



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-533-825

Administrative Review
POR: 01/01/2018 - 12/31/2018

Public Document
E&C/OI: KP/NC

November 17, 2020

MEMORANDUM TO: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

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

SUBJECT: Decision Memorandum for the Preliminary Results and Partial
Rescission of the Countervailing Duty (CVD) Administrative
Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET
Film) from India; 2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India for the period of review (POR) is January 1, 2018 through December 31, 2018. Commerce preliminarily determines that Jindal Poly Films Ltd. (Jindal), received countervailable subsidies at a 11.65 percent *ad valorem* net countervailable subsidy rate during the POR.

II. BACKGROUND

On July 1, 2002, Commerce published in the *Federal Register* the CVD order on PET film from India.¹ On July 1, 2019, Commerce published a notice of opportunity to request an administrative review of the CVD order.² In response, on July 15, 2019, DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, the petitioners) requested reviews for six companies: Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Polyplex Corporation (Polyplex), SRF Limited (SRF), Jindal, and Vacmet India Limited (Vacmet).³ Also, on July 18, 2019, Polyplex USA LLC (Polyplex USA) requested a review for eight companies:

¹ See *Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 31295, 31296 (July 1, 2019).

³ See Petitioners' Letter, "Polyethylene Terephthalate (PET) Film Sheet, and Strip from India: Request for Countervailing Duty Administrative Review," dated July 15, 2019.



Ester, Garware, Jindal, MTZ Polyesters Ltd. (MTZ), Polyplex, SRF, Vacmet, and Uflex Ltd. (Uflex).⁴ On July 26, 2016 and July 31, 2019, respectively, SRF and Jindal each self-requested a review.⁵

On September 9, 2019, we published a notice of initiation of a CVD review of eight companies in this proceeding.⁶ On September 26, 2019, we placed on the record U.S. Customs and Border Protection (CBP) import data for purposes of respondent selection, and invited parties to comment.⁷ We received no comments from interested parties. On November 14, 2019, we selected Jindal and SRF as mandatory respondents in this review.⁸

Subsequently, the petitioners timely withdrew their requests for a review on December 6, 2019, for all companies.⁹ Also, on December 6, 2019, Polyplex USA withdrew its requests for review for all but one company, *i.e.*, Jindal.¹⁰ SRF also timely withdrew its request for a review on December 7, 2019.¹¹

We issued the initial CVD questionnaire to the Government of India (GOI) and the sole remaining respondent, Jindal, on November 18, 2019.¹² Jindal filed a timely response to the affiliation section of the initial questionnaire on December 12, 2019, and the remainder of the initial response on March 11, 2020.¹³ The GOI submitted the initial questionnaire response on January 13, 2020.¹⁴ We issued supplemental questionnaires to Jindal, and the GOI on March 31, 2020 and April 10, 2020, respectively.¹⁵ Jindal filed a timely supplemental response for itself

⁴ See Polyplex USA's Letter, "Polyethylene Terephthalate (PET) Film from India: Polyplex USA LLC's Request for CVD Administrative Review" dated July 18, 2019.

⁵ See SRF's Letter, "Polyethylene Terephthalate (PET) Film from India: Request for Countervailing Duty (CVD) Admin Review," dated July 26, 2019; *see also* Jindal's Letter, "Polyethylene Terephthalate (PET) Film from India: Request for Administrative Review," dated July 31, 2019.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242, 47251 (September 9, 2019). The eight companies were Ester Industries Limited; Garware Polyester Ltd.; Jindal Poly Films Limited; MTZ Polyesters Ltd.; Polyplex Corporation Ltd.; SRF Limited; Uflex Ltd.; Vacmet India Limited.

⁷ See Memorandum "Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Release of U.S. Customs Entry Data for Respondent Selection," dated September 26, 2019.

⁸ See Memorandum, "Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Selection of Respondents for Individual Examination – 2018," dated November 14, 2019.

⁹ See Petitioners' Letter, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Withdrawal of Request for Countervailing Duty Administrative Review," dated December 6, 2019.

¹⁰ See Polyplex USA's Letter, "Polyethylene Terephthalate (PET) Film from India: Withdrawal of Request for Review for Polyplex USA LLC," dated December 6, 2019.

¹¹ See SRF's Letter, "Polyethylene Terephthalate (PET) Film from India/ Withdrawal of Request for Countervailing Duty Admin Review of SRF Limited (SRF)," dated December 7, 2019.

¹² See Commerce's Letter, "Countervailing Duty Questionnaire," dated November 18, 2019 (Initial CVD Questionnaire).

¹³ See Jindal's December 10, 2019 Initial Questionnaire Response to Affiliation Section (Jindal December 10, 2019 IQR-AFFR), *see also* Jindal's January 14, 2019 Initial Questionnaire Response.

¹⁴ See GOI's January 13, 2020 Initial Questionnaire Response (GOI January 13, 2020 IQR).

