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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 in the Final Results of the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India

I. Summary

We have analyzed the case and rebuttal briefs submitted by interested parties in response to the Notice of Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India 71 FR 45037 (August 8, 2006) (Preliminary Results). The "Subsidies Valuation Information" and the "Analysis of Programs" sections below set forth our determinations with respect to the programs under review as well as the methodologies applied in analyzing these programs. These sections are followed by the "Analysis of Comments" section, which contains the Department of Commerce's (the Department) response to the issues raised in the briefs. We recommend that you approve the positions described in this memorandum.

Comments were submitted by Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc. (collectively, the Petitioners) as well as Respondents Jindal Poly Films Limited of India (Jindal) and Polyplex Corporation Ltd. (Polyplex). Below is a complete list of issues raised by the interested parties in their case and rebuttal briefs:

Comment 1: Inclusion of Deemed Export Sales in the Total Value of Export Sales
Comment 2: Inclusion of Non-Subject Merchandise in the Subsidy Calculations
Comment 3: Countervailibility of the Advance License Program
Comment 4: Export Promotion Capital Goods Scheme Calculations
Comment 5: Sale of the DFRC License
Comment 6: Loans from Government-Owned Special Purpose Banks

Comment 7: State Sales Tax Incentive Programs
Comment 8: Target Plus Scheme

II. Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(d)(2)(i), the Department will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company-specific AUL or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years.

In the investigation, the Department determined that Polyplex had rebutted the presumption and applied a company-specific AUL of 18 years for Polyplex. See Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film), 67 FR 34905 (May 16, 2002) (PET Film Final Determination) and the accompanying Issues and Decision Memorandum, at "Allocation Period." In the second administrative review, the Department determined that Jindal had rebutted the presumption and applied a company-specific AUL of 17 years for Jindal. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006) (Second PET Film Review - Final Results) and the accompanying Issues and Decision Memorandum, at "Allocation Period."

In the Preliminary Results, the Department found there was no new evidence on the record that would cause the Department to reconsider these decisions and continued to use an AUL of 17 years for Jindal and 18 years for Polyplex in allocating non-recurring subsidies. No parties submitted comments concerning this issue. Therefore, the Department has used these AULs in these final results.

Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate, 19 CFR 351.505(a)(2)(ii) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. See Second PET Film Review - Final Results, 71 FR 7534 (February 13, 2006), and the accompanying Issues and Decision Memorandum, at Comment 3. As such, the Department did not use loans from the IDBI reported by Jindal and Polyplex in the Preliminary Results for the 2004 benchmark calculations.

For programs requiring a rupee-denominated discount rate or the application of a rupee-denominated long-term benchmark rate, the Department used, where available, company-specific, weighted-average interest rates on comparable commercial long-term, rupee-denominated loans. The Department's position on parties' comments regarding long-term benchmarks is discussed in Comments 4 and 6. For this review, the Department required long-term loan benchmarks to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) and Export Oriented Units (EOU) programs.

Respondents did not have comparable commercial long-term rupee-denominated loans for all of the required years. Therefore, for those years for which we did not have company-specific information, 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).[1] When there were no comparable long-term, rupee-denominated loans from commercial banks during either the year under consideration or the preceding year, we used national average interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from the International Monetary Fund (IMF).

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government- provided, short-term loan, the preference is to use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required both dollar-denominated and rupee-denominated short-term loan benchmark rates to determine benefits received under the Pre-Shipment Export Financing and Post-Shipment Export Financing programs.

In previous reviews of this case, the Department has determined that Inland Bill Discounting (IBD) loans are more comparable to pre-shipment and post-shipment export financing loans than other types of rupee-denominated short-term loans. See Second PET Film Review - Final Results, 71 FR 7534 (February 13, 2006) and the accompanying Issues and Decision Memorandum, at "Benchmarks for Loans and Discount Rate." In the Preliminary Results of this proceeding, the Department continued to use IBD loans as the basis for the short-term rupee-denominated benchmark for all applicable programs for both Jindal and Polyplex.

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[1] As noted in the Preamble (63 FR at 65364), 19 CFR 351.505(a)(2)(iii) specifies the time period from which the Department will select comparable financing and directs the Department to use a loan whose terms were established during or immediately before the year in which the terms of the government-provided loan were established.

In the Preliminary Results, the Department calculated Polyplex's U.S. dollar-denominated short-term benchmark rates based on its US dollar-denominated Working Capital Development Loans. Jindal did not have any U.S. dollar-denominated short-term loans during the POR. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), the Department used a national average dollar-denominated short-term interest rate, as reported in the IMF's publication of International Financial Statistics (IMF Statistics) for Jindal.

Denominator Issues

In the Preliminary Results, the Department did not include deemed exports sales as part of the export sales denominator when calculating benefits for the Advance License Program (ALP), Duty Free Replenishment Certificate (DFRC), EPCGS, and EOU programs. The Department further examined this issue at verification of the Government of India (GOI), Jindal, and Polyplex. See Verification of the Questionnaire Responses Submitted by the Government of India, December 13, 2006 (GOI Verification Report); Verification of the Questionnaire Responses Submitted by Jindal Polyester Ltd., December 13, 2006 (Jindal Verification Report); and Verification of the Questionnaire Responses Submitted by Polyplex Polyester Ltd., December 13, 2006 (Polyplex Verification Report). The Department also invited parties to comment on this issue in their briefs. The Department's position on parties' comments regarding deemed exports are discussed in Comment 1. Based on information gathered at verification as well as parties' comments, the Department has decided to include deemed exports, as appropriate, in calculating the subsidy rates under the above-mentioned programs.

III. Analysis of Programs

Programs Determined to be Countervailable

Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI) sets a ceiling on the interest rates that commercial banks may charge exporters for pre and post-export financing loans. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes (i.e., purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of no more than 180 days.

In the investigation, the Department determined that the pre-shipment and post-shipment export financing programs were countervailable because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Tariff Act of 1930, as amended, (the Act) as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the Respondents under section 771(5)(E)(ii) of the Act in as much as the interest rates given under these programs are lower than commercially available interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. See PET Film Final Determination, 67 FR 34905, and the accompanying Issues and Decision Memorandum, at "Pre-Shipment and Post-Shipment Financing." In this review no new information or evidence of changed circumstances has been submitted which would warrant reconsidering this finding. As such, we continue to find these programs countervailable.

The benefit conferred by the pre-shipment and post-shipment loans is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (i.e., the short-term benchmark). Because pre-shipment loans are not tied to specific merchandise or destinations pursuant to 19 CFR 351.525(a)(4), we calculated the subsidy rate for these loans by dividing the total benefit by the value of each Respondent's total exports (excluding deemed exports) during the POR. Because post-shipment loans are tied to specific shipments of a particular product to a particular country, we divided the total benefit from post-shipment loans tied to exports of subject merchandise to the United States by the value of total exports of subject merchandise to the United States during the POR pursuant to 19 CFR 351.525(b)(4). On this basis, the net countervailable subsidy from pre-shipment export financing is 0.02 percent ad valorem for Jindal, and 0.30 percent ad valorem for Polyplex. The net countervailable subsidy provided to Jindal from post-shipment export financing is 0.04 percent ad valorem. Polyplex did not apply for or receive any loans under the post-shipment export financing program during the period of review (POR), January 1, 2004 to December 31, 2004.

Advance License Program (ALP)

Under the ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled the export requirement specified in the licenses. The quantities of imported materials and exported finished products are identified through standard input-output norms (SIONs) established by the GOI. During the POR, Jindal and Polyplex imported certain materials duty free under a number of advance licenses.

In the 2003 administrative review, the Department found 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, because the GOI provides 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; thus, the entire amount of import duty exemption earned by the Respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is contingent upon exportation and, therefore, is specific under section 771(5A)(B) of the Act.

See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at "Advance License Program." No new information or evidence of changed circumstances has been submitted which would warrant revisiting this finding. As such, we continue to find this program countervailable.

Pursuant to 19 CFR 351.524(c), exemptions of import duties on imports consumed in production normally provide a recurring benefit. Under this program, for 2004, Jindal and Polyplex did not have to pay import duties for certain goods that are inputs in the production of merchandise. As we have in the past, we treat the benefit provided under the ALP as a recurring benefit. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at "Advance License Program." To calculate the subsidy, we first determined the total value of duties exempted during the POR for each company. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act (in order to receive ALPs, companies are required to pay application fees). We then divided the resulting net benefit by the appropriate value of export sales. In the Preliminary Results, we did not include either Respondents' deemed exports sales as part of their total value of export sales for this program. The Department's position on parties' comments regarding the ALP program is discussed in Comment 3.

