C-533-825
POR: 01/01/2013-12/31/2013
ITA/E&C/OFC VII: EB
Public Document

July 31, 2015

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

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

SUBJECT: Decision Memorandum for the Preliminary Results and Partial Rescission of the Countervailing Duty (CVD) Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India; 2013

Summary

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India in response to requests from interested parties. The period of review (POR) is January 1, 2013 through December 31, 2013. We preliminarily determine that Jindal Poly Films Ltd. (Jindal) and SRF Limited (SRF) benefitted from countervailable subsidies during the POR.

Background

On July 1, 2002, the Department published in the Federal Register the CVD order on PET film from India.[1] On July 1, 2014, the Department published a notice of opportunity to request an administrative review of the CVD order.[2] In response, on July 30, 2014, Jindal and SRF each self-requested a review.[3] Also on July 30, 2014, Polyplex USA LLC and Flex Films (USA) Inc. (collectively Domestic Interested Parties) requested a review for eight companies (Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Jindal, MTZ Polyesters Ltd. (MTZ), Polyplex Corporation Ltd. (Polyplex), SRF, Vacmet, and Vacmet India Limited).[4] On July 31, 2014, DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively

---

[1] See Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India, 67 FR 44179 (July 1, 2002).
[2] See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 79 FR 37289, 37290 (July 1, 2014).
[3] See Letters from Jindal and SRF to the Department: "Polyethylene Terephthalate (PET) Film from India/Request for Countervailing Duty Admin Review/SRF Limited/Jindal Poly Films Limited," dated July 30, 2014.
[4] See Letter from Domestic Interested Parties to the Department: "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Countervailing Duty Administrative Review," dated July 30, 2014.

Petitioners) also requested reviews for six companies (Ester, Garware, Polyplex, SRF, Jindal, and Vacmet).[5] On August 29, 2014, the Department initiated a CVD review of eight companies in this proceeding,[6] and due to an inadvertent omission from its previous notice, the Department initiated on a ninth company on December 23, 2014.[7] On September 26, 2014, the Department placed on the record U.S. Customs and Border Protection (CBP) import data for purposes of respondent selection, and invited parties to comment.[8] Subsequently, Domestic Interested Parties and SRF each timely withdrew their requests for review of certain companies on November 20, 2014[9] and November 26, 2014,[10] respectively. Petitioners also filed a withdrawal of review request for certain companies,[11] but we determined that the withdrawal request was untimely filed and denied their request for an extension.[12] On December 11, 2014, Petitioners requested a reconsideration of their withdrawal request.[13] After re-considering their request, we continued to find that there were no extraordinary circumstances as defined in 19 CFR 351.302(c)(2) that prevented Petitioners from timely filing their withdrawal request. We therefore continue to deny Petitioners' withdrawal request. On December 17, 2014, the Department selected Jindal and SRF as mandatory respondents in this CVD administrative review.[14]

The Department issued its initial CVD questionnaire to the Government of India (GOI) and respondent companies Jindal and SRF on December 19, 2014, and received timely responses from all parties. On March 9, 2015, April 3, 2015, and April 6, 2015, the Department issued its first supplemental questionnaire to Jindal, SRF, and the GOI, respectively, and again received timely responses from all parties. On June 4, 2015, the Department issued a second

[5] See Letter from Petitioners to the Department: "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Countervailing Duty Administrative Review," dated July 31, 2014.
[6] See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 79 FR 51548 (August 29, 2014). The eight companies were Ester, Garware, Jindal, MTZ, Polyplex, SRF, Vacmet, and Vacmet India Limited. Petitioners requested a review for six companies (Ester, Garware, Polyplex, SRF, Jindal, and Vacmet). Domestic Interested Parties requested a review for eight companies (Ester, Garware, Jindal, MTZ, Polyplex, SRF, Uflex Ltd., and Vacmet India Limited). In addition, Jindal and SRF self-requested an administrative review.
[7] See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 79 FR 76956 (December 23, 2014). The Department initiated on Uflex Ltd.
[8] See Memorandum To All Interested Parties From Elfi Blum: "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: U.S. Customs Entries," dated September 26, 2014.
[9] See Letter from Domestic Interested Parties to the Department: "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Withdrawal of Request for Countervailing Duty Administrative Review," dated November 20, 2014.
[10] See Letter from SRF to the Department: "Polyethylene Terephthalate (PET) Film from India/Withdrawal of Request for Countervailing Duty Admin Review/SRF Limited," Dated November 26, 2014.
[11] See Letter from Petitioners to the Department: "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Withdrawal of Request for Countervailing Duty Administrative Review," dated November 30, 2015.
[12] See Letter from the Department to Petitioners: "Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India 2013: "Petitioners' Withdrawal of Administrative Review Request," dated December 8, 2014. The Department rejected Petitioners request as late.
[13] See Letter from Petitioners to the Department: "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Reconsideration of Withdrawal Request," dated December 11, 2014.
[14] See Memorandum To Edward Yang From Jacqueline Arrowsmith: "Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Selection of Respondents for Individual Examination," dated December 17, 2014.

supplemental questionnaire to the GOI and to SRF, and received again timely responses from both.

Partial Rescission of Administrative Review
As noted above, Domestic Interested Parties and SRF timely withdrew their requests for review of certain companies, and Petitioners request for withdrawal was rejected by the Department as untimely.

As Domestic Interested Parties' withdrawal requests were timely filed and no other party requested a review of MTZ and Uflex, we are rescinding this administrative review with respect to MTZ and Uflex pursuant to 19 CFR 351.213(d)(1). Because Petitioners requested a review of Ester, Garware, Jindal, Polyplex, SRF, and Vacmet, and Jindal self-requested a review, we are proceeding with the reviews of these companies. Further, because Domestic Interested Parties did not submit a timely withdrawal of their request for review of Vacmet India Limited, we are also proceeding with a review of that company.[15]

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.

Period of Review (POR)
The POR is January 1, 2013 through December 31, 2013.

Subsidies Valuation Information

Allocation Period

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

[15] Note that Domestic Interested Parties requested a review of Vacmet India Limited; however, the request for withdrawal included named Vacmet (as opposed to Vacmet India Limited).

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.[16] 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.[17] 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, 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).

Jindal received exemptions from import duties and Central Sales Tax (CST) under the Export Promotion Capital Goods Scheme (EPCGS), and 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, 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 long-term interest 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.[18] 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.

[16] See SRF Initial Questionnaire Response (January 26, 2015) (SRF IQR) at 15.

[17] 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;" see also Jindal Initial Questionnaire Response (February 9, 2915) (Jindal IQR) at 17 and Exhibit 9.

[18] See PET Film Final Results of 2003 Review, and accompanying IDM at Comment 3. Further, the Department previously 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) (PET Film Final Results of 2005 Review) and accompanying IDM at "Benchmark Interest Rates and Discount Rates."

In this review, Jindal and SRF did not have comparable commercial long-term rupee-denominated loans for all required years; therefore, for those years for which we did not have company-specific information, and where the relevant information was on the record, we relied on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii). When there were no comparable long-term, rupee-denominated loans from commercial banks either during the year under consideration or the preceding year, we used national average long-term interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from the International Financial Statistics, a publication of the International Monetary Fund (IMF Statistics).[19] 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 Jindal and SRF, 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.

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 all but one benefit received by SRF under the programs found countervailable, i.e., State and Union Territory Sales Tax program, were tied to export performance. Therefore, for those programs tied to export performance, with the exception of Duty Drawback (DDB) and Advance Authorization Scheme (AAS), aka, Advance Licenses Program (ALP), we use total export sales, including deemed exports, as the denominator for our calculations.[20] 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. Further, as we were able to tie the benefits earned under the AAS to exports of subject merchandise, we used total exports of subject merchandise as the denominator for our rate calculations. For the two programs Jindal received benefits from but which were not tied to export performance, state and union territory sales tax incentive programs and the State Government of Maharashtra (SGOM) package scheme of incentives (PSI) 1993 and 2007, we used total sales as the denominator.

[19] See preliminary results calculation memoranda for Jindal and SRF.
[20] See 19 CFR 351.525(b)(2).

Analysis of Programs

Programs Preliminarily Determined to be Countervailable

1. Export Promotion Capital Goods Scheme (EPCGS)

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

In the investigation, the Department determined that import duty reductions provided under the EPCGS are countervailable export subsidies because: (1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone for not collecting import duties; (2) respondents receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act.[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 preliminary results, we continue to find this program countervailable.

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

---

[21] 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 "EPCGS."

[22] Id.

[23] See Countervailing Duties; Final Rule, 63 FR 65348, 65393 (November 25, 1998).

Jindal reported that it imported capital goods under the EPCGS in the years prior to the POR. Jindal received various EPCGS licenses, which it reported were for the production of: (1) subject merchandise, and (2) non-subject merchandise. However, information provided by Jindal indicates that some of the licenses were issued for the purchase of capital goods and materials that could be used in the production of both subject and non-subject merchandise.[24] 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 reliably determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that all of Jindal's EPCGS licenses benefit all of the company's exports.[25]

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.[26] 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). We further determine that some of SRF's license(s) are tied to the production of non-subject merchandise and some to the production subject merchandise. As such, we find that some of SRF's EPCGS licenses benefit the company's exports of subject merchandise.

Jindal and SRF each met the export requirements for certain EPCGS licenses prior to December 31, 2013, 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.

To calculate the benefit received from the GOI's formal waiver of import duties on Jindal's and SRF's capital equipment imports where their export obligation was met prior to December 31, 2013, 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 Jindal's and SRF's outstanding

[24] See Jindal IQR at 44-49 and Exhibits 20(a), 20(b), 20(c), 22(a), and 22(b), and Jindal First Supplemental Response (March 26, 2015) (Jindal SQR1) at 13 and Exhibit S1-9.
[25] 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 DOC Addendum to First Supplemental Questionnaire, dated March 17, 2015.
[26] See SRF Initial Questionnaire Response, dated January 26, 2015 (IQR) at 33-42 and Exhibit 15(b), 16, and 18(a) and SRF's First Supplemental Response (April 27, 2015) (SRF SQR1) at 14 and Exhibit S1-16.
[27] See Jindal IQR at 53 and Exhibits 21(a)-(f), and SRF IQR at 40 and Exhibit 18.

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 Jindal and SRF an import duty waiver. 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. All of SRF's license(s) tied to subject merchandise had values of less than 0.5 percent of SRF's total export sales for that year and were expensed in the year of receipt.[29] Therefore, we determine that SRF did not receive any benefits from this program during the POR.

As noted above, import duty reductions 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 obligations under the licenses are not met.[30] 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 reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we find the benefit to be the interest that Jindal would have paid during the POR on the full amount of the duty reduction or exemption at the time of importation.[31] 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 Interest Rates" 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, 2014, and (2) interest due on the contingent liability loans for imports of capital equipment that have not met export requirements. We then divided

[28] See PET Film Final Determination, and accompanying IDM at Comment 5.
[29] See preliminary results calculation memorandum for SRF at 6.
[30] 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)."
[31] 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)."

the total benefit by Jindal's total exports to determine a subsidy of 3.17 percent ad valorem.[32]

2. 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.[33] Specifically, the duties and tax "neutralized" under the program are (i) the customs and union excise duties on inputs and (ii) the service tax in respect of input services.[34] The DDB is generally fixed as a percentage of the Free-on-Board (FOB) price of the exported product.[35]

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.[36] 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.[37] This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.[38] If such a system does not exist, if it is not applied effectively, or if the government in question does not carry out an examination of the actual inputs involved to confirm which are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.[39]

Regarding its establishment of applicable DDB rates, the GOI stated the following:[40]

> 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.[41]

---

[32] See preliminary results calculation memorandum for Jindal.
[33] See GOI Initial Questionnaire, dated January 25, 2015 (GOI IQR) at 77-81 and Exhibit 21; see also Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Affirmative Determination of Critical Circumstances, 79 FR 41967 (July 18, 2014) (OCTG from India 2012), and accompanying IDM at "Duty Drawback;" Shrimp from India, and accompanying IDM at 12 ("Duty Drawback").
[34] See GOI IQR at 62 and Exhibit 23.
[35] Id., at 79-81.
[36] See 19 CFR 351.519(a)(1)(ii).
[37] See, e.g., PET Film Final Determination, and accompanying IDM at "Duty Entitlement Passbook Scheme (DEPS/DEPB)."
[38] See 19 CFR 351.519(a)(4); see also id.
[39] See 19 CFR 351.519(a)(4)(i)-(ii).
[40] See GOI IQR at 93-94; see also Shrimp from India, and accompanying IDM, at 12-13, "Duty Drawback."
[41] See GOI IQR at 76-79.

