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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Countervailing Duty Administrative Review: Polyethylene
Terephthalate Film, Sheet, and Strip from India; 2014

I. SUMMARY

On August 3, 2016, the Department published the preliminary results of the administrative review of the countervailing duty (CVD) order on Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India.¹ The review covers two companies: Jindal Poly Films Limited (Jindal) and SRF Limited (SRF). The period of review (POR) is January 1, 2014, through December 31, 2014. Petitioners² and Jindal submitted timely filed case briefs on September 16, 2016.³ 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 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:

¹ See *Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 51186 (August 3, 2016) (*Preliminary Results 2014*), 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; 2014,” dated July 27, 2016 (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 16, 2016 (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 2014*, 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 16, 2016. No Interested Party to the proceeding filed a rebuttal brief.



- Comment 1: Whether the Department should calculate a benefit for the Status Holder Incentive Scheme (SHIS), although Jindal did not report any benefits received during the POR.
- Comment 2: 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 3: Whether the Department should countervail benefits received under the State and Union Territory Sales Tax Incentive Program.
- Comment 4: Whether the Department erroneously omitted one sub-program in its summation of the Export Promotion Capital Goods Scheme (EPCGS) sub-programs.

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. PERIOD OF REVIEW

The period of review (POR) is January 1, 2014 through December 31, 2014.

IV. 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 2014* 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 2014* and accompanying PDM at 3-4.⁴

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Results 2014* 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

⁴ See *Preliminary Results 2014*, PDM at 3-4.

determination regarding the attribution of subsidies. For descriptions of the methodologies used for these final results, *see* the *Preliminary Results 2014* and accompanying PDM at 3-5.⁵

C. Benchmark Interest Rates

The Department has made no changes to benchmarks or discount rates used in the *Preliminary Results 2014* 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 2014* and accompanying PDM at 4-5.⁶

D. Denominator

The Department has made no changes to the denominators used in the *Preliminary Results 2014*, 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 appropriate denominators. For a description of the denominators used for these final results, *see* the *Preliminary Results 2014* and accompanying PDM at 5.⁷

V. 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 2014* and accompanying PDM.⁸ 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 2014* and are as follows:

1. Special Economic Zones (SEZs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs)⁹

- a. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material*
SRF: 1.74 percent *ad valorem*

⁵ *See also* Jindal Preliminary Calculation Memorandum and SRF Preliminary Calculation Memorandum.

⁶ *Id.*

⁷ *Id.*

⁸ *See also* Jindal Preliminary Calculation Memorandum and SRF Preliminary Calculation Memorandum.

⁹ *See Preliminary Results 2014*, PDM at 10-16.

- 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: 0.27 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: 0.14 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: No benefit during the POR.

2. Advance Authorization Scheme (AAS), aka, Advance License program (ALP)¹⁰
Jindal: 0.51 percent *ad valorem*.

3. Status Holder Incentive Scrip (SHIS)¹¹

In its case brief, Jindal raised issues related to the Department's treatment of SHIS benefits in the *Preliminary Results 2014*.¹² As explained below in the Department's position under Comment 1, the Department's analysis with regard to this program remains unchanged from the *Preliminary Results 2014*.¹³

Jindal: 0.44 percent *ad valorem*

4. Export Promotion Capital Goods Scheme (EPCGS)¹⁴

In their case brief, Petitioners alleged the Department made a ministerial error in the *Preliminary Results 2014* related to the Department's summation of Jindal's individual rates of the sub-programs under the EPCGS.¹⁵ As explained below in the Department's position under Comment 4, the Department's analysis with regard to this program changed from the *Preliminary Results 2014*.

Jindal: 2.22 percent *ad valorem*.

¹⁰ See *Preliminary Results 2014*, PDM at 16-17.

¹¹ *Id.*, at 8-10.

¹² See Comment 1 of this memorandum.

¹³ See *Preliminary Results 2014*, PDM at 8-10.

¹⁴ *Id.*, at 5-8.

¹⁵ See Comment 4 of this memorandum.

5. State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives (PSI) 1993 and 2007¹⁶

Jindal submitted comments in its case brief regarding this program.¹⁷ As explained below, the Department has not changed its calculations for this program from the *Preliminary Results 2014*.¹⁸

Jindal: 2.06 percent *ad valorem*

6. State and Union Territory Sales Tax Incentive Programs¹⁹

Jindal submitted comments in its case brief regarding this program.²⁰ As explained below, the Department has not changed its calculations for this program from the *Preliminary Results 2014*.

Jindal: 0.29 percent *ad valorem*

SRF: 0.01 percent *ad valorem*

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.²¹ 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 Scheme²²
8. Focus Market Scheme/Focus Product Scheme
9. Pre- and Post-Shipment Export Financing in Indian Rupees
10. Duty Drawback Scheme

¹⁶ See *Preliminary Results 2014*, PDM at 18-20.

¹⁷ See Comment 2 of this memorandum.

¹⁸ See Jindal Preliminary Calculation Memorandum.

¹⁹ See *Preliminary Results 2014*, PDM at 18.

²⁰ See Comment 3 of this memorandum.

²¹ See *Preliminary Results 2013*, PDM at 20-21.

²² See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015) (*Final Results 2002*), and accompanying Issues and Decision Memorandum (IDM) at 23-24. In that decision, the Department determined the Duty Entitlement Passbook Scheme (DEPS/DEPB) to be terminated.

State Programs

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

VI. 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 Poly Films of India Limited	5.52 percent
SRF Limited	2.16 percent

ANALYSIS OF COMMENTS

Comment 1: Whether the Department should calculate a benefit for the Status Holder Incentive Scheme (SHIS) when Jindal did not report any benefits received during the POR

Jindal's Case Brief

- The Department incorrectly determined in the preliminary results that Jindal reported it had received SHIS license scripts to import capital goods duty-free during the POR, when Jindal clearly stated on the record that it has not used or benefited from the SHIS during the POR.²³
- The GOI discontinued the program effective March 31, 2014, almost nine months before the start of the POR, and hence, Jindal was ineligible and unable to utilize any benefits.²⁴
- Jindal demonstrated in its supplemental response that the program has been discontinued by the GOI.²⁵
- In its rate calculations for the preliminary results, the Department relied on licenses used prior to the POR.
- The Department's reliance on those SHIS licenses is untenable because (a) the benefit is based upon the face value of the licenses rather than the amount received or utilized; (b) this face value is not representative of the actual amount received; and (c) the licenses had expired and thus were invalidated almost nine months prior to the POR.

²³ See Jindal SAW Ltd.'s Case Brief, dated September 16, 2016 (Jindal SAW Case Brief) at 3.

²⁴ *Id.*

²⁵ *Id.*

- For the Department to continue calculating and assigning a benefit for a discontinued program, that Jindal received no benefit from during the 2014 POR “is in contravention of the statute and regulations, and not in accordance with the law.” Benefits received were captured in the prior 2013 POR.

Petitioners did not comment on this issue.

Department’s Position: We disagree with Jindal that it did not receive any benefits from this program during the POR. We further disagree 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 during the POR, rather than determining the benefit received by Jindal based on the face value and date of the license issued by the GOI. Rather, Jindal was eligible to apply for licenses up to March 2014, for export made during fiscal year 2012-2013.²⁶ 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.²⁷ 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.²⁸ 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, *i.e.*, 24 months after issuance, and may be re-validated for a period up to 12 months.²⁹

Importantly, the SHIS scrip is freely transferable to other manufacturing companies while the license remains valid.³⁰ 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.

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

²⁶ See GOI IQR at 103 and Exhibit 7.

²⁷ See *Preliminary Results 2014*, PDM at 8-10; see also *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 (February 16, 2016) (*Final Results 2013*), and accompanying Issues and Decision Memorandum (IDM) at 9-10, and GOI Initial Questionnaire Response, dated December 7, 2015 (GOI IQR) at 100-111.

²⁸ See *Preliminary Results 2014*, PDM at 9 and GOI IQR at 101-103; 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 Issues and Decision Memorandum (IDM), at “Status Holder Incentive Scrip.”

²⁹ See GOI IQR at 106 and Exhibit 7 at 14.

³⁰ See GOI IQR at 101,103, and 106.

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

Moreover, the import duty exemptions under this program are solely provided for the purchase of capital equipment.³¹ The preamble of the Department's regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring...."³² 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.³³

Finally, while the SHIS has not been renewed for the Indian fiscal year 2013-2014 (which covers part of the POR), and status holders cannot apply for SHIS licenses for exports made during that period,³⁴ residual benefits continue to exist for the SHIS licenses received during and prior to the POR, covering the average useful life. Furthermore, status holders were eligible to apply for SHIS licenses for exports made during the Indian fiscal year 2012-2013 up until March 2014.³⁵ Therefore consistent with the Department's practice we do not find the SHIS scheme to have been terminated with no residual benefits.

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 treat the benefits from this program as a non-recurring, and 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 2: 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 2014*, the Department incorrectly found the VAT and CST reimbursements Jindal received under the IPS of the SGOM PSI to be countervailable.³⁶
- The Department's countervailability determination was based on the false premise that it previously found this program to be countervailable, and limited its analysis to excerpts

³¹ *Steel Threaded Rod from India Final*, IDM at "Status Holder Incentive Scrip," and GOI IQR at 101 and 104-105.

³² See *Countervailing Duties*, 63 FR at 65393.

³³ See *Steel Threaded Rod from India Final*, IDM at "Status Holder Incentive Scrip," and *Preliminary Results 2014*, PDM at 9.

³⁴ See Jindal IQR at 96 and Jindal's First Supplemental Questionnaire, dated June 20, 2016 (Jindal SQR1) at 4-5; see also GOI IQR at 109 and Exhibit 28.

³⁵ See GOI IQR at 103 and Exhibit 7; see also, *Preliminary Results 2014*, PDM at 10.

³⁶ See Jindal's Case Brief at 4.

from prior cases without further analysis as to whether or not the program is actually a specific subsidy under 771(5A)(D)(iv).³⁷

- Because Jindal receives benefits under the IPS only on sales to the Indian domestic market, these sales tax refunds are tied to the Indian market, and not the United States market. VAT and CST are both sales taxes which are paid and then refunded only on sales to the Indian market, not on sales to the United States. The program is therefore “tied to sales to a particular market,” in this case the Indian market.³⁸
- Pursuant to 19 CFR 351.525(a) and (b)(4) of the Department’s regulations, a program is not countervailable where the benefit from the program is tied to a market other than the United States.³⁹
- A key factor in 19 CFR 351.525 is that there is no reference to or discussion in the regulations that the Indian market or the domestic market cannot be a “particular market” under subsection (b)(4).⁴⁰
- In Bethlehem Steel Corp. v. United States,⁴¹ the CIT indicated that had a subsidy been tied to the domestic Korean market, then subsection (b)(4) of 19 CFR 351.525 would have applied. There the Court stated that “when there is a domestic subsidy which is not tied to a particular market, the subsidy is attributed to all products sold by a firm.”⁴²
- In the *Preliminary Results 2014*, the Department did not discuss or explain the linkage in its analysis between the basic categorization of the subsidy and the treatment of the subsidy for purposes of the Department’s analysis.⁴³
- In the *Preliminary Results 2014*, 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).”⁴⁴
- The Department cannot apply the provisions of either 351.510(a) or 351.509(a) without first analyzing whether or not a benefit actually exists. Both 351.510(a) and 351.509(a) only provide for the mathematical measurement of the purported “benefit” under a tax program; neither provide for or can be relied upon to determine whether or not a benefit even exists.
- The Department must analyze the entire program as specified under 19 CFR 351.525. The Department has failed to do so and must correct its analysis for purposes of the final results of review.⁴⁵

Petitioners did not comment on this issue.

³⁷ *Id.* at 4-5.

³⁸ *Id.* at 5.

³⁹ *Id.* at 6.

⁴⁰ *Id.*

⁴¹ See Bethlehem Steel Corp. v. United States, 223 F. Supp. 2d 1372, 1383-1384 (CIT 2002) (Bethlehem Steel).

⁴² Jindal’s Case Brief at 6.

⁴³ *Id.*

⁴⁴ *Id.* at 7; see also *Preliminary Results*, IDM at 20.

⁴⁵ *Id.* at 7.

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. We also disagree with Jindal that we failed to provide a specificity analysis and merely relied on analyses based on prior cases. As discussed in detail in the *Preliminary Results 2014* and accompanying PDM at 18-19, we clearly stated that the program is specific pursuant to 771(5A)(D)(iv) because it is limited to certain geographical regions within the SGOM. The SGOM devised the PSI specifically to promote economic development in certain underdeveloped regions of the State of Maharashtra.⁴⁶ Jindal commenced participation in this program in 1992, and has received benefits from the SGOM under the PSI since then.⁴⁷ Further, Jindal has participated in the IPS since 2001, which is one of the incentives offered under the PSI.⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.”⁵¹

The incentives the PSI provides are offered to industries with the objective to promote economic development and increase employment in designated regions through investments in plant and machinery, and furthermore there is no information on the record to indicate the subsidy is tied to a particular market or product.⁵²

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

⁴⁶ See GOI IQR at 113-120 and Exhibits 29-30, and Jindal IQR at 75-79 and Exhibits 65-67.

⁴⁷ *Id.*; see also Jindal IQR at 74-75.

⁴⁸ See Jindal IQR at Exhibit 66.

⁴⁹ *Id.*, at 75- and Exhibits 65-PSI for Industries Maharashtra: 3.2(iii) Mega Projects. The phrase “Mega project” refers to the size of the manufacturing investment.

⁵⁰ *Id.*, at 75-78.

⁵¹ *Id.*, at Exhibit 65, page 1.

⁵² See 19 CFR 351.525(b)(3) and (4).

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 also 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.⁵³ 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."⁵⁴

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 2014*, and accompanying PDM at 18-20, 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.⁵⁵ 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.⁵⁶ Accordingly, the issue whether the Indian market can be a particular market in accordance with 19 CFR 351.525, as addressed by Jindal in its case brief, is moot.

Further, Jindal argues that the Department cannot apply the provisions of either 351.510(a) or 351.509(a) without first analyzing whether or not a benefit actually exists. In the *Preliminary Results 2014*, the Department clearly stated,

"Under the SGOM's VAT system, taxpayers are required to remit VAT collected from customers (output VAT) to the SGOM.⁵⁷ 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

⁵³ See *Bethlehem Steel*, 223 F. Supp. 2d at 1380.

⁵⁴ *Id.*

⁵⁵ See also Jindal IQR at 75-76

⁵⁶ See *Preliminary Results 2014*, PDM at 18-20.

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 – c. Industrial Promotion Subsidy."

equals the difference between output VAT and input VAT. Under the IPS program as applied to Jindal, however, that amount is refunded.⁵⁸ 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.⁵⁹ 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)."⁶⁰

Therefore, as outlined above, the SGOM, by reimbursing the VAT and CST to Jindal, confers a benefit to respondent that respondent would not have received without this program, equal to the amount of the tax remission, pursuant to section 771(5)(E) of the Act.

Therefore, we continue to find that this program provides a financial contribution in the form of revenue forgone by the SGOM pursuant to section 771(5)(D)(ii) of the Act, that a benefit to Jindal exists equal to the amount of the tax remission, pursuant to section 771(5)(E) of the Act and 19 CFR 351.510(a), and that the VAT and CST refunds constitute domestic subsidies, and as such, consistent with our determination in *OCTG From India 2012*,⁶¹ the benefits are attributable to Jindal's total sales, in accordance with 19 CFR 351.525(b)(3).

Comment 3: Whether the Department should countervail benefits received under the State and Union Territory Sales Tax Incentive Program

Jindal's Case Brief

- The Department's finding that Jindal's purchases of inputs from suppliers located in states or territories which did not have to collect sales taxes from Jindal is incorrect.⁶²
- This finding is incorrect because the benefit is not received by Jindal. Rather the benefit is forgone by the state government and conferred to the seller of the input. Therefore, the Department should find this program not countervailable.
- Jindal did not receive any benefit and hence, does not record a cash refund, tax refund or other income received.⁶³
- Jindal pays the amount specified on the supplier's invoice, net of sales taxes, which the supplier is not obligated to collect.
- The Department erred by not conducting a full analysis of all the factors delineated at 19 CFR 351.523 with respect to a finding of the existence of an upstream subsidy.⁶⁴

⁵⁸ See Jindal IQR at 74-79.

⁵⁹ *Id.*

⁶⁰ *Preliminary Results 2014*, PDM at 20.

⁶¹ See *OCTG from India 2012*, IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007."

⁶² See Jindal's Case Brief at 7.

⁶³ *Id.*

⁶⁴ *Id.*, at 8.

- The Department conflated its analysis by omitting to first determine whether there is an actual benefit received by Jindal before calculating the net countervailable subsidy rate.

Petitioners did not comment on this issue.

Department's Position: We disagree with Jindal that the Department should have conducted a full analysis of all the factors delineated at 19 CFR 351.523 with respect to a finding of the existence of an upstream subsidy, and erred in not doing so. Section 771A(a) of the Tariff Act of 1930, as amended (the Act) defines an upstream subsidy as a countervailable subsidy, other than an export subsidy, that is bestowed by an authority with respect to a product, bestows a competitive benefit on the merchandise, and has a significant effect on the cost of manufacturing or producing the merchandise. That is, upstream subsidies are specific to a particular input product for the production of subject merchandise.

In the instant case, however, certain states and Union Territories in India provide a package of incentives to encourage the development of certain regions of those states.⁶⁵ These incentives are provided to privately owned (as defined by the GOI to not be 100% government owned) manufacturers in selected industries which are located in designated regions. One incentive is the exemption from paying state sales taxes. Specifically, under these state programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales. The seller's exemption from collecting state sales tax or central sales tax (CST) is granted on the basis of geographic region, rather than bestowed on an input product of subject merchandise. Thus, 19 CFR 351.523 does not apply to the state sales tax exemptions and deferrals at issue here.

In the *Preliminary Results 2014* and in prior segments of this proceeding,⁶⁶ the Department found that the state sales tax exemptions and deferrals on purchases constitute a financial contribution provided under section 771(5)(D)(ii) of the Act in the form of revenue forgone. In addition, in accordance with section 771(5)(E) of the Act, a benefit was conferred to the extent that the taxes paid as a result of these programs are less than the taxes that would otherwise have been paid.⁶⁷ Finally, pursuant to section 771(5A)(D)(iv) of the Act, we find these programs to be de jure specific because they are limited to certain regions within their respective states.⁶⁸

Accordingly, we made no changes to our countervailability analysis.

⁶⁵ See Jindal IQR at 84-90.

⁶⁶ See *Preliminary Results 2014* at "State and Union Territory Sales Tax Incentive Programs;" see also *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003*), and accompanying *Issues and Decision Memorandum (IDM)* at "State Sales Tax Incentives" and Comment 2, and Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34899 (May 16, 2002) (*PET Film Final Determination*), and accompanying *Issues and Decision Memorandum (IDM)* at "State of Maharashtra Programs: Sales Tax Incentives," and "State of Uttar Pradesh Programs: Sales Tax Incentives."

⁶⁷ See 19 CFR 351.510(a)(1).

⁶⁸ See *Preliminary Results 2014* and *PET Film Final Results 2003*.

Comment 4: Whether the Department erroneously omitted one sub-program in its summation of the Export Promotion Capital Goods Scheme (EPCGS) sub-programs.

Petitioners' Case Brief

- Petitioners allege that the Department made a ministerial error in its summary chart of the individual program rates. Specifically, when summing the individual rates calculated for the EPCGS, the Department failed to include one rate in its summation for that program.⁶⁹

Respondents did not comment on this issue.

Department's Position: We agree with Petitioners and have revised our calculations to correct this error.

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*.

X

☐

Agree

Disagree

12/1/2016

X



Signed by: PAUL PIQUADO
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

⁶⁹ See Petitioners' Case Brief, dated September 16, 2016, at 1.