Based on the analysis of those comments and the results of verification, we have included deemed export sales in the sales denominator where appropriate. See Comment 1; Changes to the Final Calculations for Jindal Poly Films Limited of India (Jindal) in the Final Results of the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India, February 5, 2007 (Jindal - Calculations Memo); and Changes to the Final Calculations for Polyplex Corporation Ltd.(Polyplex) in the Final Results of the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India , February 5, 2007 (Polyplex - Calculations Memo). On this basis, we determine the net countervailable subsidy provided under ALP to be 5.35 ad valorem for Jindal and 1.33 percent ad valorem for Polyplex.

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.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are a countervailable export subsidy because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone; and
(2) provides a benefit under section 771(5)(E) of the Act in the amount of the revenue foregone.

Because this program is contingent upon export performance, it is specific under section 771(5A)(B) of the Act. See PET Film Final Determination, 67 FR 34905, and the accompanying Issues and Decision Memorandum, at "EPCGS." As such, we continue to find this program countervailable.

Jindal and Polyplex reported that they imported capital goods under the EPCGS in the years prior to and during the POR. Based on the information and documentation submitted by Jindal and Polyplex, in the Preliminary Results, the Department was unable to determine if Jindal's and/or Polyplex's EPCGS licenses were tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we found that each company's respective EPCGS licenses benefitted all of the company's exports.

In the Preliminary Results, we noted that Polyplex met the export requirements for certain EPCGS licenses prior to December 31, 2004 and the GOI had formally waived the relevant import duties. We also found that Jindal had not yet met its export obligation for any of its imports of capital goods under the program. For Polyplex's imports for which the GOI had formally waived the duties, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the waiver. Pursuant to 19 CFR 351.524(c)(1), the Department will treat a grant as a "non-recurring" benefit. To calculate the benefit received from the GOI's formal waiver of import duties on Polyplex's capital equipment imports where its export obligation was met prior to December 31, 2004, we considered the total amount of duties waived (net of required application fees) to be the benefit. When reporting their imports under the EPCGS licenses, Polyplex and Jindal also reported application fees they paid to obtain those EPCGS licenses. In the investigation, we considered such fees to be an ". . . application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." Therefore, these fees are deducted from the value of the benefit when calculating the amount of the net countervailable subsidy. See section 771(6)(A) of the Act; and Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India, 66 FR 53389 (October 22, 2001) (unchanged by the final determination). Nothing has changed in this administrative review to warrant reconsideration of that determination.

Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Polyplex's outstanding import duties. See PET Film Final Determination, 67 FR 34905, and the accompanying Issues and Decision Memorandum, at Comment 5. Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted Polyplex a "non-recurring" benefit in the form of an import duty waiver. Those waivers with values in excess of 0.5 percent of Polyplex's total export sales in the year in which the waivers were granted were allocated using Polyplex's company-specific AUL, while waivers with values less than 0.5 percent of Polyplex's total export sales were expensed in the year of receipt. See "Allocation Period" section, above.

As noted above, import duty reductions that Jindal and Polyplex received on the imports of capital equipment for which they have not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we continue to treat the unpaid import duty liability as an interest-free loan. See 19 CFR 351.505(d)(1); Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at Comment 4; and Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005) (Final - Indian PET Resin) and the accompanying Issues and Decision Memorandum, at "EPCGS."

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the Respondents applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we continue to find the benefit to be the interest that Jindal and Polyplex would have paid during the POR had they borrowed the full amount of the duty reduction or exemption at the time of importation. 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) (Second PET Film Review - Preliminary Results) (unchanged in the final results), at 46488; and Final - Indian PET Resin, 70 FR 13460, and the accompanying Issues and Decision Memorandum, at "EPCGS."

Under the EPCGS program, the time period for fulfilling the export commitment expires eight years after importation of the capital good. Consequently, the date of expiration of the time period to fulfill the export commitment occurs at a point in time more than one year after the date of importation of the capital goods. 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. As the benchmark interest rate, we used the weighted-average interest rate from all comparable commercial long-term, rupee-denominated loans for the year in which the capital good was imported. See "Benchmarks for Loans and Discount Rate" section above for a discussion of the applicable benchmark.

The benefit received under the EPCGS is the total amount of: (1) the benefit attributable to the POR from the formally waived duties for imports of capital equipment for which Respondents met export requirements by December 31, 2004, and/or (2) interest due on the contingent liability loans for imports of capital equipment that have not met export requirements. To calculate the benefit from the waived duties for Polyplex, we took the total amount of the waived duties in each year and treated each year's waived amount as a non-recurring grant. We applied the allocation methodology set forth in 19 CFR 351.524(d), using the discount rates discussed in the "Benchmark Interest Rates and Discount Rates" section above to determine the benefit amounts attributable to the POR.

To calculate the benefit from the contingent liability loans for both Jindal and Polyplex, we multiplied the total amount of unpaid duties under each license (net of required application fees, in accordance with section 771(6)(A) of the Act) by the long-term benchmark interest rate for the year in which the license was approved. We then summed these amounts to determine the total benefit for each company. In the Preliminary Results, we did not include either Respondents' deemed exports sales as part of their total value of export sales for this or any other program. Based on the analysis of interested party comments and the results of verification, we have included deemed export sales in the sales denominator for the EPCGS program. See Jindal - Calculations Memo; and Polyplex - Calculations Memo. On this basis, we determine the net countervailable subsidy provided under EPCGS to be 5.33 ad valorem for Jindal and 2.07 percent ad valorem for Polyplex. The Department's position on parties' comments regarding the EPCGS program is discussed in Comments 1, 2, and 4.

For Jindal, we divided the benefit from the contingent liability loans under the EPGCS by Jindal's total exports to determine a subsidy of 2.78 percent ad valorem. For Polyplex, we summed the benefits attributable to the POR from the duty waivers under the EPGCS with the benefits from the contingent liability loans and divided that total by Polyplex's total exports to determine a subsidy of 3.82 percent ad valorem.

Income Tax Exemption Scheme 80HHC (80HHC)

Under section 80HHC of the Income Tax Act, the GOI allows exporters to exclude profits derived from export sales from their taxable income. In prior proceedings, the Department found this program to be a countervailable export subsidy, because it is contingent upon export performance and, therefore, specific in accordance with section 771(5A)(B) of the Act. Pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of tax revenue not collected. Finally, a benefit is conferred in the amount of the tax savings in accordance with section 771(5)(E) of the Act. See Second PET Film Review - Preliminary Results, 70 FR 46483, 46488 (unchanged in the final results).

To calculate the benefit under this program, we first calculated the total amount of income tax each company would have paid during the POR had it not claimed a tax deduction under section 80HHC and subtracted from this amount the income taxes actually paid during the POR. We then divided this benefit by each company's total export sales (excluding deemed export sales) consistent with 19 CFR 351.525(b)(2). We have determined the net countervailable subsidy under section 80HHC to be 0.29 percent ad valorem for Jindal and 1.60 percent ad valorem for Polyplex.

In its questionnaire response, the GOI claimed and provided supporting documentation that the program was terminated on March 31, 2004 with no residual benefits after the ending date in accordance with 19 CFR 351.526. See Response of the Government of India's to the Department's Third Administrative Review Questionnaire, (September 29, 2005) (GOI Questionnaire Response), at Exhibit 10; and Response of to Jindal Poly Films Limited to the Department's Third Administrative Review Questionnaire, (October 3, 2005) (Jindal Questionnaire Response), at Exhibit 24(a); and Response of to Polyplex Corporation Limited to the Department's Third Administrative Review

Questionnaire, (October 3, 2005) (Polyplex Questionnaire Response), at Exhibit 23. At verification, the Department examined the GOI's claim and was able to verify that the 80HCC exemption was phased out effective March 31, 2004 and that the exemption could not be claimed on any tax returns filed after March 31, 2005. See GOI Verification Report, at pages 9 and 10. Pursuant to 19 CFR 351.526, because this program was terminated with no residual benefits and was not replaced with a new countervailable program, we will include these subsidies in the assessment rate but exclude them from the cash deposit rate. No parties submitted comments concerning the 80HHC program.

Capital Subsidy

Polyplex received a capital infusion in 1989 from the GOI. This subsidy was discovered at verification during the investigation. See PET Film Final Determination, at "Capital Subsidy." At that time, the Department determined that there was insufficient time to establish whether the program was specific under section 771(5A)(D) of the Act. Finally, the Department stated its intention to re-examine the program in a future administrative review pursuant to 19 CFR 351.311(c)(2). Based on the information obtained during the verification in the investigation, the Department determined that a financial contribution was provided by the GOI , pursuant to section 771(5)(D)(i) of the Act, and a benefit, in the amount of the capital subsidy, was received by Polyplex under section 771(5)(E) of the Act. See Second PET Film Review - Preliminary Results, 70 FR 46483, 46489 (unchanged in the final results).

In all previous administrative reviews, the Department has sent questionnaires to the GOI and Polyplex, seeking information that would allow it to determine whether the capital subsidy program is specific under section 771(5A) of the Act. Neither the GOI nor Polyplex has provided any information regarding the subsidy. As facts available, the Department determined that the subsidy was specific. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004) (First PET Film Review - Final Results) and the accompanying Issues and Decision Memorandum, at "Capital Subsidy."

In the current review, the Department again sent questionnaires to the GOI and Polyplex, seeking information that would allow it to determine whether the program is specific under section 771(5A) of the Act. As in the previous reviews, Polyplex and the GOI reported that they were unable to provide any information regarding the specificity of this program due to the considerable amount of time that has elapsed since the provision of the subsidy. As such, there is no new information or evidence of changed circumstances that would warrant reconsidering the original finding of specificity, therefore, we continued to find, as facts available, that the subsidy is specific under section 771(5A)(A) of the Act.

Because the benefit was a capital grant, pursuant to 19 CFR 351.524(c), the Department finds it to be non-recurring. Thus, in calculating the subsidy for this program, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2). Because the grant exceeded 0.5 percent of Polyplex's total sales in 1989, the year in which the capital grant was received, the benefits were allocated over 18 years, the company-specific AUL See "Allocation Period" section, above. In allocating this capital grant, we used the Department's standard allocation methodology for non-recurring subsidies under 19 CFR 351.524(d). See "Benchmarks for Loans and Discount Rate" section above for a discussion of the applicable benchmark. To calculate the subsidy to Polyplex from this capital grant, we divided the benefit attributable to the POR by the company's total sales during the POR. On this basis, we determine the net countervailable subsidy provided to Polyplex under this program to be 0.01 percent ad valorem.

Export Oriented Units (EOU)

Companies that are designated as an EOU are eligible to receive various forms of assistance in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales, for five years. Companies designated as EOUs may receive the following benefits: (1) duty-free importation of capital goods and raw materials; (2) reimbursement of central sales taxes (CST) paid on materials procured domestically; (3) purchase of inputs free of central excise duty; and (4) receipt of duty drawback on furnace oil procured from domestic oil companies.

Consistent with the previous review, Jindal reported that it had been designated as an EOU. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at "Export Oriented Units." Specifically, Jindal reported receiving the following benefits: (1) the duty-free importation of capital goods; (2) the reimbursement of CST paid on raw materials and capital goods procured domestically; and (3) the purchase of materials and other inputs free of central excise duty.

The Department determined that the EOU program was specific, within the meaning of section 771(5A)(B) of the Act, since the receipt of benefits under this program was contingent upon export performance. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at "Export Oriented Units." The Department has previously determined that the purchase of materials and/or inputs free of central excise duty is not countervailable pursuant to 19 CFR 351.517(a), since these benefits are available to all Indian manufacturers and therefore are not specific. See Final - Indian PET Resin, 70 FR 13460, and the accompanying Issues and Decision Memorandum, at "Export-Oriented Units Program: Duty-Free Import of Capital Goods and Raw Materials" and Memorandum to the File from Sean Carey Acting Program Manager, through Dana S. Mermelstein, Acting Director, Office of AD/CVD Enforcement VI, to Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Preliminary Analysis of the Export Oriented Unit (EOU) Program on Duty Drawback on Furnace Oil Procured from Domestic Oil Companies Program and Purchases of Materials and Other Inputs Free of Central Excise Duty, dated February 14, 2005. However, as discussed in more detail below, the Department has determined that the other two EOU benefits used by Jindal are countervailable.

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

Under this program, an EOU is entitled to import, duty-free, capital goods and raw materials for the production of exported goods in exchange for committing to export all of the products it produces, with the exception of sales in the Domestic Tariff Area (DTA) over five years. The Department previously determined that the duty-free importation of capital goods provides a financial contribution and confers benefits equal to the amount of exemptions and reimbursements of customs duties and certain sales taxes. See sections 771(5)(D)(ii) and (E) of the Act; and 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, 52870 (August 30, 2004) (PET Resin - Preliminary Determination) (unchanged in the final determination). There is no new information or evidence of changed circumstances that would warrant reconsidering this determination.

However, pursuant to Appendix 14-I of the GOI's Policy Handbook, until an EOU demonstrates that it has fully met its export requirements, the company retains a contingent liability to repay the import duty exemptions. The record of this review indicates that Jindal has not yet met its export contingency and will owe the unpaid duties if the export requirements are not met. Upon Jindal meeting its export requirement, the Department will treat the unpaid duties as a grant. In the meantime, 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 Jindal at the time of importation. We determine the benefit to be the interest that Jindal 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 EOU program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). We used the long-term, rupee-denominated benchmark interest rate discussed in the "Benchmarks for Loans and Discount Rate" section above for each year in which capital goods were imported as the benchmark.

The benefit for each year is the total amount of interest that would have been paid if the firm had received a loan to pay the duties. Based on the analysis of interested parties' comments and the results of verification, we have included deemed export sales in the sales denominator for the EOU program. See Comment 1; and Jindal - Calculations Memo. To calculate the subsidy, we divided the total amount of benefits received under the program during the POR by Jindal's total value of export sales, including deemed exports. We determine the net countervailable subsidy provided to Jindal through the duty-free importation of capital goods under the EOU program to be 3.28 percent ad valorem.

b. Reimbursement of CST Paid on Materials Procured Domestically

Jindal was reimbursed for the CST it paid on raw materials and capital goods procured domestically. The benefit associated with domestically purchased materials is the amount of reimbursed CST received by Jindal during the POR. The Department previously determined that the reimbursement of CST paid on materials procured domestically provides a financial contribution and confers benefits equal to the amount of exemptions and reimbursements of sales taxes pursuant to sections 771(5)(D)(ii) and (E) of the Act. See, e.g., Second PET Film Review - Preliminary Results, 70 FR 46483 (unchanged in the final results), at 46490. Normally, tax reimbursements, such as the CST, are considered to be recurring benefits. However, a portion of the benefit of this program is tied to a

company's capital assets. As such, we treat reimbursements which are tied to capital goods as a non-recurring benefit pursuant to
19 CFR 351.524(c)(2)(iii). However, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) and found that the amount of CST reimbursements tied to capital goods received during the POR was less than 0.5 percent of total export sales for 2004. In previous reviews, none of Jindal's CST reimbursements under the EOU program exceeded 0.5 percent of the total export sales for that particular POR. Thus, all benefits were expensed in full in that particular review. Therefore, the benefit for this review is the amount of CST reimbursements received during the POR, only. See 19 CFR 351.524(b)(2). There is no new information or evidence of changed circumstances that would warrant reconsidering this determination.

To calculate the benefit for Jindal, we first summed the total amount of CST reimbursements for capital goods and raw materials received during the POR. As stated above, based on the analysis of interested parties' comments and the results of verification, we have included deemed export sales in the sales denominator for the EOU program. See Comment 1; and Jindal - Calculations Memo. We divided this amount by the total value of export sales, including deemed exports, during the POR. On this basis, we determine the net countervailable subsidy provided to Jindal through the reimbursement of CST under the EOU program to be 0.07 percent ad valorem.

State Sales Tax Incentive Programs

Certain states in India (including Uttaranchal/Uttar Pradesh (SOU/SUP), Maharashtra (SOM), West Bengal, Gujurat, Himachal Pradesh, Daman, Union Territory of Dadra & Nagarhaveli, Karnataka, Delhi, Chattisgarh, Tamilnadu, Rajasthan, and Punjab) provide a package of incentives to encourage the development of certain regions of those states. See GOI Questionnaire Response, at page 45. 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 from paying 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 State 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 State 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 did not exist for Respondents. This is consistent with the approach taken in the previous review, where the Department determined that the exemption from collecting sales taxes on sales do not provide a countervailable benefit. See Second PET Film Review - Final Results,
71 FR 7534, and the accompanying Issues and Decision Memorandum, at "State Sales Tax Incentive."

With regard to the state sales tax exemptions 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 Second PET Film Review - Final Results, 71 FR 7534. There is no new information or evidence of changed circumstances that would warrant reconsidering this determination. Interested parties' comments regarding the State Sales Tax Incentive program are discussed in Comments 4 and 10.

To calculate the benefit, we first calculated the amount of state 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 2.45 percent ad valorem for Jindal and a net countervailable subsidy of 2.11 percent ad valorem for Polyplex.

Duty Free Replenishment Certificate (DFRC)

The DFRC scheme was introduced by the GOI in 2001 and is administered by the Director-General for Foreign Trade (DGFT). The DFRC is a duty replenishment scheme that is available to exporters for the subsequent import of inputs used in the manufacture of goods without payment of basic customs duty. In order to receive a license, which entitles the recipient to subsequently import, duty free, certain inputs used in the production of the exported product, as identified in the SION, a company must: (1) export manufactured products listed in the GOI's export policy book and against which there is a SION for inputs required in the manufacture of the export product based on quantity; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. See the Ministry of Commerce and Industry Directorate General of Foreign Trade Policy 2004-2009, sect. 4.2; and GOI Response to Supplemental Questionnaire Concerning 2004 Countervailing Duty Administrative Review of PET Film from India (April 28, 2006), at page 13. The application must be filed within six months of the realization of the profits. DFRC licenses are transferrable, yet the transferee is limited to importing only those products and in the quantities specified on the license.

19 CFR 351.519(b)(2) provides that the Secretary will normally consider any benefit from a duty drawback or exemption program as having been received as of the date of exportation. However, in the Preliminary Results, we found that an exception to this normal practice is warranted here in view of the unique manner in which this program operates. Specifically, a company may not submit an application for a DFRC license until the proceeds of the sale are realized. The license, once granted, specifies the quantity of the particular inputs that the bearer may subsequently import duty free. In the case of the DFRC, the company does not know at the time of export the value of the duty exemption that it will ultimately receive. It only knows the quantity of the inputs it will likely be able to import duty free if its application for a DFRC license is granted. Under the DFRC, the Respondent will only know the total value of the duty exemption when it subsequently imports the specified products duty free with the license, or sells it. Therefore, we determined that the date of receipt is linked to when the company

imports an input duty free with the license. See e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 1512 (January 10, 2006) (unchanged in the final results). If a company sells the license, the date of sale is the date when the benefit is conferred. See e.g., Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review 62 FR 32297 (June 13, 1997) (1994 Indian Castings Final Results), at 32300.

Neither Jindal nor Polyplex reported imports using a DFRC license or exports against a DFRC license during the POR. However, Polyplex reported selling part of its rights under the DFRC Scheme. The Department has previously determined that the sale of these licenses confers a countervailable export subsidy. See e.g., 1994 Indian Castings Final Results, at 32300. No new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, in accordance with section 771(5A)(B) of the Act, we determine that Polyplex's partial sale of its license under the DFRC Scheme is an export subsidy and that a financial contribution is provided, under section 771(5)(D)(ii) of the Act, in the form of the revenue foregone. We further find that the sale conferred a benefit under section 771(5)(E) of the Act in the amount of the revenue from the sale. The Department has not made a determination on the countervailability of the DFRC system; however, no imports were made using a DFRC license during this POR.

To calculate the benefit to Polyplex on the partial sale of its rights under the DFRC Scheme, we identified the proceeds it realized from the sale during the POR. Based on the analysis of interested parties' comments and the results of verification, we have included deemed export sales in the sales denominator for the DFRC program. See Comment 1; and Polyplex - Calculations Memo. We then calculated the subsidy by dividing the total benefit by the total value of Polyplex's export sales, including deemed export sales, during the POR. Polyplex's comments regarding the DFRC program are discussed in Comment 5. On this basis, we determine the net countervailable subsidy for this program to be 0.03 percent ad valorem for Polyplex.

Programs Preliminarily Determined to be Not Used

We have determined that the producers/exporters of PET film products did not apply for or receive benefits during the POR under the programs listed below:

1. Duty Entitlement Passbook Scheme (DEPS)
2. Electricity Duty Exemption Scheme - State of Maharashtra

IV. Analysis of Comments

Comment 1: Inclusion of Deemed Export Sales in Total Value of Export Sales

In the Preliminary Results, the Department included only physical exports in determining total export sales to be used in the denominator for calculating the subsidy for all export programs. Respondents have argued that for the ALP, EPCGS, EOU and DFRC export subsidy programs the denominator should include not only physical exports, but also "deemed exports." Respondents have stated that deemed exports, as defined in chapter 8 of the GOI's Foreign Trade Policy, can be applied towards fulfillment of an exporter's export obligation under the aforementioned programs. Respondents also claim that deemed exports are defined as certain sales of products to domestic companies which are incorporated into finished products that are ultimately exported.

Jindal contends that the Department verified at the GOI verification that deemed exports relating to the supply on inputs under the ALP and the EOU will eventually be exported out of India. Jindal states that in the previous reviews of this countervailing duty order, the Department included deemed export sales for the purposes of calculating the benefits under the EPCGS, EOU and ALP programs. Therefore, Jindal contends, the Department should include deemed export sales in the export sales denominator.

Polyplex also argues that the Department should include deemed export sales in the export sales denominator of the calculations for EPCGS and ALP programs. Polyplex states that in the underlying investigation, the Department included deemed export sales in the denominator of the EPCGS calculations as companies could receive benefits for deemed exports under this program. See PET Film Final Determination, 67 FR 34905 and the accompanying Issues and Decision Memorandum, at Comment 8. Polyplex also cites to the GOI Verification Report, which states that the GOI allows Indian companies to use deemed export sales to fulfill the export obligations of the EPCGS and ALP programs. According to Polyplex, the GOI Verification Report also notes that the GOI officials stated that it was theoretically possible for a company to rely solely on deemed exports in order to receive benefits under the ALP, EOU, and EPCGS programs as long as the company is providing supplies along a chain that will eventually lead to exports.

Polyplex contends that the Department should include deemed exports in the export sales denominator since, for EOU, ALP, and EPCGS programs the GOI has safeguards in place to ensure that certain categories of deemed exports must be physically exported out of India. Polyplex states that there are ten categories of allowable deemed exports listed in chapter 8.2(a) through (j) of the GOI's Foreign Trade Policy. Polyplex contends that three of the ten categories in Chapter 8.2, 8.2(a) (supplies of inputs to ALP and DFRC license holders that are further processed), 8.2(b) (supplies to EOUs that are further processed) and 8.2(h) (supply of marine freight containers by an EOU to another domestic party that have to be exported out of India within six months), cover deemed export sales that are eventually exported. Polyplex maintains that all of their deemed export sales during the POR were under categories 8.2(a) and 8.2(b).

Polyplex notes that ALP license holders must submit supporting documentation and various government forms, such as invoices, certification of payments, certification by the purchaser of its status as company qualified to receive deemed exports, and other forms that show movement of goods without payment of excise taxes, when reporting deemed export sales toward fulfillment of its export obligation under these programs. See GOI Verification Report. Polyplex further notes that the Department examined the original documents the company filed with the GOI demonstrating that it reported deemed export sales toward fulfillment of its export obligation. See Polyplex Verification Report, at pages 12 and 13.

Polyplex maintains that the Department verified that a company cannot use a deemed export sale to claim export obligation fulfillment by reporting a single sale as both a physical export sale and a deemed export sale for the same sale. Polyplex contends that in the GOI Verification Report, at pages 2-4. GOI officials stated that companies have to submit different sets of documentation when demonstrating export obligation fulfillment for deemed export sales and physical export sales. Also, Polyplex maintains that the GOI requires EPCGS participants to categorize the method of obligation fulfillment as either physical, deemed, third party, or royalty payment.

Polyplex also contends that the Department verified that for sales from one ALP license holder to another, only one of the parties can claim the benefit of duty free imports for inputs. In these instances, the purchaser of the deemed exported inputs invalidates its right to import inputs duty free when it decides to procure inputs from a domestic ALP license holder. Polyplex notes that the Department reviewed copies of invalidation letters in the company's files during verification. See Polyplex Verification Report, at page 12.

Petitioners agree with the Department's decision in the Preliminary Results to not include deemed export sales as part of the export sales denominator used to calculate benefits for the ALP, EPCGS, and EOU programs. Petitioners state that deemed exports are not physical exports and should not be included in the export sales denominator for GOI export subsidy programs.

Petitioners argue that, when calculating ad valorem subsidy rates for export subsidies, such as the ALP, EPCGS, and EOU programs, 19 CFR 351.525(b)(2) requires that the Department attribute subsides only to products exported by a firm. Petitioners contend that the common theme of all the subsidy programs is that the benefit promotes exports and, as such, benefits under these programs must be measured by dividing the benefit by export sales only. Petitioners further argue that in this case so-called deemed exports are not exports as set forth under the statute and the Department regulations because goods do not leave the country. Therefore, Petitioners conclude the Department should not included deemed exports in the sales denominator when calculating duty for these export programs.

In its rebuttal brief, Jindal argues that it is against the Department's practice to not include deemed exports in its calculations for ALP, EPCGS, and EOU. Specifically Jindal states that the Department included deemed export sales in the calculations for the 2003 review. Moreover, Jindal disagrees with Petitioners' interpretation of 19 CFR 351.525(b)(2) and the Department's GOI Verification Report. Jindal argues that Petitioners are taking the meaning of "only" in 19 CFR 351.525(b)(2) too literally. Jindal goes on to say that Petitioners are reading the GOI Verification Report out of context when it quotes the GOI as saying that deemed exports are transactions where the goods do not leave the country. See GOI Verification Report, at page 4. Jindal contends that the GOI Verification Report also states that deemed exports relating to the supply of inputs under the ALP and EOU programs will eventually be exported out of India. See GOI Verification Report, at page 2. Jindal further states that deemed exports are exports that have had further value added to them. See GOI Verification Report, at page 4. Jindal goes on to note that both deemed and physical exports count toward fulfilling its obligations under the ALP and EOU programs.

See Jindal Verification Report, at pages 14 and 15. Jindal concludes that Petitioners are incorrect in portraying deemed exports as domestic sales. Jindal argues that if deemed exports are not exported, they will not be counted towards the Indian producers' export obligation.

Polyplex disagrees with Petitioners' statement that the Department does not have the legal latitude to define which products qualify as "exported" under 19 CFR 351.525(b)(2). Polyplex counters that since "exported" is not defined in the regulations or statute, the Department has sufficient latitude to define the term. As discussed in 19 CFR 351.501, Polyplex argues that the attribution rules are designed to ensure that the subsidy in question is attributed to and divided by the sales for which costs are reduced. Polyplex concludes that the record of this review shows that ALP and EPCGS participants qualify for participation in and fulfill the obligation of these programs through both physical export and deemed export sales. As such, Polyplex argues that the benefits derived from the ALP and EPCGS programs are attributable to all physical exports sales and deemed export sales. Polyplex concludes that under these circumstances deemed and physical exports should be included in the denominator for both programs.

Department's Position

The record of this review shows that when applying for EPCGS licenses, a company can include both physical and deemed exports to meet the program eligibility requirements. See GOI Questionnaire Response, at Exhibits 7 and 9; and GOI Verification Report, at pages 4 and 6. Furthermore, when the GOI approved Jindal's and Polyplex's EPCGS licenses, both physical and deemed exports were covered by the approval documentation. See Response of Jindal Poly Films Limited to the Department's Third Review First Supplemental Questionnaire Response (November 28, 2005) (First Jindal Supplemental), at Exhibit 42; and Response of Polyplex Corporation Limited to the Department's Third Review First Supplemental Questionnaire Response (November 28, 2005) (First Polyplex Supplemental), at Exhibit 38. Specifically, the license itself states the exporter is "subject to the conditions as laid down in Chapter 5 of Exim Policy and Procedures (Vol.I) 2002-2007 and/or The License holder shall supply goods to categories under paragraphs 8.2(a), (b), (d), (f), (g) and (j) of the policy." According to GOI officials at verification, of the ten types of deemed exports listed in Chapter 8.2 of the Foreign Trade Policy, three of them, 8.2(a) (supplies of inputs to ALP and DFRC license holders that are further processed), 8.2(b) (supplies to EOUs that are further processed) and 8.2(h) (supply of marine freight containers by an EOU to another domestic party that have to be exported out of India within six months), are eventually physically exported out of India. See GOI Verification Report, p. 2. The Department noted that all of Jindal's and Polyplex's deemed export sales were under categories 8.2(a) or 8.2(b). Therefore, we disagree with Jindal's argument that all deemed exports are ultimately exported.

With respect to Jindal's EOU status, the record shows that Jindal applied for and was approved for EOU status on the basis of both physical exports and deemed exports. When applying for EOU status, an exporter can include both physical and deemed exports to meet the eligibility requirements. For the EOU application process, the GOI considers a company's reported deemed export sales as listed in Chapter 8.2 of the Foreign Trade Policy as well as sales to Domestic Tariff Areas (DTAs) designated

by the GOI in accordance with Chapter 6.9 of the GOI's Foreign Trade Policy when deciding whether to bestow benefits under this program. See GOI Questionnaire Response, at Exhibit 23; and GOI Verification Report, at Exhibit EOU 1. Furthermore, in awarding EOU benefits to Jindal, the GOI included deemed exports as well as physical exports in the approval documentation. See Jindal Questionnaire Response,
at Exhibit 26.

The Department identifies the type and monetary value of the subsidy in question at the time the subsidy is bestowed and is not required to examine the effects of subsidies, i.e., trace how benefits are used by companies. See Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5536, 5548 (February 4, 2000). In this case, since benefits to Jindal and Polyplex under the EPCGS and the EOU programs were tied at the point of bestowal by the GOI to both physical and deemed exports, the Department determines that it is appropriate to include both physical and deemed exports sales in the denominator when calculating the net countervailable subsidy rate for these programs.

With respect to the ALP, the record of this review shows that companies can apply for and are bestowed licenses based on either physical exports or deemed exports. See GOI Questionnaire Response, at Exhibit 13 (September 29, 2005); and GOI Verification Report, at page 2. As such, we find that "deemed export" sales should be included in the export sales denominator for the ALP program only when the Respondents applied for and were bestowed licenses during the POR based on both physical exports and deemed exports.

With respect to the DFRC, neither Jindal nor Polyplex reported importing inputs against a DFRC license during the POR. However, Polyplex reported selling part of its rights for duty-free imports under the DFRC Scheme during the POR. Since the Department is looking at the sale of the DFRC license as a general subsidy, the export sales denominator used to calculate the net subsidy for this program will include both deemed and physical exports. The calculation of the subsidy on the sale of the DFRC license is discussed in Comment 5.

Comment 2: Inclusion of Non-Subject Merchandise in Subsidy Calculations

Jindal argues that the Department incorrectly calculated benefits for the review for ALP, EPCGS and Sales Tax Exemptions, by including imports of inputs and capital goods used in the production of non-subject merchandise.

- ALP - Jindal maintains that the inputs imported under ALP licenses for non-subject merchandise are required to be used in the production of non-subject merchandise only, and cannot be used for subject merchandise. Jindal also argues that even if a single ALP license covers inputs used in the production of both subject and non-subject merchandise, each input product listed in the ALP licenses carries its own specific export obligation. Therefore, Jindal argues that the Department can identify which input is used for each product.

- EPCGS - Jindal argues that the Department's statement that it cannot determine if Jindal's EPCGS licenses are tied to the production of a particular product is incorrect. Jindal states that it separated licenses that were related to subject merchandise from licenses that were used exclusively for non-subject merchandise. Jindal also states the Department verified that the production process for subject and non-subject merchandise is significantly different and that the capital goods used to produce subject merchandise could not produce non-subject merchandise. See Jindal Verification Report, at page 16. Therefore, Jindal argues the Department should exclude the interest benefit on duty saved for imports of capital goods used exclusively for non-subject merchandise.

- State Sales Tax Exemption - Jindal states that the Department incorrectly included state sales tax exemptions on purchases related to non-subject merchandise. Jindal also states that the Department verified that inputs and capital goods used to produce BOPET (subject merchandise) could not be used to produce BOPP (non-subject merchandise). Therefore, Jindal argues the Department should not include purchases to produce BOPET in the calculation of the subsidy for sales tax exemption.

Polyplex notes that in the calculations for the Preliminary Results, the Department countervailed benefits from ALP licenses that covered the import of inputs that could only be used to manufacture non-subject merchandise and where the export obligation for the license was for non-subject merchandise. Polyplex argues that the Department should exclude the value of the duties foregone for ALP licenses for non-subject merchandise from its calculations.

Polyplex maintains that it also reported ALP licenses that allowed it to import inputs that could be used to manufacture either subject or non-subject merchandise but the export obligation was for non-subject merchandise only. Polyplex argues that pursuant to 19 CFR 351.525(b)(5)(i), where a subsidy is tied to the production of a particular product, the subsidy will be attributed to sales of that product. Polyplex concludes that since the licenses in question were contingent on the export of non-subject merchandise, then the benefits are tied to sales of non-subject merchandise.

Polyplex further maintains that the Department has a practice of excluding the value of unpaid import duties for inputs that are not used in the production of subject merchandise or upstream inputs. See Final - Indian PET Resin, 70 FR 13460, and the accompanying Issues and Decision Memorandum, at page 7 and Comment 7; and Indian Hot-Rolled, and the accompanying Issues and Decision Memorandum at Comment 4. In Indian Hot-Rolled, the Department stated that, pursuant to 19 CFR 351.525(b)(5), if a subsidy is tied to production of a particular product, as well as an input product, then the subsidy will be attributed to both products. Polyplex further contends that these particular ALP licenses were tied to the sale of downstream non-subject merchandise metalized film. Specifically, Polyplex maintains that the inputs imported under those licenses (PET film, aluminum wire, and evaporation boats) cannot be used to produce subject merchandise. As such, Polyplex concludes that, pursuant to 19 CFR 351.525(b)(5)(i), the benefits under these licenses are tied to non-subject merchandise and must be excluded from the Department's calculations for the final results.

In addition, Polyplex maintains that the Department included EPCGS licenses tied to non-subject merchandise in the preliminary calculation of the rate for this program. Polyplex notes that, in the Preliminary Results, the Department stated that it could not determine whether the respective EPCGS licenses were tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Polyplex counters that it submitted complete EPCGS licenses and applications that showed the company's export obligation for each license. Moreover, Polyplex notes that in Exhibit 20 of its October 3, 2005 submission, it coded each EPCGS license so that each imported capital good was tied to its respective export obligation. According to Polyplex, the Department mistakenly included EPCGS licenses in the calculation that covered duty-free imports of capital goods used exclusively in the production of non-subject merchandise or used in the production of both subject and non-subject merchandise but had an export obligation for non-subject merchandise. Polyplex argues that in the investigation and in previous reviews, the Department excluded the benefits for these licenses. Polyplex cites the final results of the 2001 administrative review where the Department stated that it did not include an EPCGS license for a metallizer in the calculations because it does not countervail benefits conferred on non-subject merchandise. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004) (First PET Film Review - Final Results) and the accompanying Issues and Decision Memorandum, at Comment 8.

Finally, Polyplex argues that if the Department continues to include the EPCGS licenses that were tied to non-subject merchandise in its calculations, then the Department should deduct the duties paid and license fees associated with these particular licenses. Polyplex states that the Department did not make such deductions for certain licenses in its EPCGS calculations.

Petitioners maintain that the Department has previously evaluated the issue of whether an EPCGS benefit could be tied to specific products and exports. Petitioners note that in PET Resin from India, the Department found that "an EPCGS export obligation can be fulfilled through the export of any product manufactured by the EPCGS license holder" and "licenses are not product specific." See Final - Indian PET Resin, 70 FR 13460, and the accompanying Issues and Decision Memorandum, at Comment 7. Additionally, Petitioners note that in the verification for the PET Resin investigation, the GOI stated that an EPCGS license "can also be amended retroactively to allow for the fulfillment of the export obligation by products other than those originally identified." See Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Verification of the Government of India's (GOI) Questionnaire Responses (GOI Verification - PET Resin). Petitioners state in that final determination, the Department included all import duty exemptions granted to the company for all EPCGS licenses. Petitioners conclude that there is no evidence on the record of this review that should cause the Department to change its methodology.

Petitioners argue that the Jindal verification report supports the Department's position to aggregate all EPCGS benefits and divide them by all exports. Petitioners note that although Jindal reported that a particular EPCGS license was tied exclusively to non-subject merchandise, the application for that license stated the goods to be manufactured and exported would be both subject and non-subject merchandise. Petitioners also note when providing export details made in the preceding three years, as required by the EPCGS application process, Jindal included exports of subject merchandise. Therefore, Petitioners argue, the subsidy was granted based on the assumption that both subject and non-subject merchandise was to be produced and exported. Petitioners state that the since the subsidy is tied to plastic films (which includes subject and non-subject merchandise) the Department must, in accordance with 19 CFR 351.525(b)(5)(i), attribute the subsidy to exports of all plastic films.

Petitioners also argue that the Polyplex verification report indicates that Polyplex reported exports of subject merchandise to demonstrate its three-year export performance in its original EPCGS application. Thus, the subsidy was granted based on export performance and, Petitioners argue, the Department cannot speculate as to whether the subsidy would have been granted if the exports of subject merchandise were not included in the application.

With regard to the ALP, Petitioners state that if the Department does not include benefits from either Jindal's or Polyplex's licenses related to non-subject merchandise, then the Department should revise the denominators for each company's ALP calculation to include only physical export sales of subject merchandise.

Department's Position

The Department's regulations stipulate that, when an export subsidy cannot be tied to the export of a particular product, the Department will attribute the benefit to all exports. See 19 CFR 351.525(b)(5). In its evaluation of ALP and EPCGS programs, the Respondents did not demonstrate that the benefits were tied to the production and export of a particular product. As such, the Department will continue to included in its calculations all benefits received under these programs.

With regard to the EPCGS program, Jindal and Polyplex were not able to demonstrate that the capital goods which the GOI approved for importation under the EPCGS licenses are solely attributable to the production of either subject merchandise or non-subject merchandise. See First Jindal Supplemental, at Exhibit 42; and First Polyplex Supplemental, at Exhibit 38. Moreover, the Department recently found in PET Resin from India that EPCGS licenses are not product-specific and that benefits under this program could not, therefore, be tied to any specific product. See Final - Indian PET Resin, 70 FR 13460, and the accompanying Issues and Decision Memorandum, at Comment 7.

Since the Department is including all EPCGS licenses in the benefit calculations, the Department has addressed Polyplex's concerns regarding the inclusion of duties paid and the fees associated with these licenses in the Polyplex - Calculations Memo.

With regard to the ALP program, Jindal, Polyplex and the GOI were not able to demonstrate that the inputs which the GOI approved for importation under the ALP licenses are solely attributable to the production of subject merchandise or non-subject merchandise. Under some of the licenses that Polyplex reported to be tied to "non-subject merchandise," it was allowed to import subject merchandise. See Polyplex Case Brief, at 14 (December 28, 2006). As such, these "non-subject merchandise" licenses are actually approved for the importation of subject merchandise and there is no basis upon which the Department can determine that all imported subject merchandise is consumed in the production and export of non-subject merchandise. Since the Department has determined that the GOI does not have a system in place that is reasonable and effective for the purposes intended, in accordance with 19 CFR 351.519(a)(4), to confirm which inputs are consumed in the production of the exported product and in what amounts, the Department is unable to determine that these licenses are tied solely to the export of non-subject merchandise.

With regard to the State Sales Tax Incentive Schemes, neither company was able to demonstrate that, at the point of bestowal, benefits under this program were tied to the production of subject merchandise or non-subject merchandise at verification or in their questionnaire responses.

Therefore, since the Respondents could not demonstrate that the benefits of each company under these programs are tied to a particular product, the Department will continue to include all benefits received under the EPCGS and ALP programs and the State Sales Tax Incentive Schemes, and will spread these non-tied benefits over the appropriate value of total exports (either total physical exports or total physical and deemed exports).

Comment 3: Countervailibility of the Advance License Program

Jindal contends that the Department's decision to countervail the ALP because the GOI did not have in place a system that was reasonable and effective was incorrect. Jindal holds that in past reviews of other products, the Department has not considered India's ALP program to be countervailable, citing to Certain Hot-Rolled Carbon Steel Flat Products from India: Final Affirmative Countervailing Duty Determination, 66 FR 49635 (September 28, 2001) (Indian Hot-Rolled). Jindal maintains that in Indian Hot-Rolled, the Department determined that the GOI had in place an effective monitoring system.

Jindal maintains that the record of this review shows that under an ALP license a company could import only those inputs duty free that were specified in the ALP license, based on their respective SION. Jindal explains that, at the time of each importation and exportation, an entry was made into the ALP license, which the GOI could observe to ensure that what was imported and exported matched the ALP license. When the ALP license period expires, Jindal explains, the license holder must submit the license to the GOI for redemption along with supporting documents ensuring that the inputs received duty free that were specified in the license were consumed in the production of the product exported. These documents include: Bank Certificates; Shipping Bills; and Statements of Exports. Jindal argues that these requirements ensure that the GOI applies a system that is reasonable and effective for the purposes required by the Department's regulations.

Jindal argues that when evaluating the ALP program, the Department focuses on the SION to the exclusion of all other elements of the program. Jindal states that even if there were no set SION, the GOI could determine from the ALP License what has been imported and what has been exported.

Jindal argues that the SION simply establishes how much of a particular product the GOI will permit to come in duty-free in advance.

Moreover, Jindal states that the record of this review shows that the GOI made a number changes in the ALP that strengthened the supervision and monitoring process of the ALP program. These changes included: (1) the GOI's on-spot verification at Jindal's plant on June 28, 2005, to review the actual consumption and utilization of duty-free inputs under the ALP Licenses; and (2) amendments to the EXIM Policy to incorporate the requirement of review of the SION, dated May 13, 2005. Jindal states that although these changes occurred after the POR they should be considered in connection with this review since they demonstrate that the GOI intended the imports and exports to be linked in the manner envisioned by the Department's regulation at 19 CFR 351.519(a)(4).

Petitioners argue that in the 2003 administrative review of this order the Department found that the GOI did not have a reasonable and effective system or procedure in place for the ALP program that meets the requirements of 19 CFR 351.519(a)(4)(i). Furthermore, Petitioners argue that the GOI did not conduct an examination of inputs consumed in the production of PET film and in what amounts to meet the requirements of 19 CFR 351.519(a)(4)(ii). See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at page 4. Petitioners note, as indicated in the Department's verification report, that the ALP application form does not even require the company to provide the quantity of inputs imported that relates to the quantity of outputs exported, which in turn makes it impossible to calculate the actual imports consumed.

Moreover, Petitioners contend that in the final determination of Certain Lined Paper Products from India, the Department found that the GOI did not have a reasonable and effective system or procedure in place for the ALP that meets the requirements of 19 CFR 351.519(a)(4)(i). See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) (Lined Paper Products from India) and the accompanying Issues and Decision Memorandum, at Comment 10. As such, Petitioners state that there is new no new information on the record of this review that the GOI had either implemented a reasonable and effective system to confirm which inputs are consumed in the production of PET film or conducted an examination of which inputs are consumed in the production and in what amounts.

Petitioners further state that Jindal's argument that the GOI does have a reasonable and effective system is unsubstantiated, since the GOI did not provide any such information this information was not therefore verified by the Department.

Department's Position

In the 2003 administrative review, the Department found that the ALP program did not meet the requirements for non-countervailibility under 19 CFR 351.519(a)(4) and thus, all of the benefits under the program were countervailable. The Department noted that the current ALP program as described the Exim Policy and Procedures (Vol.I) 2002-2007 is distinct from the ALP program subject to the previous edition of the Exim Policy Handbook. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at "Advance License Program." Neither the GOI, Jindal, nor Polyplex provided any new information or evidence of changed circumstances that warrant reconsideration of that determination.

In the 2003 administrative review, the Department found that 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 Department also determined that the system allowed for the availability of ALP benefits for a broad category of deemed exports that are not linked to the actual exportation of merchandise. Finally, the Department 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. In addition, the GOI was not able to demonstrate that a mechanism existed 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 during the 2003 administrative review. 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. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at Comment 1.

Therefore, the Department concluded that the ALP program conferred a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, was provided under the program in the form of revenue foregone, as the GOI provides the respondents with an exemption of import duties; and (2) the GOI did not have in place and did not apply a system that was 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. The Department further determined that the entire amount of the import duty exemptions earned by the Respondents constituted a benefit under section 771(5)(E) of the Act and that the program was export contingent and thus was specific under section 771(5A)(B) of the Act. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at Comment 1.

For the current administrative review, there is no new evidence on the record to warrant reconsideration of that determination. The Department finds that the same deficiencies in the monitoring process of the ALP system that existed in the previous administrative exist in the current review. Specifically, there was no information provided by the GOI demonstrating that it effectively monitors the companies participating in this program, nor that the SIONs are reliable. The Department notes that GOI has made certain changes in the ALP program in an attempt to strengthen the supervision and monitoring process of the ALP program. This included DGFT Public Notice No. 8 /(RE:2005)/ 2004-

2009, which amended the EXIM Policy to incorporate the requirements of review for the SION. However, these amendments were implemented after the POR, on May 13, 2005. See Jindal Questionnaire Response, at Exhibit 34(d). As such, these amendments to the program cannot be evaluated for the current review. Therefore, based on the applicable information on the record of this review, we find that during the POR the GOI did not have in place a reasonable and effective system or procedure to confirm which inputs (and in what amounts) are consumed in the production of the exported products. Thus, for the current review, we find that the ALP system does not meet the requirements of 19 CFR 351.519(a)(4)(i).

In the 2003 administrative review, the Department found that the ALP laws and procedures also do not meet the criteria listed in 19 CFR 351.519(a)(4)(ii), which stipulates the Department find a program to be not countervailable if absent the reasonable and effective system envisioned in 19 CFR 351.519(a)(4)(i), "the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts." During the previous administrative review, the GOI was unable to cite to any specific examination or verification of a producer in any industry that could demonstrate the monitoring of the ALP. The Department noted that the GOI submitted on the record of the 2003 review an initial examination of the inputs consumed by the Respondents in producing exports. However, the Department noted that the study concerned a period that was after the 2003 POR that was under review. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at Comment 1.

For the current administrative review, the Department finds that the same deficiencies in the monitoring process of the ALP system that existed in the previous administrative review exist in the current review. Specifically, there was no applicable information submitted on the record of a specific examination or verification that could demonstrate the monitoring of the ALP program during this POR pursuant to 19 CFR 351.519(a)(4)(ii). We acknowledge that the GOI has submitted certain information regarding the SIONS and the inputs consumed by the respondents in producing exports. See Jindal Questionnaire Response, at Exhibit 34(c). One report, dated June 28, 2005, describes an examination of Jindal's and Polyplex's "input output norms in respect to PET film." We note that this examination took place after our POR. Moreover, the examination covered, in part, a period after our POR. Finally, the revised SIONs resulting from this report were implemented on September 19, 2005, after our POR. As such, the original SIONs were still in effect during the current POR.[2] Therefore, based on the applicable information on the record of this review, we find that during the POR the GOI had not carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts. Thus, we continue to find that the ALP system does not meet the requirements of 19 CFR 351.519(a)(4)(ii).

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[2] We note that the GOI also submitted a further report dated June 28, 2005 indicating that it had been unable to locate any records regarding the calculation of the original SIONs which were in effect during the instant POR. See Jindal Questionnaire Response, at Exhibit 34.

Comment 4: Export Promotion Capital Goods Scheme Calculations

Jindal argues that the Department used the wrong benchmark in its calculation for EPCGS. Specifically, Jindal contends that the Department incorrectly used the interest rate benchmark for the year in which the capital goods were imported duty-free rather than the effective long-term interest rate for the POR. Jindal maintains that all of the long-term commercial loans from 1996, 1998, and 1999 that the Department used to calculate its benchmarks were repaid in full before the POR. Jindal contends that the Department should calculate interest saved during the POR on the unpaid duties as the benefit for the actual interest rates applicable during the POR as the benchmark.

Moreover, Jindal argues that the Department used the wrong sales denominator to calculate EPCGS benefits. Jindal contends that the Department should have divided the benefit by total turnover (export and domestic sales), not just export sales, because the capital goods that are imported under the EPCGS program are used for the production of both domestic sales and export sales.

Petitioners argue that, consistent with 19 CFR 351.505(a)(2)(iii), the Department will establish the interest rate benchmark using 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. As such, Petitioners contend that the Department correctly use the interest rate benchmark for the year in which Jindal imported the capital goods duty-free.

Moreover, Petitioner maintains the Department has previously rejected Jindal's argument that the Department should calculate the interest benefit of the duty exemption by applying a benchmark from the POR rather than the year in which the capital goods were imported. Petitioners state that in Second PET Film Review - Final Results and accompanying Issues and Decision Memorandum, at Comment 6 the Department stated:

> 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.

In response to Jindal's argument that the denominator for the EPCGS benefit should be all sales and not just export sales, Petitioners state such an approach would be inconsistent with the Department's regulations at Section 351.514(a), which states that export performance is one of the conditions for receiving an export subsidy, and 19 CFR 351.525(b)(2), which states an export subsidy will only be attributed to exports by the firm.

Department's Position

The Department's regulations state that we will use as a benchmark, a commercial loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established. See 19 CFR 351.505(a)(2)(iii). When analyzing an EPCGS license in which the company has yet to meet its export commitment, the Department has always considered the license to be an interest-free loan made in the year that the capital goods in question were imported duty-free. Therefore, in accordance with 19 CFR 351.505(a)(2)(iii), the Department chooses a benchmark interest rate for a long-term loan from the year in which the loan was received (i.e., when the good was imported) not the benchmark rate during the POR. In previous reviews, and in other cases, the Department has treated EPCGS benefits this way. See e.g., Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at "EPCGS"; and Lined Paper Products from India, 71 FR 45034, and the accompanying Issues and Decision Memorandum, at "EPCGS." Therefore, the Department will continue to apply the benchmark rate for the year in which the goods were imported.

Finally, since the EPCGS program is contingent on export sales (including deemed exports) and not total sales, we will continue to divide the EPCGS benefits by total exports sales only, pursuant to 19 CFR 351.525(b)(2). See also Comment 1, above.

Comment 5: Sale of the DFRC License

Polyplex argues that the Department should not have countervailed Polyplex's sale of its DFRC license in the Preliminary Results since the license was for non-subject merchandise. Polyplex notes that, at verification, the Department confirmed that the DFRC license was for non-subject metalized film. See Polyplex Verification Report, at pages 9 and 10. Polyplex notes that the Department stated in the verification report that the inputs allowed to be imported under this license were for materials used in the production of metalized film and that Polyplex used deemed exports of metalized film in order to qualify for this DFRC license.

As such, Polyplex argues that, in accordance with 19 CFR 351.525(b)(5)(i), if a subsidy is tied to production of a particular product, the subsidy will be attributed to sales of that product. Polyplex concludes that the Department should exclude the sale of the DFRC license benefit from the final calculations. Petitioners did not submit comments on this issue.

Department's Position

In the Preliminary Results, the Department found that, for Polyplex, the DFRC is countervailable because Polyplex sold its license. The Department's regulations at Section 351.525(b)(5)(i) are not relevant in determining attribution of this benefit. The Department has previously determined in other cases that the sale of import licenses confers a countervailable export subsidy. See e.g., Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products From India, 71 FR 7916, 7922 (February 15, 2006) (unchanged in the Final Results). Although, as noted in the Polyplex Verification Report, the DFRC license rights that Polyplex sold was approved for the importation of goods duty-free in order to manufacture non-subject merchandise, this is not the benefit at issue. Rather, the benefit in this instance constitutes the proceeds from the sale of the license. As such, benefits from the sale of such licenses cannot be tied to the export of any particular product and thus benefits all exports made by the company selling the license. Therefore, in accordance with section 771(5A)(B) of the Act, we determine that Polyplex's partial sale of its license rights under the DFRC Scheme is an export subsidy and that a financial contribution is provided, under section 771(5)(D)(ii) of the Act, in the form of the revenue foregone. We further find that the sale conferred a benefit under section 771(5)(E) of the Act in the amount of the revenue from the sale, and that this benefit us appropriately attributable to Polyplex's export sales during the POR.

Comment 6: Loans from Government-Owned Special Purpose Banks

Jindal contends that the Department should use loans from the IDBI in its 2004 benchmark calculation. Jindal concedes that while the IDBI is government-owned and was established for special purposes, loans from this bank are commercial loans. Jindal argues that, if the Department continues to exclude IDBI loans in the calculation of the 2004 benchmark, the Department should also remove the IDBI loans used to calculate benchmark rates calculated in prior reviews. Jindal states that IDBI loans were used exclusively in the Department's benchmark calculation for 1996, and in combination with other loans in the benchmark calculation for 1999. Therefore, Jindal states that when determining the 1996 benchmark rate, the Department should use the IMF rate for that year. Jindal also maintains the Department should recalculate the benchmarks for 1999 excluding IDBI loans.

Petitioners concede that it would be improper to use IDBI loans as the commercial benchmark against which to measure whether other government-provided loans are provided at subsidized rates. However, Petitioners argue, that for this administrative review, the Department needs to establish a long-term benchmark loan rate to calculate an annual current subsidy benefit to Jindal and Polyplex of import duty exemptions that will be treated as grants once the export obligations are met. Moreover, Petitioners contend that since the IDBI interest rates in 1996 and 1999 are higher than the country-wide IMF interest rate for those years that the IDBI loans are not provided at a subsidized interest rate. Petitioners continue that, in this instance, the IDBI interest rates provided to Jindal in 1996 and 1999 were based on the IDBI's perception of Jindal's creditworthiness. These company-specific rates, Petitioners argue, better reflect the interest rate of commercial loans available to Jindal more accurately than a country-wide rate would. Therefore, Petitioners conclude that the IDBI loans, along with the other long-term loans, provide the best facts available to calculate Jindal's long-term benchmark rate.

Department's Position

In the Preliminary Results, the Department did not include IDBI loans in the 2004 benchmark calculations. The regulations stipulate that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates. See 19 CFR 351.505(a)(2)(ii). Additionally, the preamble to the Department's regulations state that the Department "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 (November 25, 1998) (CVD Final Rule), at 65363.

The Department has previously determined that loans from the IDBI meet the criteria of a government-owned special purpose bank. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at Comment 3; and Memorandum to the File from Jeff Pedersen Concerning Placing Facts from the Industrial Bank of India Website on the Record (January 3, 2005). In turn, the Department did not include IDBI loans in the short-term benchmark calculations during the previous administrative review. Therefore, we will continue to exclude IDBI loans from our 2004 benchmark calculations.

Moreover, for these final results, pursuant to 19 CFR 351.505(a)(2)(ii), we will remove IDBI loans from long-term benchmarks established in prior reviews. Therefore, we will exclude all IDBI loans received by both Jindal and Polyplex, and recalculate long-term benchmarks for the appropriate years for each company. For the years in which Jindal or Polyplex only had IDBI loans, we will, in accordance with 19 CFR 351.505(a)(2)(iii), use long-term loans which were received during the year immediately preceding the year in which the materials were imported. For years in which Jindal or Polyplex does not have applicable loans received during the year, or year immediately preceding the year in which the material imported, we will, in accordance with 19 CFR 351.505(a)(3)(ii), use the national average of interest rates from the IMF.

Comment 7: State Sales Tax Incentive Programs

Polyplex argues that the Department should exclude taxes not collected on sales from its calculations. Prior to the preliminary results of this review, Polyplex maintains that it submitted the following three exhibits: Exhibit 30 (Sales tax exemption on sales in Uttar Pradesh); Exhibit 31 (Sales tax exemptions on purchases in Uttar Pradesh); and Exhibit 34 (Sales Tax Exemptions on purchases from other states) in its October 3, 2005 Questionnaire Response summarizing its sales tax exemption benefits. Polyplex notes that the Department only countervails sales taxes not paid on purchases. See Preliminary Results 71 FR 45037, at 45043. Polyplex further notes that the Department found that the exemption from the collection of taxes on sales did not benefit either Polyplex or Jindal. See Preliminary Results 71 FR 45037, at 45043. Polyplex concludes that the Department should exclude Exhibit 30 (Sales tax exemptions on sales in Uttar Pradesh) from the calculations for the state sales tax benefit. Petitioners did not comment on this issue.

Department's Position

The Department agrees that the non-collection of sales tax has been found not countervailable in past proceedings. See Second PET Film Review - Final Results, 71 FR 7534, and the accompanying Issues and Decision Memorandum, at "State Sales Tax Incentive." In the Preliminary Results, the Department inadvertently included the information on such exemptions from Exhibit 30 in its calculations. For these final results, we have not included the data in Exhibit 30 in our calculations.

Comment 8: Target Plus Scheme

Petitioners argue that the Target Plus Scheme (TPS) should be included in the cash deposit rate for Polyplex, since: (1) the program meets the criteria of a countervailable subsidy; and (2) the finding constitutes a program-wide change. Petitioners state that the TPS meets the criteria of a countervailable subsidy as established in 775(A) of the Act and 19 CFR 351.514. Petitioners argue that the GOI grants exporters an offset for the amount paid on imports of raw materials if that company can demonstrate growth in export sales over the previous year's sales. Thus, Petitioners conclude, the benefit is contingent upon export sales and constitutes a countervailable export subsidy.

Petitioners maintain that TPS meets the definition of a program-wide change as defined in 19 CFR 351.526(b)(2). Petitioners hold that the regulations stipulate that the Department may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if the program-wide change takes place after the POR but prior to the preliminary determination, and if the amount of countervailable subsidies can be measured.

Petitioners contend that at verification, the Department verified: (1) there was a program-wide change; (2) it took place after the POR but before the preliminary determination of this review; and (3) the subsidy received can be measured. Petitioners also contend that taking the program-wide changes into account when setting the cash deposit rate is compatible with 19 CFR 351.311, regarding subsidies discovered during a review.

Polyplex points out that the Department has already determined that the TPS program was not a program-wide change in Hot-Rolled Carbon Steel Flat Products from India, a case that has the same POR as the instant PET film case. According to Polyplex, in the Hot-Rolled Carbon Steel Flat Products from India case, the Department found the program to be not used and did not adjust the Respondent's cash deposit rate. See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665, 28667 (May 17, 2006). Polyplex concludes that the Department should do the same in the instant case.

Polyplex argues that since the program was not countervailed in this case or any other case, the benefit cannot be measured. Polyplex contends that in order to have a program-wide change, there has to be a countervailable subsidy and the benefit has to be received during the POR. Polyplex further contends the Department needs to obtain (1) information from the government regarding the program and (2) financial information from the company receiving the benefit.

Also pursuant to 19 CFR 351.526(a), Polyplex maintains that a program-wide change is defined as a change (1) not limited to an individual firm or firms and (2) made by an official act of the government in question. Polyplex argues that the receipt of a license by an individual company is not a "program-wide change" as set forth in the regulation in that it is an application by an individual company, not a change in an existing countervailed program.

Polyplex states that the TPS is a duty credit that may be used for importing any inputs, capital goods (including spare parts), office equipment, professional equipment, and office furniture. See Polyplex Verification Report, at Exhibit 5d. Polyplex further states that a company can use the import duty credit for 24 months and that the license is non-transferrable. Polyplex argues that since the license is non-transferrable and that the company does not receive any benefits until it actually imports, the

Department is unable to calculate or determine the benefit until a future period of review. Polyplex cites the case of Essar v. U.S. where the Court of International Trade refused to overturn the Department's decision to calculate Essar's benefits for a program on an as-earned basis. See Essar Steel, Ltd. v. United States, 395 F. Supp. 2d 1275, 1278
(August 30, 2005). Polyplex concludes that the TPS benefits are not measurable and therefore do not qualify as a program-wide change.

Department's Position
The Department finds that the TPS program is a "subsidy discovered during the course of a proceeding," in accordance with 19 CFR 351.514, and does not constitute a program-wide change under 19 CFR 351.526(b)(2). Based on the record of this review, Polyplex did not apply for and the GOI did not approve any TPS benefits for Polyplex until well after the current POR. See Polyplex Verification Report, at page 5. Furthermore, since this program was discovered at verification, the Department does not have any information on the record to evaluate whether it would be appropriate to measure any TPS benefits to Polyplex. As such, the Department will not adjust Polyplex's cash deposit rate to reflect the TPS program for the final results of this review. However, the Department will examine this program in future proceedings.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are approved, we will issue and publish in the Federal Register the final results in accordance with these recommendations.

__________ __________
Agree Disagree

____
David M. Spooner
Assistant Secretary
for Import Administration

____
Date