¹⁵ See Commerce's Letter, "First Supplement Questionnaire for Jindal," dated March 31, 2020 (Jindal First SQ); *see also* Commerce's Letter, "First Supplemental Questionnaire for the GOI," dated April 10, 2020 (GOI First SQ).

and for its cross-owned affiliate, Jindal Films India Limited (JFIL), on June 16, 2020, and on June 17, 2020.¹⁶ The GOI timely filed its supplemental response on June 20, 2020.¹⁷

On March 18, 2020, we extended the deadline for the preliminary results of this review.¹⁸ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.¹⁹ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.²⁰ The deadline for the preliminary results of this review is now November 17, 2020.

III. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

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

IV. SCOPE OF THE ORDER

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

¹⁶ See Jindal's June 16, 2020 re-filed Initial Questionnaire Response (Jindal June 16, 2020 R-IQR); *see also* JFIL's June 16, 2020 re-filed Initial Questionnaire Response (JFIL June 16, 2020 R-IQR); Jindal's June 17, 2020 First Supplemental Questionnaire Response (Jindal June 17, 2020 SQR); JFIL's June 17, 2020 First Supplemental Questionnaire Response. Note: Jindal re-filed its initial questionnaire response at Commerce's request. *See* Jindal First SQ; *see also* Jindal June 16, 2020 R-IQR; and JFIL June 16, 2020 R-IQR.

¹⁷ *See* GOI's January 13, 2020 IQR; *see also* GOI's June 20, 2020 First Supplemental Questionnaire Response (GOI June 20, 2020 SQR).

¹⁸ *See* Memorandum, "Polyethylene Terephthalate Film, Sheet, and Strip from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2018," dated March 18, 2020.

¹⁹ *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

²⁰ *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Under 19 CFR 351.524(d)(2)(i), we 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 2006 Class Life Asset Depreciation Range System, and as updated by 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)(i) and (ii).

In the IRS Tables, PET film falls under the category "Manufactured Chemicals and Allied Products." For that category, the IRS tables specify a class life of 9.5 years, which is rounded to establish an AUL of 10 years. In the 2003 administrative review, Jindal provided the required supporting documentation to rebut the presumption and, based on that information, Commerce determined to apply a company-specific AUL of 17 years for Jindal.²¹

In the 2017 administrative review, Jindal provided the required supporting documentation to rebut the presumption arguing that its AUL be revised to 23 years. Because Jindal substantiated all of the 23 years it argued for as its company-specific AUL, Commerce found that Jindal established that the above-referenced tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under review, and further, that its company-specific AUL of 17 years, effective for all assets and grants received through the 2016 review period, no longer reflects the AUL of the renewable physical assets of the company. Therefore, Commerce determined Jindal's company-specific AUL to be 23 years,²² effective and going forward with the 2017 countervailing duty administrative, for non-recurring subsidies.²³

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

²¹ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003 Review*), and accompanying Issues and Decision Memorandum (IDM) at Subsidies Valuation Information.

²² The calculated AUL for the 2017 countervailing duty administrative review is 22.71 years, rounded to 23 years.

²³ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 14463 (March 12, 2020), and accompanying IDM at 3.

B. Attribution of Subsidies

Cross-Ownership

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received that subsidy. However, additional rules at 19 CFR 351.525(b)(6)(ii)-(v) provide for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise, (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to the respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Commerce's regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.²⁴

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁵

Jindal

Jindal responded to Commerce's initial questionnaire on behalf of itself and on behalf of its affiliate JFIL.²⁶ Based on the information provided, we preliminarily find that Jindal and JFIL

²⁴ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁵ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).

²⁶ See Jindal December 10, 2019 IQR-AFFR at Exhibit 1; see also Jindal June 16, 2020 R-IQR at "C. Affiliated Companies"; and JFIL June 16, 2020 R-IQR at "C. Affiliated Companies."

are cross-owned within the meaning of 19 CFR 351.525(b)(6). Additionally, we find that certain benefits from subsidies received by JFIL will be attributed to Jindal.

In its affiliation response, Jindal reported that it holds direct majority ownership in JFIL.²⁷ Jindal Films India Limited “is engaged in the processing of PET-MET film (Non-subject merchandise) and BOPP-MET film (Non-subject merchandise) . . .”²⁸ During the 2018 POR, JFIL transferred subsidies in the form of scrips to Jindal. JFIL earned duty scrips for the duty free import of materials for exporting the above-described such films. JFIL is also a provider and exporter of management consulting services and placement and supply of personnel services, for which it earned duty credit scrips during the POR for duty free imports of materials.²⁹ Those duty scrips may also be sold or transferred to a third party.³⁰ Based on the ownership information on the record, we preliminarily determine that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) because Jindal can use or direct the assets of Jindal Films India Limited in essentially the same ways it can use its own assets.

C. Benchmark Interest Rates

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

Jindal received exemptions from import duties and Central Sales Tax (CST) under the Export Promotion Capital Goods Scheme (EPCGS) and duty scrip for the import of capital goods under the Status Holder Incentive Scheme (SHIS), which we determined to be non-recurring benefits in accordance with 19 CFR 351.524(c). Thus, unless an exception applies, Commerce identifies an appropriate long-term interest rate for purposes of allocating the non-recurring benefits over time pursuant to 19 CFR 351.524(d)(1) and (d)(3).

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

²⁷ See Jindal December 10, 2019 IQR-AFFR at Exhibit 1.

²⁸ See JFIL June 16, 2020 R-IQR at 5.

