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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
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 from India; 2013

I. SUMMARY

On August 6, 2015, the Department published the preliminary results of the administrative review of the countervailing duty (CVD) order on Polyethylene Terephthalate Film, Sheet, and Strip from India (PET film) from India.¹ The review covers two mandatory respondents, Jindal Poly Films Limited (Jindal) and SRF Limited (SRF), along with five other companies: Ester Industries Limited, Garware Polyester Ltd., Polyplex Corporation Ltd., Vacmet; and Vacmet India Limited. The period of review (POR) is January 1, 2013, through December 31, 2013. Petitioners² and Jindal submitted timely filed case briefs on September 15, 2015.³ Petitioners also submitted a timely filed rebuttal brief on September 25, 2015.⁴ On November 2, 2015, the Department extended the deadline for the final results of review by 60 days to February 2, 2016. We find that Jindal and SRF benefitted from countervailable subsidies during the POR.

The “Analysis of Comments” section below contains summaries of these comments and the Department’s positions on the issues raised in the briefs. As a result of this analysis, we made

¹ See Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2013, 80 FR 46956 (August 6, 2015) (Preliminary Results 2013), and accompanying “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,” dated July 31, 2015 (accompanying PDM).

² DuPont Teijin Films, Inc., Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively, Petitioners)

³ See Letters from Petitioners and Jindal to the Department, dated September 15, 2015 (Petitioners’ Case Brief and Jindal’s Case Brief, respectively). SRF filed a letter with the Department “in lieu” of a case brief, stating that it accepts the Department’s findings of the Preliminary Results 2013, but reserves the right to file a rebuttal brief to address issues that might be raised by other parties. See Letter from SRF to the Department, dated September 15, 2015. SRF did not file a rebuttal brief.

⁴ See Letter from Petitioners to the Department, dated September 25, 2015 (Petitioners’ Rebuttal Brief).



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 The Department Wrongly Countervailed Export Promotion Capital Goods Scheme (EPCGS) Benefits That Apply To Non-Subject Merchandise.
- Comment 2: Whether the Department Used The Wrong Numerator To Calculate The POR Benefit For The Status Holder Incentive Scheme (SHIS).
- Comment 3: 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.
- Comment 4: Whether the Department Double Counted One Of The EPCGS Licenses Reported By Jindal And Failed to Include The Benefit Of Another License In Its Rate Calculations For Jindal
- Comment 5: Whether the Department used the wrong figure to calculate the Duty Drawback Subsidy for Jindal

II. 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

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the Preliminary Results 2013 and no issues were raised by interested parties in case briefs nor was any new factual information provided that would lead us to reconsider our preliminary determination regarding the allocation period or the allocation methodology. For a description of allocation period and the methodology used for these final results, *see* the Preliminary Results 2013 and accompanying PDM at 3-4.⁵

⁵ See also “Memorandum to the File from Elfi Page, International Trade Compliance Analyst, titled “Preliminary Results of 2013 Countervailing Duty Administrative Review of the order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Calculations for the Preliminary Results: Jindal Poly Films of India Limited,” dated July 31, 2015 (Jindal Preliminary Calculation Memorandum) and “Memorandum to the File from Elfi Page, International Trade Compliance Analyst, titled “Countervailing Duty Administrative Review of the order on Polyethylene

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the Preliminary Results 2013 for attributing subsidies and no issues were raised by interested parties in case briefs nor was any new factual information provided that would lead us to reconsider our preliminary determination regarding the attribution of subsidies. For descriptions of the methodologies used for these final results, *see* the Preliminary Results 2013 and accompanying PDM at 3-5.⁶

C. Benchmark Interest Rates

The Department has made no changes to benchmarks or discount rates used in the Preliminary Results 2013 and no issues were raised by interested parties in case briefs nor was any new factual information provided that would lead us to reconsider our preliminary determination regarding benchmarks or discounts rates. For a description of the benchmarks and discount rates used for these final results, *see* the Preliminary Results 2013 and accompanying PDM at 4-5.⁷

D. Denominator

The Department has made no changes to the denominators used in the Preliminary Results 2013. For a description of the denominators used for these final results, *see* the Preliminary Results 2013 and accompanying PDM at 5.⁸ However, interested parties raised certain issues regarding the appropriate denominator for the Export Promotion Capital Goods Scheme and the State Government of Maharashtra Subsidies Under the Package Scheme of Incentives 1993 and 2007, which are discussed in Comments 1 and 3 of this memorandum.

