C-533-825
Administrative Review
POR: 01/01/2019 - 12/31/2019
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July 27, 2021

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

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

SUBJECT: Decision Memorandum for the Preliminary Results, Partial Rescission and Intent to Rescind in Part of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India; 2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India. The period of review (POR) is January 1, 2019, through December 31, 2019. We preliminarily determine that SRF Limited (SRF) benefitted from countervailable subsidies during the POR.

II. BACKGROUND

On July 1, 2002, Commerce published in the *Federal Register* the CVD order on PET film from India.[1] On July 1, 2020, Commerce published a notice of opportunity to request an administrative review of the *Order* for the POR.[2] On July 27, 2020, Polyplex USA LLC (Polyplex USA) requested a review of Ester Industries Ltd. (Ester), Garware Polyester Ltd. (Garware), Vacmet India Ltd. (Vacmet), MTZ Polyesters Ltd. (MTZ), Uflex Ltd. (Uflex), Jindal Poly Films Ltd. (Jindal), SRF Limited (SRF), and Polyplex Corporation Ltd (Polyplex).[3] On the

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[1] *See Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*Order*).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531 (July 1, 2020).
[3] *See* Polyplex USA's Letter "Polyethylene Terephthalate ("PET") Film from India: Polyplex USA LLC's Request for CVD Administrative Review," dated July 27, 2020.

same date, Jindal self-requested an administrative review.[4] On July 30, 2020, DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, the petitioners) requested a review of Ester, Garware, Polyplex, SRF, Jindal, and Vacmet.[5] On the same date, SRF self-requested an administrative review.[6]

On September 3, 2020, Commerce initiated this administrative review.[7] In the *Initiation Notice*, Commerce stated that if it limits the number of respondents for individual examination, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR.[8] On September 10, 2020, Commerce released the CBP data for all interested parties under an administrative protective order and invited comments concerning the CBP data and respondent selection.[9] On September 17, 2020, Commerce received a comment from SRF clarifying spelling variations of the company's name.[10] We received no other comments.

On November 28, 2020, Jindal timely withdrew its self-request for an administrative review.[11] On December 1, 2020, SRF timely withdrew its self-request for an administrative review.[12] On December 2, 2020, Polyplex USA timely withdrew its request for review of all eight companies for which it requested a review.[13] On the same date, the petitioners timely withdrew their request for a review of Polyplex.[14]

We selected SRF as the sole mandatory respondent[15] and issued the initial CVD questionnaire to the Government of India (GOI) on January 7, 2021.[16] SRF submitted a timely response to the affiliation section of the initial questionnaire on January 21, 2021, and the remainder of the

[4] *See* Jindal's Letter "Polyethylene Terephthalate (PET) Film from India: Request for Administrative Review of the Countervailing Duty Order," dated July 27, 2020.
[5] *See* Petitioner's Letter "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Countervailing Duty Administrative Review," dated July 30, 2020.
[6] *See* SRF's Letter "Polyethylene Terephthalate (PET) Film from India: Requests for Countervailing Duty (CVD) Admin Review," dated July 30, 2020.
[7] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).
[8] *Id*.
[9] *See* Memorandum, "U.S. Customs and Border Protection (CBP) Data Release," dated September 10, 2020.
[10] See "Polyethylene Terephthalate (PET) Film from India, SRF Limited, Comments on U.S. Customs and Border Protection (CBP) Data Release," dated September 17, 2020 (SRF Comments).
[11] *See* Jindal's Letter "Polvethylene Terephthalate {PET) Film from India: Withdrawal of Request for Administrative Review of the Countervailing duty Order filed bv Jindal Poly Film Ltd.," dated November 26, 2020.
[12] *See* SRF's Letter "Polyethylene Terephthalate (PET) Film from India/. Withdrawal of Request for Countervailing Duty Admin Review of SRF Limited (SRF)," dated December 1, 2020.
[13] *See* Polyplex USA's Letter "Polyethylene Terephthalate ("PET") Film from India: Withdrawal of Request for Review for Polyplex USA LLC," dated December 2, 2020.
[14] *See* Petitioner's Letter "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Withdrawal of Request for Countervailing Duty Administrative Review," dated December 2, 2020.
[15] *See* Memorandum, "Countervailing Duty Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India: Respondent Selection," dated January 4, 2021.
[16] *See* Commerce's Letter, "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Countervailing Duty Questionnaire," dated January 7, 2021 (Initial CVD Questionnaire).

