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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of 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; 2015

I. SUMMARY

On August 3, 2017, the Department of Commerce (Commerce) 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 of India (Jindal) and SRF Limited (SRF). The period of review (POR) is January 1, 2015, through December 31, 2015. Jindal submitted a timely filed case brief on September 5, 2017,² and the Government of India (GOI)³ and SRF⁴ submitted timely filed case briefs on September 18, 2017. The petitioners⁵ submitted a timely filed rebuttal brief on September 25, 2017.⁶ We continue to find that Jindal and SRF benefitted from countervailable subsidies during the POR.

¹ See *Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 36124 (August 3, 2017) (*Preliminary Results 2015*), and accompanying Preliminary Decision Memorandum (PDM).

² See Jindal's Case Brief, "*Polyethylene Terephthalate (PET) Film, Sheet & Strip from India: Case Brief – Jindal Poly Films Limited of India*," dated September 5, 2017 (Jindal Case Brief).

³ See GOI's Case Brief, "Administrative Review of Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India (C-533-825) – Government of India's Written Comments (Case Brief) to the Preliminary Results," dated September 18, 2017 (GOI Case Brief).

⁴ See SRF's Case Brief, "Polyethylene Terephthalate Film, Sheet and Strip from India /Countervailing duty/SRF Limited/ Case Brief," dated September 18, 2017 (SRF Case Brief).

⁵ DuPont Teijin Films, Inc., Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively, the petitioners).

⁶ See Petitioners' Rebuttal Brief, "*Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Rebuttal Case Brief*," dated September 25, 2017 (Petitioners Rebuttal Brief).



The “Analysis of Comments” section below contains summaries of these comments and Commerce’s positions on the issues raised in the briefs. As a result of this analysis, we made no changes to the preliminary results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Below is a complete list of the issues in this review for which we received comments from parties:

- Comment 1: Whether Commerce may disregard loans from certain banks with government ownership in its benchmark calculations.
- Comment 2: Whether the Export Promotion Capital Goods Scheme (EPCGS) is a countervailable export subsidy, pursuant to the SCM Agreement.⁷
- Comment 3: Whether the exemption from duties and taxes in Special Economic Zones (SEZs) constitutes a financial contribution.
- Comment 4: Whether the benefits SRF received under the SEZ program are tied to the export sales of polyester film from the Packaging Film Business (PFB) located in the SEZ.
- Comment 5: Whether the GOI has a verification system in place for the Advance Authorization Scheme (AAS) that is effective and reasonable.
- Comment 6: Whether Commerce needs to adjust the dates in the preliminary draft cash deposit instructions for the final results.

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 POR is January 1, 2015, through December 31, 2015.

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Results 2015*. No issues were raised by interested parties in case briefs, nor was

⁷ See the Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization (SCM Agreement).

any new factual information provided that would lead us to reconsider our preliminary determination regarding the allocation period or the allocation methodology for respondent companies. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results 2015* and accompanying PDM at 3-4.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results 2015* for attributing subsidies. Except for Commerce's attribution methodology concerning SRF's Special Economic Zone (SEZ) addressed in Comment 4, below, no issues were raised by interested parties in case briefs nor was any new factual information provided that would lead us to reconsider our preliminary determination regarding the attribution of subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results 2015* and accompanying PDM at 3-5.⁸

C. Benchmark Interest Rates

Commerce has made no changes to benchmarks or discount rates used in the *Preliminary Results 2015*. Except for the GOI's concerns addressed in Comment 1, no issues were raised by the other 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 2015* and accompanying PDM at 4-5.⁹

D. Denominator

Commerce has made no changes to the denominators used in the *Preliminary Results 2015*. Except for SRF's concerns addressed in Comment 4, 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 2015* and accompanying PDM at 5.¹⁰

V. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

Commerce 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 2015* and accompanying PDM.¹¹ Issues raised by interested parties in

⁸ *See also* Jindal's Preliminary Calculation Memorandum, dated July 28, 2017 (Jindal Preliminary Calculation Memorandum) and SRF's Preliminary Calculation Memorandum, dated July 28, 2017 (SRF Preliminary Calculation Memorandum).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See also* Jindal Preliminary Calculation Memorandum and SRF Preliminary Calculation Memorandum.

case briefs regarding certain of these programs are addressed in Comments 2 through 5. There was no new factual information provided by the parties. Accordingly, we did not reconsider our preliminary determination. Therefore, the final company-specific program rates for each of the following programs are unchanged from *Preliminary Results 2015* and are as follows:

1. Export Promotion Capital Goods Scheme (EPCGS)¹²

In its case brief, the GOI claimed Commerce should treat the capital goods imported duty free as inputs because finished goods could not have been manufactured without those capital goods.¹³ As explained below in Commerce's position under Comment 2, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2015*.

Jindal: 2.04 percent *ad valorem*.

2. Status Holder Incentive Scrip (SHIS)¹⁴

Jindal: 0.39 percent *ad valorem*

3. Special Economic Zones (SEZs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs)¹⁵

The GOI and SRF submitted comments in their case briefs regarding this program. As explained below in Commerce's position under Comments 3 and 4, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2015*.

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

SRF: 5.04 percent *ad valorem*

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

SRF: 0.36 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

¹² See *Preliminary Results 2015*, PDM at 6-9.

¹³ See Comment 1 of this memorandum.

¹⁴ See *Preliminary Results 2015*, PDM at 9-10.

¹⁵ See *Preliminary Results 2015*, PDM at 11-17.

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

SRF: 0.38 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.

4. Advance Authorization Scheme (AAS), aka, Advance License program (ALP)¹⁶

The GOI submitted comments in its case brief regarding this program.¹⁷ As explained below in Commerce's position under Comment 5, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2015*.

Jindal: 0.56 percent *ad valorem*.

5. Merchandise Export from India Scheme (MEIS)¹⁸

Jindal: 0.04 percent *ad valorem*.

6. State and Union Territory Sales Tax Incentive Programs¹⁹

Jindal: 0.27 percent *ad valorem*

SRF: 0.01 percent *ad valorem*

7. State Government of Maharashtra Subsidies Under the Package Scheme of Incentives 1993 and 2007: Industrial Promotion Subsidy (IPS)²⁰

Jindal: 1.96

¹⁶ See *Preliminary Results 2015*, PDM at 17-18.

¹⁷ See Comment 5 of this memorandum.

¹⁸ See *Preliminary Results 2015*, PDM at 19-20.

¹⁹ See *Preliminary Results 2015*, PDM at 20-21.

²⁰ See *Preliminary Results 2015*, PDM at 21-23.

B. Programs Determined To Be Not Used

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

State Programs

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

C. Programs Determined To Be Terminated

17. Duty Entitlement Passbook Scheme²²

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	5.26 percent
SRF Limited	5.79 percent

²¹ See *Preliminary Results 2015*; 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 2012*), 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.

VII. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce may disregard loans from certain banks with government ownership in its benchmark calculations

GOI's Case Brief

- Commerce determined in the *Preliminary Results 2015* that the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI), and the Export-Import Bank of India (EXIM Bank) are government-owned special purpose banks, pursuant to 19 CFR 351.505(a)(2)(ii).²³
- The GOI disagrees with Commerce's treatment of these loans, and contends it is contrary to Article 14(b) of the SCM Agreement that states that a government-provided loan only confers a benefit when there is a difference between the government-provided loan and the comparable commercial loan.²⁴
- An assessment of the market conditions must be conducted before rejecting loans from government-owned special purpose banks as benchmarks.²⁵

The petitioners and other interested party did not comment on this issue.

Commerce's Position: We disagree with the GOI's claim that Commerce, in its loan benchmark determinations, is obligated to assess whether a respondent-reported loan from a government owned special purpose bank is adequate in relation to prevailing market conditions, as section 771(E)(ii) of the Tariff Act of 1930, as amended (the Act), has to be viewed in terms of section 771(E)(iv) of the Act. Commerce's regulations, at 19 CFR 351.505(a)(2)(i), provide clear guidance concerning benchmark loans when they state that "in selecting a loan that is 'comparable' to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structure of the loans . . . , the maturity of the loans . . . , and the currency in which the loans are denominated." Contrary to the GOI's demand that Commerce analyze prevailing market conditions, Commerce's regulations are clear in instructing Commerce to "not consider a loan provided under a government program, or a loan provided by a government-owned special purpose bank, to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan."²⁶ Following its regulations, Commerce determined in previous segments of this proceeding that the IDBI, the IFCI, and the EXIM bank are government-owned special purpose banks.²⁷ Therefore, for these final results, we continue to

²³ See GOI Case Brief at 1.

²⁴ *Id.* at 1, citing Article 14(b) of the SCM Agreement.

²⁵ *Id.* at 2, citing Appellate Body, *U.S. – Carbon Steel (India)* para. 4.154; Appellate Body Report, *U.S. – Anti-Dumping and Countervailing Duties (China)* para. 489 (stating the interpretation of benchmarks under Article 14(d) can be applicable to Article 14(b)).

²⁶ See 19 CFR 351.505(a)(2)(ii).

²⁷ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003 Review*), and accompanying Issues and Decision Memorandum (IDM) at Subsidies Valuation Information and Comment 3; and *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film Final Results 2005 Review*) and accompanying Issues and Decision Memorandum (IDM) at Benchmark Interest Rates and Discount Rates.

exclude any loans obtained from the IDBI, the IFCI, and the EXIM bank from our long-term benchmark calculations.

Comment 2: Whether the Export Promotion Capital Goods Scheme (EPCGS) is not a countervailable export subsidy, pursuant to the SCM Agreement

GOI's Case Brief

- The EPCGS is a duty drawback scheme permitted under the SCM Agreement.
- There is no bar to considering capital goods as inputs because they are used in the production of the exported products. Further, the value of these capital goods can be determined based on depreciation.
- Capital assets procured domestically are liable for central excise duty, and Commerce must segregate the EPCGS licenses accordingly.²⁸
- Commerce must segregate the EPCGS licenses under which capital goods were imported and EPCGS licenses under which goods were procured from indigenous sources.²⁹

Petitioners' Rebuttal Brief

- Commerce previously determined this program to be countervailable.³⁰
- The GOI failed to identify any new information or evidence of changed circumstances during the POR that would warrant Commerce reconsidering its countervailability determination.³¹
- The GOI failed to cite to any record evidence showing that any of the EPCGS licenses held by respondents were invalidated during the POR, and no longer provided any benefit.³²
- Concerning the GOI's suggestion to consider capital goods as inputs, 19 CFR 351.519(a)(1)(ii) states that the exemption "extends to inputs that are not consumed in the production of the export product."
- 19 CFR 351.102(b)(12) defines inputs consumed in the production process as inputs physically incorporated, energy, fuels, and oil used in the production process, however, capital goods cannot be consumed in the production process.³³
- Because capital goods are not consumed in the production process, their partial exemption from import charges is countervailable. Accordingly, Commerce should affirm its findings.³⁴

²⁸ GOI Case Brief at 2.

²⁹ *Id.*

³⁰ See Petitioners Rebuttal Brief at 2 (citing *Preliminary Results 2015*, PDM at 6, 12, 17).

³¹ See Petitioners Rebuttal Brief at 2.

³² *Id.* at 3.

³³ *Id.* at 4.

³⁴ *Id.*

Commerce's Position: Commerce determined the EPCGS to be countervailable in the investigation.³⁵ Further, we agree with the petitioners that there is no new information on the record, nor did the GOI point to any information on the record to support its claim of non-countervailability that would warrant Commerce to reconsider its determination of countervailability from the investigation.

Further, the GOI's suggestion that there is nothing barring capital goods under the EPCGS to be treated as inputs because they are used in the production of the exported products is a misinterpretation of the Act and Commerce's regulations. As the petitioners rightly point out, in accordance with 19 CFR 351.519(a)(1)(ii), the exemption pertains to inputs consumed in the production process of the export product. Since capital goods are not consumed in the production of the export product within the meaning of 19 CFR 351.102(b)(12), as they are not physically incorporated in the export product or consumed like energy fuels, oil and catalysts, they do not constitute an input.

Also, while the GOI contends that Commerce must segregate the EPCGS licenses under which capital goods were imported and EPCGS licenses under which goods were procured from indigenous sources, the GOI did not point to any record evidence that Jindal, the only respondent reporting benefits from the EPCGS, either invalidated any of its EPCGS licenses, or domestically procured capital goods. To the contrary, Jindal only reported those capital goods and spare parts imported duty free under its EPCGS licenses.³⁶ Accordingly, the GOI's arguments concerning domestically procured capital equipment and the need to segregate EPCGS licenses based on imported versus domestically procured capital equipment is moot. Therefore, for these final results, we continue to find the EPCGS countervailable.

Comment 3: Whether the exemption from duties and taxes in a Special Economic Zone (SEZ) constitutes a financial contribution.

GOI's Case Brief

- Commerce believes that the non-payment of duties and taxes of enterprises located in duty-free zones constitutes a financial contribution. However, the GOI believes they are not countervailable in accordance with 19 CFR 351.518 and 19 CFR 351.519.
- A benefit exists only to the extent that the remission of import charges exceeds the amount actually charged, or in case of an exemption/deferral of taxes and duties in the form of a long-term loan, calculated in accordance with 19 CFR 351.505, in the amount of duties deferred.³⁷

³⁵ See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at EPCGS.

³⁶ See Jindal's January 23, 2017 Initial Questionnaire Response (Jindal January 23, 2017 IQR) at Exhibits 37, 38, 39, 68, and 69.

³⁷ See GOI Case Brief at 3-4.

- SEZs are deemed to be a territory outside the customs territory of India, and the GOI is not entitled to collect any duties or taxes.³⁸ Sales from the domestic tariff area (DTA) or another SEZ are considered deemed exports, and sales from an SEZ to the DTA are subject to import customs duties.
- The Indian customs authorities have tight monitoring procedures that Commerce can easily ascertain during verification.
- The GOI's continued regulation of the SEZ developers' activities is insufficient for Commerce to conclude that SEZs are within the customs territory of India.

Petitioners' Rebuttal Brief

- Commerce should affirm its finding that the SEZ program is countervailable.

Commerce's Position: We disagree with the GOI that an SEZ is located outside the Indian DTA, and as such the program does not provide a financial contribution, and is consequently not countervailable. As we stated in *NSR Preliminary Results*,³⁹ SEZs are contingently liable for the import duties until they demonstrate that they have met their export requirement and earned the required net foreign exchange (NFE). The rules also indicate penalties will be applied when the company fails to achieve its NFE requirement. The facts on the record show that duties are applied when goods enter into the SEZs and companies are held liable for those duties unless the export requirement is met.⁴⁰ Furthermore, the GOI itself refers to assistance under this program as "duties exempted/refunded,"⁴¹ suggesting the duties are provisionally applicable until the export requirements are met.⁴² We also note that the record evidence supports the fact that SEZs are not deemed to be territories outside the customs territory of India because the GOI continues to regulate SEZs. The "Special Economic Zones Rules, 2006" reference cited by the GOI,⁴³

³⁸ *Id.* at 3, citing *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012) (*Welded Steel Pipe Vietnam*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (*Welded Steel Pipe Turkey*), and accompanying Issues and Decision Memorandum (IDM); *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) (*Uncoated Paper Indonesia*), and accompanying Issues and Decision Memorandum (IDM); and *Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 81 FR 13321 (March 14, 2016) (*PET Resin Oman*), and accompanying Issues and Decision Memorandum (IDM).

³⁹ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty New Shipper Review*, 75 FR 81574 (December 28, 2010) (*NSR Preliminary Results*) at "Special Economic Zones (SEZs) Formerly Known as Export Process Zones/Export Oriented Units (EPZs/EOUs)," affirmed *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 27, 2011) (*NSR Final Results*), and accompanying Issues and Decision Memorandum (IDM).

⁴⁰ See SRF's February 2, 2017 Initial Questionnaire Response (SRF February 2, 2017 IQR) at Exhibits 19(a), 21(a) and 21(b).

⁴¹ See GOI's February 2, 2017 Initial Questionnaire Response (GOI February 2, 2017 IQR) at 48-5 and Exhibits 10-11.

⁴² *Id.*

⁴³ See *Circular Welded Carbon-Quality Steel Pipe from Vietnam*; *Certain Uncoated Paper from Indonesia*; and *Certain PET Resin from Oman*.

which states that the GOI's ultimate control by granting it the power to review any letter of approval for an SEZ.⁴⁴

We also disagree with the GOI's argument regarding our previous finding of Vietnam's duty-free zones to be not countervailable in *Welded Carbon-Quality Steel Pipe from Vietnam*, that case is not analogous to the instant investigation. Specifically, the Department states in Circular Welded Carbon-Quality Steel Pipe from Vietnam:

There is no indication that the SEZs we analyzed there were outside the customs territory of India. Rather, we observed in that case that "until an SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties," which implies that a duty obligation is incurred when goods enter the SEZ. This is not the situation present in the investigated program in Vietnam.⁴⁵

Therefore, we continue to find that the GOI is entitled to collect duties and taxes from companies located inside the SEZ. Furthermore, if SEZs were operated outside of the customs territory of India, there would be nothing to exempt or refund unless duties are applicable in the first place.⁴⁶ Therefore, Commerce continues to determine pursuant to 19 CFR 351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties to be an interest-free loan made to SRF at the time of importation.

Further, we disagree with the GOI that the Indian customs authorities have tight monitoring procedures with respect to this program. In respondent's new shipper review (NSR), Commerce already determined that the GOI does not appear to have in place, and does not apply a system that is reasonable and effective for the purposes intended, 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. In the instant review, the GOI did not state or otherwise indicate that it has changed and/or updated its monitoring procedures for this program, nor does the GOI point to any other new information on the record that would warrant Commerce's reconsideration. To the contrary, the SEZ rules continue to lack specifics in monitoring and enforcement, and do not outline any specific codified rules or procedures to follow. Rather, monitoring appears to be applied at random and at the discretion of the Customs officer in place at the time. The SEZ rules provide instructions such as ". . . shall comply with such safeguards as may be necessary for the purpose and approved by the Specified Officer." With respect to imports and consumption, the rules instruct that "{t}he Developer shall maintain a proper account of the import or procurement, consumption and utilization of goods and submit quarterly and half-yearly returns to the development Commissioner"⁴⁷ The instructions do not lay out a process to follow for the

⁴⁴ See GOI's February 2, 2017 IQR at Exhibit 11.

⁴⁵ See *Welded Steel Pipe Vietnam*, IDM at Comment 3, page 14.

⁴⁶ See also, *Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 2946 (January 19, 2017) (*Final Determination OTR Tires India*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

⁴⁷ See GOI February 2, 2017 IQR at Exhibit 11 (Point 12: Import and procurement of goods by the Developer; para. 3 and 6).

holder of the SEZ, nor how the government authorities effectively monitor the accuracy of the reporting to enforce compliance. Clearly, as becomes apparent from this example, the rules in place lack enforceable specifics that the “Specified Officer” is obligated to follow consistently, speaking for a lacking monitoring system in place. In addition, as clearly described in the respective decisions cited to by the GOI, this was not the case in *Welded Steel Pipe Vietnam*, *Welded Steel Pipe Turkey*, *Uncoated Paper Indonesia*, and *PET Resin Oman*; in those proceedings, Commerce determined that the respective countries maintained reasonable and effective systems in place confirming which inputs, in what amounts, are consumed in the production of the exported products, making allowances for waste. Therefore, because similar systems for monitoring and enforcement are not in place here, we continue to find the SEZ program countervailable for these final results.

Commerce’s regulations, at 19 CFR 351.519(a)(4) and 19 CFR 351.518(a)(4) clearly state that “the Secretary will consider the entire amount of an exemption, deferral, remission or drawback to confer a benefit,” unless the government in question has a system in place, meeting the requirements of 19 CFR 351.519(a)(4)(i) and 19 CFR 351.518(a)(4)(i), as outlined above. As noted above the information on the record demonstrates that the GOI does not a monitoring system in place as outlined in Commerce’s regulation.⁴⁸ Because there is no new information on the record of this review that would warrant Commerce to reconsider its determination from the NSR. the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act.⁴⁹

Comment 4: Whether the benefits SRF received under the SEZ program are tied to the export sales of polyester film from the Packaging Film Business (PFB) located in the SEZ

SRF’s Case Brief

- Commerce erred in using SRF’s total exports from the Packaging Film Business (PFB) division only, as the denominator when calculating SRF’s subsidy rate for this program.
- As evident from the record, the PFB division transfers inputs to the Engineering Plastics (EP) division for further production. As such, the subsidy rate should have been calculated using the total company-wide exports, rather than just exports of PFB products.⁵⁰
- Not the PFB division but SRF is the sole beneficiary of the SEZ benefits, as the Approval letter for the SEZ indicates. SRF, not the PFB division, applied for the SEZ benefits and is the lessee of the land in the SEZ.⁵¹

⁴⁸ See *NSR Final Results*, IDM at “Special Economic Zones (SEZs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs).”

⁴⁹ *Id.*

⁵⁰ See SRF’s Case Brief, “Polyethylene Terephthalate Film, Sheet and Strip from India /Countervailing duty/SRF Limited/ Case Brief,” dated September 18, 2017 (SRF Case Brief) at 4-6.

⁵¹ *Id.* at 6-7.

- 19 CFR 351.525(b)(2) requires that export subsidies be attributed “only to products exported by the firm.” Commerce misconstrued and misapplied 19 CFR 351.525(b)(2) because SRF, not the PFB division, is the firm, pursuant to 19 CFR 351.102(b)(23).⁵²
- The benefits from the SEZ are not tied to a particular product, pursuant to 19 CFR 351.525(b)(5)(i), because the PFB SEZ facility produces several products, *i.e.*, subject PET film, metallized PET film, PET resin and PET chips.⁵³
- Commerce generally does not find a tie to a particular product, unless it is clear from the original intent of the subsidy that the benefit is tied to a specific product.⁵⁴
- The SEZ benefits here at issue were not earmarked for specific products, and there are no limitations on what SRF may produce at this plant.⁵⁵
- 19 CFR 351.525(b)(5)(ii) provides an exception to subpart (i) when a subsidy is tied to an input product, and Commerce will attribute the subsidy to the production of the input product and to the downstream products produced by a corporation.⁵⁶
- The PFB division provides the input products PET chips and PET resin, which SRF transfers to another production facility producing non-subject merchandise. Accordingly, Commerce must attribute the subsidy to both the input and the downstream products of the corporation.⁵⁷
- Because the PFB division transfers input PET chips to another facility where downstream products are produced, Commerce must spread the SEZ benefits over all export sales, pursuant to 19 CFR 351.525(b)(5)(ii). This exception also requires the subsidy to be attributed to the products of the corporation.⁵⁸
- Commerce’s regulations, at 19 CFR 351.525(b)(5), provide for subsidies tied to a particular product, or, at 19 CFR 351.525(b)(4), for subsidies tied to a particular market, but there is no provision for tying a subsidy to a particular facility.⁵⁹
- Absent the application of adverse facts available (AFA), there is no precedent where Commerce has ever explicitly tied benefits solely to a specific division of a respondent.⁶⁰
- In *OCTG from India*,⁶¹ Commerce applied, as AFA, a division based denominator to the subsidies received, because respondent did not provide its company-wide total export sales to Commerce.⁶²
- For the final results, the Commerce should return to using SRF’s company-wide export sales for its rate calculations for the SEZ.⁶³

⁵² *Id.* at 8-9.

⁵³ *Id.* at 9-10.

⁵⁴ *Id.* at 10.

⁵⁵ *Id.* citing *Maverick Tube Corp. and U.S. Steel Corp. et al v. United States*, No. 14-00229, slip op. 16-16 (CIT 2016) (*Maverick Tube v. United States*) at 9.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 11.

⁵⁹ *Id.*

⁶⁰ *Id.* at 12.

⁶¹ See *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*OCTG from India*), and accompanying Issues and Decision Memorandum (IDM).

⁶² *Id.* at 12-14 citing *OCTG from India*, IDM at Comment 11.

⁶³ *Id.* at 14.

- If Commerce continues to restrict the denominator to sales of the PFB unit only, it should use total sales of the PFB rather than just PFB export sales. As Commerce is not offsetting the payment of customs duties for sales in the DTA, Commerce should consider using total sales of the PFB division as the relevant denominator.⁶⁴

Petitioners' Rebuttal Brief

- Petitioners contend that the SEZ program does not apply to products that SRF's PFB division provides to other SRF divisions located outside the SEZ.⁶⁵
- The program applies to the export sales made by the PFB division and Commerce's attribution as such was correct.
- SRF's Indore plant, the PFB Business, is the only manufacturing facility located in the SEZ.
- According to SRF, for any transfer of products to another division located outside the SEZ, SRF has to pay customs duties on those products. Therefore, the Department correctly attributed the benefit of the SEZ program solely to exports of SRF's PFB division located in the SEZ.⁶⁶

Department's Position: We disagree with SRF that Commerce erred by using total export sales of polyester film from the PFB divisions when calculating the subsidy rate for this program. Specifically, SRF claims that the PFB divisions cannot be the beneficiary of the export subsidies because those can only be attributed to a firm, pursuant to 19 CFR 351.525(b)(2). The firm in this instance, it contends, is SRF and not its PFB divisions, as defined in 19 CFR 351.102(b)(23). However, SRF's argument is misplaced because Commerce attributed the subsidies that SRF's production plants received from the SEZ program to the exports of the product group manufactured in its PFB division, *i.e.*, polyester film. In this instance, based on SRF's reported information, we find no distinction between SRF and its own production plants for the purposes of attribution.⁶⁷ Therefore, we continue to find the SEZ to provide export subsidies attributable to SRF's polyester film manufactured in its PFB division, in accordance with 19 CFR 351.525(b)(2).

SRF further claims that the PFB division is not tied to a particular product, in accordance with 19 CFR 351.525(b)(5)(i), because SRF produces several products at the SEZ Indore plant, namely, PET chips, subject polyester film and non-subject polyester film. From there, SRF concludes that, as Commerce determines whether a subsidy is tied to a particular product based on the original intent, *i.e.*, the point of bestowal, the subsidies SRF received at its SEZ are not tied to any particular product, and that there is no limit on what SRF may produce at that plant. Conclusively, the subsidies received under the SEZ should be tied to all of SRF's export sales, SRF argues.

⁶⁴ *Id.* at 15-16.

⁶⁵ See Petitioners Rebuttal Brief at 4-5.

⁶⁶ *Id.* at 5.

⁶⁷ See SRF February 2, 2017 IQR at 6-8, and SRF Case Brief) at 4-6.

In the *Preliminary Results 2015*,⁶⁸ Commerce's decision to tie SRF's SEZ benefits to its export sales of polyester film, manufactured in its PFB division,⁶⁹ was based on documents such as the Approval Letter for SRF's SEZ issued by the Office of Development Commissioner, Government of India, which clearly specified that SEZ benefits are intended to expand SRF's polyester film exports and inputs thereof. We note that polyester film includes subject merchandise, *i.e.*, subject PET film, and also non-subject merchandise, but is still narrower than *all* of SRF's export sales from *all* of its six business divisions.

Commerce's determination to tie the SEZ benefits to SRF's export sales of polyester film is consistent with 19 CFR 351.525(b)(5), which states that when determining whether a subsidy is tied to the production or sale of a particular product, it is Commerce's practice to evaluate what the government intended at the time of the bestowal. Record evidence is clear that at the time of bestowal, the government clearly intended that the subsidy be used for the expansion of polyester film exports, which is produced in the Indore and Kashipur plants. We agree with SRF that in the past we have used total export sales as the denominator; however, after reevaluating the SEZ Agreement language we find it that is more accurate and appropriate to use the SRF's polyester film export sales as the denominator which is consistent with Commerce's practice.⁷⁰

Accordingly, SRF's argument that the Department should calculate the subsidy rate for this program using all of SRF's export sales – including all products manufactured in SRF's other five divisions – is not supported by the record.

Furthermore, record evidence indicates that at the time of bestowal of the subsidy, the GOI intended to reduce the overall costs for SRF's production of polyester film produced at its PFB divisions to increase export sales and net foreign exchange gains. Commerce's determination regarding the denominator for its rate calculation is reasonable and reflects the purpose of the tying regulation, *i.e.*, to attribute the subsidy to "sales for which costs are reduced."⁷¹

SRF claimed that it transferred a small amount of PET chips to its PFB Kashipur plant, and an even much smaller amount to its Engineering Business unit. SRF argues that Commerce should include the export sales from the other division(s) that it transferred these chips to. However, SRF failed to explain how it accounted for the Engineering Business unit sales, *i.e.*, whether it treated those as inter-company transfers, transfers as deemed exports, or whether it paid any duties or taxes with this transfer, as required by the SEZ Act,⁷² and if so, how much, as well as how it accounts for, such duties or taxes in its reported benefits. We note that while the language in the SEZ Agreement specifically mentions "inputs thereof" and PET chips are used as inputs for the downstream products subject film and non-subject film, at this time, Commerce lacks the necessary information on the record of this proceeding to consider whether it is appropriate to

⁶⁸ See *Preliminary Results 2015*, IDM at Subsidies Valuation Information; Denominator.

⁶⁹ Note: Polyester film and input PET chips are the only products manufactured in SRF's PFB division.

⁷⁰ See *Biodiesel from the Republic of Argentina: Final Affirmative Countervailing Duty Determination*, 82 FR 53477 (November 16, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 2; see also *Biodiesel from the Republic of Indonesia: Final Affirmative Countervailing Duty Determination*, 82 FR 53471 (November 16, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

⁷² See GOI' February 2, 2017 Initial Questionnaire Response (GOI February 2, 2017 IQR) at 48 and Exhibit 12.

include those sales in our denominator.

In addition, SRF cited to *OCTG India*,⁷³ claiming that Commerce applied, as AFA only, a division based denominator to the subsidies received, because respondent did not provide its company-wide total export sales to Commerce. However, in that case, respondent imported capital equipment duty free under the EPCGS program, with several individual licenses to import capital goods for the production of an array of export products at different facilities and locations, whereas in the instant case, the SEZ is a contained production unit designed to produce a certain product type only, subject and non-subject polyester films, and the inputs thereof for the export product. That is, in *OCTG India*, Commerce's decision pertained to a different subsidy program, with an array of licenses that could not consistently be tied to one particular product or product group, as is the case here. However, because the respondent in *OCTG India* did not provide the company-wide export sales as a denominator in its responses, Commerce applied the division denominator on the record. Hence, that case does not relate to the issue at hand in the instant proceeding, where at the time of bestowal the benefits clearly can be tied to a product group, polyester film.

Therefore, for these final results, Commerce continues to find that the SEZ is an export subsidy program and continues to tie the subsidies SRF received through the SEZ to its exports of the product group of polyester film, solely manufactured in SRF's PFB division, pursuant to 19 CFR 351.525(b)(5)(i).

Comment 5: Whether the GOI has a verification system in place for the Advance Authorization Scheme (AAS) that is effective and reasonable

GOI Case Brief

- Commerce's determination that the AAS is countervailable pursuant to 19 CFR 351.519 by relying on *PET Film Final Results of 2005 Review*,⁷⁴ is inappropriate.
- The AAS allows duty free imports of inputs, and/or duty-free procurement of indigenous goods that are inputs for the export products. This scheme is in compliance with the SCM Agreement, S1. No. (h) or (i) of Annex II.
- The remission or drawback of import charges or indirect/cumulative taxes not in excess of those levied is not countervailable, and this includes deemed exports.⁷⁵
- Commerce wrongly determined that the GOI does not have an effective and reasonable verification system in place.⁷⁶
- There is a PET film standard-input-out-norm (SION); the AAS identifies the names and quantities of each input and specifies the export product, the time by when the finished

⁷³ See *OCTG from India*, IDM at "Use of Facts Otherwise Available and Adverse Inference; Jindal SAW," and "Export Promotion Capital Goods (EPCGS) Program."

⁷⁴ See *Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film Final Results of 2005 Review*), and accompanying Issues and Decision Memorandum (IDM) at "Export Promotion Capital Goods Scheme."

⁷⁵ See GOI Case Brief at 4-5, and 8.

⁷⁶ *Id.*

product has to be exported through which port, and producers have to track actual inputs and the exports of the product, all of which is audited by chartered accountants.

- The GOI's system includes two types of verification: Imports of inputs and exports are verified against the advance authorization license by customs, and the actual consumption of inputs is verified by a chartered accountant.⁷⁷
- The GOI asserts the PET film decision was made February 2006 and covered the 2003 POR, whereas the GOI introduced its new monitoring measures, including Appendix 23, October 2005, and thus, any prior decision is inapplicable.⁷⁸
- The lack of evidence that an AAS license holder is liable for penalties at non-compliance does not mean that the existence, effectiveness or reasonableness of a system is questionable.⁷⁹
- The GOI does not allow for aggregate data on penalties. The GOI urges Commerce to appreciate its practical difficulties to provide this information, and to evaluate the AAS based on the features discussed above.⁸⁰
- The GOI applies an effective and reasonable system to confirm which inputs are consumed in the production of the exported product and in what amounts. Therefore, the GOI does not need to conduct an examination of actual inputs involved.⁸¹
- Article 1.1(a)(1)(ii) of the SCM Agreement explicitly permits exemption of duties on goods used in the production of the exported product, and, within the meaning of Article 1.1(b), any benefit is confined to excess payment. Commerce must verify from the records of the mandatory respondents as to whether excess payment was received.⁸²

Petitioners' Rebuttal Brief

- Commerce previously determined this program countervailable.⁸³
- The GOI failed to identify any new information or evidence of changed circumstances during the POR that would warrant Commerce reconsidering its countervailability determination.⁸⁴
- Contrary to the GOI's arguments, the 2005 administrative review covered the entire calendar year 2005, and the changes to the AAS by the GOI in 2005 were fully analyzed in that review.⁸⁵

Commerce's Position: The AAS is an export promotion scheme that falls squarely within 19 CFR 351.519, as it allows for the duty-free importation of inputs for the production of the export product identified in the license. Accordingly, Commerce's regulations pertaining to the exemption or remission upon export of indirect or prior-stage cumulative taxes, pursuant to

⁷⁷ *Id.* at 6-7.

⁷⁸ *Id.* at 7.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 8.

⁸² *Id.*

⁸³ See Petitioners Rebuttal Brief at 2 citing *Preliminary Results 2015*, PDM at 6, 12, and 17.

⁸⁴ *Id.*

⁸⁵ *Id.* at 2-3 citing to *PET Film Final Results of 2005 Review*, IDM at "Advance License Program," and Comment 3.

19 CFR 351.517 and 19 CFR 351.518, as referenced by the GOI, do not apply in the instant case.

In *PET Film Final Results of 2005 Review*,⁸⁶ Commerce conducted an on-site verification of the GOI's procedures for devising product SIONs, and the reported new monitoring procedures. In that segment of the proceeding, Commerce specifically verified the GOI process of developing two SIONs of the three distinct production processes for producing PET film.⁸⁷ At that time, Commerce also examined the GOI's new monitoring procedures which it introduced in 2005. As Commerce concluded in those final results, Commerce determined that the systemic deficiencies in the AAS (formerly, ALP) continue to exist for both the SION development and the monitoring system in general, *i.e.*, the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, and as required under 19 CFR 351.519. Accordingly, no allowance was made then by the GOI to account for waste to ensure that the amount of duty deferred would not exceed the amount of import charges on imported inputs consumed in the production of the exported subject merchandise.⁸⁸ Commerce continued to have concerns, specifically with regard to several aspects of the AAS including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports. In that decision, Commerce further stated that, while the GOI was able to demonstrate at verification that certain mechanisms for monitoring had been put in place, Commerce still found that the GOI did not have a system in place or that it applied a procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, making normal allowances for waste.⁸⁹ Commerce determined that the GOI's system or procedure was not reasonable and effective for the purpose intended, based on generally accepted commercial practices in the country of export; thus, contrary to the GOI's claim, the monitoring system did not meet the requirements for an exception in accordance with 19 CFR 351.519(a)(4).

Here, the GOI argues that its system does not allow for aggregate data on penalties; however, the GOI still does not discuss or explain why it encounters practical difficulties in providing this information. If effective monitoring were conducted, monitoring data would naturally exist, and this information could be easily collected and compiled by the GOI. Therefore, the GOI's argument that its monitoring system does not allow for collection of the data is not convincing. Rather, it indicates a lack of enforcement. Further, there is no new information on the record of this review for Commerce to reconsider its decision.

Therefore, the Department finds that systemic problems continue to exist. Consequently, we find that the GOI lacks a reasonable and effective system for the purposes intended, to confirm which inputs are consumed in the production of the exported products, and in what amounts, making

⁸⁶ *Id.*

⁸⁷ There are three production processes for PET film, *i.e.*, there are three SIONs for the product, but the GOI reported that it had updated just one SION (for the most common production process) along with the implementation of the new monitoring procedures.

⁸⁸ See *PET Film Final Results of 2005 Review*, IDM at "Advance License Program," and Comment 3.

⁸⁹ *Id.*

normal allowances for waste, as required under 19 CFR 351.519.

Comment 6: Whether Commerce needs to adjust the dates in the preliminary draft cash deposit instructions for the final results

Jindal's Case Brief

- Jindal notes that Commerce should use the proper date for the cash deposit instructions and replace the date in the draft cash deposit instructions with the date of publication of the *Federal Register* notice published for these final results of review.⁹⁰

Commerce's Position: We agree with Jindal that the effective dates in the draft cash-deposit instructions are incorrect and need to be replaced in the cash deposit instructions, with the date of publication of the *Federal Register* notice for the final results of this review.

RECOMMENDATION:

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

☒

Agree

☐

Disagree

2/2/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁹⁰ See Jindal's Case Brief, "*Polyethylene Terephthalate (PET) Film, Sheet & Strip from India*: Case Brief – Jindal Poly Films Limited of India," dated September 5, 2017 (Jindal Case Brief).