IV. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

The Department made no changes to its preliminary findings or calculations for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, *see* the Preliminary Results 2013 and accompanying PDM.⁹ No issues were raised by interested parties in case briefs regarding these programs nor was any new factual information provided that would lead us to reconsider our preliminary determination. Therefore, the final company-specific program rates for each of the following programs are unchanged from Preliminary Results 2013 and are as follows:

Terephthalate Film, Sheet, and Strip from India: Calculations for the 2013 Preliminary Results of Review: SRF Limited,” dated July 31, 2015 (SRF Preliminary Calculation Memorandum).

⁶ *See also* Jindal Preliminary Calculation Memorandum and SRF Preliminary Calculation Memorandum.

⁷ *Id.*

⁸ *Id.*

⁹ *See also* Jindal Preliminary Calculation Memorandum and SRF Preliminary Calculation Memorandum.

1. Status Holder Incentive Scrip (SHIS)¹⁰

Jindal: 0.25 percent *ad valorem*

2. State and Union Territory Sales Tax Incentive Programs¹¹

Jindal: 0.37 percent *ad valorem*

SRF: 0.01 percent *ad valorem*

3. Special Economic Zones (SEZs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs)¹²

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

SRF: 1.52 percent *ad valorem*

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

SRF: 0.39 percent *ad valorem*

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

SRF: No benefit during the POR

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

SRF: 0.17 percent *ad valorem*

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

SRF: No benefit during the POR

f. Discounted Land Fees in an SEZ

SRF: 0.02 percent *ad valorem*

4. Advance Authorization Scheme (AAS), aka, Advance License program (ALP)¹³

Jindal: 0.58 percent *ad valorem*

¹⁰ See Preliminary Results 2013 and accompanying PDM at 11-12.

¹¹ See Preliminary Results 2013 and accompanying PDM at 20-21.

¹² See Preliminary Results 2013 and accompanying PDM at 13-19.

¹³ See Preliminary Results 2013 and accompanying PDM at 19-20.

5. State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives (PSI) 1993 and 2007¹⁴

Jindal submitted comments in its case brief regarding this program.¹⁵ As explained below, the Department has not changed its calculations for this program from the Preliminary Results 2013.¹⁶

Jindal: 1.83 percent *ad valorem*

6. Export Promotion Capital Goods Scheme (EPCGS)

In its case brief, Jindal raised issues related to the Department's treatment of EPCGS benefits in the Preliminary Results 2013.¹⁷ As explained below in the Department's position under Comments 1 and 4, the Department's analysis with regard to this program remains unchanged from the Preliminary Results 2013¹⁸ with the exception of certain revisions to the numerator of Jindal's calculations for the final results.

In particular, as explained below in the Department's position under Comment 4, in the calculations for the Preliminary Results 2013, the Department inadvertently miscounted two EPCGS licenses in the benefit calculations for the EPCGS program used by Jindal during the POR. We have revised the calculations for these final results.¹⁹ Otherwise, the Department's analysis with regard to this program remains unchanged from the Preliminary Results 2013.

Jindal: 2.10 percent *ad valorem*

7. Duty Drawback (DDB) Program

As explained below in the Department's position under Comment 5, the Department incorrectly calculated the benefit used in the calculations for Jindal in the Preliminary Results 2013. For these final results, we have revised the final calculations for Jindal.²⁰ Otherwise, the Department's analysis of this program remains unchanged from the Preliminary Results 2013.²¹

Jindal: 3.78 percent *ad valorem*
SRF: No benefit during the POR.

¹⁴ See Preliminary Results 2013 and accompanying PDM at 21-23.

¹⁵ See Comment 2 of this memorandum.

¹⁶ See Jindal Preliminary Calculation Memorandum.

¹⁷ See Comment 1 of this memorandum.

¹⁸ See Preliminary Results 2013 and accompanying PDM at 6-9.