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.[42]

In its first supplemental questionnaire, the Department asked the GOI 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 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.[43] 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."[44]

We find in these preliminary results 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 preliminary results that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.[45]

Accordingly, we determine that the DDB program confers a countervailable subsidy. Under the DDB program, a financial contribution, as defined under 771(5)(D)(ii) of the Act, is provided because rebated duties represent revenue forgone by the GOI. Moreover, as explained above, the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product. Therefore, under 19 CFR 351.519(a)(4), the entire amount of the import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under sections 771(5A)(A) and (B) of the Act.

---

[42] Id., at 84-85.
[43] See Letter from the Department to the GOI: First Supplemental Questionnaire, dated April 6, 2015 (DOC First Supplemental).
[44] See GOI IQR at 93-95 and GOI First Supplemental Questionnaire (April 23, 2015) (GOI SQR1), at 28-31.
[45] Id.; see also Shrimp from India, and accompanying IDM at 12-13.

Under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the 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.[46] 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).

Jindal reported receiving drawbacks under the DDB program on exports of subject merchandise to the United States during the POR.[47] SRF reported receiving drawbacks under this program on exports of subject merchandise to third countries only, and that it did not avail of any benefits under this program for exports of subject merchandise to the United States.[48] Because 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), we determined that Jindal received benefits from this program during the POR. Therefore, we calculated the subsidy rate for Jindal using the value of all DDB rebates that were earned on U.S. sales of subject merchandise during the POR.[49] We divided the total amounts by Jindal's total exports of subject merchandise to the United States during the POR. On this basis, we determine a countervailable subsidy rate of 3.66 percent ad valorem for Jindal.[50] Because SRF reported not availing itself of any benefits under this program for exports of subject merchandise to the United States, we determine that SRF received no benefits from this program during the POR.

3. Status Holder Incentive Scrip (SHIS)

The SHIS scheme was introduced in 2009 with the objective to promote investment in upgrading technology in specific sectors.[51] 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 a 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.[52]

In Steel Threaded Rod from India Final,[53] the Department determined this program to be countervailable because it provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because duty free import of goods represents revenue foregone 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 exporters. A benefit is also provided

[46] 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).
[47] See GOI IQR at 95-96 and Exhibit 26(a). and Jindal IQR at 2 and 17-19, and Exhibit 26(a).
[48] See SRF IQR at 62-63, and SRF SQR1 at 4 and Exhibit S1-5.
[49] See, e.g., Steel Plate Final Determination, 64 FR at 73134 and 73140.
[50] See preliminary results calculation memorandum for Jindal.
[51] See GOI IQR at 106-117 and Exhibits 6 and 7, and GOI SQR at 34 and Exhibit S1-1.
[52] Id. at 107.
[53] 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."

under the SHIS program under 771(5)(E) of the Act 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.[54] 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…."[55] 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.[56]

Jindal reported that it received SHIS license scripts to import capital goods duty-free during the POR. Information provided by Jindal indicates that its SHIS license 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.[57]

The SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient at the time of receipt of the scrip.[58] 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 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.[59]

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 scrip and determined to allocate the benefits across the AUL.[60] 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 0.25 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).[61] Additionally, because this program applies to capital goods and the AUL in this proceeding is ten years, and for Jindal, specifically, 17 years,[62] companies may receive residual benefits from this program through at least 2026, and for Jindal through 2033.

---

[54] Id., and GOI IQR at 107.
[55] See Countervailing Duties, 63 FR at 65393.
[56] See Steel Threaded Rod from India Final, and accompanying IDM at "Status Holder Incentive Scrip."
[57] See Jindal IQR at 99-103 and Exhibit 27, and Jindal SQR1 at 14 and Exhibit S1-12.
[58] Id., Jindal IQR at 101-103, and GOI IQR at 107-108.
[59] 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, the Duty Entitlement Passbook Scheme (DEPS), benefits were conferred when earned, rather than when the credits were used.
[60] See preliminary results calculation memorandum Jindal, at Attachment 1.
[61] See GOI SQR1 at 37 and Exhibit S1-1, and GOI IQR at 115; see also Steel Threaded Rod from India Final, and accompanying IDM at "Status Holder Incentive Scrip."
[62] See "Allocation Period" section, above.

4. 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.[63] An SEZ may be established jointly or individually by the Central Government, a State Government or a person, to manufacture goods or provide services, or both, as well as to serve as a Free Trade and Warehousing Zone. Entities that want to set up an SEZ in an identified area may submit their proposal to the relevant State Government. To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services. Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production. In return, the companies inside the SEZ are eligible to receive various forms of assistance.

Companies in a designated SEZ may receive the following benefits: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of CST thereon; (3) exemption from the services tax for the services consumed within the SEZ; (4) exemption from stamp duty for all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit; (6) income tax exemptions under the Income Tax Exemption Scheme Section 10A;[64] 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.[65]

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.

[63] 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.
[64] See GOI IQR at 40-63 and Exhibits 14-17.
[65] See SRF QR at 47-61 and Exhibit 20.

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

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

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

In the SRF New Shipper Review, the Department determined that, with regard to these import duty exemptions provided on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not claim or provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Thus, the Department determined that the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act.[66] There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.[67]

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.[68] SRF has not yet met its export requirement under this program[69] 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.

[66] See SRF New Shipper Review, and accompanying IDM at 14-15.
[67] See GOI IQR at 61.
[68] See SRF IQR at Exhibit 21(a) and 21(b).
[69] Id.

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 1.52 percent ad valorem.[70]

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

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

Normally, uncollected indirect taxes, such as the CST, are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the purchase of capital goods. Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. However, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) and found that the amount of uncollected CST that was tied to the purchase of capital goods during the POR was less than 0.5 percent of total export sales during the POR. We also performed the "0.5 percent test" on SRF's uncollected CST that was tied to its purchases of capital goods in the years 2004 through 2013 and found that each year's uncollected CST was less than 0.5 percent of total export sales for each year. Therefore, each annual benefit from 2004 through 2013 was expensed in the year of receipt and the only benefit attributable to the POR was the amount of the uncollected CST on purchases of capital goods under this program during the POR.[71]

The Department found this program countervailable in the SRF New Shipper Review.[72] Specifically, the Department found that for the CST exemptions on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.518. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to treat all other CST exemptions on all purchases (other than capital goods) as recurring benefits pursuant to 19 CFR 351.524.

To calculate the benefit, we summed the total value of uncollected CST for capital goods purchased during the POR and the total value of uncollected CST due on all other purchases

[70] See preliminary results calculation memorandum for SRF.
[71] See 19 CFR 351.524(b)(2).
[72] See SRF New Shipper Review, and accompanying IDM at 15-16.

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.[73]

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.[74] These amendments include the Stamp Duty, Surcharge on Stamp Duty, Gram Panchyat Taxes, and Municipalities Tax.[75] Further, SRF states that under Section 13(2) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the transfers of immovable property or documents related thereto within the SEZ shall be exempt from the stamp duty, and that SRF has been exempted from payment of the stamp duty on its land lease deed.[76]

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.[77] 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).[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 preliminary results, we continue to find this program countervailable.

To calculate the benefit, we first calculated the value of the uncollected stamp duties and taxes, as listed above, which SRF did not pay upon registration of the land deed for the SEZ, by multiplying the value of the immovable property by the tax rates provided. As discussed above, pursuant to 19 CFR 351.524(c)(2)(i), we will treat SRF's uncollected stamp duties due on the lease of the SEZ land as non-recurring benefits. However, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) and found that the value of uncollected stamp duties on the lease of the SEZ land was less than 0.5 percent of total export sales during the year in which the benefit was received.[79] 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

---

[73] See preliminary results calculation memorandum for SRF.
[74] See SRF IQR, at 55-56 and Exhibit 24(b), and GOI IQR at 41-42 and Exhibit 14..
[75] Id.
[76] Id. at 55.
[77] See SRF New Shipper Review, and accompanying IDM at 16.
[78] Id., IDM at 16 and 35 (Comment 7).
[79] See preliminary results calculation memorandum for SRF.

The GOI and 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, as long as the unit for which electricity duty is exempted is located within the SEZ, as approved by the GOI.[80] 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,[81] demonstrating that this program is within the control of the state government.

In the SRF New Shipper Review, the Department determined that the electricity duty and cess exemptions provide a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. The Department also determined that the SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).[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 preliminary 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 0.17 percent ad valorem.[83]

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 assesse.[84]

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 foregone.[85] 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

[80] See SRF IQR at 56 and Exhibits 25(a) and (b), and GOI IQR at 42.
[81] See SRF IQR at 56 and Exhibit 25(b); see also GOI IQR at 42.
[82] See SRF New Shipper Review, and accompanying IDM at 17.
[83] See preliminary results calculation memorandum for SRF.
[84] Id., GOI IQR at 43-53.
[85] See SRF New Shipper Review, and accompanying IDM at 18.

771(5)(E) of the Act.[86] We also determined that the SEZ income tax exemption provides a recurring benefit under 19 CFR 351.524(c).[87] There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

SRF reported that it did not receive any benefit under this program during the POR. SRF further stated that, while SRF's SEZ unit period of 10 assessment years ends in 2014-15, the deduction under Section 10A is allowed only from "*such profits and gains as are derived by an undertaking,*" and, as SRF did not have "*profit and gains*," it did not claim any benefit under this program. To support its claim, SRF submitted its relevant tax return.[88] We examined the information provided and determined that SRF did not benefit from this exemption during the POR.

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 . . . ."[89] 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.[90] 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.[91] This is confirmed by the directive of the Government of Madhya Pradesh, Department of Commerce, Industry and Employment Ministry, submitted by SRF.[92]

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 foregone.[93] 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.[94] 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).[95] There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

---

[86] Id.
[87] Id.
[88] See SRF IQR at 57 and Exhibit 26(a) and (b), and SRF SQR1 at 18-19.
[89] See GOI IQR at 53-54 and Exhibit 14.
[90] Id.; see also SRF IQR at 57-59 and Exhibits 27(a), (b), and (c).
[91] Id. SRF IQR at 57-59.
[92] Id. at Exhibit 27(b).
[93] See SRF New Shipper Review, and accompanying IDM at 19.
[94] Id.
[95] Id. at 18-19.

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.[96] 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.[97]

5. Advance Authorization Scheme (AAS), aka, Advance License program (ALP)

Under the AAS, aka ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. During the POR, Jindal used advance licenses to import certain materials duty free.[98]

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAS/ALP during 2005. The Department analyzed the changes introduced by the GOI to the AAS/ALP in 2005 and acknowledged that certain improvements to the AAS/ALP system were made. However, the Department found that, based on the information submitted by the GOI and examined during previous reviews of this proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws and procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAS/ALP system during that POR.[99] In the 2005 review, the Department specifically stated that it continues to find the AAS/ALP countervailable based on:

> the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.[100]

---

[96] See "Allocation Period" and "Benchmark Interest Rates" sections of this memorandum, supra.
[97] See preliminary results calculation memorandum for SRF.
[98] See Jindal IQR at 62-71 and SQR1 at 12-14, and GOI IQR at 64-76.
[99] See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008) (PET Film Final Results of 2005 Review), and accompanying IDM at Comment 3; see also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006), and accompanying IDM at Comment 1.
[100] See PET Film Final Results of 2005 Review, IDM at Comment 3.

There is no new evidence on the record of the current administrative review of any new changes to this program since it was last examined by the Department,[101]demonstrating that the systemic deficiencies in the AAS/ALP system, identified above, have been resolved.[102] Therefore, the Department continues to find that the AAS/ALP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon exportation.

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

Jindal imported inputs under the AAS/ALP for the production of subject merchandise duty free during the POR.[103] In response to the Department's first supplemental questionnaire, Jindal provided supporting documentation regarding its ALP license(s).[104] The information provided demonstrates that the license(s) were tied to the production and export of subject merchandise within the meaning of 19 CFR 351.525(b)(5).

To calculate the subsidy rate, we first determined the total value of import duties exempted during the POR for Jindal under license(s) tied to subject merchandise. We then divided the resulting benefit by the total value of Jindal's export sales of subject merchandise. On this basis, we determine the countervailable subsidy provided to Jindal under the AAS/ALP to be 0.58 percent ad valorem.[105]

6. State and Union Territory Sales Tax Incentive Programs

Certain state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. These incentives allow privately-owned (i.e., not 100 percent

[101] Id.
[102] See GOI SQR1 at 24.
[103] See Jindal IQR at 62-71 and at Exhibit 24(a). 30, and SQR1-SRF, atS1-22(a).
[104] See Jindal SQR1 at 12-14 and Exhibit S1-10.
[105] See preliminary results calculation memorandum for SRF.

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.[106]

In the original CVD investigation, we determined that the operation of these types of state sales tax programs confer countervailable subsidies.[107] 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 and SRF reported not having to pay state sales tax and CST for certain purchases of inputs and supplies from certain locations within India for both subject- and non-subject merchandise.[108] To calculate the benefit, we first calculated the total sales tax reduction or exemption Jindal and SRF 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 these amounts by Jindal's and SRF's total sales during the POR, to calculate a net countervailable subsidy rate of 0.37 and 0.01 percent ad valorem, respectively.[109]

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.[110] The Department previously determined this program to be countervailable.[111]

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 until March 31, 2011, but was extended through subsequent amendments and then terminated effective March 31, 2013.[112]

---

[106] See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February12, 2007), and accompanying IDM at "State Sales Tax Incentive Programs."
[107] 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."
[108] See Jindal IQR at 83-88 and Exhibit 26 and SRF IQR at 69-72 and Exhibit 29.
[109] See preliminary results calculation memorandum for Jindal and preliminary results calculation memorandum for SRF.
[110] See Jindal IQR at 73-76 and Exhibits 25(a), (b), and (c) and SQR1 at 16-17 and Exhibit Revised Exhibit 28.
[111] See OCTG from India 2012, and accompanying IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007."
[112] Id.

Jindal reported that it participated in the PSI under the provisions for "mega projects," and specifically the Industrial Promotion Subsidy (IPS) under this program[113] 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.[114]

Industrial Promotion Subsidy (IPS)

The IPS, at paragraph 5.1, is part of the PSI-2007 incentives offered for new or expanding projects.[115] The Department has previously determined this program to be countervailable.[116] 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.[117]

As stated in OCTG from India 2012, 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 form 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.[118]

Jindal is eligible for this benefit for seven years. The annual amount of the benefit is determined by SGOM each year through an annual application. Because its project in Maharashtra meets the criteria of a "mega project," Jindal was allowed to propose the means through which it would receive its benefits. It chose exemption of state value-added-tax (VAT) and CST payments.[119] Thus, the amount of the benefit determined each year is based on the state VAT and CST Jindal paid that year.

---

[113] See Jindal IQR, at 70-75 and Exhibits 25(a)-(c), and Jindal SQR1, at 32.
[114] Id., at Exhibit 25(a); see also OCTG from India 2012, and accompanying IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007."
[115] See Jindal IQR at Exhibit 25(a).
[116] Id.; see also OCTG from India 2012, and accompanying IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy."
[117] See Jindal IQR at Exhibit 25(a)
[118] See OCTG from India 2012, and accompanying IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy."
[119] See Jindal IQR at 74-75 and Exhibit 25(b).

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.[120] 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.[121] 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.[122] The excessive refund of VAT provides a benefit under 19 CFR 351.510(a) (the refunded output VAT is only collected on domestic sales) and the remission of CST otherwise due provides a benefit under 19 CFR 351.509(a).

Pursuant to section 771(5A)(D)(iv) of the Act, the program is specific because it is limited to certain geographical regions within the state of Maharashtra. In order to calculate the benefit, we divided the total amount of the refunds Jindal received during the POR by its total sales during the POR. On this basis, we determined a countervailable subsidy rate of 1.83 percent ad valorem for Jindal.[123]

Programs Preliminarily Determined To Be Not Used or to Provide No Benefit During the POR

We preliminarily determine 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

[120] See OCTG from India 2012, and accompanying IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy."
[121] See Jindal IQR at 73-75.
[122] Id.
[123] See preliminary results calculation memorandum for Jindal.

5. Loan Guarantees from the GOI
6. Export Oriented Units
7. Duty Entitlement Passbook Scheme
8. Focus Market Scheme/Focus Product Scheme
9. Pre- and Post-Shipment Export Financing in Indian Rupees

State Programs

10. Octroi Refund Scheme State of Maharashtra (SOM)
11. Waiving of Interest on Loans by SICOM Limited (SOM)
12. State of Uttar Pradesh Capital Incentive Scheme
13. Infrastructure Assistance Schemes (State of Gujarat)
14. Capital Incentive Scheme Uttaranchel
15. Capital Incentive Schemes (SGOM)
16. Electricity Duty Exemption Scheme (SGOM IPS 2007)

Recommendation

We recommend that you approve the preliminary findings described above. If these recommendations are accepted, we will publish the preliminary results of the review in the Federal Register.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Deputy Assistant Secretary
for Enforcement and Compliance

July 31, 2015

Date