



C-533-825

Administrative Review
POR: 01/01/2016 - 12/31/2016

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March 18, 2019

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance,

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
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; 2016

I. Summary

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty order on polyethylene terephthalate film, sheet, and strip (PET film) from India¹ covering the period of review (POR) is January 1, 2016, through December 31, 2016.

As a result of this analysis, we have made changes to the *Preliminary Results*.² We recommend that you approve the positions described in the “Discussion of Comments” section of this memorandum.

Below is the complete list of issues for which we received comments and rebuttal comments from interested parties.

II. List of Issues

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; 2016*, 83 FR 39677 (August 10, 2018) (*Preliminary Results 2016*), and accompanying Preliminary Decision Memorandum (PDM).



- Comment 1:** Whether Commerce may countervail certain benefits respondents received pursuant to the Merchandise Exports from India Scheme (MEIS).
- Comment 2:** Whether deductions under Sections 32AC, 35(1)(iv), and 35 (2AB) of the Indian Income Tax Act are countervailable subsidies.
- Comment 3:** Whether Commerce clearly identified which components of duties were included in the benefit calculations of the Export Promotion Capital Goods Scheme (EPCGS).
- Comment 4:** Whether the GOI has a verification system in place for the Duty Drawback Scheme (DDB) that is effective and reasonable, and whether Commerce is obligated to calculate the “excess remission,” pursuant to the SCM Agreement.³
- Comment 5:** Whether Commerce incorrectly determined the Special Economic Zone (SEZ) program to be contingent on export performance.
- Comment 6:** Whether the Advance Authorization Scheme (AAS) is a countervailable subsidy, and whether Commerce is obligated to calculate the “excess remission,” pursuant to the SCM Agreement.⁴
- Comment 7:** Whether Commerce used the most recent turnover data reported by SRF in its rate calculations for respondent.
- Comment 8:** Whether Chiripal was omitted from the list of respondents not selected for individual review.

III. Background

On August 10, 2018, the Commerce published the *Preliminary Results 2016* of this review.

Jindal, SRF, and the Government of India (GOI) submitted timely filed case briefs on October 24, 2018.⁵ Chiripal Poly Films Limited (Chiripal) submitted a case brief on September 18, 2018.⁶ The petitioners⁷ submitted a timely filed rebuttal brief on October 29, 2018.⁸

On November 27, 2018, Commerce postponed the final results of review by sixty days until

³ See the Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization (SCM Agreement).

⁴ *Id.*

⁵ See Jindal’s Case Brief, “Polyethylene Terephthalate (PET) Film, Sheet & Strip from India: Case Brief – Jindal Poly Films Limited of India,” dated October 24, 2018 (Jindal Case Brief); see SRF’s Case Brief, “Polyethylene Terephthalate (PET) Film from India: Case brief on Countervailing Duty (CVD) Admin Review,” dated October 24, 2018 (SRF Case Brief); and GOI’s Case Brief, “Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Case Brief,” dated October 24, 2018 (GOI Case Brief).

⁶ See Chiripal’s Case Brief, “Polyethylene Terephthalate (PET) Film from India: Case brief on Countervailing Duty (CVD) Admin. Review,” dated September 18, 2018 (Chiripal Case Brief).

⁷ DuPont Teijin Films, Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively, the petitioners).

⁸ See Petitioners’ Rebuttal Brief, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Rebuttal Case Brief,” dated October 29, 2018 (Petitioners Rebuttal Brief).

February 6, 2019.⁹ On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.¹⁰ The revised deadline for the final results is now March 18, 2019.

On February 25, 2019, Commerce issued its Post-Preliminary Determination on certain income tax programs self-reported by respondents Jindal and SRF.¹¹ Jindal submitted a timely filed case brief on March 4, 2019.¹² The petitioners submitted a timely filed rebuttal brief on March 5, 2019.¹³

IV. Changes Since the *Preliminary Results*

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 certain changes to the *Preliminary Results* indicated in the “Analysis of Programs” section below.

V. 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.

VI. Period of Review

The POR is January 1, 2016, through December 31, 2016.

⁹ See Memorandum, “Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Final Results of Countervailing Duty Administrative Review – 2016,” dated November 27, 2018 (Final Results Extension Memo).

¹⁰ All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days. See Memorandum, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day.

¹¹ See Memorandum, “Post-Preliminary Analysis of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India; 2016,” dated February 25, 2019 (Post-Preliminary Determination 2016).

¹² See Jindal’s Post-Prelim Case Brief, “Polyethylene Terephthalate (PET) Film, Sheet & Strip from India: Post-Preliminary Analysis Case Brief,” dated March 4, 2019 (Jindal Post-Prelim Case Brief).

¹³ See Petitioners’ Post-Prelim Rebuttal Brief, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Rebuttal Brief on Post-Preliminary Determination,” dated March 5, 2019 (Petitioners Post-Prelim Rebuttal Brief).

VII. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Results 2016*. 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 respondent companies. For a description of allocation period and the methodology used for these final results, see the *Preliminary Results 2016* and accompanying PDM at 3-4.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results 2016* for attributing subsidies, and no issues were raised by interested parties in case briefs nor was any new factual information provided that would lead us to reconsider our preliminary determination regarding the attribution of subsidies. For a description of the methodologies used for these final results, see the *Preliminary Results 2016* and accompanying PDM at 6.¹⁴

C. Benchmark Interest Rates

Commerce has made no changes to benchmarks or discount rates used in the *Preliminary Results 2016*. 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 2016* and accompanying PDM at 4-6.¹⁵

D. Denominator

Commerce has made no changes to the denominators used in the *Preliminary Results 2016*. 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 2016* and accompanying PDM at 6.¹⁶

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including "adverse facts available" (AFA), for

¹⁴ See also Jindal's Preliminary Calculation Memorandum, dated August 3, 2018 (Jindal Preliminary Calculation Memorandum 2016), and SRF's Preliminary Calculation Memorandum, dated August 3, 2018 (SRF Preliminary Calculation Memorandum 2016).

¹⁵ *Id.*

¹⁶ *Id.*

several findings in the Post-Preliminary Results 2016.¹⁷ Commerce continues to rely on AFA with respect to specificity for Income Tax Deductions under Section 35 for Research and Development (R&D) Expenses (Section 35 R&D Tax Deductions), Sub-Section 35(iii), Sub-Section 35(iv), Sub-Section 35(DD), and Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961, Sub-Section 32AC.¹⁸

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”¹⁹ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁰

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”²¹ It is Commerce’s practice to consider information to be corroborated if it has probative value.²² In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and

¹⁷ See Post-Preliminary Determination 2016.

¹⁸ *Id.* at 2-6 and 8-10.

¹⁹ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, dated February 23, 1998.

²⁰ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) at 870.

²¹ See, e.g., SAA at 870.

²² See SAA at 870.

relevance of the information to be used.²³ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²⁴

Commerce notes that in this administrative review, respondents SRF and Jindal provided full reporting of the benefits received during the POR under the income tax programs discussed below.²⁵

GOI

For the reasons explained below, Commerce determines that the application of facts otherwise available is warranted with respect to the GOI for a specificity finding for these income tax programs because it withheld information that was requested of it and significantly impeded the proceeding, within the meaning of section 776(a)(2)(A) and 776(a)(2)(C) of the Act. Further we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to our requests for information, the GOI failed to cooperate to the best of its ability.

Application of FA and AFA: “Income Tax Deductions under Section 35 for Research and Development (R&D) Expenses (Section 35 R&D Tax Deductions) and Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961”²⁶

In Commerce’s initial questionnaire, we requested that the GOI coordinate with the respondent companies to determine if the companies were reporting usage of any subsidy programs. Further, we asked the GOI to “describe the assistance, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire” relating to the respondents.²⁷ In SRF’s²⁸ and Jindal’s²⁹ initial questionnaire responses, both companies reported participating in the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions programs.

In this review, despite repeated requests, the GOI failed to respond to our supplemental questionnaires regarding the self-reported programs. Additionally, the GOI failed to respond to the Initial Questionnaire with respect to the programs. Specifically, the GOI did not provide a program description, or applicable appendices for this program in the initial response, as

²³ See, e.g., SAA at 869.

²⁴ See SAA at 869-870.

²⁵ See Jindal’s July 25, 2018 Second Supplemental Questionnaire Response (Jindal July 25, 2018 SQR2) at 2-4 and Exhibit S2-105, and SRF January 16, 2018 IQR at 84-85 and SRF’s July 23, 2018 First Supplemental Questionnaire Response (SRF July 23, 2018 SQR1) at 6-27 and Exhibits S1-8(c) P1&P2, and S1-9(c) P1&P2.

²⁶ We note that while respondents, Jindal and SRF, also provided Commerce with general program descriptions they participated in, Commerce relies on governments to provide this information based on official documentation. In this case we must rely on the GOI’s industry information for specificity.

²⁷ See Commerce Letter re: Countervailing Duty Questionnaire, dated November 27, 2017 (Initial CVD Questionnaire) at II.-18, “Other Programs.”

²⁸ See SRF January 16, 2018 IQR at 84-85 and SRF July 23, 2018 SQR1 at 6-27 and Exhibits S1-8(c) P1&P2, and S1-9(c) P1&P2.

²⁹ See Jindal July 25, 2018 SQR2 at 2-4 and Exhibit S2-105.

specifically requested by Commerce. Instead, the GOI stated that it “is not aware of any other schemes availed by the Mandatory Respondents. The USDOC may collect the information from the Mandatory Respondents. The GOI remains available to verify such information.”³⁰

In the second supplemental questionnaire to the GOI, Commerce reiterated the request that the GOI complete a Standard Questions Appendix and Tax Appendix, as well as any other appropriate appendices attached to the Initial Questionnaire regarding the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions programs, noting that both SRF and Jindal reported participation in these programs.³¹ In its response to Commerce, the GOI failed to fully complete the Standard Questions Appendix and the Tax Questions Appendix, but provided supporting documentation on the laws and decrees establishing and governing these tax programs.³² In that response, the GOI also did not respond to those questions in the Appendix which are necessary for Commerce to make a specificity determination in the context of its analysis of these programs.³³ Specifically, in response to Commerce’s request to provide the number of recipient companies and industries and the amount of assistance approved, the GOI stated that:

“{t}he details with respect to mandatory respondent companies is already provided in this Second Supplementary Questionnaire response. The details with respect to all other companies is *Third Party Information*, which are not subject to investigation and, therefore, not relevant for the purpose of this investigation. In case USDOC requires information with respect to any particular company, the GOI will respond the same.”³⁴

Throughout its submission, the GOI also did not respond to the relevant Appendix questions, and Commerce issued a third supplemental questionnaire to the GOI. In its third supplemental questionnaire, Commerce specifically asked the GOI to respond to the questions concerning specificity, such as the total amount of assistance approved for all other companies under the program, the total amount of assistance approved for the industry in which mandatory respondent companies operate, as well as the totals for every other industry in which companies were approved for assistance under this program.³⁵ However, in response to the question concerning the number of recipient companies and industries and the amount of assistance approved, the GOI only repeated its statements from the second supplemental response, as above, or the same statement.³⁶ Concerning Commerce’s questions on the total amount of assistance approved for all companies under the program, the number of companies approved, and the amounts and number of companies approved by industry, the GOI consistently stated that it does not maintain

³⁰ See GOI January 16, 2018 IQR at 96.

³¹ See Commerce Letter re: Second Supplemental Countervailing Duty Questionnaire to the GOI, dated August 22, 2018 (GOI Second SQ) at 1.

³² See GOI’s September 5, 2018 Second Supplemental Questionnaire Response (GOI September 5, 2018 SQR2).

³³ *Id.* at 14-15 (Question I.L.2), 25-26 (Question II.L.2), 36-37 (Question III.L.2), and 46-47 (Question IV.M.).

³⁴ *Id.*

³⁵ See Commerce Letter re: Third Supplemental Countervailing Duty Questionnaire to the GOI, dated September 17, 2018 (GOI Third SQ) at 2.

³⁶ See GOI’s October 1, 2018 Third Supplemental Questionnaire Response (GOI October 1, 2018 SQR3) at 15-17 (Question I.L.2), 27-28 (Question II.L.2), 40-41 (Question III.L.2), 50-52 (Question IV.M.), and 60-62 (Question V.).

centralized consolidated company/industry specific, *etc.*, data.³⁷ In response to the question concerning the total number of companies that applied for, but were denied, assistance under this program, the GOI referred back to its response to question C, *i.e.*, that it does not maintain a centralized consolidated company specific database relating to the utilization of a program.³⁸

Commerce requested this information, because the responses to the respective appendices are necessary in determining whether a financial contribution exists and whether the alleged subsidy is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. If the GOI was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.³⁹

We find that the information requested regarding the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions programs is necessary to our determination of whether these programs are specific within the meaning of 771(5A)(A) and (D) of the Act. However, because the GOI did not fully respond to our requests for information regarding these tax programs, we have no further basis for evaluating the specificity of these programs. Accordingly, in reaching our determination for the above programs, Commerce has based its determination of specificity on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act.⁴⁰ Moreover, Commerce determines that the GOI did not cooperate to the best of its ability, because it did not provide its information, as requested.

Section 782(c) of the Act provides that if a party is unable to respond, or has difficulties in responding, to Commerce's requests for information, it must "promptly after receiving a request from {Commerce}" notify the agency that it is unable to submit the information, and must further provide a "full explanation and suggested alternative forms in which such party is able to submit the information. . . ." Here, the GOI did not notify Commerce that it was unable to provide or had difficulties providing the requested industry information for these programs. In fact, the GOI gave no adequate explanation for why it did not provide this information, nor did the GOI suggest any alternative method to provide the necessary information to Commerce. Not maintaining centralized records does not prevent the GOI from responding to Commerce's requests and does not absolve the GOI from collecting and compiling the requested information from the government agencies responsible for administering these programs. In its initial response, the GOI failed to address the Section 35 R&D Tax Deductions and the Section 32 Deductions programs altogether, even though the Section 35 R&D Tax Deductions program for

³⁷ *Id.* at 16-17, 27-28, 40-41, 51-52, and 61-62.

³⁸ *Id.*

³⁹ Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

⁴⁰ With the exception of Sub-Section 35(2AB) under Section 35 R&D Deductions of the Income Tax Act, 1961, as explained under "Sub-Section 35(2AB)" below.

one sub-section had been reported in SRF's initial response, indicating a lack of effort by the GOI to coordinate with respondents, as requested in the initial questionnaire, to provide Commerce with a complete response. In response to Commerce's request, Jindal and SRF provided full reporting on all income tax programs respondents participated in, and an accounting of the benefits they received.⁴¹ The GOI had almost eleven months to obtain this information from the respective government agencies to Commerce, from November 27, 2017, when Commerce first requested that the GOI provide a full section II response for Jindal and SRF, to October 1, 2018, the date the third supplemental response was due. Commerce issued two supplemental questionnaires specific to those income tax programs reported by respondents.⁴² Commerce granted the GOI two extensions to respond to Commerce's initial questionnaire, and one extension for each of the three supplemental questionnaires.⁴³ At no time during those months did the GOI contact Commerce to indicate that it had problems with accessing the company and industry information Commerce requested in its Standard Questions Appendix.

By failing to respond fully to Commerce's initial and two supplemental questionnaires specific to the income tax programs reported by the respondents, we determine that the GOI withheld the information requested and failed to provide the specific industry information by the deadlines established, and, thus, significantly impeded the proceeding, per sections 776(a)(2)(A), (B), and (C) of the Act. We further find that an adverse inference is warranted under section 776(b) of the Act. The GOI failed to cooperate to the best of its ability when it failed to provide the industry information requested in the Standard Questions Appendix, and, moreover, it never identified any difficulties in providing this information to Commerce. Not having the requested information in a centralized database does not amount to an inability to collect and provide this information.⁴⁴ In drawing an adverse inference, we find that the "Section 35 R&D Tax Deductions" and the Section 32 Capital Investment Deductions" programs, including all of their sub-programs,⁴⁵ are specific under 771(5A)(D) of the Act, as AFA.⁴⁶

⁴¹ See Jindal's July 25, 2018 SQR2 at 2-4 and Exhibit S2-105, and SRF January 16, 2018 IQR at 84-85 and SRF July 23, 2018 SQR1 at 6-27 and Exhibits S1-8(c) P1&P2, and S1-9(c) P1&P2.

⁴² See GOI Second SQ and GOI Third SQ.

⁴³ Commerce granted to the GOI extensions to respond to the initial questionnaire on December 28, 2017, and January 8, 2018, and extensions to respond to the first supplemental questionnaire on July 17, 2018, the second supplemental questionnaire on August 27, 2018, and the third supplemental questionnaire on September 21, 2018.

⁴⁴ See section 776(b) of the Act; see also *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*). In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit ("CAFC") clarified that the "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.

⁴⁵ With the exception of Sub-Section 35(2AB) under Section 35 R&D Deductions of the Income Tax Act, 1961, as explained under "Sub-Section 35(2AB)" below.

⁴⁶ See GOI September 5, 2018 SQR2 at 14-15 (Question I.L.2), 25-26 (Question II.L.2), 36-37 (Question III.L.2), and 46-47 (Question IV.M.) and GOI October 1, 2018 SQR3 at 15-17 (Question I.L.2), 27-28 (Question II.L.2), 40-41 (Question III.L.2), 50-52 (Question IV.M.), and 60-62 (Question V.); see also See Jindal's July 25, 2018 Second Supplemental Questionnaire Response (Jindal July 25, 2018 SQR2) at 2-4 and Exhibit S2-105, and SRF January 16, 2018 IQR at 84-85 and SRF's July 23, 2018 First Supplemental Questionnaire Response (SRF July 23, 2018 SQR1) at 6-27 and Exhibits S1-8(c) P1&P2, and S1-9(c) P1&P2.

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Export Promotion Capital Goods Scheme (EPCGS)⁴⁷

In its case brief, the GOI claimed Commerce did not disclose the basis for its benefit calculations.⁴⁸ As explained below in Commerce's position under Comment 3, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2016*.

Jindal: 3.05 percent *ad valorem*.

2. Status Holder Incentive Scrip (SHIS)⁴⁹

Jindal: 0.52 percent *ad valorem*

SRF: 0.11 percent *ad valorem*

3. Special Economic Zones (SEZs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs)⁵⁰

The GOI submitted comments in its case brief regarding this program. As explained below in Commerce's position under Comment 5, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2016*.

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

SRF: 4.52 percent *ad valorem*

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

SRF: 0.47 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

⁴⁷ See *Preliminary Results 2016*, PDM at 6-9.

⁴⁸ See Comment 1 of this memorandum.

⁴⁹ See *Preliminary Results 2016*, PDM at 9-11.

⁵⁰ See *Preliminary Results 2016*, PDM at 11-17.

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

SRF: 0.43 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)⁵¹

The GOI submitted comments in its case brief regarding this program.⁵² As explained below in Commerce's position under Comment 5, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2016*.

Jindal: 2.22 percent *ad valorem*.

5. Merchandise Export from India Scheme (MEIS)⁵³

The GOI submitted comments in its case brief regarding this program.⁵⁴ As explained below in Commerce's position under Comment 1, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2016*.

Jindal: 2.69 percent *ad valorem*.

SRF: 1.94 Percent *ad valorem*.

6. Incremental Exports Incentivization Scheme (IEIS)⁵⁵

Jindal: 0.07 percent *ad valorem*

7. Duty Drawback Program (DDB)⁵⁶

The GOI submitted comments in its case brief regarding this program.⁵⁷ As explained below in Commerce's position under Comment 4, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2016*.

⁵¹ See *Preliminary Results 2016*, PDM at 17-19.

⁵² See Comment 6 of this memorandum.

⁵³ See *Preliminary Results 2016*, PDM at 19-20.

⁵⁴ See Comment 1 of this memorandum.

⁵⁵ See *Preliminary Results 2016*, PDM at 20-22.

⁵⁶ See *Preliminary Results 2016*, PDM at 20-24.

⁵⁷ See Comment 4 of this memorandum.

SRF: 0.01 percent *ad valorem*

8. Section 35 R&D Deductions of the Income Tax Act, 1961

SRF submitted comments in its brief, and the petitioners submitted rebuttal briefs regarding this program. The countervailability of this program is also discussed above at “Use of Facts Otherwise Available and Adverse Inferences,” and below at Comment 2.

Sub-Section 35(iii)

Sub-section 35(1)(iii) of the Income Tax Act states that an amount equal to one and one-fourth times the amount paid to a research association, university, college or any other institution that conducts research in social science, statistical research may be deducted from the income. However, the institution receiving the money has to be approved in accordance with relevant prescribed guidelines. Entities receiving that deduction must be listed in an Official Gazette by the Central Government. The GOI reported that none of the respondent companies received deductions under this section.⁵⁸

Sub-Section 35 DD

Under this section of the Income Tax Act any firm that incurs expenditures exclusively for the purposes of amalgamation or de-merger is permitted a deduction equal to 1/5 the of such expenditure for each of the five successive previous years beginning with the year prior to the demerger.⁵⁹

Jindal reported benefitting under sub-section 35(iii) and sub-section 35 DD of the income tax programs, and noted that the deductions are combined in the tax returns.⁶⁰

Sub-Section 35(iv)

This sub-section allows for deductions granted for capital expenditures on scientific research that relate to the business activities of the claimant.⁶¹

Sub-Section 35(2AB)

This sub-section grants deductions to companies engaged in bio-technology businesses or any manufacturing business (other than listed on a specific schedule eleven) that incurs expenditures on scientific and in-house research and development facility, as approved by the prescribed authority. Excluded are expenditures for land and buildings. Once registered, the expenditure incurred for R&D has to be accounted for in a separate set of books of accounts.⁶²

SRF reported benefitting from income tax deductions under Sub-Sections 35(iv) and 35(2AB) of this income tax program.⁶³

⁵⁸ See GOI September 5, 2018 SQR2 at 49-50.

⁵⁹ *Id.* at 40-49.

⁶⁰ See Jindal July 25, 2018 SQR2 at 2-4 and Exhibit S2-105.

⁶¹ GOI September 5, 2018 SQR2 at 8.

⁶² *Id.* at 17-28.

⁶³ See SRF July 23, 2018 SQR1 at 6-13, Exhibit S1-8(a)-(b) (35), S1-8(c).

Based on the information above, we determine that, pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone by providing tax deductions to cover expenses related to scientific research for Indian companies engaged in the bio-technology sector or in a business not involved in sectors listed in the Eleventh Schedule of the Income Tax Act of 1961. The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by Jindal and SRF, pursuant to section 771(5)(E) of the Act. Further, with respect to sub-section 35(2AB) the program is specific pursuant to section 771(5A)(D)(i) of the Act, because it is limited to certain enterprises or industries or certain groups of enterprises or industries.⁶⁴

However, as noted in the “Use of Facts Otherwise Available and Adverse Inferences” section, above, the GOI failed to provide necessary information regarding “Section 35 R&D Deductions of the Income Tax Act, 1961,” Sub-Sections 35(iii), 35(iv), and 35 DD, and, thus, we have no basis for evaluating the program on specificity pursuant to section 771(5A)(D)(i) of the Act and 19 CFR 351.502. Accordingly, we are relying on AFA in determining that the income tax deductions under Section 35 R&D Deductions of Income Tax Act, 1961 are de facto specific within the meaning of section 771(5A)(D)(i) of the Act.⁶⁵

To determine the reported the benefit, respondents calculated the amount of income tax they would have had to pay on the income tax return filed in the POR less the amount respondents actually paid during the POR.⁶⁶ That benefit is capped by the Minimum Alternative Tax (MAT), which is a company’s minimum tax liability, computed at 18.5 percent on the book profit.⁶⁷ We then divided this benefit by Jindal’s and SRF’s total sales during the POR to determine countervailable subsidy rates as below:

Jindal: 0.00 percent *ad valorem*
SRF: 0.05 percent *ad valorem*

⁶⁴ See GOI September 5, 2018 SQR2 at 17-28, and SRF July 23, 2018 SQR1 at 6-8, and Exhibit S1-8(a); *see also Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44558 (September 25, 2017) (*Prelim CDM Tubing*), and accompanying Preliminary Decision Memorandum (PDM) at 24, affirmed *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017) (*Final CDM Tubing*), and accompanying Issues and Decision Memorandum (IDM) at 13 and Comment 12.

⁶⁵ See GOI September 5, 2018 SQR2 at 14-15 (Question I.L.2), 25-26 (Question II.L.2), and 46-47 (Question IV.M.) and GOI October 1, 2018 SQR3 at 15-17 (Question I.L.2), 27-28 (Question II.L.2), 50-52 (Question IV.M.), and 60-62 (Question V.); *see also* Jindal July 25, 2018 SQR2 at 2-4 and Exhibit S2-105, and SRF January 16, 2018 IQR at 84-85 and SRF July 23, 2018 SQR1) at 6-27 and Exhibits S1-8(c) P1&P2, and S1-9(c) P1&P2.

⁶⁶ See 19 CFR 351.509(c).

⁶⁷ See GOI October 1, 2018 SQR3 at 22.

9. Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961

SRF submitted comments in its brief, and the petitioners submitted rebuttal briefs regarding this program. The countervailability of this program is also discussed above at “Use of Facts Otherwise Available and Adverse Inferences,” and below at Comment 2.

Sub-Section 32AC

This sub-section is linked to investments into new assets. It provides for a deduction from taxable income for investment in a new plant and machinery of 15 percent of the actual cost of a new plant and machinery if it exceeds a specified amount from the taxable income. Firms claiming a deduction under Sub-Section 1 of Section 32AC are not eligible for this section.⁶⁸

Jindal and SRF reported participating under Sub-Section 32AC(1A), but only Jindal reported a benefit from this program.⁶⁹ SRF demonstrated that there were no benefits due to the MAT.⁷⁰

Based on the information on the record of this review, we determine that, pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by Jindal and SRF, pursuant to section 771(5)(E) of the Act.

However, as noted in the “Use of Facts Otherwise Available and Adverse Inferences,” above, the GOI failed to provide necessary information regarding Sub-Section 32AC of “Section 32 Capital Investment Deductions” and, thus, we have no basis for evaluating this program’s specificity pursuant to section 771(5A)(D) of the Act and 19 CFR 351.502. Accordingly, we are relying on AFA in determining that the income tax deductions under Sub-Section 32AC of Section 32 Deductions of Income Tax Act, 1961 are de facto specific within the meaning of section 771(5A)(D) of the Act.⁷¹

As stated above, SRF demonstrated that it did not benefit from this program. To determine the reported benefit, respondents calculated the amount of income tax they would have had to pay on the income tax return filed in the POR less the amount respondents actually paid during the POR.⁷² That benefit is again capped by the MAT, which is a company’s minimum tax liability, computed at 18.5 percent on the book profit.⁷³ We then divided Jindal’s benefit by its total sales during the POR, to determine countervailable subsidy rates as below:

⁶⁸ *Id.* at 31-44.

⁶⁹ See Jindal July 25, 2018 SQR2 at 2-3 and Exhibit S2-105, and SRF July 23, 2018 SQR1 at 13-19 and Exhibit S1-9(c).

⁷⁰ See SRF July 23, 2018 SQR1 at 17.

⁷¹ See GOI September 5, 2018 SQR2 at 36-37 (Question III.L.2) and GOI October 1, 2018 SQR3 at 40-41 (Question III.L.2); see also Jindal July 25, 2018 SQR2 at 2-4 and Exhibit S2-105, and SRF January 16, 2018 IQR at 84-85 and SRF July 23, 2018 SQR1) at 6-27 and Exhibits S1-8(c) P1&P2, and S1-9(c) P1&P2.

⁷² See 19 CFR 351.509(c).

⁷³ See GOI October 1, 2018 SQR3 at 22.

Jindal: 0.55 percent *ad valorem*
SRF: 0.00 percent *ad valorem*

10. State Government of Maharashtra Subsidies Under the Package Scheme of Incentives 1993 and 2007: Industrial Promotion Subsidy (IPS)⁷⁴

Jindal: 1.93 percent *ad valorem*

11. State and Union Territory Sales Tax Incentive Programs⁷⁵

Jindal: 0.23 percent *ad valorem*
SRF: 0.01 percent *ad valorem*

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

Commerce has made no changes to its preliminary findings with regard to the following programs.⁷⁶ 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
4. Export Oriented Units
5. Focus Market Scheme/Focus Product Scheme
6. Pre- and Post-Shipment Export Financing in Indian Rupees
7. Income Tax Deduction Under Section 80-IA for profit from Industrial Undertakings or Infrastructure Development, etc.
8. Income Tax Deduction on Profits and Gains from Industrial Undertakings or Infrastructure Development (Section 80-IA)

State Programs

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

⁷⁴ See *Preliminary Results 2016*, PDM at 24-26.

⁷⁵ *Id.*, PDM at 26-27.

⁷⁶ *Id.*, PDM at 27-28.

17. Interest Subsidy under Special Textile Package of Industrial Policy (State of Madhya Pradesh)

C. **Programs Determined To Be Terminated**

18. Duty Entitlement Passbook Scheme⁷⁷

X. **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	11.26 percent
SRF Limited	7.54 percent
Chiripal Poly Films Limited	9.40 percent
Ester Industries Limited	9.40 percent
Garware Polyester Ltd.	9.40 percent
Polyplex Corporation Ltd.	9.40 percent
Vacmet India Limited	9.40 percent

XI. **ANALYSIS OF COMMENTS**

Comment 1: Whether Commerce may countervail certain benefits respondents received pursuant to the Merchandise Exports from India Scheme (MEIS)

GOI's Case Brief

- The MEIS provides assistance to exporters to offset infrastructural inefficiencies and associated costs and taxes.⁷⁸
- Under the MEIS, assistance is provided in the form of a refund of prior-stage cumulative indirect taxes levied on inputs consumed in the production of the export product. Hence, the MEIS is in line with the provisions of paragraphs (g) and (h) of Annex I, read with

⁷⁷ 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.

⁷⁸ See GOI Case Brief at 9.

the provisions of Annex II of the SCM Agreement.⁷⁹

- These taxes are mostly incurred on electricity and other fuels consumed in the production of the export product the exporter had to pay, but for which it did not receive any refund from the government.⁸⁰
- MEIS scrips function as a credit note and there is no duty forgone, and the scrip holder only receives a benefit at the time of utilization.⁸¹

Jindal's Case Brief

- For the final results, Commerce should not countervail benefits received for non-subject merchandise and ensure, that the calculation of benefits is consistently applied within its own margin analysis.⁸²
- Jindal identified in its responses the benefits pertaining to subject merchandise, and Commerce should only countervail the benefits utilized in relation to the production and export of subject merchandise.⁸³
- Commerce should apply the same methodology used in determining the benefits for the MEIS, as it applies for the AAS.⁸⁴
- Jindal accurately reported its MEIS benefits related to the production of subject merchandise in its initial response, but Commerce requested Jindal to report all MEIS licenses, whether or not related to subject merchandise, and Jindal fully complied.⁸⁵
- Because Jindal clearly identified the benefit amount for subject merchandise, Commerce should calculate the rate by dividing the benefit amount for subject merchandise by the value of exports of subject merchandise during the POR.⁸⁶

Petitioners' Rebuttal Comments

- The GOI fails to show that the MEIS program is not countervailable under the Act and Commerce's regulations.⁸⁷
- Contrary to the GOI's assertion that there is no revenue forgone at the time of issuance of the scrip, and only at the time of utilization of the scrip for the duties owed, Commerce determined that the scrips provide exemptions for paying duties associated with the imported goods and therefore constitute revenue foregone by the GOI.⁸⁸
- The fact that scrips are freely transferable supports the argument that the benefit is conferred upon receipt of the scrip, regardless of whether it may be utilized later.⁸⁹
- Commerce consistently bases its attribution analysis on the stated purpose of the subsidy at the time of the bestowal, consistent with the *Preamble*.⁹⁰

⁷⁹ *Id.* (citing the SCM Agreement).

⁸⁰ *Id.*

⁸¹ *Id.* at 9-10.

⁸² *See* Jindal Case Brief at 3.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 4.

⁸⁶ *Id.*

⁸⁷ *See* Petitioners Case Brief at 4.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 7 (citing *Countervailing Duties: Final Rule*, 63 FR 65348, 65403 (November 25, 1998) (*Preamble*)).

- With the MEIS, the GOI provides scrips to exporters worth a certain percentage of the free-on-board (FOB) value of exports that can be used as a credit for future import duties or freely transferred.⁹¹
- An AAS license is issued for specified quantities of materials consumed in the production of the export product, whereas the benefit under the MEIS program have to be applied for after the export shipment has been made. That is when the amount is known to the producer/exporter.⁹²

Commerce Position: We agree with the petitioners, and disagree with the GOI, that the GOI failed to demonstrate that the MEIS Program is not countervailable under the Act and Commerce's regulations. The GOI falsely claims that duty credit scrips earned by respondents under this program constitute the remission of prior-stage cumulative indirect taxes as the MEIS assists exporters to offset infrastructural inefficiencies and associated costs and taxes and is, thus, not countervailable to the extent that there is no excess remission. Further, the GOI failed to demonstrate that it has a system and procedures in place to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and that its system or procedure is reasonable and effective.⁹³

Pursuant to section 19 CFR 351.518, prior-stage cumulative indirect taxes are taxes that are levied at each stage of production and distribution without any offset, and the amounts exempted, remitted or deferred upon export must correspond to the prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product, making normal allowances for waste. That is, only exemptions, remissions or deferrals of such taxes in excess of the indirect taxes on inputs that are not consumed in the production of the export product are countervailable.⁹⁴ The supporting documentation to this program, submitted by the GOI, indicates that the duty credit scrips under this program bear no relationship to any cumulative indirect taxes potentially levied on inputs throughout the production of the exported product, but instead, are calculated based on the FOB value received in foreign exchange, for the exported product.⁹⁵ Furthermore, while the respondent Jindal provided a table listing the percent rate for calculating the duty credit scrip by product group and group of countries for Commerce to confirm the reported benefits,⁹⁶ the GOI did not provide any explanation how the percent rate for calculating the duty credit scrip on exports of subject merchandise to the United States was derived for the groups of products and countries. That is, the GOI failed to explain how that particular percent reimbursement/credit on the FOB value received in foreign exchange was determined, or how it relates to any cumulative indirect tax expenses incurred by the Indian producer/exporter due to any prior-stage cumulative indirect taxes paid on the exported product, or how infrastructural inefficiencies are measured and assessed. Accordingly, we find that the GOI does not have a system in place to account for any prior-stage cumulative indirect taxes incurred by Indian producers on inputs for the export product and consider the entire amount of

⁹¹ *Id.*

⁹² *Id.* at 8.

⁹³ See 19 CFR 351.518(a)(4).

⁹⁴ *Id.* at 19 CFR 351.518(a)(1)-(3).

⁹⁵ See GOI January 16, 2018 IQR at 89-96 and Exhibit 24 (Foreign Trade Policy (FTP) 2015-2020, Chapter 3).

⁹⁶ See Jindal January 10, 2018 IQR at 94-96 and Exhibit 89.

the duty credit scrips confer a benefit.

We further agree with the petitioners, and disagree with the GOI and Jindal, that the MEIS scrips function as a credit note and, therefore, there is no duty forgone until the time of utilization, *i.e.*, until the scrip holder receives a benefit in the form of duty free imports of inputs or capital goods, or domestically procured inputs or capital goods.⁹⁷ As Commerce explained in the *Preliminary Results 2016*, Commerce normally calculates the benefit as having been received as of the date of exportation.⁹⁸ In cases where the benefits are granted based on a percentage value of a shipment, however, because the MEIS benefit, *i.e.* the scrip, amount is not automatic and is not known to the exporter until after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.⁹⁹ In addition, the MEIS duty credit scrips are freely transferable,¹⁰⁰ meaning the duty credit script value of the MEIS license, as issued by the GOI, may be sold or donated to another entity for use. Therefore, it is the MEIS license that denotes the date and the final amount of the revenue forgone by the GOI, and the benefit received by respondent is the face value of the license.

Jindal also contends that Commerce should be consistent in its analysis to countervail only benefits under the MEIS related to the production of subject merchandise. However, Jindal reported receiving individual MEIS licenses based on its exports of subject and non-subject merchandise alike, and to more than one country. That is, at the point of bestowal, the GOI granted Jindal these MEIS licenses based on both subject and non-subject merchandise, and accordingly, Jindal's MEIS licenses are not tied.¹⁰¹ Therefore, we continue to calculate Jindal's countervailing duty rate for this program by dividing Jindal's total benefits included in the licenses issued by the GOI during the POR by Jindal's total export sales.

Comment 2: Whether deductions under Sections 32AC, 35(1)(iv), and 35 (2AB) of the Indian Income Tax Act are countervailable subsidies.

SRF's Case Brief

- Deductions under Section 32AC are not countervailable because eligibility is not contingent upon any of the four criteria upon which Commerce bases countervailability.¹⁰²
- The criteria are: (1) whether the company exports or has increased its exports; (2) the use of domestic rather than imported goods; (3) the industry to which the company belongs;

⁹⁷ See GOI January 16, 2018 IQR at Exhibit 24 (Chapter 3 of [FTP & HBP 2015-2020](#) at 3.02 incl. capital goods)

⁹⁸ See 19 CFR 351.519(b)(1);

⁹⁹ See, *e.g.*, *Steel Threaded Rod from India Final*, IDM at Status Holder Incentive Scrip.