response on March 2, 2021.[17] The GOI submitted the initial questionnaire response on February 16, 2021.[18] We issued a supplemental questionnaires to SRF and the GOI on June 3, 2021, and July 16, 2021, respectively.[19] The GOI filed a timely supplemental response on June 24, 2021,[20] and SRF timely filed their supplemental responses on June 30, 2021.[21]

On February 25, 2021 we extended the deadline for these preliminary results to no later than July 30 2021.[22]

III. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

As noted above, the petitioners, Polyplex USA, Jindal, and SRF timely withdrew their requests for review of certain companies. As the petitioners and Polyplex USA's withdrawal requests were timely filed and no other party requested a review of MTZ, Polyplex, or Uflex, we are rescinding this administrative review with respect to those companies, pursuant to 19 CFR 351.213(d)(1). Accordingly, the companies subject to the instant review are Ester, Garware, Jindal, SRF, and Vacmet.

IV. NON-SELECTED RATE

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Tariff Act of 1930, as amended (the Act). Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 705(c)(5)(A)(i) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory companies, excluding rates

[17] *See* SRF's Letter, "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Countervailing Duty Questionnaire," dated January 7, 2021; *see also* SRF's Letter, "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Countervailing Duty Questionnaire," dated March 2, 2021 (SRF March 2, 2021 IQR).
[18] *See* GOI's Letter, "Certain Polyethylene Terephthalate Film, Sheet, and Strip from India (C-533-825) Admin Review: Government of India's Response to GOI Initial Questionnaire Response," dated February 16, 2021 (GOI February 16, 2021 IQR).
[19] *See* Commerce's Letters, "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Countervailing Duty Supplemental Questionnaire," dated June 3; and, "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Countervailing Duty Supplemental Questionnaire," dated June 16, 2021.
[20] *See* GOI's Letter, "Certain Polyethylene Terephthalate Film, Sheet, and Strip from India (C-533-825) Admin Review: Government of India's Response to Supplemental Questionnaire dated June, 3, 2021," dated June 24, 2021.
[21] *See* SRF's Letter, "Polyethylene Terephthalate (PET) Film from India: Submission of Supplamental Response to Countervailing Duty Administrative Review of SRF Limited," dated June 30, 2021.
[22] *See* Memorandum, "Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2019," dated February 25, 2021.

that are zero, *de minimis*, or based entirely on facts available.[23] For these preliminary results, SRF is the sole mandatory respondent with a calculated rate above *de minimis*. Therefore, we are preliminarily assigning SRF's net countervailable subsidy rate of 2.82 percent *ad valorem* to the five remaining non-selected companies, for which an individual rate was not calculated.

V. INTENT TO RESCIND ADMINISTRATIVE REVIEW, IN PART

It is Commerce's practice to rescind an administrative review of a CVD order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[24] Normally, upon completion of an administrative review, the suspended entries are liquidated at the CVD assessment rate calculated for the review period.[25] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the CVD assessment rate calculated for the POR.[26]

According to the CBP import data, except for the mandatory respondent and its cross-owned companies, the companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we are rescinding the review with respect to MTZ, Polyplex, or Uflex as explained above, and we intend to rescind this administrative review with respect to one additional company, Vacmet, in accordance with 19 CFR 351.213(d)(3).

VI. 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 the order is dispositive.

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[23] *See*, *e.g.*, *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

[24] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 14349 (March 20, 2017); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017*, 84 FR 14650 (April 11, 2019).

[25] *See* 19 CFR 351.212(b)(2).

[26] *See* 19 CFR 351.213(d)(3).

