



C-533-858  
Administrative Review  
POR: 12/23/2013-12/31/2014  
**Public Document**  
E&C/Office VII: EB/AC

DATE: October 5, 2016

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Countervailing Duty Administrative Review of Certain Oil  
Country Tubular Goods from India

---

## I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain oil country tubular goods (OCTG) from India in response to requests from interested parties. The period of review (POR) is December 23, 2013, through December 31, 2014. We preliminarily determine that Jindal SAW Ltd. (Jindal SAW) benefitted from countervailable subsidies during the POR.

## II. BACKGROUND

On September 10, 2014, the Department published in the *Federal Register* the CVD order on OCTG from India.<sup>1</sup> On September 1, 2015, the Department published a notice of opportunity to request an administrative review of the CVD order.<sup>2</sup> In response, on September 28, 2015, GVN Fuels Limited (GVN) self-requested a review.<sup>3</sup> On September 30, 2015 Jindal SAW Ltd. (Jindal SAW) and United Seamless Tubular Pvt. Ltd. (USTPL) each self-requested a review.<sup>4</sup> Also on September 30, 2015, Hilcorp Alaska LLC (Hilcorp), a domestic interested party, requested a

---

<sup>1</sup> See "Certain Oil Country Tubular Goods from India and the Republic of Turkey: Countervailing Duty Orders and Amended Affirmative Final Countervailing Duty Determination for India," 79 FR 53688 (September 10, 2014).

<sup>2</sup> See "Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review," 80 FR 52741, 52742 (September 1, 2015).

<sup>3</sup> See Letter from GVN: "Oil Country Tubular Goods from India; Request for Administrative Review," dated September 28, 2015.

<sup>4</sup> See Letter from Jindal SAW: "Oil Country Tubular Goods from India: Request for Administrative Review and Notice of Appearance," dated September 30, 2015. See also Letter from USTPL: "Certain Oil Country Tubular Goods from India: Request for Administrative Review," dated September 30, 2015.



review for Oil Country Tubular Ltd. (OCT).<sup>5</sup> On November 9, 2015, the Department published a notice of initiation for the review of the CVD order with respect to four companies.<sup>6</sup> On November 9, 2015, 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.<sup>7</sup> On December 8, 2015, the Department selected GVN and USTPL as mandatory respondents in this CVD administrative review.<sup>8</sup> Subsequently, GVN,<sup>9</sup> Hilcorp,<sup>10</sup> and USTPL<sup>11</sup> each timely withdrew their requests for review. Because all review requests were withdrawn with respect to GVN and USTPL (formerly the mandatory respondents in this review), the Department selected Jindal SAW as the sole mandatory respondent.<sup>12</sup>

The Department issued its initial CVD questionnaire to the Government of India (GOI) on January 4, 2016, and the GOI filed a timely response. On February 2, 2016, the Department issued its initial questionnaire to Jindal SAW,<sup>13</sup> and received a timely responses on March 23, 2016 and April 5, 2016. Subsequently, the Department issued two supplemental questionnaires to Jindal SAW, and received timely responses on August 26, 2016 and September 19, 2016. Further, on September 14, 2016, the Department issued a supplemental questionnaire to the GOI, to which it received a timely response.

## **Period of Review**

The POR is December 23, 2013 through December 31, 2014.<sup>14</sup>

---

<sup>5</sup> See Letter from Hilcorp, “Oil Country Tubular Goods from India: Request for Administrative Review,” dated September 30, 2015.

<sup>6</sup> See “Initiation of Antidumping and Countervailing Duty Administrative Reviews,” 80 FR 69193, 69197 (November 9, 2015).

<sup>7</sup> See Memorandum to All Interested Parties from Alexander Cipolla: “Countervailing Duty Administrative Review of Certain Oil Country Tubular Goods from India: U.S. Customs Entries,” dated November 9, 2015.

<sup>8</sup> See Memorandum to Edward Yang from Alexander Cipolla: “Administrative Review of the Countervailing Duty Order on Oil Country Tubular Goods from India: Selection of Respondents for Individual Examination,” dated December 8, 2015.

<sup>9</sup> See Letter from GVN, “Oil Country Tubular Goods from India; Withdrawal of Administrative Review Request,” dated January 19, 2016.

<sup>10</sup> See Letter from Hilcorp, “Withdrawal of Request for Administrative Review; Case No. C-533-858 Countervailing Duty Order on Oil Country Tubular Goods from India,” dated January 25, 2016.

<sup>11</sup> See Letter from USTPL, “Countervailing Duty Administrative Review of Certain Oil Country Tubular Goods from India – Withdrawal of Request for Administrative Review,” dated February 11, 2016.

<sup>12</sup> See Memorandum to Edward Yang from Alexander Cipolla: “Administrative Review of the Countervailing Duty Order on Oil Country Tubular Goods from India: Selection of Additional Mandatory Respondent,” dated January 29, 2016.

<sup>13</sup> See Letter to Jindal SAW, “Review of the Countervailing Duty Order on Certain Oil-Country Tubular Goods from India: Countervailing Duty Questionnaire,” dated February 2, 2016.

<sup>14</sup> See Memorandum To All Interested Parties From Elfi Bum: Countervailing Duty Administrative Review of Oil Country Tubular Goods from India; Period of Rate Calculation for the First Administrative Review, dated August 24, 2016. The Department invited parties to comment on its stated intention to base the assessment rate on subsidy information provided for calendar year 2014. The Department received no comments.

### **III. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW**

As noted above, all review requests for GVN, OCT, and USTPL were timely withdrawn. As those review requests were timely withdrawn, we are rescinding this administrative review with respect to those companies pursuant to 19 CFR 351.213(d)(1). Because Jindal SAW self-requested a review, and this request was not withdrawn, we are proceeding with a review of Jindal SAW as the sole mandatory respondent in this proceeding.

