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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2003 Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results

Summary

We have analyzed the comments submitted by interested parties in the 2003 countervailing duty administrative review of polyethylene terephthalate film, sheet, and strip (PET film) from India. As a result of our analysis, we have made changes to the preliminary results. We recommend that you approve the positions we have developed in the "Analysis of Comments" section of this memorandum for these final results.

I. List of Issues

Below is the complete list of issues raised by interested parties in their comments:

Comment 1: Whether the Advance License Program Provides a Countervailable Subsidy
Comment 2: Sales Tax Incentives
Comment 3: Whether the Department Should Exclude an IDBI Loan in Calculating the Short-Term Benchmark
Comment 4: Whether the Department Should Consider a Certain EPCGS License as a Grant or as an Interest-Free Loan
Comment 5: Calculation of the Countervailing Duty Rate Under the Advance License Program
Comment 6: Interest Rates Used to Calculate the Countervailing Duty Rate Under the EPCGS Program
Comment 7: The Proper Allocation of EPCGS and EOU Benefits
Comment 8: Whether the Cash Deposit Rate Should Include the 80 HHC Tax Exemption Countervailing Duty Rate
Comment 9: Inclusion of Benefits Received by Non-Producing Units in Calculating Jindal's EOU Countervailing Duty Rate
Comment 10: Calculation of Jindal's Countervailing Duty Rate Under the EOU Program

II. Background

This review covers PET film exported to the United States by Jindal Polyester Limited/Jindal Poly Films Limited of India (Jindal) and Polyplex Corporation Ltd. (Polyplex). The period of review is January 1, 2003, through December 31, 2003, (hereinafter referred to as the POR). The Department of Commerce (the Department) published its preliminary results of review on August 10, 2005. See Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 70 FR 46483 (August 10, 2005) (Preliminary Results). In response to the Department's invitation to comment on the Preliminary Results, the petitioners,[1] Polyplex, Jindal, and the Government of India (the GOI) filed case briefs on September 12, 2005. The petitioners, Polyplex and Jindal, filed rebuttal briefs on September 20, 2005.

III. Subsidies Valuation Information

A. Allocation Period

In the Preliminary Results, the average useful lives (AULs) differed significantly from the AULs applicable to the PET film industry listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System of 9.5 years. Therefore, we based the allocation periods for Jindal and Polyplex on the company-specific AULs of seventeen and eighteen years, respectively. No party contested the Department's use of these company-specific AULs. Therefore, in accordance with 19 CFR § 351.524(d)(2), we have allocated all non-recurring subsidies for Jindal and Polyplex over seventeen and eighteen years, respectively.

B. Benchmarks for Loans and Discount Rate

In accordance with 19 CFR § 351.505(a)(3)(i) and consistent with the underlying investigation, for programs requiring the application of a short-term benchmark interest rate, we use as the benchmark the company-specific, weighted-average short-term interest rate on comparable commercial loans, as reported by the respondents. Where the company did not report any comparable commercial short-term loans, we use a short-term national average interest rate as our benchmark.

In calculating the benefit of rupee-denominated, pre- and post-shipment export financing loans, we used as a benchmark the weighted-average interest rate paid by the company on its inland bill discounting loans. No party contested the Department's use of these inland bill discounting loans. Therefore, we have continued to use inland bill discounting loans in calculating the benefit for rupee-denominated, pre- and post-shipment export financing.

In calculating the benefit of pre- and post-shipment export financing loans denominated

[1]Petitioners in this review are Dupont Teijin Films, Mitsubishi Polyester Film of America, Toray Plastics (America) and SKC America, Inc.

in U.S. dollars, we use a dollar-denominated short-term interest rate as our benchmark in accordance with 19 CFR § 351.505.

Polyplex reported two types of company-specific commercial short-term loans in U.S. dollars: (1) Working Capital Demand Loans (WCDLs) and (2) a short-term loan from the Industrial Development Bank of India (IDBI). In the Preliminary Results, the Department determined that WCDLs and pre- and post-shipment export financing loans are used to finance both inventories and receivables, whereas the IDBI loan is not used in this manner. Interested parties had comments regarding the Department's choice of benchmark loans in the Preliminary Results. See Comment 3 in the "Analysis of Comments" section of this memorandum. As explained in Comment 3, we have continued to use only WCDLs in calculating the benchmark interest rate for Polyplex's pre- and post-shipment export financing loans denominated in U.S. dollars.

Jindal did not report receiving a comparable commercial, U.S. dollar-denominated, short-term loan during the POR. Since the Department was unable to identify an appropriate national average dollar-denominated, short-term interest rate for India, in the Preliminary Results we used as the benchmark, a national average dollar-denominated short-term interest rate for the United States, as reported in the International Monetary Fund's publication, International Financial Statistics (May 2004). No party contested the Department's use of this rate and we have continued to use this rate as the benchmark in evaluating Jindal's pre- and post-shipment export financing loans denominated in U.S. dollars.

IV. Analysis of Programs

A. Programs Found to Confer Subsidies

1. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre- and post-shipment financing, or "packing credits," to exporters. Commercial banks must provide loans to participating companies at rates capped by the RBI. In the Preliminary Results, we found that pre-and post-shipment export financing conferred countervailing benefits on the subject merchandise. No parties commented on this subsidy program and no information or evidence of changed circumstances has been presented to warrant reconsideration of this finding. For the final results of this review, we determined the net countervailable subsidy provided to Polyplex and Jindal from pre-shipment export financing to be 0.10 and 0.12 percent ad valorem, respectively. We also determined the net countervailable subsidy provided to Polyplex and Jindal from post-shipment export financing to be 0.21 and 0.15 percent ad valorem, respectively.

2. Advance License Program

Under the Advance License Program (ALP), exporters may import, duty free, specified quantities of materials required to produce products that are subsequently exported. Companies, however, remain contingently liable for the unpaid duties until they have exported the finished products. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. See GOI April 21, 2005 Submission, at question 7. During the POR, Polyplex and Jindal used advance licenses to import certain goods duty free.

In the underlying investigation, the Department found that the ALP was not countervailable because the system was reasonable and effective for the purposes intended, as required by 19 CFR § 351.519. Petitioners, however, timely filed a new subsidy allegation with respect to the ALP, claiming that India's 2002-2007 Export/Import Policy Guidelines (2002-2007 Exim Guidelines) underlying the ALP differed significantly from the 1997-2002 Exim Guidelines that were in effect in the underlying investigation, and thus requesting that the Department investigate the revised program. After considering petitioners' allegation, the Department initiated an investigation of the revised ALP. See Memorandum to Holly A. Kuga, through Howard Smith, from the team regarding "Advance License Program" (March 28, 2005).

Pursuant to 19 CFR § 351.519(a)(4), the Department evaluated the ALP under the 2002-2007 Exim Guidelines in its entirety to determine whether, in its administration of the ALP, (1) the GOI applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable and effective for the purposes intended, or (2) absent a system that is reasonable and effectively applied, the GOI has carried out an examination to determine which inputs are consumed in the production of the exported products and in what amounts. In the Preliminary Results, we found that the evidence on the record of this review did not demonstrate that the GOI applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, nor did it demonstrate that the ALP was reasonable and effective for the purposes intended.

The GOI failed to provide information demonstrating that the ALP was implemented and monitored effectively during the POR, as evidenced by the lack of information related to verification of the ALP's administration (e.g., to ensure that inputs listed in the SIONs are actually consumed in the production of exports) or implementation of extensions or penalties for claiming excessive credits or not meeting export requirements. In addition, the system allows for the availability of ALP benefits for a broad category of deemed exports that are not linked to the actual exportation of merchandise. Finally, we noted that the SIONs were a critical element of the ALP system, linking the amount of materials that may be imported duty-free to the exported finished products produced with such inputs. The GOI was not able to demonstrate that a mechanism exists to evaluate the SIONs to determine whether they remain reasonable over time. In addition, despite frequent requests, the GOI failed to provide the Department with its SION calculations for PET film, or any documentation indicating that the process outlined in its regulations was actually applied in calculating the original PET film SIONs. Thus, the Department could not conclude that the system the GOI has in place with respect to the ALP was reasonable or was applied in a manner effective for the purposes intended.

Therefore, we preliminarily determined that the ALP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program in the form of revenue foregone, as the GOI provides the respondents with an exemption of import duties. (2) The GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR § 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products. Accordingly, we have determined that the entire amount of the import duty exemptions earned by the respondents constitutes a benefit under section 771(5)(E) of the Act. (3) The program is contingent upon export and, therefore, is specific under section 771(5A)(B) of the Act. We note that if a party in a future proceeding is able to provide information with respect to the systemic deficiencies identified above, the Department will reevaluate the ALP to determine whether those deficiencies have been overcome.

Interested parties commented on the Department's preliminary determination to countervail the ALP. See Comment 1 in the "Analysis of Comments" section of this memorandum. As discussed in Comment 1, we have determined that the import duty exemption under the ALP constitutes a countervailable subsidy. To calculate the subsidy rate, we subtracted from the total amount of exempted duties under the ALP during the POR the actual amount of application fees paid for each license as an allowable offset in accordance with section 771(6) of the Act. This is because companies must pay application fees in order to receive the benefits of the ALP. We then divided the resulting net benefit by the total value of exports of PET film. However, in calculating the subsidy rate for this program in the Preliminary Results for Polyplex, we included the benefit from an import occurring outside of the POR and did not deduct certain administrative fees. We have corrected these errors in these final results of review. See Comment 5 in the "Analysis of Comments" section of this memorandum. For the final results of this review, we have determined the net countervailable subsidy provided to Polyplex and Jindal under the ALP to be 0.44 and 6.82 percent ad valorem, respectively.

3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties on imports of capital goods used in the production of exported products. In the Preliminary Results, we found that this program conferred a countervailable subsidy on the producers of subject merchandise. Interested parties have commented on the calculation of the countervailing duty rate of this program. See Comments 4, 6, and 7 in the "Analysis of Comments" section of this memorandum. We have determined that the import duty exemption under the EPCGS constitutes a countervailable subsidy. For the final results of this review, we have determined the net countervailable subsidy for Polyplex and Jindal under the EPCGS to be 3.86 and 2.23 percent ad valorem, respectively.

4. Income Tax Exemption Scheme 80 HHC

Under section 80HHC of the Income Tax Act, the GOI allows exporters to exclude profits derived from export sales from their taxable income. In the Preliminary Results, we found that this program conferred a countervailable subsidy on the producers of subject merchandise. Interested parties commented on the calculation of the cash deposit rate with regard to the 80 HHC tax exemption in the Preliminary Results. As discussed in Comment 8 in the "Analysis of Comments" section of this memorandum, we have decided not to adjust the countervailing duty rate for this program. We have determined that the import duty exemption under the 80 HHC constitutes a countervailable subsidy. For the final results of this review, we have determined the net countervailable subsidy for Polyplex and Jindal under section 80 HHC to be 2.64 and 0.25 percent ad valorem, respectively.

5. Capital Subsidy

Polyplex received a capital infusion of Rs. 2,500,000 in 1989 from the GOI. In the Preliminary Results, we found that this program conferred a countervailable subsidy on the producers of subject merchandise. No parties commented on this subsidy program. For the final results of this review, we determined the net countervailable subsidy provided to Polyplex under this program to be 0.01 percent ad valorem.

6. Export Oriented Units[2]

a. Reimbursement of Central Sales Taxes Paid on Materials Procured Domestically

b. Duty-Free Importation of Capital Goods and Raw Materials

For the first time in this proceeding, one of the respondents in this review, Jindal, reported that it has been designated as an export oriented unit (EOU). Jindal reported receiving benefits through the duty-free importation of capital goods and the reimbursement of the Central Sales Tax (CST) paid on raw materials and capital goods procured domestically. In the Preliminary Results, we found that this program conferred a countervailable subsidy on the producers of subject merchandise for two of the four parts of the EOU: (1) duty-free importation of capital goods and raw materials; and the (2) reimbursement of CST paid on materials procured domestically. We found in the Preliminary Results that Jindal did not receive a duty drawback on furnace oil procured from domestic oil companies. Consistent with CVP-23, we further found that the purchase of materials and other inputs free of central excise duty was not countervailable. See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India, 70 FR 13460 (March 21, 2005) (CVP-23) and accompanying Issues and Decision Memorandum at Comment 6. In calculating the subsidy rate for this program in the Preliminary Results, we erroneously added twice the benefit Jindal received from those capital goods that were imported under the EOU and converted to an EPCGS licence. We have corrected this error in these final results of review. In addition to comments on this error, interested parties had comments regarding the Department's countervailing of the EOU in the Preliminary Results. See Comments 7, 9, and 10 in the "Analysis of Comments" section of this memorandum. For the final results of review, we have determined the net countervailable subsidy provided to Jindal through duty-free importation of capital goods under the EOU program to be 3.48 percent ad valorem. Further, we have determined the net countervailable

[2]As discussed in the Preliminary Results, the EOU program provides various types of benefits. In this review, we have countervailed benefits received under this program regarding (1) the reimbursement of central sales taxes paid on materials procured domestically, and (2) the duty-free importation of capital goods and raw materials.

subsidy provided to Jindal through the reimbursement of CST under the EOU program to be 0.08 percent ad valorem.

7. Electricity Duty Exemption Scheme - State of Maharashtra

In the Preliminary Results, we found the refund of taxes on electricity charges provided by the State of Maharashtra to manufacturers located in certain regions of the SOM to confer a countervailable subsidy on the producers of subject merchandise. No parties commented on this subsidy program. For the final results of this review, we determined the net countervailable subsidy provided to Jindal under this program to be 0.01 percent ad valorem.

8. State Sales Tax Incentives

Certain states in India (including the states of Uttaranchal/Uttar Pradesh, West Bengal, Gujurat, Madhya Pradesh, Maharashtra and Himachal Pradesh) provide a package of incentives to encourage the development of certain regions of those states. These incentives are provided to privately-owned (as defined by the GOI to not be 100% government owned) manufacturers in selected industries which are located in designated regions. One incentive is the exemption or deferral of state sales taxes. Specifically, under these state programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales.

Jindal reported that, under the Sales Tax Incentive Program of Maharashtra, it was exempted from paying sales taxes on purchases from within Maharashtra and from collecting sales taxes on sales. Polyplex reported that, under the Sales Tax Incentive Program of Uttaranchal/Uttar Pradesh, it was also exempted from paying sales taxes on purchases from within the state and collecting sales taxes on sales. In addition, both Jindal and Polyplex were exempted from paying sales taxes on their purchases from suppliers located in disadvantaged regions of other states, as listed above.

In the Preliminary Results the Department found that the exemption from *collecting* sales taxes on sales did not result in Jindal or Polyplex paying any less taxes, and therefore determined that a benefit does not exist for respondents. This is consistent with the approach taken in the investigation segment of this proceeding. See PET Film Final Determination - Decision Memorandum.

With regard to the state sales tax exemptions and deferrals on purchases, the Department finds that a financial contribution was provided under section 771(5)(D)(ii) of the Act in the form of revenue foregone. In addition, in accordance with section 771(5)(E) of the Act, a benefit was conferred to the extent that the taxes paid as a result of these programs are less than the taxes that would otherwise have been paid. See 19 CFR §351.510(a)(1). Finally, pursuant to section 771 (5A)(D)(iv) of the Act, we find these programs to be de jure specific because they are limited to certain regions within their respective states. See Comment 2 in the "Analysis of Comments" section of this memorandum.

To calculate the benefit, we first calculated the amount of sales taxes the respondents would have paid on their purchases during the POR absent these programs. We then divided these amounts by each respondent's total sales during the POR to calculate a net countervailable subsidy of 1.98 percent ad valorem for Polyplex and a net countervailable subsidy of 1.92 percent ad valorem for Jindal.

B. Programs Determined Not To Be Used

1. Export Oriented Units Programs not used
    a. Duty Drawback on Furnace Oil Procured from Domestic Oil Companies
2. Duty Entitlement Passbook Scheme (DEPS)
3. The Sale and Use of Special Import Licenses (SILs) for Quality and SILs for Export Houses, Trading Houses, Star Trading Houses, or Superstar Trading Houses (GOI Program)
4. Exemption of Export Credit from Interest Taxes
5. Loan Guarantees from the GOI
6. Capital Incentive Schemes (SOM and SUP Program)
7. Waiving of Interest on Loan by SICOM Limited (SOM Program)
8. Infrastructure Assistance Schemes (State of Gujarat Program)

Name Change

In the Preliminary Results we determined that Jindal Polyester Limited had changed its name to Jindal Poly Films Limited. We stated that if we found no reason to reverse this decision, we would update our instructions to CBP to reflect this name change. No parties commented on this and no other new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding. Thus we plan to issue instructions to CBP to reflect this name change.

V. Analysis of Comments

Comment 1: Whether the Advance License Program Provides a Countervailable Subsidy

The GOI argues that the Department should reconsider its decision in the Preliminary Results to countervail the ALP because it was based on numerous misunderstandings and incorrect conclusions. The GOI first disagrees with the Department's finding that the changes between the 1997-2002 and the 2002-2007 Export/Import Policy guidelines (under which the ALP regulations are enumerated) were significant. The GOI believes that the changes between the two systems were minimal and points out that the aspects under the system that the Department believes undermine the ALP's reasonableness and effectiveness remained unchanged from the old (1997-2002) and new (2002-2007) programs.

Specifically, the GOI maintains that the procedures stipulated by the ALP, which were described in detail in its submissions, ensure that this program meets the criteria laid out in 19 CFR § 351.519(a)(4)(i). These criteria require that the GOI has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts; and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export. In particular, the GOI claims that the procedures for the ALP ensure that only those inputs needed to produce the exported product are included in the SION and, therefore, allowed to be imported duty-free. The GOI claims that the above-mentioned procedures ensure that they are able to "confirm which inputs are consumed in the production of the exported product." They also note that the Department has not been able to find an instance where an input has been allowed to be imported duty-free that was not, in fact consumed in the production of the exported product. Lastly, the GOI asserts that the ALP system is based on generally accepted commercial practices in India.

While the GOI acknowledges that it failed to provide the underlying documentation of the original or any subsequent calculation of the SIONs used in the ALP, it maintains that an examination of the actual calculation of the SION is not necessary. Specifically, the GOI states that, because all calculations of SIONs are based on the technology and production processes involved in the manufacture of the exported goods and those results are universally applied to all producers of the goods in question, it is neither mandatory nor feasible to test those consumption levels either before or after the SIONs are issued.

The GOI also disputes the Department's assertion that it was not able to demonstrate that the ALP was monitored and regulated effectively. First, the GOI does not understand the basis for the Department's statement that if the GOI fails to review an application for the creation of a new SION within four months, the SION claimed by the applicant takes effect and all companies in the industry may use the untested SION. The GOI states that an exporter's application for the creation of a new SION is filed with the regional authorities concerned, and with the Advance License Committee. The regional authorities then issue Advance Licenses on the basis of the recommendation of the Advance License Committee. The GOI proceeds to explain that there are also procedures in place to monitor the ALP program even after SIONs are in place. Specifically, the GOI notes that excise authorities continually monitor whether inputs enter an ALP recipient's inventory and confirm that those inputs are consumed in production rather than sold. It adds that investigation teams regularly collect intelligence to make sure these procedures are followed, and if found to be deviating from these rules, severe action is initiated against the exporter. The GOI asserts that its application of these ALP procedures ensures both the initial and continued accuracy of the SIONs.

Lastly, the GOI argues that the Department's preliminary determination applies a standard that goes beyond the requirements of 19 CFR § 351.519(a)(4)(i). The GOI argues that the ALP meets the regulatory criteria laid out in 19 CFR § 351.519(a)(4)(i) by providing a system to "confirm" that an input is required in the production of the exported product and "in what amounts." The GOI claims, however, that the Department has added an extra criterion of determining whether an excess rebate has been provided to any one ALP recipient. Specifically, it believes that the Department is in fact evaluating whether the ALP has a system in place to determine "what amounts have actually been consumed," which it claims is not required under the WTO Subsidies Agreement or the Department's regulations. Furthermore, because there is a system in place and that system in reasonable and effective and based on generally accepted commercial practices in India, the GOI believes the second requirement under 19 CFR § 351.519 need not be examined. Nevertheless, the GOI notes that it has initiated the steps to examine the actual consumption of inputs by the PET film industry, and that the relevant information has been provided to the Department.

Jindal also argues that the ALP is not a countervailable subsidy under the Department's regulations. Jindal cites the Department's finding in Hot-Rolled from India that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products and in what amounts, and that the ALP is reasonable and effective for the purposes intended. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001) (Hot-Rolled from India) and accompanying Decision Memorandum (Hot-Rolled Decision Memo), at para. I.C. Jindal asserts that under the ALP, a company's duty-free imports are limited to those inputs that are specified in the license and based on SIONs. Jindal adds that upon completion of a license, the ALP recipient must submit numerous documents to the GOI confirming that all of the goods listed on the license were actually imported or exported. Jindal concludes that such requirements ensure that the GOI has an effective system for verifying that the duty-free goods imported are consumed in the production of the exported product.

Jindal further contends that the Department's emphasis on the SIONs to the exclusion of all other elements of the program is misplaced. Jindal asserts that SIONs are critical only in evaluating how much of a product is allowed to be imported duty-free *in advance* of exportation, and not in evaluating how much of a product is ultimately allowed to be imported duty-free. They claim that even if there were no SIONs, the GOI could still identify what was imported and exported by looking at the transactions listed on an exporter's Advance Licence. In addition, Jindal states that since ALP recipients are exporters, and because imports are tied to exports irrespective of SIONs, ultimately the amount of imports allowed to be imported duty-free depends solely on the amount exported and not on the SIONs.

Jindal notes that the GOI's inability to demonstrate how the SIONs were calculated does not mean the GOI was not diligent in applying its stated procedures, which assure the accuracy of the applied SIONs. Jindal supports this contention by pointing to record evidence of the procedures the GOI took in deriving SIONs for opaque white PET film. Jindal also points to Hot-Rolled from India where the Department verified the GOI's calculation of SIONs. Jindal thus asserts that the GOI does have a procedure to fix the SIONs and that these SIONs provide the basis for linking the amount of materials that may be imported duty-free in advance of the production of the exported products.

Jindal also notes that, despite the GOI not providing the Department with evidence that it enforces ALP deadlines, the Export/Import Policy contains stringent guidelines for the granting of extensions, as well as strict rules and penalties for companies failing to meet deadlines and export obligations. In support, Jindal cites its own application for an extension of an ALP deadline and documentation of the GOI granting that request.

While Jindal makes no comment on the Department's finding that a defect of the ALP is that the program allows companies to meet their export requirement through deemed exports, Jindal argues that the Department cannot countervail the entire ALP for one potential flaw.

In rebuttal, petitioners submit that, although the GOI continually states that it has met all criteria described under 19 CFR § 351.519(a)(4), it has failed to produce any record evidence to support this view. With regard to the GOI's argument that the Department was not able to point to any inputs that were allowed to be imported duty-free that were not, in fact, consumed in the production of an exported good, petitioners respond that such assertions ignore the fact that: (1) ALP benefits can be earned against deemed exports, which they state are not "exports" within the meaning of U.S. law, and (2) it is the respondents' burden to prove the effectiveness of the ALP, which they argue the respondents have failed to do. Specifically, they note that respondents have failed to provide essential information in response to the Department's questionnaires, including documentation regarding the SION calculations for PET film, any documentation describing that the process outlined in the GOI regulations was actually applied in calculating the original PET film SIONs, or any information related to the verification or implementation of ALP rules.

Finally, petitioners dispute Jindal's argument that, because the ALP was found non-countervailable in Hot-Rolled from India, the Department must reach the same result in this case. Petitioners point out that the ALP at issue covers a different product, with different SIONs, during a different POR. Petitioners add that the Department initiated a review of the ALP in this review precisely because it found there were "significant changes" in the regulatory guidelines between the ALP in effect during Hot-Rolled from India and the ALP in effect in 2003.

The Department's Position:

The Department continues to find the entire ALP program to bestow a countervailable subsidy. The Department disagrees that the differences between the 1997-2002 and 2002-2007 Exim Guidelines are not significant. Specifically, in the initiation of its investigation of the ALP, the Department listed several differences between the 1997-2002 and the 2002-2007 Exim Guidelines that included:

- A substantial reduction in the penalty for failure to meet export requirements;
- A liberalization of the linkage and timing of imports and exports;
- Allowing for a reduction of the export commitment before exports are made;
- Changes in the requirements for the import of fuel; and
- Reorganization and at least partial alteration of the regulations regarding new applicants to the ALP and deemed exports.

See Memorandum to Holly A. Kuga, through Howard Smith, from the team regarding "Advance License Program" (March 28, 2005). Due to these significant changes, the Department decided to examine the ALP in its entirety to determine whether it meets the regulatory requirements listed in 19 CFR § 351.519(a)(4)(i). The GOI has provided no further evidence that would lead the Department to change its decision in this regard.

The Department also disagrees that the ALP laws and procedures meet the criteria listed in 19 CFR § 351.519(a)(4)(i). Both the GOI and Jindal argue that the procedures set out for the ALP ensure that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts, and that the system is reasonable and effective for the purposes intended. However, during this review the Department has found a number of aspects of the ALP system that undermine its reasonableness and effectiveness.

As noted in the Department's Preliminary Results, respondents failed to demonstrate that the ALP was monitored and regulated effectively, as evidenced by the lack of information related to verification or implementation of extensions or penalties. The GOI could not identify the number of companies during the POR (or even one company) that either failed to meet export commitments under the ALP, was penalized for failing to meet the export requirements under the ALP, or was penalized for claiming excessive credits. Moreover, the Department noted that if the GOI had carried out an examination that might demonstrate monitoring of the ALP, it should identify when the examination took place and the results of the examination. Despite the Department's request, the GOI did not cite to any specific examination or verification of a producer in any industry.

In addition, the Department noted that the system allows for the availability of ALP benefits for a broad category of "deemed" exports that are not linked to the actual exportation of the subject merchandise, and provides for government discretion to bestow benefits under the program even more broadly. Allowable categories under the ALP include sales to entities such as domestic fertilizer plants, power plants and refineries, UN-funded projects, nuclear power projects, and "any project or purpose in respect of which the Ministry of Finance, by a notification, permits the import of such goods at zero customs duty."

Finally, despite frequent requests by the Department, the GOI could not provide the SION calculations for PET film or any documentation demonstrating that the process outlined in its regulations was actually applied in calculating the PET film SIONs. Thus, the Department concluded that the system the GOI has in place with respect to the ALP did not meet the requirements set out in the Department's regulations. Respondents were not able to provide any further information that would lead the Department to change its decision with regard to the countervailability of the ALP program. While respondents claim that the Department was not able to find an instance where an input has been allowed to be imported duty-free and was not consumed in the production of the exported product and note that the ALP is based on generally accepted commercial practices in India, the fact remains that the systematic problems enumerated above undermine the ALP system as a whole.

The Department further disagrees that an evaluation of the actual calculation of the SIONs for Pet film is unnecessary. As the Department noted in its Preliminary Results, SIONs are a critical element of the ALP system, providing the only link between the amount of materials that may be imported duty-free and the exported finished products that have been produced with such inputs. Respondents claim that the tracking system, not the SIONs, ensures that benefits are accurately tied to consumption in the production of exports. This statement ignores the fact that the only mechanism cited by the GOI as limiting and linking the amounts of inputs allowed to be entered duty-free under the ALP to the amounts needed to produce exports, are the SIONs. See the GOI's Export/Import Handbook of Procedures, at para. 4.7.6, as provided in the GOI's April 20, 2005, Submission at Exhibit 10. With respect to the PET film SIONs applied during the POR, the GOI could not produce documentation indicating when the PET film SIONs were originally calculated, documentation demonstrating that the process outlined in its regulations was actually applied in calculating the original PET film SIONs, or any of the supporting documents used in calculating those SIONs. Further, there is no requirement that SIONs ever be reviewed for accuracy and if a company applies for the creation of a SION and the GOI fails to review the SION within four months of the application, the SION takes effect and all companies in the industry may use the untested SION. While the GOI has stated that it does not understand the Department's statements regarding the establishment and periodic review of the SIONs, they are directly based on clear, unambiguous statements on the record. See the GOI's Export/Import Handbook of Procedures, at para. 4.7.6, as provided in the GOI's April 20, 2005, Submission at Exhibit 10. See, also, the GOI's May 16, 2005, Submission, response to question 5. Therefore, the GOI has not been able to demonstrate that a mechanism exists to evaluate SIONs to determine whether they remain reasonable over time.

Contrary to the GOI's assertion, the Department has not created a new standard under 19 CFR § 351.519(a)(4)(i), requiring governments to demonstrate that not only do duty exemption programs confirm the amount of input required, but that they demonstrate that no excess rebate was provided. In fact, the Department used the same analysis in previous cases where the Department has found a program to be countervailable when the government does not have a reasonable and effective system in place to confirm the *actual amount* of import duty exemptions that are attributed to inputs consumed in the production exports. See e.g., Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005) (PET Resin from India) and the accompanying Issues and Decision Memorandum, at Comment 5 on "EOU Exemptions on Raw Materials." Without such a system, the government cannot ensure that the import duty exemptions do not exceed the import duties applicable to the actual inputs consumed in the production of exported products, as provided under section 351.519(a)(4) of the Department's regulations.

With regard to the 19 CFR § 351.519(a)(4)(ii), the Department acknowledges that the GOI has submitted an initial examination of the inputs consumed by the respondents in producing exports. However, the Department notes that this study concerns a period after the POR. In addition, the GOI provided only the results of this examination, with no supporting documentation of the calculation, nor the methodology employed, and did so very late in this review. Therefore, we have not considered the results of this initial examination in these final results. We further note that the GOI submitted information related to a change in ALP procedures that will require periodic monitoring of SIONs. We note that these procedures will only be made effective after the end of the POR.

Jindal's assertion that the GOI applies strict rules and penalties for companies not meeting the requirements fails to address the Department's contention that the GOI failed to apply effectively the rules and penalties underlying the ALP:

> the GOI could not identify the number of companies in 2003 (or even one company) that either failed to meet export commitments under the ALP or was penalized for failing to meet the export requirements under the ALP. Additionally, the GOI was unable to provide any specific information regarding the number of companies that applied for, or received, an extension of time to meet their export commitment. See Preliminary Results at page 13.

Finally, we disagree with Jindal's argument that by countervailing the entire amount of the ALP the Department has overstated the element of the ALP concerning deemed exports. A number of systemic deficiencies led to the Department's determination, only one of which was the fact that the GOI allowed ALP recipients to satisfy export requirements through deemed exports. All factors discussed above, taken together, formed the basis for the Department's determination that the ALP is countervailable. However, we note that the Department's duty drawback regulations clearly require the system to confirm which inputs are consumed in the production of exported products. The availability of a broad category of deemed exports in a system with a demonstrated lack of effective monitoring certainly rises to the level of a systemic problem.

Comment 2: Sales Tax Incentives

Petitioners argue that the Department should calculate an additional countervailing duty for Polyplex (in addition to that calculated in the preliminary results of review for the sales taxes not paid on Polyplex's intra-state purchases) in light of information that came to the Department's attention during this review. Petitioners state that the record establishes that Polyplex did not pay sales taxes on certain purchases made under sales tax incentive programs administered by other Indian states, and that such evidence shows that each element of a countervailable subsidy exists, namely, a financial contribution, benefit, and specificity. Petitioners further argue that, because the record is incomplete as to the total amount of Polyplex's sales-tax-exempt inter-state purchases, the Department should employ a pro-rata inflation calculation to determine the total countervailable subsidy rate from these purchases. The petitioners assert that the collection of information concerning these inter-state purchases was warranted and proper, and that the record evidence supports a finding of specifity as to the sales tax incentive programs administered by other Indian states. Petitioners argue that such programs are specific because the benefits thereof "are limited to enterprises or industries within designated geographical regions.

Polyplex argues that the Department erred in collecting information concerning the occasions in which Polyplex did not pay sales taxes on certain purchases made under sales tax incentive programs administered by other Indian states. Polyplex argues that because the Department lacked record evidence that all of the elements of a countervailable subsidy existed in such occasions, collecting such information was unwarranted. Notwithstanding, Polyplex argues that the record evidence obtained by the Department is insufficient to determine the countervailability of such programs, particularly with regard to any finding concerning the specificity of the programs administered by other Indian states. Noting that the GOI reported that such programs are limited to certain backward regions, and that such regions may consist of an entire state, Polyplex argues there is insufficient evidence to prove specificity. In addition, Polyplex argues that the petitioners' proposed pro-rata inflation calculation is an unwarranted use of facts available because Polyplex has provided the information requested by the Department to the best of its ability. Thus, Polyplex argues that if the Department decides to countervail these programs, it should use the information on the record, as supplemented through the final supplemental questionnaire response.

Jindal did not discuss the sales tax incentive program in its case brief, but did note that the sales tax issue raised in petitioners' case brief concerning Polyplex has relevance to its own inter-state purchases. Jindal argues that such programs are not specific as to the purchasers, and as such, are not countervailable.

The Department's Position:

We disagree with the respondents' assertions that the Department erred in collecting further information concerning the sales tax incentive programs or that such collection was improper. During the course of this review, we found that the respondents had made certain purchases from entities located in other Indian states upon which they did not pay sales taxes, and that the tax-free status of these sales was occasioned by the sellers' location and their participation in sales tax incentive programs that allowed them to sell goods without charging sales taxes. After the Preliminary Results, and pursuant to 19 CFR § 351.311(b), we requested further information concerning these transactions. In light of that information, we have determined that these state sales tax programs confer a countervailable subsidy.

We further disagree with Jindal's argument that we cannot find these programs specific. Pursuant to Section 771 (5A)(D)(iv) of the Act, we find these programs to be de jure specific because they are limited to certain regions within the respective states administering the programs. It is not necessary to further evaluate specificity once a program is found to be de jure specific.

Polyplex has submitted no information on the record supporting its assertion that sales tax incentives limited under law to designated regions within states may be received by a party located anywhere within the state providing the subsidy. Meanwhile, the GOI has clearly stated that eligibility for all programs are contingent upon the location of the applicant within a "certain region of the State." See the GOI's August 1, 2005 submission.

At the time of the submission by petitioners arguing that Polyplex failed to disclose all of their purchases on which they did not pay sales taxes, the Department had sent out a supplemental questionnaire requesting such information. In response, Polyplex provided further information regarding all purchases under the sales tax incentive programs. See Polyplex's September 12, 2005, submission. The current record does not provide a basis to conclude that Polyplex has not provided full information regarding all purchases on which it did not pay sales taxes. Thus, we have not employed the pro-rata calculation suggested by petitioners in calculating the countervailable subsidy rate for Polyplex.

Comment 3: Whether the Department Should Exclude an IDBI Loan in Calculating the Short-Term Benchmark

Polyplex reported that it had two types of company-specific, commercial short-term U.S. dollar denominated loans during the POR: (1) WCDLs and (2) a short-term loan from the Industrial Development Bank of India (IDBI). The Department stated in the Preliminary Results that the WCDLs, unlike the IDBI loan, are used to finance both inventories and receivables, and therefore used the weighted-average interest rate of the WCDLs as the benchmark for determining benefits of pre- and post-shipment export financing denominated in U.S. dollars.

Polyplex claims that the Department was incorrect in its determination in the Preliminary Results that the IDBI loan was not used to finance inventories and receivables, and thus concludes that the Department should include the IDBI loan in the calculation of the U.S. dollar denominated short-term benchmark. Polyplex notes that it reported in its June 23, 2005, supplemental response that the IDBI loan was used to finance both its inventories and receivables and thus is comparable to the WCDLs.

Petitioners disagree with Polyplex and note that the IDBI loan has a term that is substantially longer than that of the WCDLs. Petitioners argue that 19 CFR § 351.505 clearly states that "the maturity of the loans" is a key factor in assessing the comparability of the loan. Petitioners therefore argue that Polyplex's IDBI loan fails the comparability test set out in 19 CFR § 351.505(a)(2)(i), as the structure of the IDBI loan is fundamentally different from the short-term export financing loans under examination in this review.

The Department's Position:

The Department has not used the IDBI loan in calculating the short-term loan benchmark for these final results. Department practice, as stated in the preamble to its regulations, is that "we will not use loans from government-owned special purpose banks, such as development banks, as benchmarks because such loans are similar to loans provided under a government program or at the direction of the government." See Countervailing Duties Final Rule, 63 FR 65347, 65401 (November 25, 1998). The IDBI's website clearly identifies it as a development bank in which the GOI holds a 58 percent share of its outstanding stock. See Memorandum to the File from Jeff Pedersen Concerning Placing Facts from the Industrial Bank of India Website on the Record (January 3, 2005). As the IDBI loan is from a government-owned, development bank, for the purposes of the final results of this review, the Department will not consider it in calculating the benchmark for determining benefits of pre- and post-shipment export financing denominated in U.S. dollars.

Comment 4: Whether the Department Should Consider a Certain EPCGS License as a Grant or as an Interest-Free Loan

Pursuant to 19 CFR § 351.505, in calculating the benefit for the EPCGS, the Department treats EPCGS licenses where the respondent has met its export obligation as grants and treats those where the respondent has not yet met its export commitment as interest-free loans. Polyplex argues the Department has misclassified one of its licenses as an interest-free loan, rather than as a grant. Polyplex asserts that the GOI has issued an obligation of completion certificate for the license in question. In its submission of June 23, 2005, Polyplex filed a letter from the GOI that states:

> Your application for redemption of aforesaid EPCG License was examined by this office and it was found that you have fulfilled both the export obligation as per the provision of the EXIM Policy Handbook of Procedure 1997-2002/2004-2007.
>
> Hence the EPCG License {in question} . . . has been redeemed by this office.

While Polyplex acknowledges that the certificate was issued on April 6, 2005, which is past the end of the POR, Polyplex maintains that the certificate fulfills the requirements set forth by the Department in the original investigation, where the Department stated: "In order to determine when the respondent companies meet their full or partial export obligation, the Department relies on an official certification from the GOI." See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film), 67 FR 34905 (May 16, 2002) (PET Film Final Determination) and accompanying Issues and Decision Memorandum at Comment 5 (PET Film Investigation Decision Memo).

Petitioners argue that Polyplex's request runs contrary to the Department's established practice, which relies on the issuance of the GOI waiver as the relevant legal event. Petitioners can find nothing raised by Polyplex that would cause the Department to abandon this practice.

The Department's Position:

The Department has continued to treat the benefits received under the EPCGS license in question as an interest-free loan rather than as a grant. In countervailing the EPCGS, in cases where the GOI has formally waived import duties on capital equipment, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the waiver. Otherwise, we treat the unpaid duty liabilities as an interest-free loan, as provided under 19 CFR § 351.505(d). Consistent with our approach in the previous segment of this review, the underlying investigation, and the final results in Hot-Rolled from India, we will only begin treating benefit amounts under the EPCGS program as a grant when the GOI has issued a formal waiver during that POR stating that the recipient has completed its export obligation and is therefore waived from paying the remaining outstanding import duties. See, e.g., Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 20240, 20247 (April 20, 2001) (Hot-Rolled from India Prelim) (unchanged in the final results); and PET Film Investigation Decision Memo at Comment 5. As Polyplex has acknowledged, the date of the waiver for the license in question is April 6, 2005, which falls after the POR. Therefore, the benefits of the EPCGS license will continue to be treated as an interest-free loan during this POR.

Comment 5: Calculation of the Countervailing Duty Rate Under the Advance License Program

Polyplex argues that in calculating the amount of the Advance License benefits received, the Department incorrectly included raw materials imported by Polyplex outside of the POR. Polyplex also notes that in calculating the subsidy amount the Department failed to deduct the application fees paid in calculating the benefit as required by the statute.

Petitioners had no comment.

The Department's Position:

The Department has revised its calculation of the amount of Advance License benefits received. We have omitted the raw material imports occurring outside of the POR. Also, pursuant to section 771(6)(A) of the Act, we have deducted the application fees Polyplex paid.

Comment 6: Interest Rates Used to Calculate the Countervailing Duty Rate Under the EPCGS Program

For imports under the EPCGS, where the export commitment has not been met, the Department calculated the benefit by multiplying the unpaid duties by the benchmark interest rate for rupee-denominated, long-term loans borrowed in the year in which the capital goods for which duty exemptions were provided were imported. Jindal argues that such an interest rate does not reflect the effective long-term interest rate for the POR. Jindal argues that the Department's approach mistakenly presumes that imputed long-term loans are never repaid. Jindal submits that as the Department is considering interest saved during the POR on the unpaid duties as the benefit, then this interest savings must be calculated based on the actual interest rates applicable during the POR, which have been actually paid on rupee-denominated long-term borrowing. Hence, Jindal asserts that for calculating the interest benefit for the POR, the weighted-average interest rate on rupee-denominated long-term loans for the POR should be applied to the unpaid duty under the EPCGS. Jindal maintains that this is the actual interest rate that Jindal would have paid during the POR had it borrowed funds for payment of import duties on capital goods.

Petitioners argue that since the EPCGS benefits at issue are being treated as long-term, government-provided, interest-free loans issued on the date of duty exemption, the relevant benchmark should similarly be a long-term commercial loan issued in the year of duty exemption. Petitioners state that this approach is consistent with 19 CFR § 351.505(a)(2)(iii), which states that "the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established."

The Department's Position:

The Department has continued to use rupee-denominated, long-term loans borrowed in the year in which the capital goods were imported as the benchmark. For EPCGS licenses, where respondents have not yet met their export commitment, the Department considers the amount of unpaid import duties to be an interest-free loan. Accordingly, we find the benefit to be the interest that Jindal would have paid during the POR had they borrowed the full amount of the duty exemption at the time of importation.

Pursuant to 19 CFR § 351.505(a)(2)(iii), in the case of long-term loans, the Department is directed to use, as the benchmark, a loan whose terms were established during or immediately before the year in which the terms of the government-provided loan were established. Because the Department is treating the amount of unpaid import duties as a loan originating at the time of import, the Department has correctly calculated the benefit by multiplying the exemption by the benchmark interest rate for loans borrowed in the year in which the capital goods for which duty exemptions were provided were imported. This is consistent with the Department's practice. See, e.g., Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate ("PET") Resin From India, 69 FR 52866, 52869 (unchanged in the final); see, also, Hot-Rolled from India Prelim, 66 FR 20240, 20247 (unchanged in the final).

Comment 7: The Proper Allocation of EPCGS and EOU Benefits

In calculating the countervailing duty rate for the EPCGS and the EOU, the Department divided the sum of the total benefit by the amount of total export sales. Jindal claims that such a calculation results in an overstated countervailing duty rate. Jindal argues that since the imported capital goods were used to produce products for both export and domestic markets, the benefit should be allocated over all sales, both foreign and domestic. Jindal makes the same argument with regard to calculating the countervailing duty rate for capital goods procured domestically under the EOU.

Petitioners disagree and cite to 19 CFR § 351.525(b)(2), which provides that "{t}he Secretary will attribute an export subsidy only to products exported by a firm" (emphasis added).

The Department's Position:

Pursuant to 19 CFR § 351.525(b)(2), the Department attributes an export subsidy only to a firm's exported products. The indispensable requirement for the duty-free importation of capital goods under both the EPCGS and EOU programs is that the recipient be an exporter. As both programs are export subsidies, the Department will continue to attribute EPCGS and EOU benefits exclusively to exports.

Comment 8: Whether the Cash Deposit Rate Should Include the 80 HHC Tax Exemption Countervailing Duty Rate

Jindal argues that the GOI has terminated the 80 HHC tax exemption, effective April 1, 2005, that such termination is a program-wide change, and that the 80 HHC tax exemption has not been replaced by any other program. See Jindal's Brief at 5 (Jindal's September 27, 2005, Submission at III-54; and Exhibit 23(b), p.4). Jindal cites 19 CFR § 351.526 stating that:

> (a) In general. The Secretary may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if:
>
> (1) The Secretary determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation (see 351.205) or a preliminary result of an administrative review or a new shipper review (see 351.213 and 351.214), a program-wide change has occurred; and
>
> (2) The Secretary is able to measure the change in the amount of countervailable subsides provided under the program in question.

Jindal argues that the GOI's termination of the 80 HHC tax exemption meets these criteria since the entire program was terminated subsequent to the POR but prior to the Preliminary Results, and the Department can measure the change in the amount of the countervailable subsidy since the subsidy will henceforth be zero. Accordingly, while the Department may countervail the benefit from the 80 HHC tax exemption for the POR, for purposes of setting the cash deposit rate for future entries, Jindal argues that the impact of the 80 HHC tax exemption should not be included in that deposit rate as no benefit will accrue on account of the 80 HHC tax exemption in the future.

Petitioners submit that there will be residual benefits within the meaning of 19 CFR § 351.526(d)(1), as the purported termination date of the program is not until March 31, 2005, which is three months into the 2005 period of review. Petitioners claim that this precludes the adjustment of cash deposit requirements.

The Department's Position:

The Department has not adjusted the cash deposit rate as requested. Under its regulations, the Department has discretion as to whether a program-wide change must be taken into consideration. See 19 CFR § 351.526(a). If the parties do not meet their requirements to provide the Department with sufficient information at an appropriate point in the proceeding to demonstrate that a program has been terminated and no new program has replaced it, the Department will not adjust the cash deposit rate. Not only has the GOI remained silent on the record regarding whether a substitute program will take the place of the 80 HHC program, Jindal did not raise its request for a change to the cash deposit rate until its brief. Therefore, the Department did not have sufficient time to seek additional information or to determine whether to verify that this program did, in fact, terminate without another one taking its place. See 19 CFR § 351.526(d).

Comment 9: Inclusion of Benefits Received by Non-Producing Units in Calculating Jindal's EOU Countervailing Duty Rate

Jindal argues that since its biaxially-oriented manufacturing unit in Nashik was under construction during the POR and only began production after the POR, the Department should not have included the benefits received by this unit in calculating the EOU countervailing duty rate for capital goods imported duty-free. Jindal points out that in the calculation of the countervailing duty rate, the denominator used by the Department does not include any turnover of the new EOU unit. Jindal asserts that as the entire unit under the EOU was under construction during the POR, the Department should either exclude the benefit relating to this unit or should consider the sales turnover of the period from April 2004 to March 2005.

Using the same line of argument, Jindal argues that since its Khanvel unit produced nothing during the POR, the Department should not have included the benefits received by this unit in calculating the EOU countervailing duty rate for capital goods imported duty-free.

Petitioners had no comment.

The Department's Position:

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 of the EOU capital goods program to be an interest-free loan made to Jindal at the time of importation. Jindal has not yet met the contingent liability under the EOU program. Therefore, the Department has correctly identified the benefits under this program to be the unpaid import duties during the POR. Pursuant to 19 CFR § 351.525(a), the Department has allocated benefits under the EOU program to "the sales value during the same period of the products to which the Secretary attributes the subsidy." For the EOU program, pursuant to 19 CFR § 351.525(b)(2), the Department has allocated the benefits to all exports during the POR. This approach is consistent with the Department's treatment of the EOU program in other proceedings and is also consistent with the Department's methodology regarding similar capital goods programs, such as the EPCGS. See PET Resin From India, 70 FR 13460 (March 21, 2005) and the accompanying Issues and Decision Memorandum, at III.A.1.f. See, also, Hot-Rolled from India Prelim, 66 FR 20240, 20247 (unchanged in the final).

Comment 10: Calculation of Jindal's Countervailing Duty Rate Under the EOU Program

Jindal claims that in the preliminary calculations, the Department double-counted the duty exemption benefit for certain capital goods that were imported under the EOU program and then converted to EPCGS Licences.

Petitioners state that they are unable to identify the alleged double-counting by the Department in the Preliminary Results disclosure materials.

The Department's Position:

In calculating the Preliminary Results, the Department incorrectly included the duty exemption benefit for certain capital goods that were imported under the EOU program and then converted to EPCGS licences both under the rows titled "EOU Duty Exemption on Capital Goods" and the "Transferred EOU-EPCGS Benefits," thereby counting this benefit twice. The Department has eliminated the double-counting of the countervailable benefit from the duty exemption for the imports in question.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will calculate individual net subsidy rates for Jindal and Polyplex for 2003 in accordance with these positions and publish the final results and the final net subsidy rates in the Federal Register.

__________ __________
Agree Disagree

____
David M. Spooner
Assistant Secretary
for Import Administration

____
Date