



C-533-825

Administrative Review
POR: 01/01/2017 - 12/31/2017
Public Document
E&C/OVII: EB

March 6, 2020

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

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Countervailing Duty Administrative Review of Polyethylene
Terephthalate Film, Sheet, and Strip from India; 2017

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 (CVD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India.¹ The period of review (POR) is January 1, 2017 through December 31, 2017.

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

II. LIST OF ISSUES

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

Comment 1: Whether Commerce properly determined the appropriate denominator for Jindal Poly Films Limited (Jindal) for all export subsidies.

¹ See *Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review*; 2017, 84 FR 48105 (September 12, 2019) (*Preliminary Results 2017*), and accompanying Preliminary Decision Memorandum (PDM).



- Comment 2:** Whether Commerce properly relied on facts available and an adverse inference to find the Section 32 Capital Investment Deductions of the Income Tax Act, 1961 – Subsection 32AC(1A) program is a countervailable subsidy.
- Comment 3:** Whether Commerce properly found the State Government of Maharashtra (SGOM) Package Scheme of Incentives (PSI) 2007 – Industrial Promotion Subsidy (IPS) to be a countervailable subsidy.
- Comment 4:** Whether Commerce should revise all allocations for all non-recurring subsidies based on Jindal’s revised company-specific average useful life (AUL).
- Comment 5:** Whether Commerce should not countervail export promotion capital goods scheme (EPCGS) Licenses for Jindal’s Global Non-Wovens (GNL) division for non-subject merchandise.
- Comment 6:** Whether Commerce should deduct Jindal’s application fees it paid for its EPCGS licenses from the calculated benefit amounts.
- Comment 7:** Whether Commerce made a calculation error related to the services export from India/services from India (SEIS/SFIS) schemes.
- Comment 8:** Whether Commerce failed to explain the source for the interest rate used in the allocation of the status holder incentive scheme (SHIS).

III. BACKGROUND

On September 12, 2019, Commerce published the *Preliminary Results 2017* and, on September 18, 2019, Commerce issued a second supplemental questionnaire to the Government of India (GOI) concerning certain respondent reported tax programs and transfers of subsidies.³

On October 21, 2019, Commerce issued its Post-Preliminary Determination on certain income tax programs and subsidy transfers.⁴ Jindal submitted a timely filed case brief on November 14, 2019.⁵ The petitioners submitted a timely filed rebuttal brief on November 21, 2019.⁶

IV. CHANGES SINCE THE PRELIMINARY AND POST-PRELIMINARY RESULTS

As a result of our analysis of parties’ comments, we made certain changes to the *Preliminary Results* as discussed 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

³ See Commerce’s Letter, “Second Supplemental Questionnaire for the Government of India,” dated September 18, 2019 (GOI Second SQ).

⁴ See Memorandum, “Post-Preliminary Analysis of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India; 2017,” dated October 21, 2019 (Post-Preliminary Decision Memorandum 2017).

⁵ See Jindal’s Case Brief, “Polyethylene Terephthalate Film, Sheet and Strip from India: Case Brief,” dated November 14, 2019 (Jindal Case Brief).

⁶ See Petitioners’ Rebuttal Brief, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Rebuttal Brief,” dated November 21, 2019 (Petitioners Rebuttal Brief).

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, 2017 through December 31, 2017.

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 2017*. The issues raised by interested parties in case and rebuttal briefs, addressed at Comment 4, would not 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 2017* and accompanying PDM at 4-5.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results 2017* 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 2017* and accompanying PDM at 5-6.⁷

C. Benchmark Interest Rates

Commerce has made no changes to benchmarks or discount rates used in the *Preliminary Results 2017*. Except for Jindal's concerns addressed in Comment 8, 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 2017* and accompanying PDM at 6-7.⁸

⁷ See Memorandum, "Calculations for the 2017 Preliminary Results of Review: Jindal Poly Films Ltd.," dated September 6, 2019 (Jindal Prelim Calc Memo 2017); *see also* Memorandum, "Calculations for the 2017 Preliminary Results of Review: SRF Limited/SRF Limited of India," dated September 6, 2019.

⁸ See *Preliminary Results 2017*.

D. Denominator

Commerce has made no changes to the denominators used in the *Preliminary Results 2017*. Except for Jindal's concerns addressed in Comment 1, 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 2017* and accompanying PDM at 7-8.⁹

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including "adverse facts available" (AFA), for several findings in the Post-Preliminary Results 2017.¹⁰ For these final results, Commerce continues to rely on AFA with respect to the GOI for a specificity finding for the income tax programs and the services export schemes, as well as for a finding of financial contribution regarding the income tax and services export schemes.¹¹

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 Commerce, subject to subsections (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."¹² 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."¹³

⁹ See *Preliminary Results 2017*.

¹⁰ See Post-Preliminary Decision Memorandum 2017.

¹¹ *Id.*

¹² 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); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, (February 23, 1998).

¹³ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 870.

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.”¹⁴ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁵ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁶ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹⁷

Commerce notes that in this administrative review, respondents SRF Limited (SRF) and Jindal Poly Films Limited of India (Jindal) provided full reporting of the benefits received during the POR under the income tax programs and the services export programs discussed below.¹⁸ Commerce further notes, that the GOI did not file a case brief in this segment of the proceeding.

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 the income tax programs and the services export schemes, as well as for a finding of financial contribution regarding the income tax and services export schemes, 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.

In Commerce’s initial questionnaire, we requested that the GOI coordinate with the respondent companies to determine if the companies were reporting participating in 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.¹⁹ In SRF’s and Jindal’s initial questionnaire responses,²⁰ both companies reported participating in the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions

¹⁴ See, e.g., SAA at 870.

¹⁵ See SAA at 870.

¹⁶ See, e.g., SAA at 869.

¹⁷ See SAA at 869-870.

¹⁸ See Jindal’s March 11, 2019 Initial Questionnaire Response (Jindal March 11, 2019 IQR) at 90-99, 104-112, and Exhibits 100, 105-108, and 121; see also SRF’s March 13, 2019 Initial Questionnaire Response (SRF March 13, 2019 IQR) at 82-88 and Exhibit 34(a).

¹⁹ See Commerce’s Letter, “Countervailing Duty Questionnaire,” dated December 19, 2018 (Initial CVD Questionnaire) at II-78, “Other Programs.”

²⁰ See SRF March 13, 2019 IQR at 82-88, Exhibits 26, 33(d)(P1) & (P2), 34(a), and 34(b)(P1) & (P2); see also Jindal March 11, 2019 IQR at 104-112 and Exhibit 121.

programs; however, SRF demonstrated that it received no benefit from these programs.²¹ In addition, Jindal reported that it received benefits from the self-reported programs in the form of transfers of benefits from its cross-owned affiliate, Jindal Films India Limited (JFIL).²²

In this review, despite repeated requests, the GOI failed to respond to our supplemental questionnaires regarding the respondents' 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 these programs in its initial response, as specifically requested by Commerce. Instead, the GOI did not respond at all to Commerce's question on "Other Programs (including other GOI or State Programs not covered above)" in the initial questionnaire.²³

Application of AFA: "Income Tax Deductions under Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961 – Sub-Section 32AC(1A); and Section 35 for Research and Development (R&D) Expenses (Section 35 R&D Tax Deductions) – Subsection 35DD"

In response to Commerce's first supplemental questionnaire requesting a full response regarding these two programs, the GOI provided some supporting documentation on the laws and decrees establishing and governing the tax programs concerned. The GOI also provided partial answers to the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions programs, but 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.²⁴ Specifically, with respect to the Section 32 Capital Investment Deductions program, the GOI responded to Commerce's request to provide the total amount of assistance approved for all companies under the program that:

"The GOI does not maintain centralized consolidated company specific details relating to utilization of individual program. In any case, the participating exporter is providing relevant information, which is open to verification by the DOC."²⁵

Likewise, the GOI consistently provided the same response to Commerce's other questions relating to specificity, *i.e.*, to provide the total number of companies approved for assistance under the program, the total amount of assistance approved for the industry in which the mandatory respondent companies operate, as well as the totals for every other industry in which companies were approved for assistance under this program, and the total number of companies that applied for, but were denied, assistance under this program.²⁶ The GOI's responses to the same questions concerning the Section 35 R&D Tax Deductions program simply referred back to its responses to the two prior questions, C and F, of which F referred back to C. Question C

²¹ See SRF March 13, 2019 IQR at Exhibits 26, 33(d)(P1) & (P2), 34(a), and 34(b)(P1) & (P2).

²² See *Preliminary Results 2017*, PDM at 6.

²³ See GOI's March 20, 2019 Initial Questionnaire Response (GOI March 20, 2019 IQR).

²⁴ See GOI's August 8, 2019 Supplemental Questionnaire Response (GOI August 8, 2019 SQR) at 36-44.

²⁵ *Id.* at 43.

²⁶ *Id.*

pertained to which respondent companies or trading companies exporting subject merchandise to the United States applied for, accrued, or received benefits under the program during the POR. The GOI responded that the details for mandatory respondents are available in the referenced Exhibit 6. The referenced Exhibit 6 consists of an “Office Memorandum” issued by the Ministry of Finance listing the allowable deductions under these programs for respondents.²⁷ The exhibit contains no information on the recipient companies and industry specific information, the total amount of assistance granted, etc., as requested in the Standard Questions Appendix of Commerce’s Initial CVD Questionnaire.

In the second supplemental questionnaire to the GOI, Commerce reiterated its request that the GOI fully respond to the Standard Questions Appendix, the Tax Appendix, as well as any other appropriate appendices attached to the Initial Questionnaire concerning the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions programs. As stated above, a full response with all the industry information is necessary for Commerce’s specificity determination.²⁸ Again, Commerce noted that both SRF and Jindal reported participation in these programs.²⁹ However, the GOI did not to respond at all to Commerce’s second supplemental questionnaire by the deadline, nor did it request an extension of the deadline to respond, or indicate in any other form that it had difficulty in responding to Commerce’s second supplemental questionnaire.

Application of AFA: “Services from India Scheme (SFIS); and Services Export from India Scheme (SEIS).”

In the first supplemental questionnaire, Commerce informed the GOI that one or both respondents reported benefitting from these programs and, therefore, asked the GOI to provide a full narrative response describing the programs and assistance provided, including full responses to the Standard Questions Appendix and to all other relevant appendices. In addition, Commerce requested that the GOI report the purpose and terms of the assistance, the date of receipt, and the amount of the assistance. However, the GOI’s response with respect to the SFIS was that “{n}one of the mandatory respondent companies received assistance under this scheme during the POR and three years prior. Therefore the subsequent questions are not being answered.”³⁰ In response to Commerce’s request concerning the other program, the SEIS, the GOI responded that “{t}he details of the authorizations issued to the mandatory respondents during the POR is attached at Exhibit- 4. However please note that Agreement on subsidies and countervailing measures is only applicable to Goods [sic] and not to the services.”³¹ Exhibit 4 indicates that Jindal received benefits under the SEIS during the POR.³² That is, short of providing some information that Jindal received some benefit under one of the programs, the GOI determined that there was no need to answer the questions.

²⁷ *Id.* at 33-34 and Exhibit S1-6.

²⁸ See Initial CVD Questionnaire at Section II, Standard Questions Appendix.

²⁹ See Commerce’s Letter, “Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India; 2017: Second Supplemental Questionnaire,” dated September 18, 2019 (GOI Second SQ) at 1.

³⁰ See GOI August 8, 2019 SQR at 52.

³¹ *Id.* at 53.

³² *Id.* at Exhibit 4.

In the second supplemental questionnaire, Commerce again informed the GOI that the respondent, *i.e.*, Jindal, identified additional programs, the SFIS and the SEIS, under which it reported receiving benefits from the GOI during the POR, and requested that the GOI provide a full response, including the Standard Appendix and all additional appendices applicable to the programs, that were included in the Initial Questionnaire.³³ As stated above, the GOI did not respond to Commerce's second supplemental questionnaire by the deadline, nor did it request an extension of the deadline to respond or indicate in any other form that it had difficulty in responding to Commerce's second supplemental questionnaire.

In conclusion, Commerce requested the above information for all four programs, the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions programs and the SFIS and the SEIS, because the responses, including 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, neither with respect to the Section 35 R&D Tax Deductions and the Section 32 Capital Investment Deductions programs, nor to the SFIS and the SEIS.³⁴ With the second post-preliminary supplemental questionnaire, Commerce provided the GOI with a third opportunity to respond fully to the requested information, but the GOI failed to do so.

We continue to 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 sections 771(5A)(A) and (D) of the Act. Further, we continue to find that the information requested regarding the services export programs, SFIS and SEIS, is necessary for Commerce's determination of whether a financial contribution within the meaning of section 771(5)(D)(ii) of the Act exists, and whether the programs are specific, pursuant to sections 771(5A)(A) and (B) of the Act. Because the GOI only partially responded to our requests for information with respect to the two tax programs, and not at all to our requests for information with respect to the export of services programs, we have no further basis for evaluating the specificity of all four programs, and no basis for evaluating whether a financial contribution exists for the two export services schemes. Accordingly, in reaching our determination, Commerce has based its determination of specificity for all four programs, and its determination that a financial contribution exists with respect to the two services export schemes, on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) and 771(5)(D)(ii) of the Act, respectively. Moreover, Commerce determines that the GOI

³³ See GOI Second SQ.

³⁴ 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.”

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 the tax 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, as well as the export services programs, even though the Section 35 R&D Tax Deductions program and the Section 32 Capital Investment Deductions programs for some sub-sections, as well as the export services schemes, had been reported in Jindal's and in SRF's initial responses,³⁵ 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. Jindal and SRF provided full reporting on all income tax programs and export services schemes respondents participated in, and an accounting of the benefits they received.³⁶ The GOI had almost ten months to obtain this information from the respective government agencies to Commerce, from December 19, 2018, when Commerce first requested that the GOI provide a full section II response for Jindal and SRF, to September 25, 2019, the date the second supplemental response was due. Commerce issued two supplemental questionnaires specific to those income tax programs and to those export services schemes reported by respondents.³⁷ Commerce granted the GOI two extensions to respond to Commerce's initial questionnaire, and one extension of the first supplemental questionnaire.³⁸ 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 with respect to the tax programs, or to respond at all to the services export schemes.

³⁵ See Jindal March 11, 2019 IQR at 90-99, 104-112, and Exhibits 121-123; see also SRF March 13, 2019 IQR at 75-87 and Exhibits 26, 33(d)(P1) & (P2), 34(a), and 34(b)(P1) & (P2).

³⁶ *Id.*

³⁷ See Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India; 2017: First Supplemental Questionnaire," dated July 25, 2019, at 3; see also GOI Second SQ at 1.

³⁸ Commerce granted the GOI extensions to respond to the initial questionnaire on March 4, 2019, and March 12, 2019, and an extension to respond to the first supplemental questionnaire on July 29, 2019; see Commerce's Letters, "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip (PET film) from India (01/01/2017-12/31/2017): Request for Extension to Respond to the Initial Questionnaire," dated March 4, 2019; "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip (PET film) from India (01/01/2017-12/31/2017): Second Request for Extension to Respond to the Initial Questionnaire," dated March 12, 2019; and "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip (PET film) from India (01/01/2017-12/31/2017): First Request for Extension to Respond to the First Supplemental Questionnaire," dated July 29, 2019.

By failing to respond in full to Commerce’s initial and two supplemental questionnaires specific to the services export schemes and the tax programs reported by the respondents, the GOI withheld the information requested by, and necessary for, Commerce to make a determination on financial contribution and specificity by the deadlines established, and thus, significantly impeded the proceeding, pursuant to 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 regarding the tax programs, 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. In drawing an adverse inference, we find that the “Section 35 R&D Tax Deductions – Sub-section 35DD” and the Section 32 Capital Investment Deductions – Sub-section 32AC(IA)” program, are specific under 771(5A)(D) of the Act, as AFA. Further, when a government fails to provide the requested information concerning certain subsidy programs altogether, such as Jindal’s self-reported SFIS and SEIS subsidy schemes, Commerce, as AFA, typically finds that a financial contribution exists under the program, and that the program is specific. Accordingly, for these final results, absent the requested information and the GOI’s lack of cooperation, we find that a financial contribution exists within the meaning of 771(5)(D)(ii) of the Act, and that the programs are specific pursuant to 771(5A)(A) and (B).

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Export Promotion Capital Goods Scheme (EPCGS)³⁹

In its case brief, Jindal argued that Commerce should not countervail EPCGS licenses for GNL for non-subject merchandise, and Commerce should deduct application fees Jindal paid for its licenses.⁴⁰ As explained in Commerce’s position under Comments 5 and 6, Commerce’s analysis regarding this program remains unchanged from the *Preliminary Results 2017*.

Jindal: 2.40 percent *ad valorem*

2. Status Holder Incentive Scrip (SHIS)⁴¹

Jindal submitted comments in its case brief regarding this program. As explained in Commerce’s position under Comment 8, Commerce’s analysis regarding this program remains unchanged from the *Preliminary Results 2017*.⁴²

Jindal: 0.44 percent *ad valorem*

SRF: 0.09 percent *ad valorem*

³⁹ See *Preliminary Results 2017* PDM at 8-11.

⁴⁰ See Jindal Case Brief at 11-12; and Comment 5 of this memorandum.

⁴¹ See *Preliminary Results 2017* PDM at 11-12.

⁴² See Jindal Case Brief at 5; and Comment 8 of this memorandum.

3. Special Economic Zones (SEZs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs)⁴³

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

SRF: 3.88 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: 0.45 percent *ad valorem*

- c. *Exemption from Stamp Duty of all Transactions and Transfers of Immovable Property within the SEZ (Stamp Duty)***

SRF: No benefit during the POR

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

SRF: 1.01 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)⁴⁴

Jindal: 3.00 percent *ad valorem*

5. Merchandise Export from India Scheme (MEIS) ⁴⁵

Jindal: 1.44 percent *ad valorem*

SRF: 1.34 Percent *ad valorem*

⁴³ See *Preliminary Results 2017 PDM* at 13-19.

⁴⁴ *Id.* at 19-21.

⁴⁵ *Id.* at 21-23.

6. Incremental Exports Incentivization Scheme (IEIS)⁴⁶

SRF: 0.07 percent *ad valorem*

7. Duty Drawback Program (DDB)⁴⁷

SRF: 0.05 percent *ad valorem*

8. Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961⁴⁸

Jindal submitted comments in its case brief, and the petitioners submitted rebuttal briefs regarding this program. The countervailability of this program is also discussed at “Use of Facts Otherwise Available and Adverse Inferences,” and at Comment 2.⁴⁹

Jindal: 0.08 percent *ad valorem*

9. Section 35 R&D Deductions of the Income Tax Act, 1961⁵⁰

Jindal: no benefit during the POR

10. Services from India Scheme (SFIS)⁵¹

Jindal submitted comments in its case brief regarding this program. As explained in Commerce’s position under Comment 7, Commerce’s analysis regarding this program remains unchanged from the *Post-Preliminary Results 2017*.⁵²

Jindal: 0.59 percent *ad valorem*

11. Services Export from India Scheme (SEIS)⁵³

Jindal submitted comments in its case brief regarding this program. As explained in Commerce’s position under Comment 7, Commerce’s analysis regarding this program remains unchanged from the *Post-Preliminary Results 2017*.

Jindal: 0.43 percent *ad valorem*

⁴⁶ *Id.* at 23-24.

⁴⁷ *Id.* at 25-27.

⁴⁸ See Post-Preliminary Decision Memorandum 2017 at 8.

⁴⁹ See Jindal Case Brief at 5-8; *see also* Petitioners Rebuttal Brief at 2-7; and Comment 2 of this memorandum.

⁵⁰ See Post-Preliminary Decision Memorandum at 9.

⁵¹ *Id.* at 9-10.

⁵² See Jindal Case Brief at 12-13; *see also* Post Preliminary Decision Memorandum 2017 at 9-10.

⁵³ See Post-Preliminary Decision Memorandum at 10-11.

12. State Government of Maharashtra Subsidies Under the Package Scheme of Incentives 1993 and 2007: Industrial Promotion Subsidy (IPS)⁵⁴

Jindal submitted comments in its case brief regarding this program. As explained in Commerce's position under Comment 3, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results 2017*.

Jindal: 1.97 percent *ad valorem*

13. State Government of Madhya Pradesh (SGOMP) Industrial Promotion Policy (IPP)⁵⁵

- a) VAT&CST/GST⁵⁶ Assistance
SRF: 0.19 percent *ad valorem*
- b) Entry Tax Exemption
SRF: 0.02 percent *ad valorem*
- c) Electricity Duty Exemption and
- d) Electricity Rate Concession
SRF: 0.12 percent *ad valorem*
- e) Onetime Capital Subsidy
SRF: No benefit during the POR

14. State and Union Territory Sales Tax Incentive Programs⁵⁷

Jindal: 0.16 percent *ad valorem*
SRF: No measurable benefit during the POR

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.⁵⁸ 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

⁵⁴ See *Preliminary Results 2017 PDM* at 27-29.

⁵⁵ *Id.* at 29-31.

⁵⁶ Value-Added Tax (VAT); Central Sales Tax (CST); Goods and Services Tax (GST).

⁵⁷ See *Preliminary Results 2017 PDM* at 32.

⁵⁸ *Id.* at 27-28.

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. Section 80-IA Deductions of the Income Tax Act, 1961 for Enterprises Engaged in Infrastructure Development¹⁹⁹

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

C. Programs Determined To Be Terminated

1. Duty Entitlement Passbook Scheme⁵⁹

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:

Manufacturer/Exporter	Subsidy Rate (percent <i>ad valorem</i>)
Jindal Poly Films Limited of India	10.51
SRF Limited	7.22
Ester Industries Limited	9.30
Garware Polyester Ltd.	9.30
Polyplex Corporation Ltd.	9.30
Vacmet India Limited	9.30

⁵⁹ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2012, 80 FR 11163 (March 2, 2015), and accompanying Issues and Decision Memorandum (IDM) at 23-24. In that decision, Commerce determined the Duty Entitlement Passbook Scheme (DEPS/DEPB) to be terminated.

XI. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce properly determined the appropriate denominator for Jindal for all export subsidies.

Jindal's Case Brief

- Commerce failed to apply a consistent denominator in its rate calculations for the MEIS, EPCGS, SHIS, SEIS, and the SFIS.⁶⁰
- Commerce correctly included deemed exports in its rate calculations for the AAS, but failed to do so for MEIS, EPCGS, SHIS, SEIS, and SFIS.⁶¹
- Commerce should include deemed exports in the denominator for the rate calculations for all the above programs.⁶²
- Jindal claims that Commerce explained that it used a denominator net of deemed exports if the program is tied to export performance, and a denominator of total exports sales if the program is not tied to export performance.⁶³
- All six programs are tied to export performance, and thus Commerce should use the same denominator all, *i.e.*, inclusive of deemed exports.⁶⁴

Petitioners' Rebuttal Comments

- Jindal argues that Commerce should treat the MEIS, EPCGS, SHIS, SEIS, and the SFIS like the AAS and use as a denominator export sales plus deemed exports, because all six programs are effectively tied to export performance.⁶⁵
- Jindal ignores the key distinction between the AAS and the other five programs, as Commerce clearly stated in the PDM, that for export programs for which respondents demonstrated they could fulfill their export obligations with deemed exports, Commerce includes deemed exports in the denominator for its calculations.⁶⁶
- Commerce found that the AAS satisfied the above criterion, and used a denominator inclusive of deemed exports for its rate calculations for that program.⁶⁷
- Jindal fails to explain why the other five programs should be treated the same nor does Jindal point to any evidence demonstrating that exporters can fulfill their export obligations for those programs with deemed exports. Commerce should reject Jindal's argument and not include deemed exports for these programs.⁶⁸

Commerce Position: We disagree with Jindal that Commerce should apply the same denominator to the MEIS, EPCGS, SHIS, SEIS, and the SFIS, as it applied to the AAS. In the *Preliminary Results 2017*, Commerce determined all six programs to be export programs that

⁶⁰ See Jindal Case Brief at 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 3-4.

⁶⁵ See Petitioners Rebuttal Brief at 1.

⁶⁶ *Id.* at 1-2.

⁶⁷ *Id.* at 2.

⁶⁸ *Id.*

were not tied to any one particular product or market, but used Jindal's POR export sales net of deemed exports for all but the AAS in its rate calculations. In response to Commerce's first supplemental questionnaire, Jindal reported the AAS as the only GOI program for which it had deemed exports.⁶⁹

The GOI defines deemed exports as follows:

“Deemed Exports” for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph 7.02 below shall be regarded as “Deemed Exports” provided goods are manufactured in India.⁷⁰

As the GOI has made clear, while export obligations under an export program may be fulfilled by way of deemed exports, at the time of the sale, the good does not leave the country and *de facto* remains a domestic sale. Because Jindal was authorized to and officially claimed deemed exports under the AAS for its fulfillment of its export obligation under this export program, we are including those deemed export sales in the denominator for our rate calculations for that program. As Jindal stated itself, the AAS was the only GOI program where Jindal had deemed exports but it did not identify any of the other five programs listed above. Record evidence provided by Jindal shows that it did not have any deemed exports and could not claim any fulfillment of export obligations for those programs.⁷¹ Accordingly, we cannot attribute those benefits received under those five programs to Jindal's combined export and deemed export sales, pursuant to 19 CFR 351.525(b)(2). Therefore, for these final results, we continue to calculate Jindal's rate for those five export programs by dividing the respective benefit by Jindal's export sales, net of deemed exports.

Comment 2: Whether Commerce properly relied on facts available and an adverse inference to find the Section 32 Capital Investment Deductions of the Income Tax Act, 1961 – Sub-Section 32AC(1A) program is a countervailable subsidy

Jindal's Case Brief

- Jindal objects to Commerce's post-preliminary determination that the capital investment deductions under Section 32AC(1A) are *de facto* countervailable.⁷²
- Because the tax deduction is provided to all businesses investing more than 25 crore,⁷³ benefits under Section 32AC(1A) are not specific, and Commerce should reverse its post-preliminary determination on countervailing the benefits.⁷⁴
- Jindal asserts that none of the four criteria of *de facto* specificity of a subsidy pursuant to 771(5A)(D)(iii) are met with respect to the tax benefit under section 32AC(1A).⁷⁵

⁶⁹ See Jindal August 8, 2019 SQR at 1; see also Jindal March 11, 2019 IQR at Exhibit 12.

⁷⁰ GOI March 20, 2019 IQR at Exhibit D Part 1, (Foreign Trade Policy April 1, 2015 through March 31, 2020 (FTP 2015-2020), Chapter 7.

⁷¹ See Jindal August 8, 2019 SQR at 1.

⁷² See Jindal Case Brief at 5.

⁷³ Note: 25 crore equal 250,000,000 rupees.

⁷⁴ See Jindal Case Brief at 5-6.

⁷⁵ *Id.* at 6.

- (1) any entity investing more than Rs. 25 Crore is eligible for the tax deduction, and is hence not provided to a limited industry or enterprise; (2) there is not an enterprise or industry that is a predominant user of this program; (3) no particular enterprise or industry receives a disproportionately large amount of the subsidy given; and (4) there is no discretion by the GOI to granting the deduction, because the deduction is based on self-disclosure by the claiming enterprise.⁷⁶
- To point (3), the lack of evidence of this factor due to the GOI not providing this information, does not automatically create the presumption that the PET film industry receives a disproportionate amount.⁷⁷
- To point (4), because the GOI does not have direct or indirect discretionary authority over the reporting of income tax deductions, it cannot exercise preferential or discretionary authority of granting the subsidy.⁷⁸
- Commerce's determination unduly and unfairly harms Jindal rather than the GOI, even though Jindal has been cooperative and provided all necessary documentation and information to the operation of this tax program on the record.⁷⁹
- Jindal has no control over an uncooperative GOI, as the GOI has no control over Jindal.⁸⁰
- Jindal did not fail to respond to Commerce's questionnaires within the established deadlines pertaining to those tax programs, and did not withhold information. Neither did Jindal significantly impede the proceeding nor failed to provide information that cannot be verified.⁸¹
- Thus, sections 776(a)(1) and (2), 782(c)(1) and (e) do not apply to Jindal, and accordingly, Commerce should not continue finding section 32 AC(1A) is *de facto* countervailable to Jindal Poly Films.⁸²

Petitioners' Rebuttal Comments

- Commerce requested from the GOI for its *de facto* specificity analysis pursuant to section 771(5A)(D)(iii) of the Act: (1) the total number of recipient companies and industries; (2) the total amount of assistance approved under these programs; and (3) the total number of companies that applied for but were denied assistance under these programs.⁸³
- As Commerce stated in the post-preliminary decision memorandum, the GOI declared that it does not maintain centralized consolidated company specific details relating to the utilization of the individual program, and that the participating exporter is providing the information.⁸⁴
- The GOI also refused to provide: (1) the total number of companies approved for assistance under the program; (2) the total amount of assistance approved for the industry respondents are operating in; (3) the totals for every other industry in which companies

⁷⁶ *Id.* at 6-7.

⁷⁷ *Id.* at 6.

⁷⁸ *Id.* at 7.

⁷⁹ *Id.*

⁸⁰ *Id.* at 8.

⁸¹ *Id.*

⁸² *Id.*

⁸³ See Petitioners Rebuttal Brief at 3.

⁸⁴ *Id.* (citing Post-Preliminary Decision Memorandum 2017).

were approved for assistance under this program; and (4) the total number of companies that had applied for, but were denied assistance under the program.⁸⁵

- Commerce provided the GOI with a second opportunity but the GOI refused to respond, leaving Commerce no choice but to make a determination pursuant to sections 776(a) and (b) of the Act with an adverse inference.⁸⁶
- Jindal's arguments are unsupported by record evidence and contradicted by the statute. When a government fails to provide the necessary information and to cooperate to the best of its ability, Commerce may rely on facts available with an adverse inference, pursuant to section 776(a) and (b) of the Act.⁸⁷
- There was neither a presumption that the PET film industry receives a disproportionate amount of the subsidy, nor that there is an industry that is the predominant user of the program.⁸⁸
- It was the lack of certain information on the record, and information that Jindal was neither asked for, nor would have been able to provide to Commerce. This information was missing because the GOI failed to provide it.⁸⁹
- Jindal cites to no authority for its assertion regarding due process, and that it is unfairly punished for the GOI's failure to respond, and additionally, ignores that Commerce requires information from the respective government in CVD proceedings.⁹⁰
- Jindal also ignores the fact that an adverse inference is to provide an incentive for respondents to cooperate in future segments of a proceeding.
- Due to the GOI's failure to respond, Commerce relied on facts available and an adverse inference to determine the program is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act, and not to "punish" Jindal, nor did Commerce deprive Jindal of due process in doing so.⁹¹

Commerce Position: We disagree with Jindal 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 32AC of Section 32 Capital Investment Deductions program is countervailable. As explained therein, we determined that the GOI provides a financial contribution in the form of revenue forgone.⁹² The benefit equals the difference between the amount of income taxes that would be paid absent this program and the actual amount of taxes paid by Jindal.⁹³

Further, we disagree with Jindal's assertion that none of the four criteria of *de facto* specificity of a subsidy pursuant to 771(5A)(D)(iii) are met with respect to the tax benefit under section 32AC(1A), and that Commerce's finding is based on the presumption that the PET film industry receives a disproportionate amount of the subsidy, or that there is an industry that is the predominant user of the program. That is, for its *de facto* specificity analysis pursuant to section

⁸⁵ *Id.* at 3-4.

⁸⁶ *Id.* at 4.

⁸⁷ *Id.*

⁸⁸ *Id.* at 4-5.

⁸⁹ *Id.* at 5.

⁹⁰ *Id.* at 6.

⁹¹ *Id.* at 6-7.

⁹² See section 771(5)(D)(ii) of the Act.

⁹³ See section 771(5)(E) of the Act.

771(5A)(D)(iii) of the Act, Commerce requested that the GOI provide: (1) the total number of recipient companies and industries; (2) the total amount of assistance approved under these programs; and (3) the total number of companies that applied for but were denied assistance under these programs on multiple occasions, but the GOI decided to withhold that information from Commerce. 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 32 Capital Investment Deductions program 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. Therefore, we are relying on AFA in determining that the income tax deductions under Sub-Section 32AC of Section 32 Capital Investment Deductions are *de facto* specific. Accordingly, we determine the above program countervailable.

As such, any further discussion concerning the specificity of the Sub-Section 32AC program is moot, because the GOI did not make the necessary 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 businesses or industries.

As we stated above, we determined that the income tax reduction program constitutes a domestic subsidy within the meaning of section 771(5A)(D) and 19 CFR 351.509. Further, that direct tax deduction is taken from respondent’s income tax filing, and hence, Jindal as a whole benefits from the deduction, and it cannot be tied to one particular product pursuant to 19 CFR 351.525(b)(5). Commerce’s regulations, at 19 CFR 351.525(b)(3), direct Commerce to attribute a domestic subsidy to all products produced by Jindal, which we have done in this administrative review.

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 did use the information provided by Jindal on the record of this review in its benefit calculations for this program. Commerce’s application of facts available, including the use of adverse inferences, with respect to its countervailability determination for this program, applied to the GOI and its failure to fully respond to Commerce’s questionnaires. Commerce resorts to applying facts available with an adverse inference only 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 properly found the SGOM PSI 2007 – IPS to be a countervailable subsidy

Jindal’s Case Brief

- Commerce wrongly found Jindal’s refunds the value-added tax (VAT) and the central sales tax (CST) under the IPS of the SGOM PSI countervailable. The key premise for Commerce’s determination is the fact that it has previously found the program countervailable.⁹⁴

⁹⁴ See Jindal Case Brief at 9.

- Commerce limited its specificity analysis within the meaning of section 771(5A)(D)(iv) of this program to excerpts from prior cases. However, because the sales tax refunds received by Jindal are tied to the Indian domestic market, and not the United States market, these refunds cannot be countervailable with respect to Jindal.⁹⁵
- Commerce regulations state that a program is not countervailable where the benefit from it is tied to a market other than the United States pursuant to 19 CFR 351.525(b)(4).⁹⁶
- Because the refunds of the VAT and CST are based on sales in the Indian market only, the benefits received are attributable to that particular market only. Jindal does not receive such benefits on sales to other markets.⁹⁷
- There is no discussion in the regulations that the domestic market cannot be a particular market, and the IPS is not a generic subsidy. Commerce's preliminary results err by not discussing or explaining the linkage between the basic categorization and the treatment of the subsidy for its analysis.⁹⁸
- Commerce cannot apply 19 CFR 351.510(a) or 19 CFR 351.509(a) without first determining that a benefit exists, as those sections only provide for the measurement of the benefit, and not for its existence.
- Commerce failed to analyze the program first pursuant to 19 CFR 351.525, from which it would arrive at the conclusion that the SGOM programs are not countervailable.⁹⁹

Petitioners' Rebuttal Comments

- Jindal's assertion that Commerce found the program to be countervailable only because it previously found it countervailable is incorrect.¹⁰⁰
- Commerce stated in the *Preliminary Results* that the IPS, which is part of the SGOM's PSI 2007, provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act, and that Jindal reported being eligible by meeting the investment requirement of a mega project.¹⁰¹
- Jindal further stated that it was allowed to choose among benefits to receive due to the size of its investment, and selected the exemption from the state VAT and CST payments.¹⁰²
- Commerce found that the remission of VAT and CST under the program provided a benefit pursuant to 19 CFR 351.510(a), and is specific pursuant to section 771(5A)(D)(iv) of the Act because it is limited to certain geographic regions within the state, and thus, provided a reasoned countervailability analysis of the program.¹⁰³

⁹⁵ See Jindal Case Brief at 9.

⁹⁶ See Jindal Case Brief at 9-10 (citing 19 CFR 351.525(a)).

⁹⁷ See Jindal Case Brief at 10.

⁹⁸ See Jindal Case Brief at 10-11.

⁹⁹ See Jindal Case Brief at 11.

¹⁰⁰ See Petitioners Rebuttal Brief at 7.

¹⁰¹ See Petitioners Rebuttal Brief at 7.

¹⁰² See Petitioners Rebuttal Brief at 7-8.

¹⁰³ See Petitioners Rebuttal Brief at 8 (citing *Preliminary Results 2017*, PDM at 27-29).

- Jindal conflates countervailability with attribution of a subsidy tied to sales to a particular market pursuant to 19 CFR 351.525(b)(4). Whether tied to a particular market or not does not alter the fact that the program is a countervailable subsidy.¹⁰⁴
- Jindal fails to demonstrate that the subsidy is tied to a particular market. Commerce’s analysis focuses on the basis for granting assistance at the time of bestowal, not the mechanism for delivering that assistance or the purpose for which the recipient uses it.¹⁰⁵
- Commerce concluded in *PET Film Final Results of 2014 Review* that the IPS program and benefit are not contingent or tied to sales of a particular product in a particular market, and that Jindal is eligible to receive a benefit because it invested at a certain level in manufacturing facilities in a designated area with the state.¹⁰⁶

Commerce Position We disagree with Jindal that Commerce in this administrative review relied on its countervailability determination from a prior review rather than providing a full analysis thereof in this segment of the proceeding. As Commerce clearly stated in the *Preliminary Results 2017*, the VAT and CST refunds under the IPS, which is part of the SGOM PSI, constitute a financial contribution in the form of revenue forgone by the SGOM, within the meaning of 771(5)(D)(ii) of the Act.¹⁰⁷ Further, based on record information Commerce determined that the refund of the VAT and CST due that Jindal was allowed to select based on the size of its investment in the specified geographic area as a mega project, provides a benefit under 19 CFR 351.510(a) (the refunded output VAT is only collected on domestic sales) and the remission of CST otherwise due provides a benefit under 19 CFR 351.510(a).¹⁰⁸ Pursuant to section 771(5A)(D)(iv) of the Act, the program is specific because it is limited to certain geographical regions within the state of Maharashtra.¹⁰⁹

We further disagree with Jindal’s argument that this program is not countervailable based on the mode of the benefits received by Jindal. As discussed in detail in the *Preliminary Results 2017*, the SGOM devised the PSI to promote economic development in certain underdeveloped regions of the State of Maharashtra.¹¹⁰ Further, Jindal reported that it participated in the PSI under the provisions for “mega projects,” and specifically the IPS under this program.¹¹¹ Under the mega project provisions, Jindal was offered different options for drawing a benefit within a period of seven years from the date of commencement of commercial production. The annual amount of the benefit is determined by SGOM each year through an annual application. Because its project in Maharashtra meets the criteria of a “mega project,” Jindal was allowed to propose the means through which it would receive its benefits. It opted for exemption/refund of state VAT and CST

¹⁰⁴ See Petitioners Rebuttal Brief at 8.

¹⁰⁵ See Petitioners Rebuttal Brief at 8-9 (citing *Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of countervailing duty Administrative Review; 2014*, 81 FR 89056 (December 9, 2016) (*PET Film Final Results of 2014 Review*), and accompanying IDM at 11).

¹⁰⁶ See Petitioners Rebuttal Brief at 9.

¹⁰⁷ See *Preliminary Results 2017*, PDM at 28.

¹⁰⁸ See *Preliminary Results 2017*, PDM at 29.

¹⁰⁹ See *Preliminary Results 2017*, PDM at 29.

¹¹⁰ See *Preliminary Results 2017*, PDM at 29 (citing GOI March 20, 2019 IQR at 94-101 and Exhibit P; GOI August 8, 2019 SQR1 at 54-58 and Exhibits 11 and 12).

¹¹¹ See Jindal March 11, 2019 IQR at 77-81 and Exhibit 89.

payments.¹¹² Thus, the amount of the benefit determined each year is based on amount of exempted/refunded state VAT and CST for Jindal payable for that year.

The incentives the PSI provides are offered to industries with the objective to promote economic development and increase employment in designated regions through investments in plant and machinery, and furthermore there is no information on the record to indicate the subsidy is tied to a particular market or product.¹¹³

As Jindal opted to receive its benefits under the PSI through the VAT and the CST reimbursement mechanism, to be applied annually for seven years and capped by the level of its additional investment as a mega project, the yearly level of benefits is, according to Jindal, dependent on Jindal's sales of the final product in the Indian market. However, the basis of the SGOM's approval of benefits under the PSI, and specifically the IPS, was Jindal's additional level of investment in its production facility located in the SGOM designated region; receipt of benefits was not contingent on the sales of a particular product or sales to a particular market. Moreover, based on the record evidence, we cannot find any indication that would lead us to determine that the subsidy is tied to a particular market within the meaning of 19 CFR 351.525(b)(4) and therefore, consistent with our attribution methodology, the subsidy is attributable to Jindal's total sales within the meaning of 19 CFR 351.525(b)(3).

Our analysis of whether benefits are tied to a particular region or market must focus on the basis for granting assistance at the time of bestowal, not the mechanism for delivering that assistance or what Jindal used the funds for. As noted in the *Preliminary Results 2017*, the objective of this program and Jindal's eligibility for the IPS are founded on its willingness to invest at a certain level in manufacturing facilities in a designated area within the state.¹¹⁴ Jindal chose VAT and CST reimbursements as the mechanism for receiving its benefits under this program, but the funds Jindal received under the IPS were not tied at the time of the bestowal of the subsidy to sales of a particular product or to a particular market.¹¹⁵ Thus, Jindal's claim that the benefit is tied to a particular market, *i.e.*, the Indian market, because none of the benefit was earned on sales other than the domestic market, is not supported by record information and without merit.

Therefore, we continue to find that the benefits under this program are not tied to a particular market as provided in 19 CFR 351.525(b)(4). Instead, we determine that the VAT and CST refunds constitute domestic subsidies, and as such, their benefits are attributable to Jindal's total sales, in accordance with 19 CFR 351.525(b)(3).

¹¹² See Jindal March 11, 2019 IQR at 77-85; see also GOI March 20, 2019 IQR at Exhibit P.

¹¹³ See GOI March 20, 2019 IQR at 94 and 97-99.

¹¹⁴ See *Preliminary Results 2017*, PDM at 28-29.

¹¹⁵ See *Preliminary Results 2017*, PDM at 27-29

Comment 4: Whether Commerce should revise all allocations for all non-recurring subsidies based on Jindal's revised company-specific AUL

Jindal's Case Brief

- Commerce stated in the *Preliminary Results* that Jindal's company-specific AUL of 17 years for all grants and assets received through the 2016 POR no longer reflects the AUL of Jindal's renewable physical assets.¹¹⁶
- Effective POR 2017, Commerce accepted Jindal's AUL calculation and preliminarily determined going forward, Jindal's AUL to be 23 years.¹¹⁷
- Jindal asks that Commerce apply the new AUL retroactively for all programs, for which the benefits are allocated over the AUL period, *i.e.*, the EPCGS and the SHIS.¹¹⁸

Petitioners' Rebuttal Comments

The petitioners provided no comments on this issue.

Commerce Position: We disagree with Jindal that Commerce should revise the allocations for all of Jindal's non-recurring subsidies received and allocated prior to this POR based on Jindal's company-specific AUL revised in the instant POR. It is Commerce's practice, as established in *Phosphoric Acid from Israel*,¹¹⁹ not to reallocate benefits and thus, the existing subsidy rates calculated in prior administrative reviews. As in the instant case, it would not be sensible for Jindal's non-recurring subsidies that have already been countervailed based on Jindal's original company-specific AUL of 17 years established in its first review under the order to reallocate based on the revised AUL determined in this POR, because it affects rates applied before and after the review by way of the assessment rates for entries made in prior segments, and the cash deposit rates for prospective entries of subject merchandise. As Commerce explained in *Phosphoric Acid from Israel*,

“{s}ince the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segment of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over-or under-countervailing the actual benefit.”¹²⁰

Re-allocating all of Jindal's non-recurring subsidies received and already allocated prior and up to the instant 2017 review would not be practicable, as it would distort the rates calculated since Jindal's first review in 2003,¹²¹ and further render Jindal's previous assessment rates inaccurate. Therefore, we are following Commerce's practice in *Phosphoric Acid from Israel* and continue

¹¹⁶ See Jindal Case Brief at 2.

¹¹⁷ See Jindal Case Brief at 2.

¹¹⁸ See Jindal Case Brief at 2-3.

¹¹⁹ See *Industrial Phosphoric Acid from Israel: final Results of Countervailing Duty Administrative Review*, 64 FR 2879 (January 19, 1999) (*Phosphoric Acid from Israel*).

¹²⁰ See *Phosphoric Acid from Israel* at 64 FR 2879, 2880.

¹²¹ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003 Review*), and accompanying IDM at Subsidies Valuation Information.

to apply the allocation period assigned previously to each non-recurring subsidy Jindal received prior to the instant POR.

Comment 5: Whether Commerce should not countervail export promotion capital goods scheme (EPCGS) Licenses for Jindal’s Global Non-Wovens (GNL) division for non-subject merchandise.

Jindal’s Case Brief

- Commerce should not countervail the EPCGS licenses of Jindal’s GNL division that is producing non-subject merchandise only, products not covered under the scope of the CVD orders on PET film from India, and its capital goods are not shared with Jindal’s PET film facilities.¹²²
- The sample licenses provided show that those are non-transferable and therefore, Commerce should not countervail those licenses.¹²³

Petitioners’ Rebuttal Comments

The petitioners provided no comments on this issue.

Commerce Position: We disagree with Jindal that Commerce should not have included the benefits Jindal received through EPCGS licenses of its GNL division because it produces non-subject merchandise. As Commerce stated in the *Preliminary Results 2017*, Jindal reported that it received various EPCGS licenses bestowed on subject merchandise or non-subject merchandise; however, upon close examination of the source documents, Commerce determined that some of the licenses were issued for the purchase of capital goods and materials that could be used in the production of both subject and non-subject merchandise. As a result, Commerce found that, “{b}ased on the information and documentation submitted by Jindal, we cannot reliably determine that at the time of bestowal of the various licenses which of those EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5),”¹²⁴ and therefore concluded that all of Jindal’s EPCGS licenses benefit all of Jindal’s exports. Whether the EPCGS licenses Jindal holds for the GNL division are proven to be eventually used on non-subject merchandise becomes immaterial at this point with regard to Commerce’s attribution methodology. Commerce already determined that it cannot tie some of Jindal’s other EPCGS licenses to one particular product, irrelevant of actual usage, and accordingly, found that all licenses benefit all of Jindal’s exports of subject and non-subject merchandise. Further, no interested party commented on Commerce’s findings regarding the attribution of the subsidy in the preliminary results. Therefore, we continue to determine that all of Jindal’s EPCGS licenses benefit all of Jindal’s exports within the meaning of 19 CFR 351.525, including Jindal’s licenses obtained for the GNL division.

¹²² See Jindal Case Brief at 12.

¹²³ *Id.*

¹²⁴ See *Preliminary Results 2017* PDM at 9-11.

Comment 6: Whether Commerce should deduct Jindal’s application fees it paid for its EPCGS licenses from the calculated benefit amounts.

Jindal’s Case Brief

- Commerce must account for the application fees paid by Jindal for the EPCGS license by deducting those fees from the benefit in the numerator of the rate calculations.¹²⁵
- Commerce stated in the 2015 review of this proceeding that the benefit for the EPCGS is the amount of duties waived net of the required application fees, as applicable.¹²⁶
- Commerce deviated from this methodology in the instant review without explanation. Commerce’s calculation memo indicates that the application fees should be subtracted from the benefit.¹²⁷
- It appears from the calculations released with the *Preliminary Results 2017* “that the application fees were in fact included and not deducted from the benefit calculation.” Commerce should correct this error to ensure consistency with prior reviews.¹²⁸

Petitioners’ Rebuttal Comments

The petitioners provided no comments on this issue.

Commerce Position: We disagree with Jindal that Commerce deviated from its practice, as stated in the 2015 review of this proceeding, and failed to deduct application fees Jindal paid for its EPCGS licenses. Section 771(6)(A) of the Act states that “the administering authority may subtract from the gross countervailable subsidy the amount of any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy, ...”¹²⁹ Accordingly, Commerce usually recognizes application fees, and the like, as an expense respondent has to pay at the time of application to obtain a license under certain subsidy programs, by reducing a respondent’s benefit in the amount of such fees paid. However, those fees constitute a one-time expense incurred by respondent at the time of application or receipt of the license. Because the application or license fee is not a recurring expense for a particular license, the respondent has to pay the fee only once. Therefore, Commerce is offsetting the benefit received by the amount of the application or license fee paid by respondent once only, namely, at the time the license was first reported received in the response.

As Commerce stated in the preliminary calculation memorandum of this review,¹³⁰ and as cited to by Jindal, “{w}e subtracted the sum of duties Jindal reported paid and application fees from the duties Jindal reported due in the current POR.”¹³¹ However, as explained there, and also in the 2015 review, Commerce added the footnote in the preliminary calculation memorandum of

¹²⁵ See Jindal Case Brief at 4.

¹²⁶ *Id.* (citing *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 36124 (August 3, 2017) (*Preliminary Results of 2015 Review*), and accompanying PDM at 7-8, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India*, 83 FR 5612 (February 8, 2018)).

¹²⁷ See Jindal Case Brief at 4-5 (citing Jindal Prelim Calc Memo 2017 at 3).

¹²⁸ See Jindal Case Brief at 5.

¹²⁹ See Section 771(6)(A).

¹³⁰ See Jindal Prelim Calc Memo 2017 at 3.

¹³¹ See Jindal Prelim Calc Memo 2017 at 3.

this review, stating “{w}e note that, in the EPCGS benefit calculation, we only allocated the fees that were paid after the most recently completed review. Therefore, only fees paid during the 2017 POR were included in our calculations, if applicable, for the EPCGS.”¹³² That is, Commerce neither deviated from nor was inconsistent with its established methodology by not subtracting fees reported by Jindal for certain EPCGS licenses previously reported from the numerator. Specifically, Commerce only subtracted a reported application or license fee from the benefit received during the POR, when the license at issue was newly obtained by Jindal. Any one-time application or license fees reported incurred in prior reviews for licenses held by Jindal would already have been accounted for in one of those reviews.

Jindal did not report any application or license fees paid for any of its EPCGS licenses newly reported during this POR.¹³³ Accordingly, Commerce did not grant any offsets within the meaning of Section 771(6)(A) of the Act to the benefits Jindal received under those EPCGS licenses. In addition, we are correcting a ministerial error Commerce made with respect to its benefit and allocation calculations for two licenses, for which the GOI granted a waiver of the import duties due for the import of capital goods duty free. Specifically, for the benefit calculation of those licenses, Commerce inadvertently again subtracted application fees from the benefit Jindal received. For these final results, we are correcting this error by not subtracting those application fees from the calculated benefit received.

Comment 7: Whether Commerce made a calculation error related to the services export from India/services from India (SEIS/SFIS) schemes.

Jindal’s Case Brief

- The numerator for Commerce’s rate calculations for the SEIS and the SFIS was based on the incorrect license value, namely, Commerce accounted for the full license value minus fees paid to JFIL for the SFIS, and the full license value for the SEIS, failing to deduct the fees Jindal paid to JFIL.¹³⁴
- Commerce should use the amount Jindal actually saved in duties when utilizing the licenses for the SFIS and the SEIS, as reported in Exhibits 109 and 114, IQR, rather than the license face value.¹³⁵
- Jindal notes that the benefit received by Jindal pursuant to the SFIS license is for non-subject merchandise and should not be countervailed.¹³⁶ Thus, Commerce should only countervail Jindal’s benefits received und the SEIS program.¹³⁷

Petitioners’ Rebuttal Comments

The petitioners provided no comments on this issue.

¹³² See Jindal Prelim Calc Memo 2017 at 3.

¹³³ See Jindal March 11, 2019 IQR at Exhibit 26-27.

¹³⁴ See Jindal Case Brief at 12.

¹³⁵ See Jindal Case Brief at 12-13.

¹³⁶ See Jindal Case Brief at 13.

¹³⁷ See Jindal Case Brief at 13.

Commerce Position: We disagree with Jindal that Commerce treated the SFIS and the SEIS inconsistently by applying the fees Jindal paid to JFIL for the SFIS license(s), but did not to the face value of the SEIS license(s). Jindal provided for both types of licenses in its initial and supplemental questionnaire responses, among other documents, copies of an “Authorisation Forwarding Letter” issued by the GOI to JFIL for the respective license (s), the SFIS/SEIS license(s), a tax invoice issued by JFIL to Jindal for the licenses, and a SAP system booking entry for the licenses.¹³⁸ As an initial matter, and as stated in Commerce’s Post-Preliminary Determination,¹³⁹ we note that the documentation did not, however, provide any explanations or interpretations to the information on the documents provided, nor did Jindal submit any supporting information for its claim of market value or show any actual payments and bank statements to and from its affiliate. In addition, the tax invoices from JFIL to Jindal for the licenses, *e.g.*, include a rate per piece, but Jindal provided no explanation how this rate was arrived at and how it relates to the amount on the invoiced. It also bears no relationship to the type of license, as the rate found therein is applied to both types of licenses, SFIS and SEIS, whereas the rate varies within the same type of license over time.¹⁴⁰ The SAP booking entry documents are inconsistent in content with the information they provide on the screen shots, and while a plurality of those SAP booking entries appear to be from Jindal’s SAP accounting system, others appear to be taken from JFIL’s SAP accounting system, as also reflected in the differing account numbers for similar types of transactions,¹⁴¹ calling into question the reliability of any of the accounting entries provided. Furthermore, based on the documents provided, JFIL invoiced Jindal for a license the beginning of this POR, but the SAP booking entry reflects a booking and posting date in Jindal’s accounting system of more than one year later.

With respect to Commerce’s application of fees, the SAP system print-outs for the SFIS license(s) describe a “purchase” booking entry by JFIL of the license(s) at a value below the face value of the license(s), whereas the SAP booking entry(ies) for the SEIS license(s) do not provide any description at all of the transaction at hand, short of identifying the type of license received by and identifying the names of both parties to the transaction. However, for the SEIS, the transaction shown is over the total amount of face value of the license(s) plus VAT. In other words, the SAP bookings for the SEIS license(s) placed on the record by Jindal likens a plain transfer of the licenses from JFIL to Jindal, rather than “a purchase” transaction, not deserving any adjustment to the face value of the license(s).

Jindal also contends that Commerce should only include the amount of duties actually saved in the numerator of its rate calculations when importing under the license during the POR. As Commerce clearly laid out in its countervailability determinations of these programs in the Post-Preliminary Decision Memorandum 2017,¹⁴² because in this scheme, the benefit is calculated based on foreign exchange earnings, we determine that the license, which contains the date of validity and the amount of duty exemption, as issued by the GOI, is the best method for determining the benefit.¹⁴³ The license amount is the amount of revenue forgone by the GOI,

¹³⁸ See Jindal March 11, 2019 IQR at Exhibits 106-107 and 113; *see also* Jindal August 8, 2019 SQR1 at Exhibit127.

¹³⁹ See Post-Preliminary Decision Memorandum 2017 at 10-11.

¹⁴⁰ See Jindal March 11, 2019 IQR at Exhibits 106-107 and 113; *see also* Jindal August 8, 2019 SQR1 at Exhibit127.

¹⁴¹ See Jindal March 11, 2019 IQR at Exhibits 106-107 and 113; *see also* Jindal August 8, 2019 SQR1 at Exhibit127.

¹⁴² See Post-Preliminary Decision Memorandum 2017 at 10-11.

¹⁴³ See Post-Preliminary Decision Memorandum 2017 at 10-11 (citing Jindal March 11, 2019 IQR at 90); *see also* GOI March 20, 2019 IQR at Exhibit D (FTP 2015-2020, Chapter 3).

and it is upon issuance of the license that respondent knows the exact benefit amount for the exemption of import duties. Accordingly, we continue to find that the value amount of the license, as issued by the GOI, is the appropriate amount for the numerator in our rate calculations for these programs, net of fees.

While the entitlement of duty free imports were earned on exports of non-subject merchandise by Jindal's cross-owned affiliate, JFIL, those benefits were transferred to Jindal by JFIL in form of the SFIS and SEIS licenses pursuant to 19 CFR 351.525(b)(6)(v). Therefore, irrelevant of how this entitlement was earned, Jindal is eligible to import duty-free any goods or capital goods in the amount stated on the licenses and benefits from them. Accordingly, we continue to include this transferred benefit in our rate calculations and attribute the subsidy to all export products sold by Jindal.

Comment 8: Whether Commerce failed to explain the source for the interest rate used in the allocation of the status holder incentive scheme (SHIS).

Jindal's Case Brief

- Jindal is unable to recreate the 2014 interest rate from pages 2-3 of the calculation memo, and thus, is unable to conduct a meaningful analysis of the interest calculations to provide substantive guidance for Commerce's consideration.¹⁴⁴
- Jindal urges Commerce to explain its calculation methodology to determine the interest rate utilized to determine the SHIS benefit.¹⁴⁵
- As noted by Commerce, Jindal does not have commercial long-term loans. Therefore, Commerce should have utilized the IMF rates submitted by Jindal.¹⁴⁶

Petitioners' Rebuttal Comments

The petitioners provided no comments on this issue.

Commerce Position: We disagree with Jindal that it cannot conduct a meaningful analysis of the 2014 interest calculations, and hence, would not be able to provide substantive guidance for Commerce's consideration. Jindal first reported receiving SHIS licenses in the 2012 review and in the subsequent 2013 and 2014 reviews. Based on the allocation methodology outlined in 19 CFR 351.524(c) and (d), and as described in the final decisions of the respective PORs the individual licenses were first reported by Jindal, Commerce established the allocation tables for each of the licenses over Jindal's AUL in the review the licenses were first reported. In the 2014 administrative review, Jindal reported receiving another SHIS license, as well as having long-term loans in 2014. Pursuant to 19 CFR 351.505(a) (1) and (3), Commerce calculated a long-term lending rate based on Jindal's actual borrowing experience, as reported for 2014 in that review, and applied that calculated long-term interest rate in its allocation table for the benefit received under the SHIS license, covering Jindal's AUL at the time.¹⁴⁷ In the instant 2017 review, Commerce included the benefit amount allocated to 2017 in the allocation table established in the 2014 administrative review in its rate calculations for this program and Jindal.

¹⁴⁴ See Jindal Case Brief at 5.

¹⁴⁵ See Jindal Case Brief at 5.

¹⁴⁶ See Jindal Case Brief at 5 (citing Jindal March 11, 2019 IQR at Exhibit 81).

¹⁴⁷ See *PET Film Final Results of 2014 Review*, IDM at 3-4 and 7-8.

As discussed above, at Comment 4, it is Commerce's practice to not re-calculate its allocation tables for previously allocated non-recurring grants in a subsequent review.

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

3/6/2020

X 

Signed by: CHRISTIAN MARSH

Christian Marsh

Deputy Assistant Secretary
for Enforcement and Compliance