### **IV. SCOPE OF THE ORDER**

The merchandise covered by the order is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

## **V. SUBSIDIES VALUATION INFORMATION**

### **A. Allocation Period**

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>15</sup> The Department notified the respondent of the 15-year AUL in the initial questionnaire and requested data accordingly. For non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

### **B. Attribution of Subsidies**

*Cross Ownership:* In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a

---

<sup>15</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>16</sup>

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (CIT) has upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>17</sup>

#### *Jindal SAW*

Jindal SAW responded to the Department’s questionnaire on behalf of itself and on behalf of one of its crossed-owned subsidiaries.<sup>18</sup> However, after reviewing the relevant response, the subsidiary did not receive any benefits during the POR or during the 14 year AUL period. Jindal SAW further reported that it did not have any other cross-owned companies that were involved in the production or sale of subject merchandise, transfer of subsidies, are holding or parent companies, or the production of inputs used in the production of the downstream products during the POR or AUL.<sup>19</sup> Therefore, we will attribute subsidies received by Jindal SAW to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

### **C. Denominators**

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents’ receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents’ export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the “Preliminary Calculation Memoranda” prepared for this administrative review.<sup>20</sup>

### **D. Benchmarks and Discount Rates**

We are reviewing loans that the respondent received under the Export Promotion Capital Goods Scheme (EPCGS) with unfulfilled export obligations, which the Department treats as loans, and non-recurring, allocable duty waivers under the same program, Export Oriented Units (EOU), for which the Government of India (GOI) has waved Jindal SAW’s duty obligations for imports of capital goods duty free, (*see* 19 CFR 351.524(b)(1)), and interest free loans received under the State Government of Maharashtra (SGOM) Sales Tax Program (1988).

---

<sup>16</sup> *See Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

<sup>17</sup> *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>18</sup> *See* Jindal SAW’s First Supplemental Response, dated August 26, 2016 (Jindal SAW SQR1) at Exhibit 91 and Jindal SAW’s Second Supplemental Response, dated September 19, 2016 (Jindal SAW SQR2) at Exhibit 111.

<sup>19</sup> *See* Jindal SAW’s Initial Questionnaire Response, dated March 23, 2016 (Jindal SAW IQR) at 5.

<sup>20</sup> *See* “Countervailing Duty Administrative Review of Certain Oil Country Tubular Goods from India: Jindal SAW Limited. Preliminary Calculation Memorandum,” dated concurrently with this memorandum (Preliminary Calculation Memorandum).

For programs requiring the application of a benchmark interest rate or a discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) states that the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii). Finally, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government owned special purpose bank for purposes of calculating benchmark rates.<sup>21</sup>

In accordance with these regulations, and the Department's previous examination of these subsidy programs, we have used, where available, the respondent's fixed rate long-term commercial loans, and the respondent's weighted-average rate of short-term commercial borrowing, depending on the non-recurring or recurring nature of the subsidy program. In the few instances where contemporaneous long-term loans from commercial lenders were not available, we relied on long-term lending rates published by the International Monetary Fund in International Financial Statistics,<sup>22</sup> which are comparable in structure and currency, in accordance with 19 CFR 351.505(a)(2).

### **Long-Term Lending Rates**

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

## **VI. ANALYSIS OF PROGRAMS**

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

### **A. Programs Preliminarily Determined To Be Countervailable**

#### *GOI Programs*

##### **1. Advance Authorization Program (AAP)/Advance License Program (ALP)**

In several prior investigations, the Department has determined that import duty exemptions provided under the Advance Authorization Program (AAP)/Advance License Program (ALP) program are countervailable export subsidies.<sup>23</sup> Under this program, exporters may import, duty

---

<sup>21</sup> See, e.g., *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) and IDM at Comment 3; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) and accompanying IDM at "Benchmark Interest Rates and Discount Rates" section.

<sup>22</sup> See Preliminary Calculation Memorandum.

<sup>23</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) (*PET Film from India 2007 Review*) and accompanying

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. In *PET Film from India 2007 Review*, the Department found that the ALP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon export. The GOI did not report changes to this program since the Department's determination in *PET Film from India 2007 Review*. Therefore, the Department finds this program to be countervailable.

Unless the AAP/ALP licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5), the Department will consider the company's AAP/ALP licenses to benefit all of the company's exports.<sup>24</sup> Therefore, because Jindal SAW's AAP/ALP licenses are not tied to the production of a particular product,<sup>25</sup> we have divided the total value of the duties exempted under all of Jindal SAW's AAP/ALP licenses during the POR by Jindal SAW's total export sales. On this basis, we determine a countervailable subsidy rate under the AAP/ALP program of 2.72 percent *ad valorem* for Jindal SAW.<sup>26</sup>

---

IDM at "Advance License Program;" see also *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) (*Hot-Rolled from India 2006 Review*) and accompanying IDM at "Advance License Program."

<sup>24</sup> See e.g., *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, at 5. (Unchanged in the *Final Results*)

<sup>25</sup> Specifically, Jindal SAW reported that it used certain AAP/ALP licenses at its Nashik facility for the production of subject merchandise, non-subject merchandise, or both subject and non-subject merchandise. Some of those licenses identified by Jindal SAW as used for the production of subject and/or non-subject merchandise are not tied to any one particular product. In addition, the company-wide AAP license documentation Jindal SAW submitted in Exhibit 100, Jindal SAW SQR1, indicates that many licenses, including those associated with the Nashik facility, are not tied to any particular product. Rather, some of those licenses are tied to several facilities, including the Nashik facility, which produce more than one product. See also Jindal SAW IQR at 17-23 and Exhibit 18-20.

<sup>26</sup> See Preliminary Calculation Memorandum.

## 2. Duty Drawback (DDB)

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.<sup>27</sup> 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.<sup>28</sup> The DDB is generally fixed as a percentage of the FOB price of the exported product.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup> This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.<sup>32</sup> 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.<sup>33</sup>

Regarding its establishment of applicable DDB rates, the GOI stated the following in *Shrimp from India*:<sup>34</sup>

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the Government. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.<sup>35</sup>

---

<sup>27</sup> See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*) and accompanying IDM at 12, “Duty Drawback.”

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See 19 CFR 351.519(a)(1)(ii).

<sup>31</sup> See, e.g., *PET Film from India 2005 Review*, and accompanying IDM at “Duty Entitlement Passbook Scheme (DEPS/DEPB).”

<sup>32</sup> *Id.*

<sup>33</sup> See 19 CFR 351.519(a)(4)(i)-(ii).

<sup>34</sup> See *Shrimp from India*, and accompanying IDM at 12-13, “Duty Drawback.”

<sup>35</sup> *Id.* at 12-13.



However, “based on the GOI’s questionnaire responses and lacking the documentation to support that the GOI has a system in place,” we concluded in that investigation that “the GOI had not supported its claim that its system is reasonable or effective for the purposes intended.”<sup>36</sup> The GOI has not reported any changes to the program during the course of this proceeding.<sup>37</sup>

As explained above, under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the 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.<sup>38</sup> 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 SAW reported that it received drawbacks under the DDB program during the POR.<sup>39</sup> We are able to tie the benefits received to a particular market and to a particular product, in accordance with 19 CFR 351.525(b)(4) and (5). Therefore, we calculated Jindal SAW’s subsidy rate using the value of all DDB rebates that were earned on its sales of subject merchandise to the United States sales during the POR.<sup>40</sup> We divided Jindal SAW’s benefit earned on exports of subject merchandise to the United States by the company’s exports of subject merchandise to the United States. On this basis, we determine a countervailable subsidy of 2.84 percent *ad valorem* for Jindal SAW.<sup>41</sup>

### 3. Export Promotion Capital Goods Scheme (EPCGS)

In several prior investigations, the Department has determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies.<sup>42</sup> The EPCGS program provides for a reduction of, or exemption from, customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to six times the duty saved within a period of six years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus an interest penalty.

---

<sup>36</sup> *Id.*

<sup>37</sup> See Government of India First Supplemental Response of September 26, 2016 (GOI SQR1) at 11-27.

<sup>38</sup> 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*).

<sup>39</sup> See Jindal SAW initial questionnaire response dated April 5, 2016, at 29 and Exhibits 17 and 42.

<sup>40</sup> See, e.g., *Steel Plate Final Determination*, 64 FR at 73134 and 73140.

<sup>41</sup> See Preliminary Calculation Memorandum.

<sup>42</sup> See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*) and accompanying IDM at 14-17; see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film from India*) and accompanying IDM at “EPCGS.”

Under the EPCG program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).<sup>43</sup> Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCG program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble to our regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring . . . ."<sup>44</sup> 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.<sup>45</sup>

Information provided by Jindal SAW indicates that their EPCGS licenses were issued for the purchase of capital goods for the production of both subject and non-subject merchandise.<sup>46</sup> Accordingly, this information does not allow us to tie particular EPCG licenses to particular products within the meaning of 19 CFR 351.525(b)(5). As such, we are attributing the EPCGS benefits received by the respondents on all EPCGS licenses to their total exports.

Jindal SAW reported that it did not receive a formal waiver from the GOI during the POR.<sup>47</sup>

As noted above, import duty reductions or exemptions received for capital equipment imports for which the respondents had not yet met their export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liabilities as interest-free loans.<sup>48</sup>

The amount of the unpaid duty liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, which had not been officially waived by the GOI as of the end of the POR. Accordingly, we find the benefit to be

---

<sup>43</sup> *Id.*

<sup>44</sup> See *Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998).

<sup>45</sup> See, e.g., *PET Film from India 2007 Review* and accompanying IDM at Comment 9.

<sup>46</sup> See Jindal SAW IQR (APR 2016) at 26-29 and Exhibits 21-25, and SQR1 at Exhibit 103..

<sup>47</sup> See IQR at Exhibit 21 (EPCG Standard Question Appendix) and Jindal SAW SQR1 at Exhibit 87. In this administrative review, Jindal SAW did not report that it had obtained an official waiver of duties from the GOI under the EPCGS.

<sup>48</sup> See 19 CFR 351.505(d)(1); see also *PET Film from India* and accompanying IDM at "EPCGS" and *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) and accompanying IDM at "Export Promotion Capital Goods Scheme (EPCGS)."

the interest that the respondents would have paid during the POR had they borrowed the full amount of the duty reduction or exemption at the time of importation.<sup>49</sup>

As stated above, the time period for fulfilling the export requirement expires six years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends, (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported, and summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCG program is the interest due on the contingent-liability loans for imports of capital equipment that have unmet export requirements during the POR. We divided the total benefit received by Jindal SAW under the EPCG program by their total export sales during the POR. Accordingly, we preliminarily determine a countervailable subsidy rate of 1.58 percent *ad valorem* for Jindal SAW.<sup>50</sup>

#### 4. Focus Product Scheme

The Focus Product Scheme (FPS) is an export promotion program with an objective to promote exports of products with high export intensity and/or employment potential (*i.e.*, focus product). Introduced in 2006, the scheme allows exporters to earn duty credit scrips on the FOB value of their exports. The scrips are then used to offset import duties or can be resold by the exporter. The Directorate General of Foreign Trade (DGFT) administers the FPS through Foreign Trade Policy 2009-2014 (FTP) that is carried out by Handbook of Procedures 2009-2014 (HBP).<sup>51</sup>

Jindal SAW reported that it earned duty credit scripts on exports of subject merchandise to the United States. In its response to the Department, Jindal SAW explains that Appendix 37D, which is published in the Handbook of Procedures (HBP), provides a list of eligible products and rates in two categories or tables: 1) Focus Product Scheme (products to all countries; 2) Focus Market Scheme (products to specified countries), which includes, Market Linked Focus Products, and that Table 1, *i.e.* Focus Product Scheme, now includes OCTG.<sup>52</sup>

---

<sup>49</sup> See, *e.g.*, *Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46488 (August 10, 2005) (unchanged in *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006)).

<sup>50</sup> See Preliminary Calculation Memorandum.

<sup>51</sup> See “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Oil Country Tubular Goods from India,” dated July 10, 2014, (OCTG Investigation IDM) at 64; *see also*, GOI IQR (February 16, 2016) at 60.

<sup>52</sup> See Jindal SAW IQR (APR 2016) at Exhibits 57 and 58; *see also* Jindal SAW’s Second Supplemental Response of September 19, 2016 (Jindal SAW SQR2) at 9-11. The information on the record indicates that the scheme was available to Jindal SAW during the POR. *See also*, GOI’s First Supplemental Response (SEP 2016) (GOI SQR1) at 6-9, and Annex I, Exhibit 16.

We determine that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we determine that the FPS program is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters. Furthermore, the entire amount of the FPS constitutes a benefit under section 771(5)(E) of the Act. Consistent with 19 CFR 351.519(b)(2), we find that the benefits from the FPS program are conferred as of the date of exportation of the shipment for which the FPS is earned. This is because the FPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, the recipients know the exact amount of the benefit when exportation occurs. Accordingly, we calculated the subsidy rate for Jindal SAW by first summing its reported benefit earned on its exports of subject merchandise to the United States, and then dividing the total benefit earned by the total value of exports of subject merchandise to the United States. On this basis, we determine a countervailable subsidy rate of 1.74 percent *ad valorem* for Jindal for this program.<sup>53</sup>

## 5. Export Oriented Units (EOU)

Companies, or a manufacturing facility of a company, that are designated as an EOU are eligible to receive various forms of assistance in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales, for five years. Companies designated as EOUs may receive the following benefits: (1) duty-free importation of capital goods and raw materials; (2) reimbursement of central sales taxes (CST) paid on capital goods and materials procured within India; (3) purchase of materials and other inputs free of central excise duty; and (4) receipt of duty drawback on furnace oil procured from domestic oil companies. In this administrative review, Jindal SAW reported that its manufacturing facility located in Nanakapaya had been designated as an EOU.<sup>54</sup> Specifically, Jindal reported receiving the following benefits: (1) the duty-free importation of capital goods and raw materials, and the reimbursement of CST paid on capital goods and raw materials procured domestically.

The Department previously determined that the purchase of materials and/or inputs free of central excise duty is not countervailable.<sup>55</sup> With respect to the other categories of benefits enumerated above, the Department determined that the EOU program was specific, within the meaning of section 771(5A)(A) and (B) of the Act, because the receipt of benefits under this program was contingent upon export performance.<sup>56</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering this finding.

### *a. Duty-Free Importation of Capital Goods and Raw Materials*

Under this program, an EOU is entitled to import, duty-free, capital goods and raw materials for the production of exported goods in exchange for committing to export all of the products it

---

<sup>53</sup> See Preliminary Calculation Memorandum.

<sup>54</sup> See Jindal SAW IQR (APR 2016) at 25.

<sup>55</sup> See *Indian PET Resin Final Determination*, Issues and Decision Memorandum, at “Export Oriented Units (EOUs) Programs: Purchase of Material and other Inputs Free of Central Excise Duty.”

<sup>56</sup> See, e.g., *id.* at “Export-Oriented Unit (EOU) Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically.”

produces over five years. The Department previously determined that the duty-free importation of capital goods and raw materials provides a financial contribution and confers benefits equal to the amount of exemptions of customs duties. *See* Sections 771(5)(D)(ii) and (E) of the Act.<sup>57</sup> With respect to raw material imports, the GOI was not able to demonstrate that it has in place and applies 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. Based on the information provided by Jindal SAW in the form of a copy of its “Nanakapaya Letter of Permission,”<sup>58</sup> until an EOU demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties.

Therefore, with respect to capital goods, the first benefit is the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is the Department’s practice to treat any balance on an unpaid liability as a contingent liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).<sup>59</sup> The second benefit is the waiver of duty on imports of capital equipment covered by the EOU. If the company demonstrates that it has completed its export obligation, and the GOI has officially waived the import duties for the imported capital equipment, we treat the import duty savings as grant 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). Jindal SAW provided information demonstrating that the GOI has officially waived the import duties on the imported capital equipment for its EOU.<sup>60</sup>

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring . . . .”<sup>61</sup> In accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

To calculate the benefit received from the GOI’s formal waiver of import duties on Jindal SAW’s capital equipment imports, *i.e.*, the GOI’s “Final Exit Order”<sup>62</sup> from the EOU Scheme, which was met prior to December 31, 2014, 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, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Jindal SAW’s outstanding import duties.<sup>63</sup> Next, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the year in which the GOI granted Jindal SAW an import duty waiver. Because the result met the threshold for the “0.5

---

<sup>57</sup> *See also id.* at “Export-Oriented Unit (EOU) Program: Duty Free Import of Capital Goods and Raw Materials.”

<sup>58</sup> *See* Jindal SAW IQR (MAR 2016) at Exhibit 105.

<sup>59</sup> *Id.*

<sup>60</sup> *See* Jindal SAW IQR (APR 2016) at Exhibits 75-76 and 81.

<sup>61</sup> *See Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998).

<sup>62</sup> *See* Jindal SAW IQR (APR 2016) at Exhibit 81.

<sup>63</sup> *Id.*

percent test,” we then calculated the benefit from the allocable grant using the methodology set forth in 19 CFR 351.504 to determine the benefit in the POR from this grant.<sup>64</sup>

For the duty free importation of materials and inputs, we summed the duty exemptions on raw material inputs received during the POR. We then divided Jindal SAW’s total benefits under this program by its total export sales during the POR. On this basis, we determine the countervailable subsidy from this category of the program to be 0.08 percent *ad valorem* for capital goods and 0.01 percent *ad valorem* for raw materials.<sup>65</sup>

*b. Reimbursement of CST Paid on Capital Goods and Raw Materials*

Under this program, Jindal SAW was also reimbursed for the CST it paid on capital goods and raw materials procured domestically. The Department previously determined that the reimbursement of CST paid on materials procured domestically provides a financial contribution and confers benefits equal to the amount of reimbursements of sales taxes pursuant to sections 771(5)(D)(ii) and (E) of the Act.<sup>66</sup> Specifically, the benefit associated with domestically purchased materials is the amount of reimbursed CST received by Jindal SAW during the POR.