²⁹ *Id.* 15-19 and Exhibits 15, 18-19.

³⁰ See GOI January 13, 2020 IQR at 70; *see also* GOI June 20, 2020 SQR at 51.

government-owned special purpose banks.³¹ As such, Commerce does not use loans from the IDBI, the IFCI, or the EXIM as a basis for a commercial loan benchmark.

Finally, 19 CFR 351.524(d)(3) directs us regarding the selection of a discount rate or long-term lending rate for the purposes of allocating non-recurring benefits over time. The regulations provide several options in order of preference. The first among these is the cost of long-term fixed-rate loans of the firm in question, excluding any loans which have been determined to be countervailable, for each year in which non-recurring subsidies have been received. The second option directs us to use the average cost of long-term, fixed-rate loans in the country in question.

In this review, Jindal did not have comparable commercial long-term rupee-denominated loans for all required years; therefore, for those years for which we did not have company-specific information, and where the relevant information was on the record, we relied on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii).³² When there were no comparable long-term, rupee-denominated loans from commercial banks either during the year under consideration or the preceding year, we used national average long-term interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from International Financial Statistics (IMF Statistics), a publication of the International Monetary Fund.³³ Thus, for those years for which Jindal did not report any long-term fixed-rate commercial loans, we used the yearly average long-term lending rate in India from IMF Statistics.

D. Denominator

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program at issue. As discussed in further detail below, we determine that all but the following three benefits received by Jindal, *i.e.*, (1) the Section 35 R&D Deductions of the Income Tax Act, 1961, subsection 35 DD; (2) the State of Maharashtra Package Scheme of Incentives (PSI) 1993 and 2007; and (3) the State Sales Tax Incentive program, found countervailable, were tied to export performance. Therefore, for those programs tied to export performance, we use export sales, net of deemed exports,³⁴ *i.e.*, the Export Capital Goods scheme (EPCGS), the Status Holder Incentive scheme (SHIS), the Merchandise Exports from India scheme (MEIS), and the Service Export from India scheme (SEIS) as the denominator for our calculations. Nevertheless, as respondents may fulfill their export obligations under certain export subsidy programs with deemed exports, *i.e.*, the good supplied does not physically leave the country, those deemed exports may be included in the denominator for those programs permitting deemed exports to fulfill a respondent's export obligations.³⁵ Accordingly, with respect to Jindal, we divided the benefits from all export programs, with the exception of the Advance Authorization Scheme

³¹ See *PET Film Final Results 2003 Review* IDM at Subsidies Valuation Information; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying IDM at "Benchmark Interest Rates and Discount Rates."

³² See Memorandum, "Jindal Preliminary Results Calculation 2018," dated September 18, 2020 (Jindal Prelim Calc Memo 2018).

³³ See Jindal Prelim Calc Memo 2018.

³⁴ See Jindal June 16, 2020 R-IQR at 59-65, 76-78, and Exhibits 10, 97-99, and 116-117.

³⁵ *Id.* at 29-36; see also Jindal June 17, 2020 SQR at 2.

(AAS), formerly, Advance Licenses Program (ALP), by Jindal's total export sales net of deemed exports. Because we were able to tie the benefits earned under the AAS to exports of subject merchandise based on information provided by the company and because it reported to having deemed exports during the POR for this program,³⁶ we used total exports of subject merchandise, inclusive of deemed exports, as the denominator for our rate calculations for this program. For the programs under which Jindal received benefits, but were not tied to export performance, we used total sales as the denominator for our rate calculations for those programs.³⁷

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."³⁸ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."³⁹

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the

³⁶ *Id.*

³⁷ See Jindal Prelim Calc Memo 2018.

³⁸ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

³⁹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 870.

extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴⁰ It is Commerce’s practice to consider information to be corroborated if it has probative value.⁴¹ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁴² However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁴³

Commerce notes that in this administrative review, the respondent, Jindal, provided full reporting of the benefits received during the POR under the income tax programs discussed below.⁴⁴

GOI & Adverse Facts Available

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

In Commerce’s initial questionnaire, we requested that the GOI coordinate with the respondent companies to determine if the companies were reporting participating in any subsidy programs. The initial questionnaire requested information on the Section 35 for Research and Development (R&D) Expenses (Section 35 R&D Tax Deductions) program, listing all sub-sections, including sub-section 35DD.⁴⁵ In its initial questionnaire response, Jindal reported participating in the Section 35 R&D Tax Deductions program, sub-section 35DD.⁴⁶ Further, we asked the GOI to “describe such assistance in detail including the amounts, date of receipt, purpose and terms,” and to provide full responses to all questions in the Standard Questions Appendix, the Tax Programs Appendix, as well as any other appropriate appendices attached to this Initial Questionnaire,” relating to the respondent.⁴⁷

In this review, despite repeated requests, the GOI failed to provide all the information requested in the initial and supplemental questionnaires, such as full answers to each particular question in the Standard Appendix, as specifically requested and necessary for Commerce’s countervailability determination. In its initial response, the GOI also failed to respond altogether

⁴⁰ See, e.g., SAA at 870.

⁴¹ *Id.* at 870.

⁴² *Id.* at 869.

⁴³ *Id.* at 869-870.

⁴⁴ See Jindal June 16, 2020 R-IQR at 76-78 and Exhibits 10 and 116-117.

⁴⁵ See Commerce’s Letter, “Countervailing Duty Questionnaire,” dated November 18, 2019 (Initial CVD Questionnaire) at II-14.

⁴⁶ See Jindal June 16, 2020 at 76 and Exhibit 116-117.

⁴⁷ See Initial CVD Questionnaire at II-14.

to a sub-section of this program, *i.e.*, sub-section 35DD, although Commerce specifically requested that information in the initial questionnaire. In its initial response, the GOI further did not fully answer all applicable appendices for this program and its sub-programs, as requested by Commerce. Instead of providing the requested information on the amount of assistance approved and provided to respondents, to all companies, and to the industry in which mandatory respondent operates, all industries, *etc.*, the GOI argued that allowable deductions under Section 35 R&D Tax Deductions of the Income Tax Act are not a subsidy pursuant to Article 1 of the SCM Agreement⁴⁸, and even if it were assumed to be a subsidy, those deductions under the Income Tax Act were

“...availed of by millions of assesses cutting across several sectors and industries. Therefore, it would not be possible to definitely determine where deductions under the Income Tax Act are de facto used only by one sector. Nonetheless, the number of assesses applying for deductions under the Income Tax Act is extremely large. Therefore, it is practically not possible to sort the application data and provide response to this question.”⁴⁹

In response to Commerce’s request to provide an answer to all questions and relevant appendices with respect to section 35DD, and in particular the Standard Appendix questions pertaining to industry and participant information, such as amount of assistance approved for respondents, total assistance, total number of companies in the industry, *etc.*, the GOI’s supplemental response stated that “{t}here is no separate Column in the Income Tax Return for the Section 35DD, hence the details cannot be retrieved for this section.”⁵⁰ In addition, the GOI stated that the information on the total number of companies was not available because different Income Tax Zonal offices examine the claims of the individual companies.⁵¹

As discussed above, the GOI’s initial response, which addressed the sub-sections collective, simply declared the collection of the requested information too difficult due to the large number of sectors and industries. The GOI did not state why it was impossible to collect this information in light of the Central Government of India being the authority to collect the income taxes, nor did it elaborate on any efforts to collect the requested information. Further, Commerce specifically asked for a full response to sub-section 35DD of the Section 35 R&D Tax Deductions program in its initial questionnaire, which is also the only sub-section of this program Jindal reported participating in, the GOI failed to address that section altogether. Then, in response to Commerce’s supplemental questionnaire requesting the GOI to also fully respond to section 35DD, it provided some supporting documentation on the laws and decrees establishing and governing the tax program’s sub-section concerned. That is, the GOI finally provided a basic description of that particular sub-section 35DD and included the respective sections of the Income Tax Act in its supplemental response. However, the GOI still did not respond to those questions in the Appendix which are necessary for Commerce to make a

⁴⁸ See Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization (SCM Agreement).

⁴⁹ See GOI January 13, 2020 IQR at 121.

⁵⁰ See GOI June 29, 2020 SQR at 49.

⁵¹ *Id.*

specificity determination in the context of its analysis of this program.⁵² Specifically, the GOI responded to Commerce's request to provide the total amount of assistance approved for all companies under the program that "{t} here is no separate Column in the Income Tax Return for the Section 35DD, hence the details cannot be retrieved for this section."⁵³ Again, the GOI failed to explain where and with what kind of other deductions section 35DD deductions are claimed in the income tax return, nor why it is not possible to segregate those out from other deductions. The GOI also failed to describe any efforts on how it tried to obtain the requested information.

Likewise, the GOI consistently provided the same response to Commerce's other questions relating to specificity, *i.e.*, to provide the total amount of assistance approved for each of the largest 50 recipients under the program, including industry designation, the total number of corporate/business income tax filers within the jurisdiction of the granting authority of the investigated program, the amount of assistance approved for the industry in which the mandatory companies operate, the totals of every other industry in which companies were approved for assistance under the program, the total number of companies that applied for, but were denied assistance under this program, as well as any additional information demonstrating that this program is broadly available and widely used throughout the economy.⁵⁴ In response to Commerce's request to provide the total number of companies that were approved for assistance under this program, the GOI simply responded that:

"GOI in its central server keeps the record of claimed made by different companies under sections of Income Tax Act. The actual approval is being done by different Income Tax Zonal offices after scrutinizing the claims made by the companies. Hence, the information is not available as of now."⁵⁵

Nowhere did the GOI explain why the fact that different companies have their approval done by different Income Tax Zonal offices prevents the GOI from collecting this information from these Income Tax Zonal offices, nor did the GOI describe any efforts undertaken to collect this information for its response to Commerce.

In conclusion, Commerce requested the above information for all sub-programs of the Section 35 R&D Tax Deductions program, because the responses, including the respective appendices, are necessary in determining whether a financial contribution exists and whether the alleged subsidy is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. If the GOI was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.⁵⁶ With the

⁵² *Id.* at 48-49.

⁵³ *Id.* at 49.

⁵⁴ *Id.* at 49-50.

⁵⁵ *Id.* at 49.