¹⁰⁰ See SRF January 16, 2018 IQR at 71 and Exhibit 31; *see also*, Jindal January 10, 2018 IQR at 94-95.

¹⁰¹ We note that the record evidence shows that Jindal received benefits under this program for its exports of subject and non-subject merchandise to several countries. We also note that in the recent case PTFE from India, Commerce determined that MEIS was tied to non-subject merchandise. *See* Polytetrafluoroethylene Resin from India: Final Affirmative Determination, 83 FR 23422 (May 21, 2018) and accompanying Issues and Decision Memorandum (PTFE from India), at 29-30.

¹⁰² See SRF Case Brief at 4-5.

and (4) the region in which the company is located.¹⁰³

- Pursuant to section 771(5A)(D)(iii) of the Act, for domestic subsidies, Commerce must find *de jure* or *de facto* specificity, and as explained in the *Preamble*, the specificity test serves to ensure that subsidies distributed widely throughout the economy are not countervailed.¹⁰⁴
- The SAA explains that the specificity test should not serve as a loophole where discrete segments of an economy could escape the purview of the CVD laws.¹⁰⁵
- Pursuant to the SCM Agreement, generally applicable tax rates set by all levels of government are not specific subsidies, and an allowed deduction on new assets alone is insufficient to determine specificity. Commerce must analyze whether the subsidy is *de jure* or *de facto* limited to certain industries.¹⁰⁶
- The deduction from taxable income under Section 32AC is not specific or limited to certain enterprises, industries, or product, and Commerce should determine it not countervailable.¹⁰⁷
- Deductions under Sections 35(1)(iv) for capital expenditures on business related research and 35(2AB) for expenditures incurred on approved research are not specific to any asset or class of assets nor to any industry or class of industries, and does not meet the specificity criteria, as enumerated above under Section 32AC. The fact that the deductions are allowed on research related expenses is insufficient to determine specificity.
- Capital expenditures for scientific research under Section 35(1)(iv) is available to all industries. Deductions under Section 35(2AB) are available to all industries and articles, and only articles listed on the Eleventh Schedule of the Indian Income Tax Act are excluded.¹⁰⁸
- The only requirement for a company in claiming deductions under Section 35(2AB) is to register as an approved R&D facility, following the prescribed registration procedures.¹⁰⁹
- Commerce must find deductions under 35(1)(iv) and 35(2AB) not countervailable.
- The case record confirms that for 2015-2016, the relevant tax year, Sections 32AC, 35(1)(iv) and 35(2AB) were capped by the MAT for a downward adjustment, ensuring a minimum corporate tax liability of 18.5 percent, plus cess/surcharge on the book profit.¹¹⁰
- Because the MAT income tax paid is higher than the regular income tax liability under Section 32AC, no deduction has been availed. For deductions under Sections 35(1)(iv)

¹⁰³ *Id.* at 5 and 7-8.

¹⁰⁴ *Id.* (citing *Preamble* at 63 FR, 65357).

¹⁰⁵ *Id.* (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 930).

¹⁰⁶ See SRF Case Brief at 5-6 (citing SCM Agreement; *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber*), and accompanying Issues and Decision Memorandum (IDM), and *Certain Steel Nails from Malaysia: Final Negative Countervailing Duty Determination*, 80 FR 28968 (May 20, 2015) (*Steel Nails from Malaysia 2015*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.* at 8.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 9.

and 35(2AB), the MAT tax paid is slightly lower as compared to the regular income tax liability after deduction under those sections.

- Deductions for research under Sections 35(1)(iv) and 35(2AB) were related to divisions producing exclusively non-subject merchandise, and thus, not tied to subject merchandise.¹¹¹

Petitioners' Rebuttal Comments

- SRF's arguments regarding Section 35(2AB) are incorrect because Commerce previously found that income tax deduction to be *de jure* specific, as it is limited to businesses engaged in the bio-technology sector or a business not involved in sectors listed in the eleventh Schedule of the Income Tax Act of 1961.¹¹²
- A subsidy is *de facto specific* if the actual recipients, whether an enterprise or an industry basis, are limited in number, or are predominant user of the subsidy, or receive a disproportionately large amount of the subsidy.¹¹³
- Commerce requested information from the GOI relevant to a *de facto* specificity analysis of income tax deductions under Sections 35(1)(iv), 35(2AB), and 32AC(1A) of the Indian Income Tax Act, including (1) the number of recipient companies and industries; (2) the amount of assistance approved under these programs; and (3) the total number of companies that applied for but were denied assistance under these programs.¹¹⁴
- The GOI refused to provide the requested information, stating that it provided the details with respect to mandatory respondents already, and information on all other companies is *Third Party* information not subject to this investigation, and therefore not relevant to this investigation.¹¹⁵
- Because the GOI refused to provide information necessary for Commerce to make a *de facto* specificity determination, thereby impeding Commerce's investigation, and failed to cooperate to the best of its ability, Commerce should draw an adverse inference, to find the Income Tax Deduction programs are *de factor* specific.¹¹⁶
- Commerce's regulations, at 19 CFR 351.525(b), provide that Commerce will attribute a domestic subsidy to all products sold by a firm, including export products, unless the subsidy is tied to the production or sale of a particular product, then Commerce will attribute the subsidy to only that product.¹¹⁷
- It is Commerce's practice to ground its attribution analysis on the stated purpose of the subsidy at the time of bestowal, however there is insufficient record evidence to determine whether the deductions under Sections 35(1)(iv) and 35(2AB) were tied to the production of non-subject merchandise.¹¹⁸

¹¹¹ *Id.*

¹¹² See Petitioners Case Brief at 9 (citing to *Prelim CDM Tubing*, PDM at 24, affirmed *Final CDM Tubing*, IDM at 13 and Comment 12.

¹¹³ See section 771(5A)(D)(iii) of the Act.

¹¹⁴ See Petitioners Rebuttal Brief at 9.

¹¹⁵ *Id.* at 10 (citing to the GOI's September 5, 2018 Second Supplemental Questionnaire Response (GOI September 5, 2018 SQR2) at 14, 17, 25, 37, and GOI's October 1, 2018 Third Supplemental Questionnaire Response (GOI October 1, 2018 SQR3) at 15, 17, 27, 40).

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 11.

¹¹⁸ *Id.*

- Commerce specifically requested from the GOI to submit a completed program application, but neither the GOI nor SRF submitted such application form on the record of this review.¹¹⁹
- Because the GOI failed to provide the information needed for Commerce to make an attribution determination and failed to cooperate to the best of its ability, Commerce should attribute, based on facts available with an adverse inference, the income tax deductions under Sections 35(1)(iv) and 35(2AB) to all of SRF's domestic sales, and not tied to non-subject merchandise.¹²⁰

Jindal's Post-Preliminary Case Brief

- Commerce should revise its post-preliminary determination and not countervail any deductions claimed by Jindal under Section 32AC(1A).¹²¹
- The tax benefits under Section 32AC(1A) meet none of the criteria for specificity in the Act.¹²²
- The benefit is not provided to a limited industry or enterprise. The benefits are available for any entity that invests more than Rs. 25 Crore.¹²³
- Furthermore, there is not an enterprise or industry that is the predominant user of this subsidy. In fact, "any and all industries can utilize this tax deduction..."¹²⁴
- No particular industry or enterprise receives a disproportionately large amount of this subsidy.¹²⁵
- The fact that the GOI did not provide the relevant information does not automatically create the presumption that the PET film industry receives a disproportional amount of the subsidy.¹²⁶
- The GOI does not instruct companies to report the deduction, nor does it provide instructions on when and how to take the deduction. "Given that the GOI has no direct or indirect discretionary authority in the reporting of the income tax deduction, it stands to reason that it cannot...exercise any preferential or discretionary authority in the grant {sic} of the subsidy."¹²⁷
- Jindal is the company that has to report the tax deduction, and it is the company that determines the amount of the deduction. The GOI has no influence on this.¹²⁸
- Commerce's post-preliminary AFA analysis fails to consider that Jindal has been cooperative and provided all of the requested documentation relating to the operation of the income tax programs to Commerce.¹²⁹

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Jindal Post-Prelim Case Brief at 2.

¹²² *Id.*; see also section 771(5A)(D)(iii) of the Act.

¹²³ See Jindal Post-Prelim Case Brief at 2.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 2-3.

¹²⁷ *Id.* at 3.

¹²⁸ *Id.*

¹²⁹ *Id.* at 4.

- Commerce should not punish Jindal for the GOI's failures. "India is a market economy and just as the GOI has no control over Jindal Poly Films, similarly Jindal Poly Films has no control over the GOI."¹³⁰
- Jindal has not withheld any information from Commerce, and Jindal has not failed to respond to Commerce's questionnaires. Nor has Jindal impeded the proceeding in any manner. As a result, Commerce cannot legally apply AFA.¹³¹

The Petitioners' Post-Prelim Rebuttal Brief

- Jindal acknowledges that there is a lack of record evidence concerning certain statutory factors for specificity, thereby undercutting its own argument.¹³²
- The GOI failed to provide the necessary information for Commerce to make a *de facto* specificity determination, which impeded the proceeding. The GOI failed to cooperate to the best of its ability. Therefore, it was appropriate for Commerce to rely on facts available with an adverse inference to find the Income Tax Deduction under Section 32AC(1A) of the Income Tax Act to be *de facto* specific.¹³³
- The evidence provided by Jindal is not sufficient for Commerce to determine whether Section 32AC(1A) of the Income Tax Act is *de facto* specific.¹³⁴
- Jindal was not asked, nor is it able to provide, the necessary information to determine whether the recipients of the tax deduction "are limited in number, whether an enterprise or industry is a predominant user of the program, or whether an enterprise or industry receives a disproportionately large amount of the subsidy."¹³⁵
- Jindal's argument concerning its cooperation is inapposite. Jindal does not cite to any authority in support of its argument and ignores one of the primary purposes of Commerce's application of facts available with an adverse inference, "an incentive for respondents to cooperate in future segments of a proceeding."¹³⁶
- Commerce requires information from both the government of a respondent country, and the responding producers/exporters. "When a government fails to provide requested information concerning alleged subsidy programs, {Commerce}, in relying on facts available and applying an adverse inference, may find that a countervailable subsidy was conferred because a financial contribution exists under the alleged program and the program is specific."¹³⁷
- Commerce did not rely on facts available, or apply an adverse inference, to punish Jindal, nor did it deprive Jindal of its due process rights in doing so.¹³⁸

¹³⁰ *Id.*

¹³¹ *Id.*; see also section 776(a)(1) and (2) of the Act; see also section 782(c)(1); see also section 782(e) of the Act; see also section 782(i)(C) and (D) of the Act.

¹³² See Petitioners Post-Prelim Rebuttal Brief at 2 (citing Jindal Post-Prelim Case Brief at 2); see also section 771(5A)(D) of the Act.

¹³³ See Petitioners Post-Prelim Rebuttal Brief at 2-3.

¹³⁴ *Id.* at 3; see also section 771(5A)(D)(iii) of the Act.

¹³⁵ See Petitioners Post-Prelim Rebuttal Brief at 3.

¹³⁶ *Id.* at 4; see also, e.g., *Drill Pipe from China*, IDM at 7.

¹³⁷ See Petitioners Post-Prelim Rebuttal Brief at 4; see also *Drill Pipe from China*, IDM at 25.

¹³⁸ See Petitioners Post-Prelim Rebuttal Brief at 5.

Commerce Position: We disagree with Jindal and SRF that Sub-Section 32AC is not countervailable. As discussed above, at “Use of Facts Otherwise Available and Adverse Inferences” and at “Programs to be Determined Countervailable,” we determined that Sub-Section 35(iv) of Section 35 R&D Deductions program and Sub-Section 32AC of Section 32 Capital Investment Deductions program are countervailable. As explained therein, we determined that the GOI provides a financial contribution in the form of revenue forgone.¹³⁹ The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by Jindal and SRF.¹⁴⁰

Further, as noted in the “Use of Facts Otherwise Available and Adverse Inferences” section above, the GOI failed to provide the necessary information regarding the Section 35 R&D Deductions and Section 32 Capital Investment Deductions programs in its responses, and therefore, necessary information is not on the record for evaluating the program on specificity pursuant to section 771(5A)(D) of the Act and 19 CFR 351.502. Accordingly, we are relying on AFA in determining that the income tax deductions under Sub-Section 35(iv) of Section 35 R&D Deductions program and Sub-Section 32AC of Section 32 Capital Investment Deductions are *de facto* specific. Therefore, we determine the above programs countervailable.

We further disagree with SRF that income tax deductions under Sub-Section 35(2AB) of Section 35 R&D Deductions are not countervailable because they are, according to SRF, available to all industries and articles, excluding those listed in the Eleventh Schedule.

With respect to Sub-Section 35(2AB) of Section 35 R&D Deductions, we explained our countervailability determination of this program at “Programs Determined to be Countervailable.” Above we laid out that the GOI provides a financial contribution in the form of revenue forgone by providing tax deductions for company expenses related to scientific research and determined the benefit to be the difference between the amount of income taxes payable absent the program and the actual amount payable.¹⁴¹ Further, in this instance, the GOI provided the information necessary for Commerce to make a specificity determination. Specifically, we determined that the availability of income tax deductions under Sub-Section 35(2AB) is limited pursuant to section 771(5A)(D)(i) of the Act, because it is limited to businesses engaged in the bio-technology sector or a business not involved in sectors listed in the eleventh Schedule of the Income Tax Act of 1961.¹⁴²

Accordingly, any further discussion concerning the specificity of the Sub-Sections 35(iv), 32AC, and 35(2AB), as discussed above, is moot, because the GOI did not make relevant information available on the record of this proceeding for Commerce to analyze and to determine whether the subsidy is *de jure* or *de facto* limited to certain industries.

Finally, we disagree with SRF that deductions for research from the income tax under Sub-Section 35(iv) and Sub-Section 35(2AB) were tied to non-subject merchandise and therefore not

¹³⁹ See section 771(5)(D)(ii) of the Act.

¹⁴⁰ See section 771(5)(E) of the Act.

¹⁴¹ See sections 771(5)(D)(ii) and 771(5)(E) of the Act.

¹⁴² See GOI September 5, 2018 SQR2 at 17-28, and SRF July 23, 2018 SQR1 at 6-8, and Exhibit S1-8(a); *see also Prelim CDM Tubing*, PDM at 24, affirmed *Final CDM Tubing*, IDM at 13 and Comment 12.

tied to subject merchandise, and hence not countervailable.

As we stated above, we determined that the income tax reduction programs constitute domestic subsidies within the meaning of section 771(5A)(D) and 19 CFR 351.509. Further, those direct tax deductions are taken from respondents' income tax filing. Hence, respondent companies as a whole benefit from those deductions and cannot be tied to one particular product per 19 CFR 351.525(b)(5). Accordingly, Commerce's regulations, at 19 CFR 351.525(b)(3), direct Commerce to attribute a domestic subsidy to all products produced by Jindal and SRF.

Last, as the petitioners correctly pointed out, Commerce did not rely on facts available, or apply an adverse inference, to punish Jindal, nor did it deprive Jindal of its due process rights in doing so. Commerce's application of fact available, including the use of adverse inferences, is to select accurate information as a proxy for the missing information, and to be able to complete the review and make a determination where the party requested has not provided information that is necessary for Commerce to make its determination. The use of facts available, including the reliance upon adverse inferences, therefore, is not a punitive application.

Comment 3: Whether Commerce clearly identified which components of duties were included in the benefit calculations of the Export Promotion Capital Goods Scheme (EPCGS).

GOI's Case Brief

- In the *Preliminary Results*,¹⁴³ Commerce did not clearly identify which duties it included in its benefit calculations for the EPCGS, resulting in an erroneous calculation of the benefit in this proceeding, despite the GOI having identified the necessary components in its initial questionnaire response.¹⁴⁴
- The GOI clarified in its response that the benefit calculation should include the basic customs duty, additional customs duty, special additional duty, and educational cess, and not any countervailable duties like countervailing duties levied on the aforementioned duties.¹⁴⁵

Petitioners' Rebuttal Brief

- The GOI's argument is incorrect. As concerns SRF, Commerce determined that SRF did not receive any benefits from this program during the POR. Regarding Jindal, Commerce fully explained the components and properly calculated Jindal's benefit from this program.¹⁴⁶

Commerce Position: We disagree with the GOI that Commerce did not clearly identify the duties included in its benefit calculations for this program, resulting in an erroneous calculation

¹⁴³ See *Preliminary Results 2016*.

¹⁴⁴ See GOI Case Brief at 8-9 (citing GOI's January 16, 2018 Initial Questionnaire Response (GOI January 16, 2018 IQR), and *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying Issues and Decision Memorandum (IDM)).

¹⁴⁵ *Id.*

¹⁴⁶ See Petitioners Rebuttal Brief at 6-7 (citing to Jindal Preliminary Calculation Memorandum 2016 at 3).

of the benefit in this proceeding. With respect to SRF, Commerce determined that respondent did not receive any benefits from the EPCGS during the POR.¹⁴⁷ For Jindal, Commerce clearly identified in its preliminary results calculation memorandum the basic duty, the custom education and custom higher education cess, and the special additional duty non-cenvatable as the duties included in its benefit calculation for Jindal.¹⁴⁸

Comment 4: Whether the GOI has a verification system in place for the Duty Drawback Scheme (DDB) that is effective and reasonable, and whether Commerce is obligated to calculate the “excess remission,” pursuant to the SCM Agreement.

GOI’s Case Brief

- Contrary to Commerce’s determination that the GOI does not have a reasonable and effective system in place that confirms which inputs, and in what amounts, have been consumed in the production of the export-linked product, the GOI has a robust verification mechanism in place.¹⁴⁹
- Commerce has an obligation to be proactive for the calculation of excess remission, and by countervailing the whole amount instead of calculating the excess remission, Commerce erred in applying the fundamental WTO principles.¹⁵⁰
- Rule 3 of the Drawback Rules of 1995, as amended in 2006, and the Customs Manual of 2015 provide for verification procedures and allow for drawback on exported goods at amounts and rates determined by the central government, but is not allowed on goods produced with imported inputs or excisable materials, of which duties or taxes have not been paid.¹⁵¹
- Rule 9 provides for the verification of the class and origin of the inputs used in the production of the exported good, and whether duties or taxes were paid on the inputs or input services.¹⁵²
- Paragraphs 7.5 and 7.7 of Chapter 22 of the Customs Manual allow for special audits and post-export verification regarding duties or taxes paid to confirm no excess payments are made.¹⁵³
- The Appellate Body determined, even in the event that no reliable system for tracking the inputs is in place, the investigating entity still should determine if excess remission occurred.¹⁵⁴

¹⁴⁷ See SRF Preliminary Calculation Memorandum 2016 (*Public Version*) at 8.

¹⁴⁸ See Jindal Preliminary Calculation Memorandum 2016 (*Public Version*) at 3.

¹⁴⁹ See GOI Case Brief at 10-11.

¹⁵⁰ *Id.* (citing Article 1.1(a)(ii) and Panel Report, *EU -PET (Pakistan)*, para 7.56, paragraph (h) and (i) of Annex I, paragraph 2 of Annex II, and footnote 1 of the SCM Agreement).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* (citing Appellate Body, *EU – PET (Pakistan)*, paras 5.135, 5.129, and 5.130).

- The GOI requests Commerce to reconsider its understanding of the program, and its finding that the respondent reported amount granted under the program constitutes excess remission.¹⁵⁵

Petitioners' Rebuttal Brief

- Commerce correctly found that the GOI failed to provide documentation demonstrating that the verification system is reasonable or effective for the purposes intended and, therefore, calculated the benefit on the entire amount of duties rebated during the POR, because the requirements of 19 CFR 351.519(a)(4)(i) and (ii) were not met.¹⁵⁶
- The GOI failed to provide supporting documentation on: (1) how it determined to include PET film in the list of products eligible for DDB; (2) how the DDB rates were derived based on each standard-input-output-norm (SION); (3) whether the existing SIONs for PET film are applied in deriving the DDB rate; and (4) why there are no differences in rates depending on the specific PET film SION in use.¹⁵⁷
- The GOI cites to Rules 3 and 9 of the Drawback Rules of 1995 and Paragraphs 7.5 and 7.7 of the Customs Manual of 2015, however, those do not demonstrate that India has a reasonable and effective system in place for verifying drawback claims.¹⁵⁸
- The GOI fails to cite to any record evidence for its claim that drawback claims are subject to random post-export verification, sampling/testing, or other examination, and failed to address Commerce's arguments for its determination.¹⁵⁹

Commerce Position: We disagree with the GOI and continue to find that the DDB scheme is countervailable. Commerce first determined the DDB scheme countervailable in this proceeding in *Preliminary Results 2013*.¹⁶⁰ Specifically, in the *Preliminary Results 2013*, Commerce found that the GOI had not supported its claim through any reports and corroborating data that it has in place and applies a system by which to confirm which inputs are consumed in the production of the exported products, and in what amounts. Commerce further determined that the GOI did not discuss or provide any documentation from all entities involved in the process of determining the eligibility of PET film for the DDB scheme and derivation of the applied DDB rate(s).¹⁶¹ The GOI also did not demonstrate that its system is reasonable, effective for the purpose intended, and based on India's generally accepted commercial practices.¹⁶² Therefore, Commerce determined that the GOI did not have a system in place that was applied effectively, and

¹⁵⁵ *Id.* at 12.

¹⁵⁶ See Petitioners Rebuttal Brief at 5-6 (citing 19 CFR 351.519(a)(4)).

¹⁵⁷ *Id.* (citing *Preliminary Results 2016*, PDM at 23, and GOI January 16, 2018 IQR at 65-66).

¹⁵⁸ *Id.* at 6.

¹⁵⁹ *Id.*

¹⁶⁰ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 46956 (August 6, 2015) (*Preliminary Results 2013*), and accompanying Preliminary Decision Memorandum (PDM) at 9-11, affirmed in *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 5; see also *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 "Duty Drawback."

¹⁶¹ *Id.*

¹⁶² See 19 CFR 351.519(a)(4), and *Id.*, *Preliminary Results 2013*, PDM at 9-11.

determined the entire amount of any duty drawback received by the respondent countervailable.¹⁶³

Further, as stated in the *Preliminary Results 2016*, Commerce determined in this review that the GOI failed to provide supporting documentation and corroborating information on the following unresolved issues, namely: (1) the basis for the determination to include PET film in the list of products eligible for DDB; (2) the derivation of the DDB rate for each standard-input-output-norm (SION); (3) the role of the existing PET film SIONs in deriving the POR DDB rate; (4) an explanation why the differing production processes requiring multiple SIONs are not reflected in the DDB rates; and (5) the lack of corroborating documentation on the GOI's verification activities concerning respondent(s) exports.¹⁶⁴

As explained in the *Preliminary Results 2016*, Commerce, as in prior segments of this proceeding, asked the GOI to provide all documentation from all entities involved in the process for including PET film and the applied DDB rate(s). Commerce also asked the GOI to include all documentation from the Export Promotion Councils, Trade Associations, and individual exporters, data on procurement prices of inputs (indigenous and imported), applicable duty rates, consumption ratios and FOB values of exports products, as well as corroborating data collected from Central Excise and Customs field formations.¹⁶⁵ However, the GOI provided no such supporting documentation. In addition, Commerce specifically asked the GOI to describe in detail how the SION(s) were applied to derive the DDB rate(s), and to explain why there are no differences in the DDB rates depending on the varying production processes. Instead, as Commerce already explained in the *Preliminary Results 2016*, the GOI response stated that:

The drawback rates are calculated on the basis of the data, pertaining to inputs and input services used in the manufacturing process provided by the different export promotion councils and is duly verified by the statutory auditors. The data is also sought from the Customs, Central Excise and Service Tax Commissioner rates regarding the inputs used, their prices and the duty incidence on the inputs or the input services. Based on these verified data, and any additional statutory or non-statutory data available from the different government departments, the drawback rates are calculated by the drawback Committee. The rates provided to the goods in question represent a broad assessment of unrebated incidence (direct and embedded) of the duties which for ease of implementation are together extended as the drawback rate.¹⁶⁶

Concerning Commerce's inquiry regarding the DDB rates in the context of the existing SIONs, the GOI only confirmed that they are taken into consideration but that the rates are based on an average of the duty incidences in the all industry level, so a common DDB rate is assigned to all exporters.¹⁶⁷

¹⁶³ See *Id.*, *Preliminary Results 2013* at 10-11.

¹⁶⁴ *Id.* (citing *Preliminary Results 2016*, PDM at 23, and GOI January 16, 2018 IQR at 65-66).

¹⁶⁵ See Initial CVD Questionnaire.

¹⁶⁶ See GOI January 16, 2018 IQR at 56-57.

¹⁶⁷ See GOI January 16, 2018 IQR at 57-58.

In addition, Rules 3 and 9 of the Drawback Rules of 1995 and Paragraphs 7.5 and 7.7 of the Customs Manual of 2015, by themselves do not support the GOI's claim that India has a reasonable and effective system in place for verifying drawback claims without any corroborating documentation or evidence. The language itself in Rules 3 and 9 of the Drawback Rules of 1995 and Paragraphs 7.5 and 7.7, Chapter 22, of the Customs Manual of 2015 is vague and does not include requiring the verification of the information. Rule (3)(2) serves as a guideline rather than providing specific measurable criteria for granting drawback on exported goods, and Paragraph 7.5 foresees only checks with respect to special cases, and Paragraph 7.7 addresses a possible mismatch between the shipping bill vs. the drawback detail.¹⁶⁸

In the instant administrative review, the GOI again failed to cite to any record evidence for its claim that drawback claims are subject to random post-export verification, sampling/testing, or other examination, and the GOI failed to address Commerce's above listed concerns for its determination and failed to provide documentation and corroborating evidence to support its claim that its system is reasonable or effective for the purposes intended.¹⁶⁹ Therefore, we continue to find, as we did in the *Preliminary Results 2016*, that the GOI did not have a system in place that is applied effectively, and determine the entire amount of any duty drawback received by the respondent countervailable.

Comment 5: Whether Commerce incorrectly determined the Special Economic Zone (SEZ) program to be contingent on export performance.

GOI's Case Brief

- Commerce mischaracterized the net foreign exchange (NFE) calculation under the SEZ Act, and incorrectly concluded that the SEZ program is contingent upon export performance. This conclusion is utterly flawed. Therefore, the GOI requests that Commerce reverse its findings on the benefit accrued.¹⁷⁰
- The SEZ is akin to a free trade zone, which is considered outside India's customs territory, and thus, there is no revenue "otherwise due." Because of the failure to demonstrate that there is "revenue foregone otherwise due," the conditions under Article 1.1(a)(1) of the SCM Agreement have not been met.¹⁷¹

Petitioners' Rebuttal Brief

- The GOI failed to explain in which way Commerce mischaracterized the net foreign exchange (NFE) calculation, and its argument is contradicted by record evidence.¹⁷²
- Pursuant to Paragraph 7.4 of the EXIM Policy 2002-2007 and per Rule 53 of the SEZ Rules 2006, an SEZ must undertake to export all goods produced, excluding rejects and certain domestic sales, and achieve a positive NFE, calculated cumulatively for a period

¹⁶⁸ See GOI January 16, 2018 IQR at Exhibit 18; see also *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

¹⁶⁹ *Id.*; see also *Shrimp from India* and accompanying IDM at 12-13.

¹⁷⁰ See GOI Case Brief at 12.

¹⁷¹ *Id.*

¹⁷² See Petitioners Rebuttal Brief at 2-3.

of five years from the commencement of production. And, as stated by SRF, “eligibility is contingent upon export.”¹⁷³

- Further record evidence contradicts the GOI’s argument that the SEZ is akin a free trade zone, as the respondent remains contingently liable for import duties until it demonstrates that the export requirement is met.¹⁷⁴

Commerce Position: We disagree with the GOI that the SEZ is akin to a free trade zone to be considered outside India’s customs territory, and continue to find that the uncollected taxes and duties goods, inputs, and services into the SEZ constitute revenue forgone. We further continue to find that the program is contingent upon export performance.

We disagree with the GOI’s assessment that an SEZ is located outside India’s customs territory, and as such the program does not provide a financial contribution. As we stated in *NSR Preliminary Results*,¹⁷⁵ 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.¹⁷⁶ Furthermore, the GOI itself refers to assistance under this program as taxes and duties an eligible company may seek exemption from,¹⁷⁷ suggesting the duties are provisionally applicable until the export requirements are met.¹⁷⁸ 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 Act, 2005” confirm the GOI’s ultimate control, including granting it the power to review any letter of approval for an SEZ.¹⁷⁹

Accordingly, 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.¹⁸⁰ Therefore, Commerce continues to determine pursuant to 19 CFR 351.505(d)(1), that 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.

¹⁷³ *Id.* at 3 (citing *Preliminary Results 2016*, PDM at 11, and SRF January 16, 2018 IQR at 34-35).

¹⁷⁴ *Id.* (citing *Preliminary Results 2016*, PDM at 12-13).

¹⁷⁵ 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).

¹⁷⁶ See GOI January 16, 2018 IQR at 29-34, 36-38, and Exhibit 13, and SRF January 16, 2018 IQR at 34-35).

¹⁷⁷ *Id.* GOI January 16, 2018 IQR at 29.

¹⁷⁸ *Id.* at 29-34, 36-38, and Exhibit 13.

¹⁷⁹ *Id.* at 29-34, 36-38, and Exhibit 13 (Special Economic Zones Act, 2005).

¹⁸⁰ 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.

In addition, we disagree with the GOI that Commerce mischaracterized the net foreign exchange (NFE) calculation under the SEZ Act and incorrectly concluded that the SEZ program is contingent upon export performance. First, the GOI failed to explain, clarify or direct Commerce to documentary evidence on the record of this review demonstrating that the SEZ program is not export contingent. Next, we agree with the petitioners that, pursuant to Rule 53 of the SEZ Rules 2006, an SEZ must undertake to export all goods produced, excluding rejects and certain domestic sales, and achieve a positive NFE, calculated cumulatively for a period of five years from the commencement of production. That is, an SEZ is required to have a certain level of export to earn the prescribed NFE. This is also confirmed by information placed on the record by SRF, namely, that eligibility is contingent upon export.¹⁸¹ Therefore, we continue to find that the SEZ is contingent upon export performance.

Comment 6: Whether the Advance Authorization Scheme (AAS) is a countervailable subsidy, and whether Commerce is obligated to calculate the “excess remission,” pursuant to the SCM Agreement.

GOI’s Case Brief

- The AAS is not countervailable under the SCM Agreement, and Commerce did not clarify whether it has determined the benefit based on the total duty savings or on the excess benefit.¹⁸²
- Commerce violated the SCM Agreement, paragraphs (h) and (i) of Annex I, and Annex II, paragraph 1 of Section I, which allows for the exemption of import charges levied on inputs that are consumed in the production of the exported product, by countervailing the total benefit amount rather than countervailing any import charges in excess of any duty amount levied only.¹⁸³
- The GOI has a system in place for the AAS in accordance with Section II of Annex II, (a-e), accounting for actual wastages through Appendix 4H and verified by an independent Chartered Accountant.¹⁸⁴
- The Foreign Trade Policy (FTP) 2015-2020, paragraph 4.12, and Appendix 4H to the Handbook of Procedures 2015-2020 (HBP) lay out the regulations and procedures for the GOI’s verification requirements under this program¹⁸⁵

Petitioners’ Rebuttal Brief

- The GOI failed to identify any new information or evidence of changed circumstances warranting Commerce to reconsider its determination on the AAS.¹⁸⁶

¹⁸¹ See SRF January 16, 2018 IQR at 34-35 and Exhibit 20(b) (SEZ Rules).

¹⁸² See GOI Case Brief at 12 and 14.

¹⁸³ *Id.* at 13.

¹⁸⁴ *Id.* at 13-14.

¹⁸⁵ *Id.* at 14.

¹⁸⁶ See Petitioners Rebuttal Brief at 1.

- The GOI's arguments, as above, do not address the defects in the system of the AAS program identified by Commerce and form the basis for Commerce consistently finding the program to be countervailable.¹⁸⁷
- Contrary to the GOI's assertion, Commerce clearly explained in Jindal's calculation memorandum how the benefit and its amount was derived for the rate calculation, and whether it was calculated on the "Excess Remission Principle" only.¹⁸⁸

Commerce 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.

In *PET Film Final Results of 2005 Review*,¹⁸⁹ 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.¹⁹⁰ 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.¹⁹¹ 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 apply a procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, making normal allowances for waste.¹⁹² 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

¹⁸⁷ *Id.* at 1-2 (citing *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 Comment 3.

¹⁸⁸ *Id.* at 2 (citing Jindal Preliminary Calculation Memorandum 2016 at 4).

¹⁸⁹ *Id.*

¹⁹⁰ 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.

¹⁹¹ See *PET Film Final Results of 2005 Review*, IDM at "Advance License Program," and Comment 3.

¹⁹² *Id.*

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).

In its initial questionnaire under the program-specific questions, Commerce asked the GOI to report any changes to the nature or operation of the program since it was last reviewed, and if so, to explain those changes and to respond to all relevant appendices.¹⁹³ In its response, the GOI did not report any changes to the program. As a follow-up to confirm there were no changes, Commerce asked the GOI in a supplemental questionnaire whether, since 2005, there were any changes in the implementation of the laws and regulations governing this program, and whether the procedures for devising a SION and/or the SIONs for PET film had been revised.¹⁹⁴ However, in its response, the GOI merely listed and elaborated on the changes examined by Commerce in the 2005 review, and stated that the [FTP 2015-20](#) nomenclature of Appendix 23 has been harmonized with Chapter 4 of the FTP, and is now called Appendix-4H.¹⁹⁵ That is, the GOI did not report any changes to the AAS since Commerce last determined its countervailability. Accordingly, there is no new information on the record of this review for Commerce to reconsider its decision.

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

Furthermore, we disagree with the GOI that Commerce did not explain how the benefit and its amount were derived for the rate calculation, and that it was not discernable whether the benefit was calculated based on the "Excess Remission Principle" only. In Jindal's preliminary calculation memorandum Commerce clearly stated that to calculate the subsidy rate, it first determined the total value of import duties exempted during the POR. Commerce summed these duties payable and subtracted any duties Jindal reported as paid, and divided the remaining benefit by Jindal's total export sales of subject merchandise. Therefore, Commerce fully explained how the benefit and its amount were derived.¹⁹⁶

Comment 7: Whether Commerce used the most recent turnover data reported by SRF in its rate calculations for respondent.

SRF's Case Brief

- SRF states that Commerce used the turnover data submitted on January 16, 2018, rather than the revised turnover data for "total sales" and "total sales of subject merchandise" submitted on July 23, 2018, in its rate calculations for SRF.¹⁹⁷

Commerce Position: We agree with SRF that Commerce inadvertently used the sales data from

¹⁹³ See Commerce Letter re: Countervailing Duty Questionnaire, dated November 27, 2017 (Initial CVD Questionnaire), at II-8.

¹⁹⁴ Department Letter re: First Supplemental Questionnaire for the GOI, dated July 12, 2018 (GOI First SQ) at 1.

¹⁹⁵ See GOI July 26, 2018 SQR1 at 9-10.

¹⁹⁶ See Jindal Preliminary Calculation Memorandum 2016 at 4.

¹⁹⁷ See SRF Case Brief at 4.

SRF's initial data submission, dated January 16, 2018, rather than the revised turnover data for "total sales" and "total sales of subject merchandise" submitted on July 23, 2018, in its rate calculations. However, this error affected the denominator of one particular rate calculation only, State and Union Territory Sales Tax Incentive Program. For these final results, we have revised our rate calculations for SRF accordingly, and used the revised total sales data from SRF as the denominator in our rate calculations for this program.

In addition, in the preliminary results, Commerce failed to use the AUL sales values from the Packaging Film Business (PFB) division submitted by SRF with its July 23, 2018 supplemental questionnaire response to perform the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the SEZ subprogram "Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material." We found that for one year during the AUL, the amount of uncollected CST that was tied to the purchase of capital goods during that year was more than 0.5 percent of total export sales for that respective year. Therefore, we allocated that benefit over SRF's AUL, and included the POR benefit in our POR rate calculations for that program and SRF.

Comment 8: Whether Chiripal was omitted from the list of respondents not selected for individual review

Chiripal's Case Brief

- Commerce initiated a review on Chiripal, and Chiripal did not withdraw its request for a review. However, in the preliminary results of review, Commerce failed to list Chiripal as one of the respondents not selected for individual review. Commerce also failed to include Chiripal in its draft customs instructions.¹⁹⁸

Commerce Position: We agree with Chiripal that Commerce initiated an administrative review on Chiripal, but inadvertently did not list the respondent in the rate table of *Federal Register*¹⁹⁹ notice of the preliminary results with the other companies not selected for individual review. Commerce also failed to include Chiripal in the draft customs instructions released after the preliminary results of review. For these final results, we have included Chiripal as a respondent not selected for individual review in the rate table of the *Federal Register* notice dated concurrently with this IDM. We also intend to specifically include Chiripal in the customs instructions to be issued subsequent to these final results of review.

¹⁹⁸ See Chiripal Case Brief at 2-3.

¹⁹⁹ See *Preliminary Results 2016* at 83 FR, 39679; see also, Memorandum, "Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Comments Filed by Respondent Chiripal Polyfilms Limited," dated October 2, 2018.

XII. 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

3/18/2019

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance