



A-533-824
Administrative Review
POR: 07/01/2016-06/30/2017
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DATE: March 5, 2019

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of the Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty Administrative Review: Polyethylene
Terephthalate Film from India; 2016-2017 Administrative Review

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty (AD) order¹ on polyethylene terephthalate film, sheet, and strip (PET Film) from India. This review covers Jindal Poly Films Limited of India (Jindal) and SRF Limited (SRF). As a result of this analysis, we made changes to both Jindal and SRF's calculation since the *Preliminary Results*.² We continue to find that Jindal sold PET Film in the United States below normal value, but that SRF did not. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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

¹ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 2002) (*AD Order*).

² See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 39667 (August 10, 2018) (*Preliminary Results*).

II. LIST OF ISSUES

Comment 1: Whether to Grant Certain Post-Sale Price Adjustments to Jindal for the Final Results
Comment 2: Whether to Grant Certain Post-Sale Price Adjustments to SRF for the Final Results
Comment 3: Whether to Use 2016 Export Subsidy as Offset or Whether to Use 2015 Export Subsidy
Comment 4: Whether to Revise Jindal's Home Market and Margin Programs
Comment 5: Whether to Revise SRF's Home Market Program

III. BACKGROUND

On August 10, 2018, Commerce published the *Preliminary Results*. The period of review (POR) is July 1, 2016 through June 30, 2017.³

On November 24, 2017, Commerce issued questionnaires.⁴ On July 16, 2018, Commerce issued a supplemental questionnaire (SQR) to Jindal; Jindal submitted its response to this SQR on July 19, 2019.⁵ On August 29, 2018, Commerce issued SRF an SQR; SRF submitted its response to this SQR on September 19, 2018.⁶ On September 14, 2018, Commerce issued a second SQR to Jindal; Jindal submitted its response to the second SQR on September 28, 2018.⁷ Jindal and SRF each submitted a case brief on October 12, 2018.⁸ On October 15, 2018, DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC Inc., the petitioners, submitted a case brief.⁹ On October 17, 2018, Jindal submitted a rebuttal brief.¹⁰

On November 27, 2018, we extended these *Final Results* from December 10, 2018, until January 11, 2019.¹¹ Commerce exercised its discretion to toll deadlines affected by the partial government shutdown closure from December 22, 2018, through the resumption of operations

³ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 39667 (August 10, 2018) (*Preliminary Results*).

⁴ See Commerce Letter Questionnaire for Jindal Poly Films Ltd. (India), dated November 24, 2017. Commerce Letter Questionnaire for SRF Limited of India, dated November 24, 2017. See also Commerce Letter Corrected Questionnaire for SRF Limited of India, dated November 27, 2017.

⁵ See Commerce Letter re: Supplemental Section B Questionnaire for Jindal Poly Films Ltd., dated July 16, 2018 and Jindal Supplemental Questionnaire Response, dated July 19, 2018 (Jindal Section B SQR).

⁶ See Commerce Letter re: First Supplemental Questionnaire, dated August 29, 2018 (SRF First SQ) and SRF Supplemental Questionnaire Response, dated September 19, 2018 (SRF First SQR).

⁷ See Commerce Letter re: Second Supplemental Questionnaire, dated September 14, 2018 and Jindal 2nd Supplemental Questionnaire Response, dated September 28, 2018 (Jindal Second SQR).

⁸ See Jindal Case Brief, dated October 12, 2018 (Jindal Case Brief) and SRF Case Brief, dated October 12, 2018 (SRF Case Brief).

⁹ See DuPont Teijin Films, Mitsubishi Polyester Film, Inc. and SKC Inc. (collectively, the petitioners) Brief, dated October 15, 2018 (the Petitioners' Brief).

¹⁰ See Jindal Rebuttal Brief, dated October 17, 2019 (Jindal Rebuttal Brief).

¹¹ See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

January 29, 2019.¹² As a result of this tolling, the deadline for these *Final Results* was moved to February 20, 2019. On February 14, 2019, we extended the *Final Results* until March 6, 2019.¹³

IV. SCOPE OF THE ORDER

The products covered by the order are all gauges of raw, pretreated, or primed PET Film, 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 currently 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 the order is dispositive.

V. CHANGES MADE SINCE THE *PRELIMINARY RESULTS*

Based on our analysis of the comments received from parties, we made certain changes to Jindal's margin calculations¹⁴ and SRF's margin calculations.¹⁵

VI. DISCUSSION OF ISSUES

Comment 1: Whether to Grant Certain Post-Sale Price Adjustments to Jindal for the Final Results

Jindal argues:

- Commerce erroneously denied REBATE4H (EDD Discounts)).¹⁶
- Commerce should continue to grant REBATE5H (E-bid Discounts)¹⁷ and REBATE6H (Regional Discounts)¹⁸. The record demonstrates that REBATE5 and REBATE6H are long-standing published discounts that are known to Jindal's customers at the time of ordering and invoicing. "These discounts are announced as part of Jindal's sales policy

¹² *Id.*

¹³ See Memorandum "Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review – 2016-2017," dated February 14, 2019.

¹⁴ See Comment 4 below; see also Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Jindal Poly Films Limited (Jindal), dated concurrently with this memorandum (Jindal Final Analysis Memo).

¹⁵ See Comment 5 below; see also Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited (SRF), dated concurrently with this memorandum (SRF Final Analysis Memo).

¹⁶ Jindal's EDD Discounts is its Exclusive Dealer Discounts. See Jindal Section B January 16, 2018 Questionnaire Response at 40 (Jindal January 16, 2018 BQR). "Customers which operate under an Exclusive Dealer Agreement and meet the criteria mentioned in the Domestic Marketing Sales Policy as provided at Exhibit B-14 of the original Section B response, qualify for and are eligible to get EDD Discounts at the rate mentioned in said Domestic Marketing Sales Policy." See Jindal Second SQR at 3 and Jindal January 16, 2018 BQR at Exhibit B-38.

¹⁷ Jindal offers E-Bid Discounts on its E-Sales ("wherein customers directly send their orders through Jindal's Website"). See Jindal January 16, 2018 BQR at 41.

¹⁸ Jindal offers Regional Discounts based on its customers' geographic location. See Jindal January 16, 2018 BQR at 41-42.

and {is} published on the order forms. Accordingly, this discount is not a traditional post-sale price adjustment and...these discounts fall within the scope of accepted price adjustments as stated by {Commerce} in the *Final Modification*.¹⁹

No other party commented on this issue.

Commerce's Position: We are granting Jindal's REBATE4H (EDD Discounts) for these *Final Results*. Commerce considers five factors when determining whether to grant post-sale price adjustments, as listed in the *Final Modification*.²⁰ After reviewing Jindal's Second SQR, we confirmed that the terms and conditions of REBATE4H (EDD Discounts) were known to its customers prior to sale (Criterion 1) because, as Jindal states in its Second SQR, "Jindal also clarifies for the record that each time the sales policy is updated this policy is shared with dealers and customers in advance of any such sales that the customers are aware of."²¹ Jindal also states that "{t}he customer becomes aware of the EDD discount on or before invoicing and is reflected on the invoice as a price adjustment at the time of sale."²²

Moreover, we are continuing to grant REBATE5 (E-bid discounts) and REBATE6H (Regional Discounts).²³ Our analysis of Jindal's post-sale price adjustments using the criteria enumerated in the *Final Modification* shows that the terms and conditions of REBATE5 (E-bid discounts) and REBATE6H (Regional Discounts) were known to the customer prior to sale.²⁴

Comment 2: Whether to Continue to Grant Certain Post-Sale Price Adjustments to SRF for the Final Results

SRF Argues:

- Commerce should continue to grant SRF's reported Cash Discounts (REBATE2H)²⁵ and Rate Difference {Rebates} (REBATE3H)²⁶ because SRF's Section B responses shows that SRF and its customers agree to these adjustments prior to the sale.²⁷

¹⁹ See *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24, 2016) (*Final Modification*) and section 351.401(c) of Commerce's Regulations.

²⁰ See *Final Modification*. The factors are: (1) Whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment. See *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24, 2016) (*Final Modification*) and section 351.401(c) of Commerce's Regulations.

²¹ See Jindal Second SQR at 3.

²² See Jindal Second SQR at 3.

²³ See Jindal Final Analysis Memorandum.

²⁴ See Jindal Second SQR at 4-5.

²⁵ "SRF gives a cash discount to its customers on a percentage basis that depends on the terms of cash discount that have been agreed to with each customer from time to time." See SRF January 16, 2018 Section B Questionnaire Response at 34 (SRF January 16, 2018 BQR). See also SRF January 16, 2018 BQR at 34-35 and Exhibits B-8(a) and B-8(b); and SQR at S1-1 to S1-2 and Exhibits S1-1 through S1-1(v).

²⁶ "SRF agrees to give price differences on a customer-specific basis." See SRF January 16, 2018 BQR at 36 and Exhibits B-9(a) and B-9(b); and SQR at S1-3 to S1-4.

²⁷ See SRF Case Brief at 3-4.

- Commerce allowed both of these post-sale price adjustments and should continue to find that its Cash Discounts (REBATE2H) and REBATE3H meet the criteria of the *Final Modification* and grant the adjustments for the *Final Results*.²⁸

No other party commented on this issue.

Commerce's Position: For these *Final Results*, we have continued to grant SRF's reported Cash Discounts (REBATE2H) and Price Difference Rebates (REBATE3H).²⁹ Our analysis of SRF's reported Cash Discounts (REBATE2H) and Price Difference Rebates (REBATE3H) using the criteria enumerated in the *Final Modification* indicates that they meet the following criteria: (1) the terms and conditions were set prior to sale;³⁰ (2) the fact that these post-sale price adjustments are common for the company and the industry;³¹ (5) other factors tending to reflect on the legitimacy of these claims (a showing of legitimate transactions).³²

Comment 3: Whether to Use the Export Subsidy Rates Calculated in the 2016 Countervailing Duty Administrative Review as the Export Subsidy Offset in this Administrative Review

Jindal and SRF Argue

- Commerce incorrectly used each company's export subsidy rate calculated in the 2015 countervailing (CVD) duty administrative final results as the export subsidy offset in its calculations for the *Preliminary Results*. Instead, Commerce should use each company's export subsidy rate calculated in the concurrent 2016 CVD duty administrative review because the 2016 calendar year is parallel to the instant POR.³³

No other party commented on this issue.

Commerce's Position: We disagree with Jindal and SRF. We are continuing to use the 2015 export subsidy because that export subsidy rate is from the most recently completed administrative review of the CVD order.³⁴

Section 772(c)(1)(C) of the Tariff Act of 1930 (the Act) directs Commerce to increase EP or CEP by the amount of the CVD duty "imposed" on the subject merchandise "to offset an export subsidy." The basic theory underlying this provision is that, in parallel antidumping duty (AD)

²⁸ See SRF Case Brief at 2-5.

²⁹ See SRF Final Analysis Memorandum.

³⁰ See SRF Questionnaire at B-34 – B-35 for Cash Discounts (REBATE2H) and SRF Questionnaire at B-36 for Price Difference Rebates (REBATE3H). See also Exhibits S1-1 through S1-1(v) for Cash Discounts (REBATE2H) and S1-2(a) and S1-2(b) for Price Difference Rebates (REBATE3H).

³¹ See SRF SQR at S1-1 to S1-2 for Cash Discounts (REBATE2H) and SRF SQR S1-3 to S1-4 for Price Difference Rebates (REBATE3H).

³² See SRF Questionnaire at B-34 – B-35 for Cash Discounts (REBATE2H) and SRF Questionnaire at B-36 for Price Difference Rebates (REBATE3H).

³³ See Jindal Case Brief at 1-2 and SRF Case Brief at 2.

³⁴ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, dated February 8, 2018 (83 FR 5612) (*2015 CVD Final Results*).

and CVD proceedings, if Commerce finds that a respondent received the benefits of an export subsidy program, it is presumed the subsidy contributed to lower-priced sales of subject merchandise in the United States market. Thus, the subsidy and dumping are presumed to be related, and the imposition of duties against both would, in effect, be “double application” – or imposing two duties against the same situation. Section 772(c)(1)(C) of the Act therefore requires that Commerce factor the affirmative export subsidy determination into the AD calculations to prevent this “double-application” of duties.³⁵

We are continuing to follow that practice here, pursuant to section 772(c)(1)(C) of the Act. Although the most recently completed administrative review of the parallel CVD order covered the 2015 POR,³⁶ SRF and Jindal argue that Commerce should instead use the preliminary rates of the CVD administrative review for the 2016 POR to calculate the offset for these *Final Results*.

While Jindal and SRF are correct that the concurrent 2016 CVD duty administrative review is ongoing, the 2016 CVD duty administrative review will not be completed until after these *Final Results*. When making export subsidy adjustments in antidumping administrative reviews, it is our practice to use final export subsidy rates from the most recently completed administrative review of the CVD order.³⁷ We do not use preliminary rates to make export subsidy adjustments in the calculation of AD margins because those rates are not final, have not been commented on by parties, and are subject to change. The preliminary rates of the 2016 CVD duty administrative review therefore do not reflect the ultimate, final determination of Commerce as to the amount of the CVD duties imposed on Jindal and SRF to offset export subsidies during the 2016 POR, and we determine that it would be inappropriate to use them when calculating their subsidy offset here.

Comment 4: Whether to Revise Jindal’s Home Market and Margin Programs

Petitioners Argue

- Commerce should correct the Preliminary Analysis Memorandum with regard to the differential pricing test.³⁸
- Commerce should assign regions using the variable for state (STATEU) in its differential pricing test instead of zip codes (DESTU).³⁹
- Commerce should include home market sales during the 90/60-day window period.⁴⁰

³⁵ See *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) and accompanying IDM at Comment 3.

³⁶ See *2015 CVD Final Results*.

³⁷ See e.g., *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 80 FR 77323 (December 14, 2015), and accompanying IDM at Comment 12.

³⁸ See the Petitioners’ Case Brief at 2.

³⁹ *Id.*, at 2-3.

⁴⁰ *Id.*, at 3.

Jindal Argues

- Commerce should continue using the variable for zip codes (DESTU) in its differential pricing analysis.⁴¹
- The state variable (STATEU) is based on the destination port, rather than the actual point of delivery, and is, therefore, a less accurate measure in assigning regions. Commerce should not modify the differential pricing analysis.⁴²
- Commerce should follow its normal practice and include sales within the 90/60-day window period to calculate the most accurate margin.⁴³

Commerce's Position: We agree with both Jindal and the petitioners that we should make corrections to Jindal's Home Market program to include sales within the 90/60-day window period.

With respect to the variable used to assign the region for the purposes of the differential pricing test, we agree with the petitioners and are using the state variable (STATEU) for the differential pricing test instead of the zip code variable (DESTU) in Jindal's Margin program. While Jindal says that the zip code (DESTU) variable is more specific and is, therefore, a more accurate measure in assigning regions, there are errors in some of the entered fields for zip code variable. For example, Jindal reported some of the zip codes as being located in either the incorrect state or in multiple states.⁴⁴ Given this fact, we have determined that the state variable is a more accurate reflection of region and have decided to use the state variable (STATEU) in assigning the region for purposes of the differential pricing test.

We will address the results of the Differential Pricing test for Jindal in its Final Analysis Memorandum, including the most up-to-date information from these *Final Results*.

Comment 5: Whether to Revise SRF's Home Market Program

SRF Argues

- Commerce should deduct the movement expenses for SRF's factory to warehouse inland freight (INLFTWH) and warehousing expenses (WAREHSH).⁴⁵

No other party commented on this issue.

Commerce's Position: We agree with SRF and have deducted both the inland freight from SRF's factory to warehouse expenses (INLFTWH) and warehousing expenses (WAREHSH) from home market price for these *Final Results*.⁴⁶

⁴¹ See Jindal Rebuttal Brief at 2.

⁴² *Id.*

⁴³ *Id.*, at 3.

⁴⁴ See Jindal Final Analysis Memorandum.

⁴⁵ See SRF Case Brief at 2-3.

⁴⁶ See SRF Final Analysis Memorandum at 1.

VII. Recommendation

We recommend adopting the above positions. If these recommendations are accepted, we will publish the *Final Results* of this administrative review in the *Federal Register*.



Agree

Disagree

3/5/2019

X



Signed by: International Trade Administration

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