⁵⁶ Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the

supplemental questionnaire, Commerce provided the GOI with another opportunity to respond fully to the requested information, but the GOI failed to do so.

We find that the information requested regarding the Section 35 R&D Tax Deductions program is necessary to our determination of whether this program and its sub-sections are specific within the meaning of sections 771(5A)(A) and (D) of the Act. Because the GOI only partially responded to our requests for information with respect to this tax program, we have no further basis for evaluating the specificity of this program. Accordingly, in reaching our determination, we have based our preliminary determination of specificity for this program with respect to the Section 35 R&D Tax Deductions program, on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) and 771(5A)(A) and (D) of the Act. Moreover, Commerce determines that the GOI did not cooperate to the best of its ability, because it did not provide its information, as requested.

Section 782(c) of the Act provides that if a party is unable to respond, or has difficulties in responding, to Commerce's requests for information, it must "promptly after receiving a request from {Commerce}" notify the agency that it is unable to submit the information, and must further provide a "full explanation and suggested alternative forms in which such party is able to submit the information. . . ." Here, the GOI did not notify Commerce that it was unable to provide or had difficulties providing the requested industry information for the tax program. In fact, the GOI gave no adequate explanation for why it did not provide this information, nor did the GOI suggest any alternative method to provide the necessary information to Commerce. Not maintaining centralized records and/or the sheer quantity of data to be collected, does not prevent the GOI from responding to Commerce's requests and does not absolve the GOI from collecting and compiling the requested information from the government agencies responsible for administering these programs. In its initial response, the GOI failed to address sub-section 35DD of the Section 35 R&D Tax Deductions program altogether, even though the Section 35 R&D Tax Deductions program had been reported in Jindal's initial response,⁵⁷ indicating a lack of effort by the GOI to coordinate with respondents, as requested in the initial questionnaire, to provide Commerce with a complete response. Jindal provided full reporting on income tax program it participated in, and an accounting of the benefits they received.⁵⁸ The GOI had almost eight months to obtain this information from the respective government agencies to Commerce, from November 18, 2019, when Commerce first requested that the GOI provide a full section II response for Jindal, to June 20, 2020, the date the supplemental response was due. Commerce issued a supplemental questionnaire specific to this income tax program reported by Jindal.⁵⁹ Commerce granted the GOI two extensions to respond to Commerce's initial questionnaire, and two extensions to the supplemental questionnaire.⁶⁰ Additionally, Commerce

information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

⁵⁷ See Jindal June 16, 2020 at 76 and Exhibit 116-117.

⁵⁸ *Id.*

⁵⁹ See GOI First SQ at 4.

⁶⁰ Commerce granted the GOI extensions to respond to the initial questionnaire on December 30, 2019, and January 7, 2020, and extensions to respond to the supplemental questionnaire on June 12, 2020, and June 19, 2020; see Commerce's Letters, "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and

tolled all deadlines for this administrative review, including questionnaire responses, by 50 days.⁶¹ At no time during those months did the GOI contact Commerce to indicate that it had problems with accessing the company and industry information Commerce requested in its Standard Questions Appendix with respect to the tax program.

By failing to respond in full to Commerce's initial and its supplemental questionnaires specific to tax programs reported by the respondent, the GOI withheld the information requested by, and necessary for, Commerce to make a determination on specificity by the deadlines established, and thus, significantly impeded the proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. We further find that an adverse inference is warranted under section 776(b) of the Act. The GOI failed to cooperate to the best of its ability when it failed to provide the industry information requested in the Standard Questions Appendix regarding the tax program, and, moreover, it never identified any difficulties in providing this information to Commerce. Not having the requested information in a centralized database and/or the extent of the data to be collected does not amount to an inability to collect and provide this information. In drawing an adverse inference, we find that the "Section 35 R&D Tax Deductions – Sub-section 35DD" program, is specific under 771(5A)(D) of the Act, as AFA.

VII. ANALYSIS OF PROGRAMS

Programs Preliminarily Determined to be Countervailable

1. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.⁶²

In the investigation, Commerce determined that import duty reductions provided under the EPCGS are countervailable export subsidies because: (1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone for not

Strip (PET film) from India (01/01/2018-12/31/2018): Request for Extension to Respond to the Initial Questionnaire," dated December 30, 2019; "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip (PET film) from India (01/01/2017-12/31/2017): Second Request for Extension to Respond to the Initial Questionnaire," dated January 7, 2020; "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip (PET film) from India (01/01/2018-12/31/2018): Request for Extension to Respond to the First Supplemental Questionnaire," dated June 12, 2020, and "Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, sheet and Strip) PET film) from India (01/01/2018-12/31/2019: Second Request for Extension to Respond to the First supplemental Questionnaire," dated June 19, 2020.

⁶¹ See First Tolling Memo.

⁶² See GOI January 13, 2020 IQR at 9-12 and Exhibits 4-6.

collecting import duties; (2) respondents receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act.⁶³ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is Commerce's practice to treat any balance on an unpaid liability as a contingent liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).⁶⁴ The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring. . . ."⁶⁵ In accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

Jindal reported that it imported capital goods under the EPCGS in the years prior to and during the POR. Jindal received various EPCGS licenses, which it reportedly used for the production of either: (1) subject merchandise, or (2) non-subject merchandise. However, information provided by Jindal indicates that some of the licenses were issued for the purchase of capital goods and materials that could be used in the production of both subject and non-subject merchandise.⁶⁶ Based on the information and documentation submitted by Jindal, we cannot reliably determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that all of Jindal's EPCGS licenses benefit all of the company's exports.

Jindal reported that it met the export requirements for certain EPCGS licenses prior to December 31, 2018, and the GOI formally waived payments of the relevant import duties.⁶⁷ For most of its licenses, however, Jindal has not yet met its export obligation as required under the program.⁶⁸ Therefore, although Jindal received a deferral from paying import duties when the capital goods

⁶³ See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at EPCGS.

⁶⁴ *Id.*

⁶⁵ See *CVD Preamble*, 63 FR at 65393.

⁶⁶ See Jindal June 16, 2020 R-IQR at 14-24; see also Jindal June 17, 2020 SQR at 10-11 and Exhibits S1-42-58.

⁶⁷ See Jindal June 17, 2020 SQR at 10-11 and Exhibit S1-7.

⁶⁸ *Id.*

were imported, the final waiver of the obligation to pay the duties has not yet been granted for many of these imports.

To calculate the benefit received from the GOI's formal waiver of import duties on Jindal's capital equipment imports where the export obligation was met prior to December 31, 2018, we considered the total amount of duties waived (net of required application fees, as applicable) to be the benefit, and treated these amounts as grants pursuant to 19 CFR 351.504. 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 Jindal's outstanding import duties.⁶⁹ 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 Jindal an import duty waiver. For those license(s) which were not expensed in the year of receipt, we calculated the benefit from these allocable grants using the methodology set forth in 19 CFR 351.524 to determine the benefit in the POR from these grants. We summed the benefits from these grants to determine the total benefit for Jindal of these waivers.

As noted above, import duty reductions that Jindal received on the imports of capital equipment for which it has not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met.⁷⁰ Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest-free loan.

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 respondent applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we find 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.⁷¹ As stated above, under the EPCGS program, the time period for fulfilling the export commitment expires eight years after importation of the capital good. As such, 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 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 EPCGS program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). As the benchmark interest rate, we used, where available, the weighted-average interest rate from all of Jindal's comparable commercial long-term, rupee-denominated loans for the year in which the capital good was imported. See the "Benchmarks Interest Rates" section of this memorandum for a discussion of the applicable benchmark. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit to Jindal from these interest-free loans.

⁶⁹ See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at EPCGS.

⁷⁰ See 19 CFR 351.505(d)(1); see also *PET Film Final Determination* IDM at EPCGS; and *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India*, 70 FR 13460 (March 21, 2005) (*Indian PET Resin Final Determination*), and accompanying IDM at EPCGS.

⁷¹ See, e.g., *PET Film Preliminary Results of 2003 Review*, 70 FR at 46488, unchanged in *PET Film Final Results of 2003 Review*; see also *Indian PET Resin Final Determination* IDM at "EPCGS."

Thus, the total benefit Jindal received under the EPCGS is the sum 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, 2018, and (2) interest due on the contingent liability loans for imports of capital equipment that have not met export requirements. We then divided the total benefit by Jindal's total exports to determine a subsidy of 2.29 percent *ad valorem*.⁷²

2. Status Holder Incentive Scrip (SHIS)

The SHIS scheme was introduced in 2009 with the objective to promote investment in upgrading technology in specific sectors.⁷³ Status Holders under the GOI's listing of specific exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of a duty credit. The SHIS license can only be used for imports of capital goods and it can be transferred to another Status Holder for the import of capital goods.⁷⁴

In the *Final PET Film 2014 Review* Commerce found that this program is countervailable because it provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because duty free import of goods represents revenue foregone by the GOI. Further, Commerce determined that it is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters. A benefit is also provided under the SHIS program under 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.⁷⁵ There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

Import duty exemptions under this program are solely provided for the purchase of capital equipment.⁷⁶ The preamble of Commerce's regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring...."⁷⁷ Therefore, in accordance with 19 CFR

⁷² See Jindal Prelim Calc Memo 2018.

⁷³ See GOI January 13, 2020 IQR at 66-67; see also GOI June 20, 2020 SQR at 36-46 and Exhibits S1-13, S1-17, S1-24-26.

⁷⁴ See *Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 81 FR 51186 (August 3, 2016) (*Prelim PET Film 2014 Review*), and accompanying Preliminary Decision Memorandum (PDM) at 8-10, affirmed in *Polyethylene Terephthalate Film, Sheet and Strip from India: Countervailing Duty Administrative Review; 2014*, 81 FR 89056 (December 9, 2016) (*Final PET Film 2014 Review*), and accompanying IDM at 4; see also *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India Final*), and accompanying IDM at Status Holder Incentive Scrip.

⁷⁵ *Id.*

⁷⁶ See Jindal June 16, 2020 R-IQR at 37-38; see also *Steel Threaded Rod from India Final* IDM at "Status Holder Incentive Scrip."

⁷⁷ See *CVD Preamble*, 63 FR at 65393.