VII. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Pursuant to 19 CFR 351.524(d)(2)(i), Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The AUL in this proceeding is 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this review disputed the allocation period.[27]

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

B. Benchmark Interest Rates

For programs requiring the application of a benchmark interest rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company would pay on a comparable commercial loan that the company could actually obtain on the market. Also, 19 CFR 351.505(a)(3)(i) states that when selecting a comparable commercial loan that the recipient "could actually obtain on the market," Commerce will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, Commerce may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

SRF received exemptions from import duties on the importation of capital equipment under the Special Economic Zones (SEZ) programs and the Status Holder Incentive Scheme (SHIS), which we determined to be non-recurring benefits in accordance with 19 CFR 351.524(c). Thus, unless an exception applies, Commerce identifies an appropriate long-term interest rate for purposes of allocating the non-recurring benefits over time pursuant to 19 CFR 351.524(d)(1) and (d)(3).

Pursuant to 19 CFR 351.505(a)(2)(iii), in selecting a comparable loan if a program under review is a government-provided, long-term loan program, the preference would be to use a loan for which the terms were established during, or immediately before, the year in which the terms of the government-provided loan were established. Pursuant to 19 CFR 351.505(a)(2)(ii), Commerce will not consider a loan provided by a government-owned special purpose bank to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan. Commerce has previously determined that the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI), and the Export-Import Bank of India (EXIM) are

[27] *See* SRF March 2, 2021 IQR at 16.

government-owned special purpose banks.[28] As such, Commerce does not use loans from the IDBI, the IFCI, or the EXIM as a basis for a commercial loan benchmark.

In this review, SRF did not have comparable commercial long-term rupee-denominated loans for all required years. Therefore, for those years for which we did not have company-specific information, and where the relevant information was on the record, we relied on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii).[29] When there were no comparable long-term, rupee-denominated loans from commercial banks either during the year under consideration or the preceding year, we used national average long-term interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from International Financial Statistics (IMF Statistics), a publication of the International Monetary Fund.[30] Finally, 19 CFR 351.524(d)(3) directs us regarding the selection of a discount rate or long-term lending rate for the purposes of allocating non-recurring benefits over time. The regulations provide several options in order of preference. The first among these is the cost of long-term fixed-rate loans of the firm in question, excluding any loans which have been determined to be countervailable, for each year in which non-recurring subsidies have been received. The second option directs us to use the average cost of long-term, fixed-rate loans in the country in question. Thus, for those years for which SRF, respectively, did not report any long-term fixed-rate commercial loans, we used the yearly average long-term lending rate in India from IMF Statistics.

C. Denominator

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program at issue. As discussed in further detail below, we determine that all but one benefit received by SRF, *i.e.*, the State Government of Madhya Pradesh (SGOMP) Industrial Promotion Policy (IPP) 2014 was tied to export performance. For all programs tied to export performance, we use export sales, net of deemed exports,[31] as the denominator for our calculations. For the programs under which SRF received benefits, but were not tied to export performance, we used total sales as the denominator for our rate calculations for both companies.

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[28] *See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying Issues and Decision Memorandum (IDM) at "Subsidies Valuation Information"; and *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying IDM at "Benchmark Interest Rates and Discount Rates."
[29] *See* Memorandum, "SRF Preliminary Results Calculation 2019," dated July 30, 2021 (SRF Prelim Calc Memo 2019).
[30] *See* SRF Prelim Calc Memo 2019.
[31] *See* SRF March 2, 2021 IQR at 12-13 and Exhibit 8(g).

VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record information, we preliminary find the following:

Programs Preliminarily Determined to be Countervailable

1. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.

In the investigation, Commerce determined that import duty reductions provided under the EPCGS are countervailable export subsidies because: (1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone for not collecting import duties; (2) respondents receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act.[32] There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is Commerce's practice to treat any balance on an unpaid liability as a contingent liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).[33] The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are provided for the purchase of capital equipment. The *Preamble* to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be

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[32] *See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002), and accompanying IDM at EPCGS.
[33] *Id.*

considered non-recurring. . ."[34] In accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

SRF reported that it imported capital goods under the EPCGS in the years prior to and during the POR.[35] SRF received post-export EPCGS licenses, which function similarly to SHIS Licenses in that they are received after exports are tied to subject merchandise and freely transferable.[36] For the post export credit, the GOI also provides scrips to exporters worth the amount of duties paid on imported capital goods. The scrip could then be used as a credit for future import duties on capital goods, or could be transferred to other entities to be used as credit for future import duties.

Although 19 CFR 351.519(b)(1) of Commerce's regulations stipulates that we will normally consider the benefit as having been received as of the date of exportation, because the EPCGS license benefit amount is not received by the exporter until well after the exports are made, and application conditions are fulfilled, the EPCGS post export credit licenses, which contain the date recieved and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.[37]

Thus, the total benefit SRF received under the EPCGS is the sum of the face value of the licenses received by SRF. We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which SRF received the post export duty scrip and determined not to allocate the benefits across the AUL.[38] We divided the total benefit by SRF's total exports to determine a subsidy of 0.19 percent *ad valorem*.

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

This program was found countervailable in SRF's new shipper review.[39] An SEZ may be established jointly or individually by the central government, a state government, or a person, to manufacture goods or provide services, or both, as well as to serve as a Free Trade and Warehousing Zone. Entities that want to set up an SEZ in an identified area may submit their proposal to the relevant state government. To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services. Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must

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[34] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998) (*Preamble*).
[35] *See* SRF March 2, 2021 IQR at 16-22.
[36] *See* SRF March 2, 2021 IQR at 16-17; *see also Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India Final*), and accompanying IDM at "Status Holder Incentive Scrip."
[37] Commerce determined and was upheld by the U.S. Court of International Trade (CIT) in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*) in the similar but discontinued GOI program, the Duty Entitlement Passbook Scheme (DEPS), that benefits were conferred when earned, rather than when the credits were used.
[38] *See* SRF Prelim Calc Memo 2019 at Attachment 1.
[39] *See Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Countervailing Duty New Shipper Review,* 76 FR 30910 (May 27, 2011) (*SRF New Shipper Review*), and accompanying IDM at 13-19.

achieve a net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production. In return, the companies inside the SEZ are eligible to receive various forms of assistance.

Companies in a designated SEZ may receive the following benefits: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of CST thereon; (3) exemption from the services tax for the services consumed within the SEZ; (4) exemption from stamp duty for all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit; (6) income tax exemptions under the Income Tax Exemption Scheme Section 10A; and (7) discounted land in an SEZ.[40]

SRF reported that it produced subject and non-subject merchandise in an SEZ unit located in Indore during the POR. Specifically, for the POR SRF reported using the SEZ program to obtain: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; and (2) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit.[41]

Since eligibility for the SEZ program is contingent upon export performance, we find that the assistance provided under the SEZ program is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

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

Companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts and packing material duty-free in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales. Additionally, such companies have to achieve an NFE calculated cumulatively for a period of five years from the commencement of production.[42]

We determine that the duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material, provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the forgoing of duty payments. This SEZ program confers benefits in the amounts of exemptions of customs duties not collected in accordance with section 771(5)(E) of the Act.

In the *SRF New Shipper Review*, Commerce determined that, with regard to these import duty exemptions provided on goods, such as raw materials, that may be consumed in the production

[40] *Id.*; *see also* GOI February 16, 2021 IQR at 25-39.
[41] *See* SRF March 2, 2021 IQR at 26-45 and Exhibits 10 (a) and (b), 11(a)-(c), 12(a)-(c), 13, 22(a) and (b), 23, and 24.
[42] *See* GOI February 16, 2021 IQR at 25-39 and Exhibits 13, and 14 at 8-9, 24-25 (Chapter VI of the SEZ Rules), and 34.

of the exported product, the GOI did not claim or provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Thus, Commerce determined that the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act.[43] In the initial questionnaire for this segment of the proceeding, Commerce stated that it was not going to reevaluate the countervailability of this program, however, if there were any changes to the nature or operation of this program, or parts thereof, to please explain.[44] In its response, the GOI did not inform Commerce of any changes to this program or its operation.[45] Consequently, there is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

Further, based on the information provided by SRF in its "Executed Legal Agreement for SEZ Unit" with the GOI, until an operation in a SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties.[46] SRF has not yet met its export requirement under this program[47] and will owe the unpaid duties if the export requirement is not met. Therefore, consistent with 19 CFR 351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties to be an interest-free loan made to SRF at the time of importation. We determine the benefit to be the interest that SRF would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation.

Pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate, because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.*, under the SEZ program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). As the benchmark interest rate, we used the weighted-average interest rate from all of SRF's comparable commercial long-term, rupee-denominated loans for the year in which the capital good was imported. *See* the "Benchmarks Interest Rates" section of this memorandum for a discussion of the applicable benchmark.

We calculated the benefit from these exemptions by multiplying the value of the item imported by the applicable duty rates for customs duty and cess and multiplied these amounts by the appropriate interest rate. We then summed the results and divided that total by SRF's exports net of deemed imports to determine the countervailable subsidy of 0.03 percent *ad valorem*.[48]

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[43] *See SRF New Shipper Review* IDM at 14-15.
[44] *See* Initial CVD Questionnaire at II-4 and III-11.
[45] *See* GOI February 16, 2021 IQR at 25-39.
[46] *See* SRF March 2, 2019 IQR at 29 and Exhibits 12(a)-(b); and GOI February 16, 2019 IQR at 31-33 and Exhibit 13.
[47] *Id.* at 21.
[48] *See* SRF Prelim Calc Memo 2019.

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

SRF reported that under Section 11(4) of the Indore Special Economic Zone (Special Provisions) Act, 2003, the supply of electricity to an SEZ is exempt from electricity duty and cess, as long as the unit for which electricity duty is exempted, is located within the SEZ, as approved by the GOI.[49] In addition, SRF provided an exhibit including the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 and the state's laws governing the taxation of electricity, which establish the applicable rates of electricity duty and cess,[50] demonstrating that this program is within the control of the state government.

In the *SRF New Shipper Review*, Commerce determined that the electricity duty and cess exemptions provide a financial contribution in the form of revenue forgone by the State Government of Madhya Pradesh, pursuant to section 771(5)(D)(ii) of the Act. It confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. Commerce also determined that the SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).[51] There is no new information or evidence of changed circumstances that would warrant reconsidering our determinations. Therefore, for these preliminary results, we continue to find this program countervailable.

To calculate the benefit, we first calculated the uncollected electricity duty and cess, which SRF did not pay during the POR, by multiplying the monthly billed amount of electricity consumed by the tax rates provided. We then divided this amount by SRF's total export sales net of deemed imports during the POR to calculate a countervailable subsidy of 0.20 percent *ad valorem*.[52]

3. Status Holder Incentive Scrip (SHIS)

The SHIS scheme was introduced in 2009 with the objective to promote investment in upgrading technology in specific sectors.[53] Status Holders under the GOI's listing of specific exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of a duty credit. The SHIS license can only be used for imports of capital goods and it can be transferred to another Status Holder for the import of capital goods.[54]

In the *Final PET Film 2014 Review* Commerce found that this program is countervailable because it provides a financial contribution in the form of revenue forgone under section

[49] *See* SRF March 2, 2021 IQR at 42 and Exhibits 23 and 24.
[50] *Id.* at Exhibit 41(a).
[51] *See SRF New Shipper Review* IDM at 17.
[52] *See* SRF Prelim Calc Memo 2019.
[53] *See* GOI February 16, 2021 IQR at 87-110.
[54] *See Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 81 FR 51186 (August 3, 2016) (*Prelim PET Film 2014 Review*), and accompanying Preliminary Decision Memorandum (PDM) at 8-10, affirmed in *Polyethylene Terephthalate Film, Sheet and Strip from India: Countervailing Duty Administrative Review; 2014*, 81 FR 89056 (December 9, 2916) (*Final PET Film 2014 Review*), and accompanying IDM at 4; *see also Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."

771(5)(D)(ii) of the Act because duty free import of goods represents revenue foregone by the GOI. Further, Commerce determined that it is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters. A benefit is also provided under the SHIS program under 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.[55]

Import duty exemptions under this program are solely provided for the purchase of capital equipment.[56] The *Preamble* of Commerce's regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring…."[57] Therefore, in accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.[58]

SRF reported that they received SHIS license scrips to import capital goods duty-free prior to the POR. Information provided by SRF indicates that the SHIS license scrips were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by SRF to the company's total exports.[59]

The SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient at the time of receipt of the scrip.[60] Although 19 CFR 351.519(b)(1) of Commerce's regulations stipulates that we will normally consider the benefit as having been received as of the date of exportation, because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS 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.[61]

We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which SRF received the SHIS scrip and determined to allocate the benefits across the AUL.[62] We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). On this basis, we determine a countervailable subsidy of 0.05 percent *ad valorem* for SRF.

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[55] *Id.*
[56] *See* GOI February 16, 2021 IQR at 88; *see also Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."
[57] *See Preamble*, 63 FR at 65393.
[58] *See Final PET Film 2014 Review* IDM at 4; and *Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."
[59] *See* SRF March 2, 2021 IQR at 50-53 and Exhibit 28(d).
[60] *See Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."
[61] Commerce determined and was upheld by the CIT in *Essar Steel* in the similar but discontinued GOI program, the DEPS, that benefits were conferred when earned, rather than when the credits were used.
[62] *See* SRF Prelim Calc Memo 2019 at Attachment 1.

The GOI stated that this program was discontinued in 2013.[63] Companies may apply for licenses for up to three years after the program has ended (*i.e.*, through 2016).[64] Additionally, because this program applies to capital goods and the AUL in this proceeding is ten years,[65] companies may receive residual benefits from this program through at least 2026.

4. Merchandise Export from India Scheme (MEIS)

SRF reported participating in the MEIS during the POR.[66] The GOI explained that the MEIS was introduced on April 1, 2015, in the FTP 2015-2020. Its purpose is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.[67] The eligibility is also dependent on the products and the foreign markets to which the products are exported.[68] Under this program, the GOI issues a scrip worth either two, three, or five percent of the FOB value of the exports in free foreign exchange realized or received, or on the "FOB value of exports in free foreign exchange, as given on the shipping bills in free foreign exchange, whichever is less."[69] To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with Director General of Foreign Trade (DGFT).[70] Each application can only comprise of a maximum of 50 shipping bills.[71] After a recipient receives and registers the scrip, it may either use it for the payment of future customs duties for importing goods or transfer it to another company.[72]

Commerce has found a similar program, the SHIS, to be countervailable. For the MEIS scheme, the GOI also provides scrips to exporters worth a certain percentage of the FOB value of exports. The scrip could then be used as a credit for future import duties on inputs or goods, including capital goods, or could be transferred to other Status Holders to be used as credit for future import duties.[73]

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[63] *See* GOI February 16, 2021 IQR at 87.
[64] *Id; see also Prelim PET Film 2014 Review* PDM 8-10 (affirmed *Final PET Film 2014 Review)*; *Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."
[65] *See* Allocation Period section, above.
[66] *See* SRF March 2, 2021 IQR at 64-69 and Exhibit 30.
[67] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 36124 (August 3, 2017), and accompanying PDM at 19-20, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India*, 83 FR 5612 (February 8, 2018), and accompanying IDM; *see also* GOI March 20, 2019 IQR at 110-126.
[68] *See* GOI February 16, 2021 IQR at 110-114.
[69] *See* SRF March 2, 2021 IQR at 64; *see also* GOI February 16, 2021 IQR at Exhibit 53 (FTP at 3.03-3.12) (HoP at 3.01-3.16).
[70] *See* SRF March 2, 2021 IQR at 66.
[71] *Id*. at 65.
[72] *Id.* at 64-69.
[73] *See* GOI February 16, 2021 IQR at Exhibit 53 (FTP 201502020, 3.02 Nature of rewards); *see also PET Film from India 2013 Preliminary Results* PDM at 11, unchanged in *PET Film from India 2013 Final Results* IDM; *Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."

The program is specific within the meaning of sections 771(5A)(A) and (B) of the Act because, as the GOI and SRF report, eligibility to receive the scrips is contingent upon export.[74] As Commerce determined for the SHIS program, this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue forgone by the GOI.[75] A benefit is also provided under the MEIS scheme pursuant to 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported inputs or capital equipment.

SRF reported submitting applications and receiving approval under the MEIS program. According to SRF, it met the requirements of this program and obtained the requisite scrips from the DGFT, which can be used by the recipient company or sold in the market.[76]

This program provides a recurring benefit because, unlike the scrips in the SHIS scheme, the scrips provided under this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year. We calculated the benefit to SRF to be the total value of scrips granted during the POI. Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates benefit as having been received as of the date of exportation;[77] however, because the MEIS benefit, *i.e.* the scrip, amount is not automatic and is not known to the exporter until well 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.[78] Therefore, we divided the face value of the MEIS license by the respondents total export sales, net of deemed exports. On this basis, we determine the countervailable subsidy provided to SRF under the MEIS to be 2.01 percent *ad valorem*.[79]

5. State Government of Madhya Pradesh (SGOMP) Industrial Promotion Policy 2014

The Industrial Promotion Policy (IPP) of the SGOMP serves to achieve inclusive growth and bring economic prosperity to the state through sustainable industrialization, increased employment, skill enhancements, balanced regional development, and ease of business and environmentally friendly practices in enterprise development.[80] Specifically, the SGOMP IPP states that "{it} wants to encourage growth in Madhya Pradesh's thrust sectors … ," and is "promoting industrial parks for clusters development of similar micro and small scale industries in regions of the State which are rich in raw material being used in that particular industry." [81]

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[74] *See PET Film from India 2013 Preliminary Results* PDM at 11*; see also* GOI March 20, 2019 IQR at Exhibit D, Chapter 3;
[75] *See PET Film from India 2013 Preliminary Results* PDM at 11*; see also* GOI March 20, 2019 IQR at 70-79.
[76] *See* SRF February 16, 2021 IQR at 66.
[77] *See* 19 CFR 351.519(b)(1).
[78] *See, e.g., Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."
[79] *See* SRF Prelim Calc Memo 2019.
[80] *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) (*PET Film from India 2017 Preliminary Results*), and accompanying PDM at 29-30.
[81] *Id*.

The IPP 2014 was last amended in December 2018.[82] The level of investment determines which benefits and at what level a company may receive. There are different set incentive packages based on the level of investment by a company, including fiscal assistance, capital subsidies, interest subsidy, entry tax exemption, VAT and CST Assistance, electricity duty exemption, stamp duty, *etc*.[83] If a company commits to an investment reaching at least 100 crore in Indian rupees,[84] it qualifies as a Mega unit, and the benefit package can be negotiated between the company and the Cabinet Committee of Investment Promotion (CCIP).[85] The CCIP has the authority to deal with all issues relating to the industrial promotion and may sanction a customized package of assistance beyond what has been explicitly provided in this policy, such as the packages available to Mega Scale Industrial Units, only.[86]

As described in more detail below, we find that this program provides a financial contribution in the form of revenue forgone by the SGOMP pursuant to section 771(5)(D)(ii) of the Act in the form of VAT and GST refunded to the producer. Further, the SGOMP stated in the SGOMP IPP 2014 that it wants to promote certain "thrust sectors" "in regions of the State which are rich in raw material being used in that particular industry."[87] Pursuant to section 771(5A)(D)(iii) and (iv) of the Act, the program is specific because it is limited to certain industries in certain geographical regions within the state of Madhya Pradesh.

SRF reported receiving subsidies under the SGOMP IPP 2014, Mega Scale Industrial Units, for its investment in its plant located in the Domestic Tariff Area (DTA) of Indore Madhya Pradesh.[88] That particular plant has two separate production lines, one producing BOPET film (subject merchandise), that commenced production in February 2017, and the other is for the production of BOPP film (non-subject merchandise) that commenced production in December 2017.[89] SRF explains that its BOPET production line in the DTA received benefits during the POR under the under the following sub-sections of the SGOMP IPP 2014: [90]

a) <u>VAT& CST/GST[91] Assistance</u>

Based on its investment in the BOPET facility in the DTA, SRF is eligible for the investment promotion assistance under this program, calculated with a specified formula based on SRF's investment. This benefit is conferred over seven years and needs to be applied for yearly.[92]

[82] *Id*; *see also* SRF March 2, 2021 IQR at 98.
[83] *See PET Film from India 2017 Preliminary Results* PDM at 29-30.
[84] 1 crore = 10,000,000.
[85] *See PET Film from India 2017 Preliminary Results* PDM at 29-30.
[86] *Id*.
[87] *Id.*
[88] *See* SRF March 2, 2021 IQR at 95. SRF notes that this plant is separate from its SEZ plant located in Indore, Madhya Pradesh – *see above* at SEZ.
[89] *Id*.
[90] *See* SRF March 2, 2021 IQR at Exhibit 38(a) and (b).
[91] Value-Added Tax (VAT); Central Sales Tax (CST); Goods and Services Tax (GST).
[92] *See* SRF March 2, 2021 IQR at 98-101 and Exhibit 39(a)-(e).

In order to calculate the benefit, we divided the total amount of the VAT&CST/GST refunds SRF received during the POR by its total sales during the POR. On this basis, we determined a countervailable subsidy rate of 0.14 percent *ad valorem* for SRF for this sub-program.

b) Electricity Duty Exemption

SRF reported that, as part of its approval agreement, it is also exempted from paying electricity duty and cess for a period of ten years.[93] According to SRF, the electricity duty rate is fifteen percent tariff per unit.[94]

Based on its SGOMP IPP 2014 agreement, SRF is entitled to a rebate of one Indian rupee per unit consumed. That rebate is reflected in SRF's electricity bill.[95]

To calculate the benefit for the electricity duty exemption and rate concession, we divided the total amount of the exemption and the rate concession SRF received during the POR by its total sales during the POR. On this basis, we determined a countervailable subsidy rate of 0.21 percent *ad valorem* for SRF for this sub-program.

Programs Preliminarily Determined to Be Not Used or to Provide No Benefit During the POR

We preliminarily determine that SRF did not apply for or receive benefits during the POR under the programs listed below:

GOI Programs

1. Duty Free Replenishment Certificate (DFRC)
2. Target Plus Scheme
3. Capital Subsidy
4. Exemption of Export Credit from Interest Taxes
5. Loan Guarantees from the GOI
6. Export Oriented Units
7. Incremental Exports Incentivization Scheme (IEIS)
8. Duty Drawback (DDB) Program
9. Focus Market Scheme/Focus Product Scheme
10. Pre- and Post-Shipment Export Financing in Indian Rupees
11. Section 35 R&D Deductions of the Income Tax Act, 1961
    ---Sub-Section 35(iv)
    ---Sub-Section 35(2AB)
12. Section 80-IA Deductions of the Income Tax Act, 1961 for Enterprises Engaged in Infrastructure Development
13. Income Tax Programs
    a. Income Tax Exemption Scheme (80-IA)
    b. Sections 35(1)(i), 35(1)(ii), 35(1)(iv) of the Income Tax Act of 1961

[93] *See* SRF March 2, 2021 IQR at 102 and Exhibits 36(a) and 41(a)-(c).
[94] *Id*.
[95] *Id*. at 102 and Exhibits 37(b) and 41(c).

c. Section 35(2AB) of the Income Tax Act of 1961 conferring Income Tax Reductions for R&D Expenses

State Programs

14. State and Union Territory Sales Tax Incentive Programs
15. Octroi Refund Scheme State of Maharashtra (SOM)
16. Waiving of Interest on Loans by SICOM Limited (SOM)
17. State of Uttar Pradesh Capital Incentive Scheme
10. Infrastructure Assistance Schemes (State of Gujarat)
11. Capital Incentive Scheme Uttaranchel
12. Capital Incentive Schemes (SGOM)
13. Electricity Duty Exemption Scheme (SGOM IPS 2007)
14. Exemption of Electricity Duty on Account of Electricity Generation (State of Gujarat)
15. State Government of Maharashtra Subsidies Under the Package Scheme of Incentives 1993 and 2007.
15. Interest Subsidy under Special Textil Package of Industrial Policy (State of Madhya Pradesh)
16. Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961 – Sub-Section 32AC(1A)
17. Section 35 R&D Deductions of the Income Tax Act, 1961 – Sub-Section 35DD
18. Services from India Scheme (SFIS)
19. Services Export from India Scheme (SEIS)

IX. RECOMMENDATION

We recommend that you approve the preliminary findings described above. If these recommendations are accepted, we will publish the preliminary results of the review in the *Federal Register*.

☒ ☐

Agree Disagree

7/27/2021

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance