 and 4; GOI SQR1 at 11-17 and Exhibit S1-1; see also Jindal SQR1 at Exhibit 8 and SRF IQR at Exhibit 10(a).

Domestic Interested Parties' Rebuttal Brief

- Jindal is incorrect when it argues that the Department should not include the value of duties exempted on certain imports under the EPCGS because these imports were not used in the production of subject merchandise, and the Department should continue to include the EPCGS benefits received on those imports in its calculations.
- With EPCGS licenses, imported capital equipment used for the production of exported products is exempted from or imported at reduced duty rates.
- According to the EXIM policy,¹¹⁷ up to 50 percent of an export obligation may be fulfilled by export of good(s) other than subject merchandise. Thus, the subsidy should apply to both subject and non-subject merchandise.

Department's Position: As we noted in the Preliminary Results 2012,¹¹⁸ based on the information and documentation submitted by Jindal, we were unable to determine whether all EPCGS licenses reported are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). For these final results, we continue to find that Jindal failed to establish that all of its EPCGS licenses are tied to a particular product.

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:

“{W}e 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.”¹¹⁹

For the Department to make a determination whether the benefit for an EPCGS license is to be attributed to a 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 received numerous EPCGS licenses, which it reported as used for the production of: (1) subject merchandise, and (2) non-subject merchandise. While Jindal indicates that it used certain EPCGS licenses only for the production of non-subject merchandise (and reported this to the Department), information provided by Jindal indicates, e.g., that same licenses were issued for the purchase of capital goods and materials for the production of *both* subject and non-subject merchandise.¹²⁰ Because those licenses were bestowed on both subject and non-subject merchandise, we cannot attribute those licenses to a particular product. Based on Jindal's

¹¹⁷ Domestic Interested Parties are referencing the GOI Foreign Trade Policy (FTP) and the GOI Handbook of Procedures (HoP), when discussing the EXIM policy.

¹¹⁸ See Preliminary Results 2012, and accompanying Preliminary Decision Memorandum (PDM) at “Export Promotion Capital Goods Scheme (EPCGS).”

¹¹⁹ See Countervailing Duties: Final Rule, 63 FR 65348, 65403 (November 25, 1998).

¹²⁰ See Jindal Initial Questionnaire Response (March 5, 2014) (Jindal IQR) at 42 and Exhibits 20(a), 20(b), 20(c), 22(a), and 22(b), and Jindal First Supplemental Response (June 24, 2014) (Jindal SQR1) at 19-20, and Exhibit S1-1 and S1-20(b), and Exhibit S1-22.

request to limit the burden on respondent, we granted Jindal limited reporting of supporting documentation of its EPCGS licenses, including copies of the original licenses issued by the GOI.¹²¹ Of those copies of the original licenses we requested, about 44 percent indicated similar problems with Jindal's reporting (*i.e.*, that Jindal reported whether it *used* a particular EPCGS license for the production of non-subject merchandise, not whether the license was bestowed for the production of non-subject merchandise).¹²²

In accordance with 19 CFR 351.525(b)(5), we tie the licenses to a certain product at the point of bestowal, *i.e.*, when the licenses are issued, and not to capital equipment or spare parts purchased at a future point in time. The inconsistencies we found between the licenses and Jindal's reporting to the Department demonstrate that we cannot rely on the information on the record.

Therefore, based on the information and documentation submitted by Jindal, we determine that the EPCGS licenses are not tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Because the benefits are not tied to a particular product, we continue to calculate Jindal's subsidy rate by dividing the benefit in duty savings derived from all of Jindal's EPCGS licenses by its total export sales during the POR.

Comment 3: Whether the Department Used The Wrong Numerator To Calculate The POR Benefit For The Status Holder Incentive Scheme (SHIS)

Jindal's Case Brief

- The Department's calculations in the Preliminary Results 2012 did not reflect the benefit actually received/utilized by Jindal during the POR, but rather the figure Jindal reported as the amount of benefit that Jindal was eligible for based on the FOB value of its exports.
- As requested by the Department, Jindal reported the amount it was eligible for in Exhibit S-29,¹²³ but clearly stated that the amount reported in Exhibit 27 of its initial questionnaire is the amount of incentive scrip against which it imported capital goods and is the benefit to which Jindal was actually entitled, accounted for in the books of accounts.
- The benefit is only received when the scrip is actually utilized, and Jindal used significantly less than it was eligible to utilize. Thus, the Department should use the actual utilization figures, as reported again in Exhibit S2-2,¹²⁴ to calculate the SHIS subsidy.
- The Department's reference in the Preliminary Results 2012 to Essar Steel v United States¹²⁵ to support its reliance on the benefit as earned, rather than the benefit used, does

¹²¹ Note: To alleviate the burden of reporting for Jindal, the Department granted Jindal limited reporting of the license documentation. Thus, the analysis of the EPCGS license documentation is based on a sample of license documents. See Letter from Jindal to the Department (June 10, 2014).

¹²² *Id.* at Exhibit S1-22.

¹²³ See Jindal SQR1 at Exhibit S-29. This exhibit contains the preliminary amount of benefit under the SHIS that Jindal is eligible for based on its exports during the POR.

¹²⁴ See Jindal Second Supplemental Response (September 19, 2014) (Jindal SQR2).

¹²⁵ See Essar Steel, 395 F Supp. 2d at 1278.

not apply in this case because the relevant language from Essar Steel applies only where the extent of the benefit actually realized is not clear and still open ended. However, that is not the case with respect to Jindal's benefits received in 2012.

- Jindal knows the amount of benefit it received during each year and has reported this amount to the Department in Exhibit S2-2, and the Department cannot ignore the evidence on the record establishing the exact measure of the benefit during the POR.
- Another difference between Jindal and Essar Steel is that Essar Steel involved a different subsidy program, DEPS/DEPB, where companies earned credits toward future imports, and thus, gained a benefit that could be used or traded at any time in the future.
- By contrast, once the validity on the SHIS scrip expires, it is unusable toward future imports, and Jindal cannot trade the forgone scrip at any time in the future.
- Therefore, the Department should use Jindal's actual utilization amounts, as reported for all relevant years of Jindal's AUL.

Domestic Interested Parties' Rebuttal Brief

- The Department should continue to use the amount that Jindal was eligible to receive in calculating this subsidy.
- In Steel Threaded Rod from India Final the Department stated that the benefit under SHIS is not automatic and is not known to the exporter until some time after the exports were made. Therefore, the Department should use the SHIS licenses issued by the GOI, which contain the date of validity and amount of duty exemption, to determine the benefit.
- Further, companies may apply for SHIS licenses up to three years after the program has ended (*i.e.*, 2016); the licenses are transferable; and the program applies to capital goods, and companies may receive residual benefits over the AUL. Thus, the benefit must be calculated based on eligibility.

Department's Position: We disagree with Jindal that our subsidy rate calculation for this program should only reflect the value of duty actually exempted on imports of capital goods and equipment, and spare parts imported by Jindal.

Contrary to Jindal's assertion that the benefit from this program is only known when the scrip is actually utilized (*i.e.*, when the goods are imported duty free), the exact amount of benefit is known at the time of the issuance of the license. That is, in order to qualify for a SHIS license, the applicant has to be a Status Holder and has to have received payment for the exports for which it claims the SHIS scrip.¹²⁶ Once this is demonstrated to the GOI by the manufacturer, the GOI will issue the license reflecting the amount to which the GOI determines the manufacturer is entitled. The Status Holder may apply for a SHIS license up to three years after the relevant exports were made.¹²⁷ The GOI fixes the amount of revenue that it is willing to forgo at the time it issues the SHIS license. The GOI also sets the expiration date of the SHIS license at that time.

¹²⁶ See GOI IQR at 80-89.

¹²⁷ See Steel Threaded Rod from India, and accompanying IDM at "Status Holder Incentive Scrip ("SHIS")."

Therefore, the face value of the SHIS license is the benefit amount that we have used in our rate calculations for these final results.

Importantly, the SHIS scrip is freely transferable to other manufacturing companies while the license remains valid.¹²⁸ Information on the record indicates that Jindal was free to sell unutilized SHIS scrip.¹²⁹ While the information on the record does not positively indicate that Jindal sold (or did not sell) any of its SHIS scrip during this POR or in prior PORs covering its AUL,¹³⁰ the fact that the SHIS scrip can be sold before expiry of the SHIS license, just as with DEPS/DEPB licenses, demonstrates that the actual amount of the benefit is determined at the time the SHIS license is issued by the GOI. If the Department were to rely exclusively on the actual amount of duties that Jindal saved under the SHIS program as reported by Jindal, it would disregard the benefit inherent in the fact that the licenses were transferable when bestowed.

Therefore, in the Preliminary Results 2012, we correctly referred to Essar Steel in making our determination for this program on the benefit earned rather than the benefit used. We disagree with Jindal's argument that Essar Steel is distinguishable because, unlike SHIS licenses, the DEPS/DEPB credits at issue in that case could be used or traded at any time in the future. Initially, Jindal's argument suggests that DEPS/DEPB credits were valid in perpetuity, but the Court of International Trade (CIT) in Essar Steel expressly noted that those credits were valid for only twelve months.¹³¹ Furthermore, our reliance on the license value for purposes of calculating Jindal's numerator is not premised on a particular length of time during which the licenses must remain valid. Thus, we find that the SHIS license, which determines the validity and the amount of duty exemption, as issued by the GOI, to be the best method for determining a company's benefit.

At the time of the Preliminary Results 2012, we did not have the actual SHIS licenses issued and covering Jindal's AUL on the record of this review. Therefore, we based our benefit calculations on Jindal's reported FOB export values during the POR, as reported. For these final results, consistent with our determination in Steel Threaded Rod from India Final, we will calculate Jindal's rate for this program based on the date and face value of the licenses issued by the GOI to Jindal from 2009 (the year in which the SHIS scheme was introduced) through the POR.

Comment 4: Whether The Department Made An Error In Calculating The POR Benefit for the SHIS Program

Jindal's Case Brief

- For non-recurring subsidies, the Department uses a declining balance formula that generates a net present value of subsidy for each year of the AUL.
- In its benefit calculations for the SHIS, the Department inadvertently used the subsidy

¹²⁸ See GOI IQR at 84 and GOI SQR1 at 38.

¹²⁹ See Jindal SQR2 at Exhibit S2-3. Besides copies of Jindal's SHIS licenses, this Exhibit includes a copy of an internal document assessing Jindal's licenses and proposals on their utilization.

¹³⁰ Id. A document included in the exhibit indicates that the sale of unutilized scrip before expiry is optional.

¹³¹ Essar Steel, 395 F. Supp. 2d at 1277.

balance instead of the interest figure derived from the discount rate in one of the columns, as intended, leading to a grossly overstated net present value of the subsidy for the POR.

- The formula indicated at the top of the spreadsheet was correct, but another wrong Excel spreadsheet column was actually used in the calculations, effectively treating the “Balance” as the “Amount of Interest” in the standard formula.
- It is imperative for the Department to correct this ministerial error because it requested in a post-preliminary supplemental questionnaire, that Jindal report SHIS benefits received for all years of the company’s AUL.
- Thus, failure to correct the ministerial error will result in a gross overstatement of the total benefit from the program.

Domestic Interested Parties’ Rebuttal Brief

Domestic Interested Parties did not comment on this issue.

Department’s Position: We agree with Jindal that we erroneously tied the wrong column in our benefit calculation for the Preliminary Results 2012. For the final results, we are adding the allocated grant amount to the interest to calculate the benefit for the POR.

Comment 5: Whether The Value Added Tax (VAT) and Central Sales Tax (CST) Refunds Under The Industrial Promotion Subsidy (IPS) Of The State Government Of Maharashtra’s (SGOM) Package Scheme Of Incentives (PSI) Is Countervailable

Jindal’s Case Brief

- In the Preliminary Results 2012, the Department found the VAT and CST reimbursements Jindal received under the IPS of the SGOM PSI to be countervailable.
- The Department states that it previously determined this program countervailable; however, given the nature of the benefits received and the actual sales that Jindal benefitted under the program, it is not countervailable with respect to Jindal.
- Because Jindal receives benefits under the IPS only on sales to the Indian market, the program is “*perforce*” tied to sales to a particular market (*i.e.*, the Indian market), pursuant to 19 CFR 351.525(b)(4), and the Department should attribute the subsidy only to products sold to the Indian market.
- Under 19 CFR 351.525, there is only one exception to the attribution rules outlined therein. That exception, found in 19 CFR 351.525(b)(5)(i), relates to inputs and does not apply. Had there been the intent to determine that a “domestic market” cannot be a “particular market under subsection (b)(4), it would have been included as an exception in the regulations. Therefore, a subsidy to only the Indian market is not countervailable pursuant to 19 CFR 351.525.
- In Bethlehem Steel Corp. v. United States¹³² the CIT upheld the Department’s determination that a particular subsidy was not tied to a particular market because the

¹³² See Bethlehem Steel Corp. v United States, 223 F. Supp. 2d 1372 (CIT 2002) (Bethlehem Steel).

subsidy was a “tariff reduction” on an input product “used in the production of products sold in the domestic or export markets.” Specifically, the CIT found that the necessary “link between eligibility and sale in the domestic market” was absent for purposes of finding the subsidy tied under 19 CFR 351.525(b)(4).

- Thus, the CIT clearly indicated, had the subsidy been tied to sales to the Korean market, 19 CFR 351.525(b)(4) would have applied.
- The link is not absent in the case with the IPS and Jindal, and the domestic subsidy is tied to sales in the domestic market. Thus, consistent with 19 CFR 351.525(b)(4), the subsidy should be attributed only to those sales.
- Sales to any market other than India are not eligible to receive benefits under the IPS. Jindal is eligible to receive VAT and CST reimbursements only on sales of PET film in the Indian market.
- The Department errs in holding that payments received under the IPS benefit all sales. No sales to the United States benefitted from the payments under the IPS.
- While money is fungible, the regulation relating to “attribution of subsidies” rejects a fungibility-of-money approach for determining attribution. In other words, while benefits tied to a particular market might benefit the company as a whole, the pertinent regulation does not require tracing benefits through the firm.
- The benefits received relate to Jindal’s Mega project, which means that sales must emanate from Jindal’s Mega unit to be eligible for the IPS subsidy.
- Domestic sales are made from the Mega unit, only. All exports are made from Jindal’s Non-Mega unit. Thus, this is yet another indicator that the benefits under the program are tied to a particular market.
- By stating that “[t]he 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),”¹³³ the Preliminary Results 2012 have failed to address the relevance of 19 CFR 351.525(b)(4) to Jindal’s situation.
- If the Department continues to find the program to be a countervailable subsidy, the amount of taxes refunded to its customers should be deducted from the numerator of the subsidy calculation.

Domestic Interested Parties’ Rebuttal Brief

- The Department correctly found that the VAT and CST provided under the IPS of the SGOM PSI 1992 and 2007 provided a countervailable subsidy.
- Jindal’s argument that the sums received are tied to a particular market and that market is not the United States market, is legally not sustainable.
- Jindal did not provide any new evidence for the Department to deviate from its past practice as to this program.

Department’s Position: We disagree with Jindal’s argument that this program is not countervailable based on the nature of the benefits received and the actual sales that Jindal

¹³³ See Preliminary Results 2012, and accompanying PDM at “Industrial Promotion Subsidy (IPS).”

benefitted from. As discussed above, the SGOM devised the PSI to promote economic development in certain underdeveloped regions of the State of Maharashtra.¹³⁴ Jindal commenced participation in this program in 1992, and has received benefits from the SGOM under the PSI since then.¹³⁵ Further, Jindal has participated in the IPS since 2001, which is one of the incentives offered under the PSI.¹³⁶ The SGOM implemented certain policy revisions regarding the PSI in 2007, and Jindal was eligible for, and decided to participate in, the IPS under the SGOM's PSI provisions for Mega projects.¹³⁷ Under the Mega project provisions, Jindal was offered different options for drawing a benefit within a period of seven years, capped by its level of investment.¹³⁸ By virtue of investing as a Mega project, Jindal was free to choose from several options/mechanisms offered by the SGOM under the IPS to receive its benefit in return for its industrial investment in a certain region.

As the SGOM stated with respect to the 2007 PSI policy revisions:

“The State has declared the new Industrial, Investment, Infrastructure Policy 2006 to ensure sustained industrial growth through innovative initiatives for development of key potential sectors and further improving the conducive industrial climate in the State, for providing the global competitive edge to the State's industry.

The policy envisages grant of fiscal incentives to achieve higher and sustainable economic growth with emphasis on balanced Regional Development and Employment Generation through Greater Private and Public Investment in industrial development.”¹³⁹

The incentives the PSI provides are offered to industries with the objective to promote economic development and increase employment in designated regions through investments in plant and machinery, and furthermore there is no information on the record to indicate the subsidy is tied to a particular market or product.¹⁴⁰

As Jindal opted to receive its benefits under the PSI through the VAT and the CST reimbursement mechanism, to be applied annually for seven years and capped by its level of its additional investment as a Mega project, the yearly level of benefits is, according to Jindal, dependent on Jindal's sales of the final product in the Indian market. The basis of the SGOM's approval of benefits under the PSI, and specifically the IPS, was Jindal's additional level of investment in its production facility located in the SGOM designated region, and not based on the sales of a particular product or sales to a particular market. Moreover, based on the record evidence, we cannot find any indication that would lead us to determine that the subsidy is tied to a particular market within the meaning of 19 CFR 351.525(b)(4) and therefore, consistent with

¹³⁴ See Jindal IQR at 70-73 and Exhibit 25(a); see also Jindal SQR1 at Exhibits S1-30-31, Memorandum of Understanding SGOM and Jindal.

¹³⁵ Id.

¹³⁶ See Jindal SQR1 at Exhibit 30.

¹³⁷ See Jindal IQR at 75 and Exhibit 25(a)-PSI for Industries Maharashtra: 3.2(iii) Mega Projects. The phrase “Mega project” refers to the size of the manufacturing investment.

¹³⁸ See Jindal SQR1 at Exhibit 31.

¹³⁹ See Jindal IQR at Exhibit 25(a).

¹⁴⁰ See 19 CFR 351.525(b)(3) and (4).

our attribution methodology the subsidy is attributable to Jindal's total sales within the meaning of 19 CFR 351.525(b)(3).

The Department disagrees that our treatment of the benefits received under this program is contrary to the CIT's holding in Bethlehem Steel. In Bethlehem Steel, a respondent argued that a particular subsidy was tied to the domestic market because the benefit at issue (tariff rate reduction on imports of slab) was only actually conferred on domestic sales due to duty drawback claimed upon exportation.¹⁴¹ But because eligibility for the tariff reduction did not depend on whether the slab was used in the production of merchandise sold in the domestic market, the CIT found that the respondent failed to establish a "link between eligibility and sale in the domestic market."¹⁴²

Here, the Department similarly finds that Jindal has failed to establish the necessary link between stated purpose and the funds Jindal receives in the form of VAT and CST refunds. Our analysis of whether benefits are tied to a particular region or market must focus on the basis for granting assistance at the time of bestowal, not the mechanism for delivering that assistance or what Jindal used the funds for. As discussed above, the purpose for this program and Jindal's eligibility for the IPS are founded on its willingness to invest at a certain level in manufacturing facilities in a designated area within the state. Jindal chose VAT and CST reimbursements as the mechanism for receiving its benefits under this program, but the funds Jindal received under the IPS were not contingent on sales of a particular product or to a particular market.

We note that Jindal further claims that domestic sales are made from the Mega unit, only, and all exports are made from Jindal's Non-Mega unit. Thus, Jindal insists, this provides another indicator that benefits under the program are tied to a particular market. Record evidence does support Jindal's argument that export sales made by qualifying Mega Units are not able to benefit from the SGOM PSI, IPS program nor limits the respective company to investment into one particular production facility. In defining fixed assets, the PSI specifically states that "{t}he Tooling acquired by the Mega Project may be located at the premises of various ancillary units of the Mega Project within the State limited to maximum 40% of the total plant and machinery of the Mega Project."¹⁴³ In other words, per the PSI, Jindal would still be eligible for the benefit if part of its new capital investments had been invested in its other production line at Nashik, which has export production.

Thus, Jindal's claim that the benefit is tied to a particular market, i.e., the Indian market, because none of its export sales were made from its Mega unit is not supported by record information and without merit. Whether Jindal chooses to sell merchandise manufactured at its Mega unit in the domestic market to collect the VAT and CST refunds is irrelevant to our analysis of attribution. Jindal's argument says the Department should essentially calculate factory specific subsidy rates; the production from the Mega unit was only sold in the domestic market, therefore, subsidies provided to the Mega unit did not benefit exports. However, this argument was explicitly rejected by the Department during the creation of the CVD regulations: "If such a methodology

¹⁴¹ See Bethlehem Steel, 223 F. Supp. 2d at 1380.

¹⁴² Id.

¹⁴³ Jindal IQR at Exhibit 25(a).

were to be universally applied, foreign companies could easily escape payment of countervailing duties by selling the production of a subsidized region domestically, while exporting from a facility in an unsubsidized region.”¹⁴⁴

Therefore, we find that the benefits under these programs are not tied to a particular market as provided in 19 CFR 351.525(b)(4). Instead, we determine, consistent with our determination in OCTG India,¹⁴⁵ that the VAT and CST refunds constitute domestic subsidies, and as such, their benefits are attributable to Jindal’s total sales, in accordance with 19 CFR 351.525(b)(3).

In addition, Jindal’s business policy of refunding to its customers a certain amount of the tax refunds obtained from the SGOM under this program has no impact on the actual amount of revenue foregone by the SGOM, and thus the benefit to Jindal through this program. Accordingly, we did not make any deductions from the numerator for Jindal’s refunds to its customers in our benefit calculations for this program.

RECOMMENDATION:

Based on our analysis of the comment received, we recommend adopting the above position. If accepted, we will publish these final results of review in the Federal Register.

AGREE ✓ DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

23 February 2015
Date

¹⁴⁴ See Preamble at 65404.

¹⁴⁵ See OCTG India, and accompanying IDM at “SGOM Subsidies Under the Package Scheme of Incentives of 2007.”