351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁷⁸

Jindal reported that it received SHIS license scrips to import capital goods duty-free prior to the POR. Information provided by Jindal indicates that the SHIS license scrips were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by Jindal to the company's total exports.⁷⁹

The SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient at the time of receipt of the scrip.⁸⁰ Although 19 CFR 351.519(b)(1) of Commerce's regulations stipulates that we will normally consider the benefit as having been received as of the date of exportation, because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.⁸¹

We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which Jindal received the SHIS scrip and determined to allocate the benefits across the AUL.⁸² We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). On this basis, we determine a countervailable subsidy of 0.28 percent *ad valorem* for Jindal.

The GOI stated that this program was discontinued in 2013.⁸³ Companies may apply for licenses for up to three years after the program has ended (*i.e.*, through 2016).⁸⁴ Additionally, because this program applies to capital goods and the AUL in this proceeding is ten years, and for Jindal, specifically, 17 years,⁸⁵ companies may receive residual benefits from this program through at least 2026, and for Jindal through 2033.

⁷⁸ See *Final PET Film 2014 Review* IDM at 4; see also *Steel Threaded Rod from India* Final IDM at "Status Holder Incentive Scrip."

⁷⁹ See Jindal June 16, 2020 R-IQR at Exhibit 81.

⁸⁰ See *Steel Threaded Rod from India* Final IDM at Status Holder Incentive Scrip.

⁸¹ Commerce determined and was upheld by the CIT in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*) in the similar but discontinued GOI program, the Duty Entitlement Passbook Scheme (DEPS), that benefits were conferred when earned, rather than when the credits were used.

⁸² See Jindal Prelim Calc Memo 2018 at Attachment 1.

⁸³ See GOI January 13, 2020 IQR at 66; see also GOI June 20, 2020 SQR at 36-38.

⁸⁴ *Id.*; see also *Prelim PET Film 2014 Review* PDM 8-10, affirmed *Final PET Film 2014 Review*; and *Steel Threaded Rod from India* Final IDM at "Status Holder Incentive Scrip."

⁸⁵ See Allocation Period section, above. Jindal received those SHIS licenses prior to the 2017 administrative review.

3. Advance Authorization Scheme (AAS), formerly Advance License Program (ALP)

Under the AAS/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 their export requirement. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. During the POR, Jindal used advance authorization licenses to import certain materials duty free.⁸⁶

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its FTP and Handbook of Procedures (HoP) for the AAS/ALP during 2005. We analyzed the changes introduced by the GOI to the AAS/ALP in 2005 and acknowledged that certain improvements to the AAS/ALP system were made. However, we found that, based on the information submitted by the GOI and examined during previous reviews of this proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws and procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAS/ALP system during that POR.⁸⁷ In the 2005 review, Commerce specifically stated that it continues to find the AAS/ALP countervailable based on:

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.⁸⁸

In this review, Commerce specifically asked the GOI in its supplemental questionnaire, whether it "has implemented any changes to the laws and regulations governing this program, including monitoring procedures, since 2005," to which the GOI responded that that the scheme has undergone several procedural changes since 2005.⁸⁹ For example, the GOI points to Chapter 4 at 4.06 of the HoP, allowing for an existing SION to be modified.⁹⁰ Such changes do not address Commerce's concerns stated in the 2005 determination, and as referenced above. In fact, the GOI confirms itself that neither the procedures for devising a SION, nor the SIONs for PET film have been modified since 2005.⁹¹ Jindal likewise comments in its response that the SIONs for

⁸⁶ See Jindal June 16, 2020 R-IQR at 29-34.

⁸⁷ See *Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film Final Results of 2005 Review*), and accompanying IDM at Comment 3; see also *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), and accompanying IDM at Comment 1.

⁸⁸ See *PET Film Final Results of 2005 Review* IDM at Comment 3.

⁸⁹ See GOI June 20, 2020 SQR at 28-29.

⁹⁰ See GOI January 13, 2020 IQR at 31-32.

⁹¹ See GOI June 20, 2020 SQR at 28-29; see also Jindal June 16, 2020 R-IQR at 35.

PET film have not been revised since,⁹² and directs Commerce to revisions in Chapter 4, paragraph 4.49 of the HoP applicable for the 2015-2020 period. Chapter 4, paragraph 4.49; however, does not address the SIONs but rather discusses “Bonafide Default” in the fulfillment of the export obligation (EO).⁹³ While this paragraph addresses procedures, penalties and remedies in case of default by an Indian manufacturer, the lack of evidence regarding the actual implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits persists. Accordingly, we find that there is no new evidence on the record of the current administrative review since the AAS was last examined by Commerce⁹⁴ that would indicate that the systemic deficiencies in the AAS/ALP system, identified above, have been resolved.⁹⁵ Therefore, Commerce continues to find that the AAS/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, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (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, making normal allowance for waste, nor did the GOI carry 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, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit. Thus, we are treating the benefit provided under the AAS/ALP as a recurring benefit.

Jindal imported inputs under the AAS/ALP for the production of subject merchandise duty free during the POR.⁹⁶ The information provided by Jindal demonstrates that the license(s) were tied to the production and export of subject merchandise within the meaning of 19 CFR 351.525(b)(5). As such, we find that those licenses benefit the company’s exports of subject merchandise.