¹⁹ See Comment 4 of this memorandum; see also Memorandum to the File from Elfi Page, International Trade Compliance Analyst, titled "Final Results of 2013 Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India- Jindal Polyfilms Limited," dated concurrently with this memorandum (Jindal Final Calculation Memorandum).

²⁰ See Comment 5 of this memorandum and Jindal Final Calculation Memorandum.

²¹ See Preliminary Results 2013 and accompanying PDM at 9-11 and Jindal Preliminary Calculation Memorandum.

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

The Department has made no changes to its preliminary findings with regard to the following programs.²² No issues were raised by interested parties in case briefs regarding these programs. We continue to find that, for these final results, the following programs were not used by SRF or Jindal during the POR:

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. 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)

V. Final Results of Review

Based on the above analyses, we determine the net total *ad valorem* subsidy rates for these final results are as follows:

Company	Subsidy Rate
Jindal Polyfilms Limited	8.91 percent
SRF Limited	2.11 percent

²² See Preliminary Results 2013 and accompanying PDM at 24.

ANALYSIS OF COMMENTS

Comment 1: Whether The Department Incorrectly Countervailed Export Promotion Capital Goods Scheme (EPCGS) Benefits That Apply To Non-Subject Merchandise

Jindal's Case Brief

- The Department erroneously used all of the EPCGS licenses to calculate a benefit for the program, including those in Exhibit 20(c), even though column 53 of that exhibit titled “Whether used for subject or non-subject merchandise (Note 5),” states that the imports under the EPGS are *used* exclusively in the production of non-subject merchandise.²³
- Because none of the imports listed in Exhibit 20(c) could be used for subject merchandise, the relevant benefit could be tied to particular products that were not subject merchandise. Therefore, these EPCGS licenses should not have been used to calculate a benefit conferred on 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.”

Petitioners' Rebuttal Brief

- Petitioners' comments on this issue were limited to a general statement that they disagreed “with all of Jindal's arguments.”²⁴

Department's Position: As noted in the Preliminary Results 2013,²⁵ we could not determine that Jindal's EPCGS licenses were tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Our analysis indicated that the GOI approved certain EPCGS licenses for the export of both subject and non-subject merchandise. As a result, we preliminarily found that all of Jindal's EPCGS licenses benefitted all of Jindal's exports.²⁶ We have not changed our findings for these final results.

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.”²⁷

²³ See Jindal Initial Questionnaire Response (February 9, 2015) (Jindal IQR) at 55.

²⁴ Petitioners focused their rebuttal comments on the IPS program. See Petitioners' Rebuttal Brief at 1-2.

²⁵ See Preliminary Results 2013 and accompanying PDM at 6-9.

²⁶ Id.

²⁷ See Countervailing Duties: Final Rule, 63 FR 65348, 65403 (November 25, 1998) (Preamble).

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 some licenses were bestowed for the export of *both* subject and non-subject merchandise.²⁸ 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 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.²⁹ As noted in the Jindal Final Calculation Memorandum, explained in the Preliminary Results 2013, 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).³⁰ In addition, Exhibit 20(c) included license(s) bestowed on subject merchandise.³¹

Jindal has not contested that information on the record shows that the GOI approved certain EPCGS licenses bestowed to Jindal for the export of *both* subject and non-subject merchandise.³² Rather, it has continued to argue that that the Department should instead look at how it used the equipment at issue (*i.e.*, the fact that Jindal only used the licenses in the production of non-subject merchandise). The Department has previously rejected this same argument.³³

Therefore, based on our analysis of the information and documentation submitted by Jindal, we continue to 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.³⁴

²⁸ See Jindal IQR at (February 9, 2015) (Jindal IQR) at 44, 46, and 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 Exhibits S1-9, Parts 6–10.

²⁹ 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 (March 16, 2015) and Addendum to the Department's first supplemental questionnaire to Jindal (March 17, 2015).

³⁰ *Id.* at Exhibit S1-9.

³¹ *Id.*

³² See Preliminary Results 2013 and accompanying PDM at 7-8; see also Jindal IQR at 44, 46, and 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 Exhibits S1-9, Parts 6–10.

³³ See Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India: 2012 at 27-28 dated February 23, 2015.

³⁴ See Jindal Final Calculation Memorandum.

Comment 2: Whether the Department Used The Wrong Numerator To Calculate The POR Benefit For The Status Holder Incentive Scheme (SHIS)

Jindal's Case Brief

- Jindal did not utilize the full amount it was eligible to, and only the actual amount of benefits received and utilized should be countervailed. Therefore, the Department should use the actual utilization figure reported by Jindal to allocate the SHIS subsidy during the POR.
- The Department's reference in the Preliminary Results 2013 to Essar Steel v. United States³⁵ to support its reliance on the benefit as earned, rather than the benefit used, does 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.
- Jindal knows the amount of benefit it received in the relevant years and has reported these amounts to the Department, and the Department cannot ignore the evidence on the record establishing the exact measure of the benefit during the POR.
- The Department should not use what the Department calls the amount "earned" as Jindal has demonstrated that it did not, in fact, benefit to that degree from the SHIS scrip program.

Petitioners' Rebuttal Brief

- Petitioners' comments on this issue were limited to a general statement that they disagreed "with all of Jindal's arguments."³⁶

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. We have made no changes to our calculations for these final results.

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.³⁷ 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

³⁵ See Preliminary Results 2013 and accompanying PDM at 12.

³⁶ See Petitioners' Rebuttal Brief at 1.

³⁷ See GOI Initial Questionnaire, dated January 25, 2015 (GOI IQR) at 110-113.

exports were made.³⁸ The GOI then 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.

Importantly, the SHIS scrip is freely transferable to other manufacturing companies while the license remains valid.³⁹ The fact that the SHIS scrip can be sold before expiry of the SHIS license, just as with DEPS/DEPB licenses, is further evidence 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.

Finally, we disagree with Jindal's apparent argument that Essar Steel⁴⁰ does not support the Department's treatment of this program in the Preliminary Results 2013 since the relevant language applies "only where the extent of the benefit actually realized is not known."⁴¹ As discussed above, the actual amount of the benefit conferred by the GOI (i.e., the amount of revenue it is willing to forgo) is determined at the time it issues the SHIS license. Therefore, the face value of the SHIS license is the benefit amount that we have used in our rate calculations for these final results.

Therefore, for these final results, consistent with our determination in Steel Threaded Rod from India Final and our treatment of this issue in the immediately preceding review, we continue to 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 3: 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) Are Countervailable

Jindal's Case Brief

- In the Preliminary Results 2013, the Department erroneously found the VAT and CST reimbursements Jindal received under the IPS of the SGOM PSI to be countervailable.

³⁸ See Preliminary Results 2013 and accompanying PDM at 12; see also 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."

³⁹ See GOI IQR at 101-112.

⁴⁰ In the Preliminary Results 2013, we state that 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." See footnote 59 of accompanying PDM at 12

⁴¹ See Jindal's Case Brief at 13.

- 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 States,⁴² the CIT upheld the Department’s determination that a particular subsidy was not tied to a particular market because the 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 to the home market 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.
- There is basis for the Department’s finding that that IPS benefits apply to products sold in the domestic or export markets. 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.
- While money is fungible, the regulation relating to “attribution of subsidies” rejects a fungibility-of-money approach for determining attribution, and by choosing the mode of benefit it did under the IPS, Jindal has tied the benefit solely to sales in the Indian market.
- 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.
- In the Preliminary Results 2013, the Department stated 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),”⁴³ however, these regulations explain only when a benefit exists and how that benefit should be measured. These provisions do not trump 19 CFR 351.525(b)(4).
- 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.

⁴² See Bethlehem Steel Corp. v United States, 223 F. Supp. 2d 1372 (CIT 2002) (Bethlehem Steel).

⁴³ See Preliminary Results 2013 and accompanying PDM at 21-23.

Petitioners' 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 made the same argument in the preceding administrative review, which the Department rejected. Jindal fails to identify any new legal or factual information warranting a departure from Preliminary Results 2013.
- Further, Jindal has not even cited any evidentiary support for its assertion that the IPS subsidies received by Jindal are tied to sales to the domestic market.

Department's Position: We disagree with Jindal's argument that this program is not countervailable based on the mode of the benefits received by Jindal. As discussed in detail in the Preliminary Results 2013 and accompanying PDM at 21-23, the SGOM devised the PSI to promote economic development in certain underdeveloped regions of the State of Maharashtra.⁴⁴ Jindal commenced participation in this program in 1992, and has received benefits from the SGOM under the PSI since then.⁴⁵ Further, Jindal has participated in the IPS since 2001, which is one of the incentives offered under the PSI.⁴⁶ 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.⁴⁷ 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.⁴⁸ 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.”⁴⁹

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

⁴⁴ See GOI IQR at 118-123 and Jindal IQR at 73-76 and Exhibit 25(a) and (c); see also Jindal SQR1 at 16-17.

⁴⁵ Id.; see also Jindal IQR.

⁴⁶ See Jindal IQR at Exhibit 25(c).

⁴⁷ Id. at 74 and Exhibit 25(b)-PSI for Industries Maharashtra: 3.2(iii) Mega Projects. The phrase “Mega project” refers to the size of the manufacturing investment.

⁴⁸ Id. at 74.

⁴⁹ Id. at Exhibit 25(a).

machinery, and furthermore there is no information on the record to indicate the subsidy is tied to a particular market or product.⁵⁰

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. However, 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; receipt of benefits was not contingent 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 our attribution methodology the subsidy is attributable to Jindal's total sales within the meaning of 19 CFR 351.525(b)(3).

We disagree 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.⁵¹ 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."⁵²

Here, we similarly find that Jindal has failed to establish the necessary link between the stated purpose and the funds Jindal received 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 the purposes for which Jindal used the funds. As noted in the Preliminary Results 2013 and accompanying PDM at 13-20, 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.⁵³ 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.⁵⁴

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 not support Jindal's argument that export sales made by qualifying Mega units are unable to benefit from the SGOM PSI. The IPS program does not limit the respective company to investment into one particular production facility. In defining fixed assets, the PSI specifically

⁵⁰ See 19 CFR 351.525(b)(3) and (4).

⁵¹ See Bethlehem Steel, 223 F. Supp. 2d at 1380.

⁵² Id.

⁵³ See also Jindal IQR at 74

⁵⁴ See Preliminary Results 2013 and accompanying PDM at 13-20.

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.”⁵⁵ 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, in effect, argues that 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 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.”⁵⁶

Therefore, we continue to 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 From India 2012,⁵⁷ 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).

Finally, we note that 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.

Comment 4: Whether the Department Double Counted One Of The EPCGS Licenses Reported By Jindal And Failed to Include The Benefit Another License In Its Rate Calculations For Jindal

Jindal’s Case Brief:

- The Department double-counted the benefits from an EPCGS license with fulfilled export obligation in its preliminary calculations. This should be corrected for the final results.

⁵⁵ See Jindal IQR at Exhibit 25(a).

⁵⁶ See Preamble at 65404.

⁵⁷ See 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 “SGOM Subsidies Under the Package Scheme of Incentives of 2007.”

Petitioners' Case Brief:

- The Department failed to include the non-recurrent benefit of an EPCGS license which did not pass the 0.5 percent test, and therefore should have been expensed in the year in which the subsidy was paid (2013). This should be corrected for the final results.

Department's Position:

We agree with Jindal that the Department inadvertently included the benefit for license at issue twice in its rate calculations. We have corrected this error for these final results.⁵⁸

Further, we agree with Petitioners that the Department incorrectly excluded the benefit from the EPCGS license at issue. We have corrected this error for these final results.⁵⁹

Comment 5: Basis For Calculating Jindal's Duty Drawback Benefit (DDB)

Petitioners' Case Brief

- The Department used the wrong figure to calculate the Duty Drawback Subsidy for Jindal.
- The Department should have used the sum of "Duty Drawback Benefit Received" (Column L) instead of the sum of "Duty Drawback as Booked in Accounts," (Column K) of Exhibit 26(a).

Jindal's Comments

- Jindal did not file any comments or rebuttal comments on this issue.

Department's Position: We agree with Petitioners that we should have used the total sum of Column L, "Duty Drawback Received," for our benefit calculation of Jindal for this program, because this number reflects the actual DDB benefit received by Jindal during the POR. We have corrected this error for these final results.⁶⁰

⁵⁸ See Jindal Final Calculation Memorandum.


⁵⁹ Id.

⁶⁰ Id.

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
Assistant Secretary
for Enforcement and Compliance

8 FEBRUARY 2016
Date