Normally, tax reimbursements, such as the CST, are considered to be recurring benefits. However, some of the reimbursements under this program are tied to the purchase of capital assets. As such, pursuant to 19 CFR 351.524(c)(2)(iii), we would normally treat such reimbursements 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 CST reimbursements tied to capital goods received during the POR was less than 0.5 percent of total export sales for the POR.<sup>67</sup> We also performed the “0.5 percent test on Jindal SAW’s reimbursements of CST on its purchases of capital assets for the 14 years prior to the POR, and found that they were less than 0.5 percent of total export sales for the respective years. As a result, the benefits were expensed in the years in which they were received. Therefore, Jindal SAW’s benefits under this program are properly expensed entirely in the year earned, and the only benefit to Jindal SAW was from the CST reimbursements claimed under this program during the POR for inputs and raw materials.<sup>68</sup> To calculate the benefit for Jindal SAW, we first summed the total amount of CST reimbursements raw materials received during the POR. We then divided this amount by the total value of Jindal SAW’s export sales during the POR. On this basis, we determine the countervailable subsidy provided to Jindal SAW through the reimbursement of CST under the EOU program to be 0.01 percent *ad valorem* for raw materials.<sup>69</sup>

---

<sup>64</sup> See Preliminary Calculation Memorandum.

<sup>65</sup> *Id.*

<sup>66</sup> See, e.g., *Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483 (August 10, 2005) (*PET Film Preliminary Results of 2003 Review*), 70 FR at 46490 (unchanged in the final results).

<sup>67</sup> Note: Jindal SAW did not purchase any capital equipment during January 1, 2014 through December 31, 2014 for its EOU.

<sup>68</sup> See 19 CFR 351.524(b)(2).

<sup>69</sup> See Preliminary Calculation Memorandum.

6. Provision of Mining Rights of Iron Ore (GOI and State Government of Rajasthan) (SGOR)

According to Jindal SAW, the company applied for mining rights of iron ore, specifically, a mining lease, to the State Government of Rajasthan (SGOR) in 2005. The SGOR recommended that the GOI grant the lease. Jindal SAW further explained that, based on the Mining Act of 1956, mining rights are granted on a first come-first serve basis with the caveat that the state government actually approves the mining lease.<sup>70</sup> According to the Memorandum of Understanding (MOU) between Jindal SAW and the SGOR, and the subsequent “Sanction Letter” by the SGOR, Jindal SAW has to commit to a specified level of investment for a specified type of enterprise in order to mine the iron ore.<sup>71</sup> Further, Jindal SAW informed the Department that it is not allowed to sell the iron ore it extracts in the open market; thus, it has no information on market prices for iron ore identical to that mined by Jindal SAW. Moreover Jindal SAW is the only miner of magnetite iron ore, with no other identical iron mine for use available in India.<sup>72</sup>

In our initial questionnaire, the Department requested that the GOI provide the following: 1) Responses to all items in the Standard Questions Appendix and the Captive Mining Rights Appendix;<sup>73</sup> 2) Information on royalties charged by private landowners in India for the extraction of iron ore from their property; and 3) Information regarding market prices in India for iron ore that is available to consumers in India.<sup>74</sup> In its response, the GOI stated that it considered it unnecessary to respond to the Department’s questions because there is no program called “Captive Mining Rights for Iron Ore” and the GOI does not exercise any “control over manufacturing, pricing, distribution, or marketing, neither on the steel products nor on the raw materials required for their production.”<sup>75</sup> In our supplemental questionnaire, we requested that the GOI clarify whether Jindal SAW benefitted from this program, and provide a complete description of this program.<sup>76</sup> The GOI referred to its initial questionnaire response and restated that there is no program called “Captive Mining Rights for Iron Ore.”<sup>77</sup> Our supplemental questionnaire also requested that the GOI “respond to all questions pertaining to the above program” in the initial questionnaire (i.e., the questions in the Standard Questions Appendix and the Captive Mining Rights Appendix). In response, the GOI again referred to its initial questionnaire response and said the questions were not applicable.”<sup>78</sup>

As an initial matter, notwithstanding that the Department’s questionnaire requested information on the “Captive Mining Rights for Iron Ore” program, we note that in the *Hot-Rolled Steel 129*

---

<sup>70</sup> See Jindal SAW SQR2 at 12.

<sup>71</sup> See Jindal SAW IQR (APR 2016) at Exhibits 61 and 63, and Jindal SAW SQR2 at Exhibit 114.

<sup>72</sup> *Id.*, at 18.

<sup>73</sup> The Standard Questions Appendix requests information on financial contribution, specificity, and benefit. The Captive Mining Rights Appendix requests information on how the program operates and government involvement in the market for iron ore. See the Department of Commerce’s Initial Countervailing Duty Questionnaire, dated January 4, 2016, at I-14 and Captive Mining rights Appendix, and GOI IQR (February 16, 2016) at 133-137.

<sup>74</sup> GOI IQR (February 16, 2016) at 133-137 and GOI SQR1 at 29.

<sup>75</sup> See GOI IQR (FEB 2016) at 133.

<sup>76</sup> See the Department of Commerce’s First Supplemental Questionnaire to the Government of India, dated September 14, 2016, at 5.

<sup>77</sup> See GOI SQR1 at 2.

<sup>78</sup> *Id.*

*Implementation Memo* we stated that “the Department re-examined the record and conclude{d} that the GOI’s *provision of mining rights* constitutes a countervailable subsidy and has investigated these types of transactions and found that they fall squarely under the definition of a direct provision of a good to a firm by a government entity and, as such, constitutes a ‘program.’”<sup>79</sup>

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

In CVD proceedings, the Department relies on government-provided information to determine whether a financial contribution has been provided and if the program in question is specific. As explained above, the GOI did not provide this information with respect to the Captive Mining Rights program for these preliminary results. Therefore, the Department is resorting to facts available with respect to the Mining Rights program.

As facts available, we have relied on our findings in *Final Hot-Rolled Steel from India 2006* to preliminarily determine that the provision of iron ore under this program constitutes a financial contribution, in the form of a provision of a good, within the meaning of section (771)(5)(D)(iii) of the Act,<sup>80</sup> and is de facto specific under section 771(5A)(D)(iii)(I) of the Act because the provision of iron ore mining rights is limited to certain enterprises, such as steel producers.<sup>81</sup> We note that the *Hot-Rolled Steel 129 Implementation Memo* states that “the GOI’s provision of mining rights... {is} specific in accordance with section 771(5A)(D)(iii)(I) of the Act because the provision of the rights was limited to two industries, specifically steel producers and mining companies.” Furthermore, our determinations that the Captive Mining Rights program provides

---

<sup>79</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 1578, 1591 (January 9, 2008) (*Prelim Hot-Rolled Steel 2006*), and unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Final Hot-Rolled Steel 2006*).

<sup>80</sup> See Memorandum To Paul Piquado, Assistant Secretary for Enforcement and Compliance From Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations: Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436); Final Determination, dated April 14, 2016 (*Hot-Rolled Steel 129 Implementation Memo*) at 21-25.<sup>81</sup> Additional information placed on the record by Jindal SAW indicates that this program is specific. The fact that the GOI has to approve the agreement between the SGOR and Jindal SAW, is indicative of the GOI’s control over its mines and minerals. This approval process confirms that captive mining rights of iron ore, are issued by the GOI and the SGOR to a select and limited small group of companies in the steel industry, including Jindal Saw. See Jindal SAW IQR (April 2016) at 14-19.

<sup>81</sup> Additional information placed on the record by Jindal SAW indicates that this program is specific. The fact that the GOI has to approve the agreement between the SGOR and Jindal SAW, is indicative of the GOI’s control over its mines and minerals. This approval process confirms that captive mining rights of iron ore, are issued by the GOI and the SGOR to a select and limited small group of companies in the steel industry, including Jindal Saw. See Jindal SAW IQR (April 2016) at 14-19.



a financial contribution and is specific are consistent with the information provided by Jindal SAW.<sup>82</sup>

The basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR is set forth in 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).

In prior proceedings,<sup>83</sup> the Department has determined that all mineral mining rights in India are owned by the state governments and mining leases for iron ore are granted with approval from the GOI. Accordingly, as facts available, we find that the GOI continues to own all mineral rights and mining leases in India, and that prices within India for iron ore are distorted such that they cannot be used as a Tier 1 benchmark.<sup>84</sup> Furthermore, we note that Jindal SAW provided the Department with import prices for iron used in ductile iron pipes from its Gujarat plant; however, we find that the import price information is not suitable.<sup>85</sup> Therefore, consistent with our practice, we are relying on 2007 world market prices derived from the February 19, 2008 edition of the Tex Report,<sup>86</sup> inflated using the appropriate Consumer Price Index, as the Tier 2 benchmark provided for in 19 CFR 351.511(a)(2)(ii).<sup>87</sup> This analysis is similar to the approach adopted by the Department in *HRS from India* and *Tetra from the PRC*, where we also investigated the provision of mining rights for LTAR. On the basis of the records in those cases, the Department conducted its benefit analysis using benchmarks not based on mining rights, *per se*, but on the value of the underlying good conveyed via mining rights.

To calculate the benefit, we took the reported per unit cost for the iron ore that Jindal SAW extracted, and subtracted that per unit cost from the benchmark. We then multiplied that difference by the reported quantity mined. We then divided this benefit by Jindal SAW's total sales, to arrive at a countervailable subsidy rate of 34.46 percent *ad valorem*.<sup>88</sup>

---

<sup>82</sup> See Jindal SAW IQR (April 2016) at 14-19 and Exhibit 61.

<sup>83</sup> See, *e.g.*, *Prelim Hot Rolled Steel 2006*.

<sup>84</sup> *Prelim Hot-Rolled Steel 2006* at 73 FR 1578, 1591, *unchanged in Final Hot-Rolled Steel 2006; reaffirmed in Hot-Rolled Steel 129 Implementation Memo*) at 21-25.

<sup>85</sup> *Note:* Because Jindal SAW's information was incomplete by not providing a complete cost build-up, such as duties and international freight, and was missing source documentation demonstrating how its cost build-up for the iron ore was derived, the Department intends to request that information for the final results of review.

<sup>86</sup> See Memorandum To All Interested Parties From Thomas Gilgunn, Program Manager, AD/CVD Operations: Certain Oil Country Tubular Goods From India; Placing Benchmark Information for the Captive Mining Rights Program on the Record of this Review, dated concurrently with these preliminary results. As noted in the memorandum, we invite parties to submit comments and information within ten days of the publication of these preliminary results.

<sup>87</sup> See Preliminary Calculation Memorandum.

<sup>88</sup> *Id.*

## *Programs by State Government of Maharashtra (SGOM)*

### 7. SGOM Sales Tax Program (1988)

In prior investigations, the Department has determined that sales tax exemptions, deferrals, and sales tax loans provided under the SGOM Sales Tax program are countervailable export subsidies.<sup>89</sup> In *Hot-Rolled Steel*, the Department found that sales tax exemptions, deferrals, and sales tax loans, in the form of interest-free loans, were provided under the SGOM's sales tax program. Jindal SAW provided information on their use of this program and we have used that information to calculate the amount of benefits received.<sup>90</sup> We divided the benefit amounts received by the relevant total sales amounts during the POR. We calculated a countervailable subsidy rate of 0.04 percent *ad valorem* for Jindal SAW.<sup>91</sup>

### 8. SGOM Subsidies Under the Package Scheme of Incentives (PSI) 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."<sup>92</sup> The zones cover the entire state of Maharashtra. Benefits under the PSI-2007 vary by zone.<sup>92</sup> The Department previously determined this program to be countervailable.<sup>93</sup>

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.<sup>94</sup>

#### a. IPS VAT and CST Refund

The Department has previously determined this program to be countervailable.<sup>95</sup> 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.<sup>96</sup>

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

---

<sup>89</sup> See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) and accompanying IDM at "State Government of Maharashtra Programs (SGOM), Sales Tax Program."

<sup>90</sup> See Jindal SAW IQR (APR 2016) at 40-41 and at Exhibits 26, 27, and 30.

<sup>91</sup> See Preliminary Calculation Memorandum.

<sup>92</sup> *Id.*

<sup>93</sup> See OCTG Investigation IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007."

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

(output VAT) to the SGOM.<sup>97</sup> 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 SAW, however, that amount is refunded.<sup>98</sup> 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.<sup>99</sup> 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 0.37 percent *ad valorem* for Jindal SAW.<sup>100</sup>

#### b. State of Maharashtra Electricity Duty Exemption Scheme

The GOI and Jindal SAW reported that SGOM provides a Package Scheme of Incentives (PSI), which encourages investments in new units and/or the expansion of existing production capacity located in specified underdeveloped areas in the state of Maharashtra in accordance with the terms and conditions specified by SGOM.<sup>101</sup> The SGOM has exempted from electricity duties certain industries and enterprises in certain less developed industrial regions in the state of Maharashtra. In *Cold-Rolled Steel from India*, the Department found that this program constitutes a financial contribution, in the form of revenue forgone, and is regionally specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.<sup>102</sup> Jindal SAW reported that their manufacturing facilities were exempted from the payment of electricity duties during all or part of the POR, thus conferring a benefit pursuant to section 771(5)(E) of the Act in the amount of the exempted electricity duties.<sup>103</sup>

---

<sup>97</sup> *Id.*

<sup>98</sup> See Jindal SAW IQR (APR 2016) at 48.

<sup>99</sup> *Id.*

<sup>100</sup> See Preliminary Calculation Memorandum.

<sup>101</sup> See Jindal SAW IQR (APR 2016) at "Subsidies for Mega Projects under the Package Scheme of Incentives 2007," see also and GOI's Initial Questionnaire Response at 151.

<sup>102</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination* (unchanged in the *Final* Determination) and attached Preliminary Decision Memorandum at 13.

<sup>103</sup> See Jindal SAW IQR (APR 2016) at 48.

To calculate the subsidy rate, we divided the benefit by Jindal SAW's total sales during the POR. On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Jindal SAW.<sup>104</sup>

#### *Programs by State Government of Gujarat (SGOG)*

##### 9. SGOG's VAT Remission Scheme Established on April 1, 2006

In the fourth review of *Hot-Rolled Steel from India*, we found that the SGOG had established a VAT remission system on April 1, 2006 that remits VAT to eligible firms using the balance of tax incentives under the Prestigious Scheme, another tax incentive program.<sup>105</sup> This system remits VAT to eligible firms using the balance of tax incentives under the Prestigious Scheme, that remained unutilized after the end of the 8- to 14-year time window allowed under the Prestigious Scheme.

The VAT remission scheme operates differently with respect to purchases and sales. For purchases within the State of Gujarat, eligible firms (i.e., firms with existing balances under the Prestigious Scheme) must pay full tax to the vendor. However, the tax paid is credited to the company in the form of an input tax credit to be refunded by the State Government. The SGOG then debits the refund received by the firm against the firm's remaining balance of tax credits leftover from the Prestigious System.<sup>106</sup>

With respect to sales, a company is required to charge sales tax from its customers (both local VAT and central sales tax). However, the tax collected by the seller does not have to be paid to the SGOG, but instead can be retained through a remission order provided by the state's sales tax authorities. In such instances, the amount of sales tax retained by the firm is credited against the firm's remaining balance of tax credits leftover from the Prestigious Scheme.<sup>107</sup>

We determined that this VAT remission system was linked to the Prestigious Scheme, a countervailable program.<sup>108</sup> Moreover, because the source of the tax remissions received under the system comes from participating firms' unused tax credits under the Prestigious Scheme, we determined that these indirect tax remissions constituted a financial contribution, in the form of revenue forgone, under section 771(5)(D)(ii) of the Act, and are regionally specific under section 771(5A)(D)(iv) of the Act. We further determined that these indirect tax remissions conferred a benefit under section 771(5)(E) of the Act and 19 CFR 351.510(a)(1), because they enabled participating firms to pay less indirect taxes than they would have to pay absent the system.<sup>109</sup>

In this review, Jindal SAW reported that it received benefits under this program from the SGOG. Jindal SAW also reported that the Government of Gujarat introduced the scheme and "any outstanding balances available under the earlier 2001 scheme was converted into the VAT

---

<sup>104</sup> See Preliminary Calculation Memorandum.

<sup>105</sup> See Preliminary Results of Fourth HRS Review, 73 FR at 1593 (unchanged in the Final Results of Fourth HRS Review).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

Remission Scheme.”<sup>110</sup> To calculate the subsidy rate, we divided the benefit by Jindal SAW’s total sales during the POR. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Jindal SAW.<sup>111</sup>

#### *Programs by the State Government of Uttar Pradesh (SGUP)*

##### 10. Exemption from Entry Tax for the Iron and Steel Industry

Jindal SAW reported that it did not have to pay entry-tax on imported hot-rolled coils into Uttar Pradesh.<sup>112</sup> Although Jindal SAW stated it had not availed itself of any benefit under the state government of Uttar Pradesh (SGUP) programs, it stated the entry tax for hot-rolled coil purchased during the POR was zero percent. Jindal SAW stated that none of the benefits received related to the production and/or sale of subject merchandise.<sup>113</sup>

In the underlying investigation, the Department determined that there is a countervailable subsidy program specific to users of iron and steel products.<sup>114</sup> In particular, the zero rate for hot-rolled coil is established by an amendment to the relevant SGUP tariff schedule. The SGUP tariff schedule establishes duties for all iron and steel products. However, the amendment provides an exception to the existing tariff schedule specifically for five itemized iron and steel products, and therefore creates a specific duty exemption for these products.<sup>115</sup>

Because the financial assistance provided by the program is expressly limited by law to users of five specific items of iron and steel, we find the program to be *de jure* specific under section 771(5A)(D)(i) of the Act. We find that this program provides a financial contribution in the form of revenue foregone by the SGUP pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax refund, pursuant to section 771(5)(E) of the Act. To determine the subsidy rate, we divided the amount of the benefits by the combined total sales of Jindal SAW. We divided Jindal SAW’s benefits under this program by the company’s total sales during the POR. On this basis, we determine a countervailable subsidy rate of 0.02 percent for Jindal SAW.<sup>116</sup>

#### **B. Programs for Which No Benefits Were Received During the POR**

##### *Pre-Shipment and Post-Shipment Export Financing (Indian Rupees)*

During the POR, the GOI provided pre- and post-export financing to make short-term working capital available to exporters at internationally comparable interest rates. The financing was denominated in rupees and in foreign currencies.

---

<sup>110</sup> See Jindal SAW’s Initial Questionnaire Response at 20 and at Exhibits 17, 64, 66, and 67

<sup>111</sup> See Preliminary Calculation Memorandum.

<sup>112</sup> *Id.* at 23

<sup>113</sup> *Id.*, at 23.

<sup>114</sup> See OCTG Final Investigation IDM at 32.

<sup>115</sup> *Id.*

<sup>116</sup> See Preliminary Calculation Memorandum.

With respect to the rupee-denominated export financing, the Reserve Bank of India (“RBI”) previously capped the interest rate that commercial banks could charge on these loans. However, beginning on July 1, 2010, the RBI eliminated the interest rate cap, and allowed participating commercial banks to set the interest rates for these export loans based on the bank’s own operating and lending costs. At the same time, the RBI instituted an interest subvention program for certain exporting companies, including small and medium enterprises. Banks that participated in the interest subvention program were restricted to charging an interest rate not exceeding the Benchmark Prime Lending Rate minus 4.5 percentage points on pre-shipment credit up to 270 days and post-shipment credit up to 180 days on the outstanding amount.<sup>117</sup>

Jindal SAW reported that it was ineligible to receive any loans through the Interest Subvention Scheme during the POR in Indian Rupees.<sup>118</sup> Therefore, we preliminarily determine that Jindal SAW did not receive any benefits under this program during the POR.

### **C. Programs Preliminarily Found Not Used**

#### *GOI Programs*

##### *Duty Exemption/Remission Schemes*

1. Duty Free Import Authorization (DFIA) Scheme

##### *Subsidies for Export Oriented Units*

2. Duty Drawback on Fuel Procured from Domestic Oil Companies
3. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)

##### *Other Countervailable Subsidies Provided by the GOI*

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

##### *Subsidies for Producers and Exporters Located in Special Economic Zones*

10. Duty Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material
11. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components Consumables, Intermediates, Spare Parts and Packing Material
12. Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
13. SEZ Income Tax Exemption

---

<sup>117</sup> See Jindal SAW IQR at Exhibit 54.

<sup>118</sup> See Jindal SAW IQR at 7, and Exhibit 71; see also, Jindal SAW SQR2 at 19 and Exhibit 106..

14. SEZ Service Tax Exemption
15. Steel Development Fund
16. Provision of Captive Mining Rights for Coal
17. Provision of High-Grade Iron Ore for LTAR

*Programs by State Government of Andhra Pradesh (SGAP)*

*Subsidies under SGAP Industrial Investment Promotion Policy (IIPP)*

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

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

28. APIIC's Allotment of Land for LTAR
29. APIIC's Provision of Infrastructure

*Programs by State Government of Gujarat (SGOG)*

30. Provision of Land Use Rights for LTAR under the Gujarat Industrial Development Corporation Estate Scheme
31. SGOG's Critical Infrastructure Project Scheme
32. SGOG's Scheme for Assistance to Industrial Parks/Industrial Estates Set Up by Private Institutions
33. Gujarat Industrial Investment Corporation Financing
34. SGOG SEZ Act: Exemptions from Payment of Sales Tax, Stamp Duty and Registration Fees

*Programs by State Government of Maharashtra (SGOM)*

- 35. *SGOM Provision of Land for LTAR*
- 36. Refunds of Octroi Under the Package Scheme of Incentives 1993 (Octroi Refund Scheme)
- 37. Octroi Loan Guarantees
- 38. Waiving of Loan Interest by SICOM
- 39. Investment Subsidies

*Programs by State Government of Haryana*

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

*Programs by the State Government of Uttar Pradesh (SGUP)*

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

**D. Programs Preliminarily Determined To Be Terminated**

- 43. Pre/Post-Shipment Export Financing (USD)

**VII. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>119</sup> Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's APO/Dockets Unit no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>120</sup> Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the Federal Register, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the eleven concurrent investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>121</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the Federal Register.<sup>122</sup> Requests should contain the party's name, address, and telephone number; the

---

<sup>119</sup> See 19 CFR 351.224(b).

<sup>120</sup> See 19 CFR 351.309.

<sup>121</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>122</sup> See 19 CFR 351.310(c).



Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the Department's electronic records system, ACCESS.<sup>123</sup> Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>124</sup> on the due dates established above.

### VIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

✓  
Agree                      Disagree

Ronald K. Lorentzen  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

October 5, 2016  
(Date)

<sup>123</sup> See 19 CFR 351.303(b)(2)(i).

<sup>124</sup> See 19 CFR 351.03(b)(1).