To calculate the subsidy rate, we first determined the total value of import duties exempted during the POR for Jindal under license(s) tied to subject merchandise. We then divided the resulting benefit by the total value of Jindal’s export sales of subject merchandise. On this basis, we determine the countervailable subsidy provided to Jindal under the AAS/ALP to be 3.62 percent *ad valorem*.⁹⁷

⁹² *Id.*

⁹³ See Jindal June 17, 2020 SQR at 12 and Exhibit 58A.

⁹⁴ See *PET Film Final Results of 2005 Review* IDM at Comment 3.

⁹⁵ See GOI June 20, 2020 SQR at 28-29.

⁹⁶ See Jindal June 16, 2020 R-IQR at 29-30.

⁹⁷ See Jindal Prelim Calc Memo 2018.

4. Merchandise Export from India Scheme (MEIS)

Jindal reported participating in the MEIS during the POR.⁹⁸ The GOI explained that the MEIS was introduced on April 1, 2015, in the FTP 2015-2020. Its purpose is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.⁹⁹ The eligibility is also dependent on the products and the foreign markets to which the products are exported.¹⁰⁰ Under this program, the GOI issues a scrip based on the FOB value of the exports in free foreign exchange realized or received, or on the ". . . FOB value of exports, as given on the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified."¹⁰¹ To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with Director General of Foreign Trade (DGFT).¹⁰² After a recipient receives and registers the scrip, it may either use it for the payment of future customs duties for importing goods or transfer it to another company.¹⁰³

Commerce has found a similar program, the SHIS, to be countervailable. For that program, similar to this MEIS program, the GOI provides scrips to exporters worth a certain percentage of the FOB value of exports. The scrip could then be used as a credit for future import duties or could be transferred to other Status Holders to be used as credit for future import duties.¹⁰⁴

The program is specific within the meaning of sections 771(5A)(A) and (B) of the Act because, as the GOI and Jindal report, eligibility to receive the scrips is contingent upon export.¹⁰⁵ As Commerce determined for the SHIS program, this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue forgone by the GOI.¹⁰⁶

⁹⁸ See Jindal June 16, 2020 R-IQR at 40-48 and Exhibits 79, 83-86.

⁹⁹ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 36124 (August 3, 2017), and accompanying PDM at 19-20, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India*, 83 FR 5612 (February 8, 2018), and accompanying IDM; see also GOI January 13, 2020 IQR at 70-79 and Exhibits 3 and 5 (FTP at 3.00); and Jindal June 16, 2020 R-IQR at 40.

¹⁰⁰ See GOI January 13, 2020 IQR at 76.

¹⁰¹ See GOI January 13, 2020 IQR at 76 and Exhibits 5 (FTP at 3.03-3.12, 3.04) and 3 (HoP at 3.01-3.16).

¹⁰² *Id.* at Exhibit 3 (HoP at 3.06 and 3.08); see also Jindal June 16, 2020 R-IQR at 40-42.

¹⁰³ See GOI January 13, 2020 IQR at Exhibit 5 (FTP at 3.18 and 3.02).

¹⁰⁴ *Id.*; see also *Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip From India*, 80 FR 46956 (August 6, 2015) (*PET Film from India 2013 Preliminary Results*), and accompanying IDM at 11, unchanged in *PET Film from India 2013 Final Results*, and accompanying IDM; see also *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India Final*), and accompanying IDM at Status Holder Incentive Scrip.

¹⁰⁵ See GOI January 13, 2020 IQR at 70; see also Jindal June 16, 2020 R-IQR at 40-41; and *PET Film from India 2013 Preliminary Results* IDM at 11.

¹⁰⁶ See *PET Film from India 2013 Preliminary Results* and accompanying IDM at 11; see also GOI January 13, 2020 IQR at 70-72.

Jindal reported that it submitted applications and received approval under the MEIS program. According to Jindal, it met the requirements of this program and obtained the requisite scrips from the DGFT, which can be used by the recipient company or sold in the market.¹⁰⁷ Furthermore, Jindal's cross-owned affiliate, JFIL, reported that it transferred certain MEIS scrips under this scheme to Jindal during the POR.¹⁰⁸ JFIL submitted a copy of the licenses, tax invoices from Jindal Films India Limited to Jindal, and transactional screen shots from each entity's the SAP accounting system, as well as bank statements of lump sum money transfers from one company to the other.¹⁰⁹ It did not, however, submit any itemized support for those bank transfers it claims would include payment for the transfer of licenses, nor supporting information for its claim of market value for those transfers from and to its affiliate. Importantly, the transactional screen shots of the individual license transaction is inconsistent with Jindal's statement that "{Jindal does not make accounting entries for MEIS benefits in its accounting system,"¹¹⁰ suggesting a simple transfer of assets from the accounting books of one company to another. Additionally, Commerce requested that Jindal include the bookings of the Goods and Services Tax (GST) associated with that sale/transfer of scrips for both, Jindal and JFIL, to which both parties claimed that such scrip transaction of scrip are excluded from the GST. To support that claim, Jindal provided "Notification No. 35/2017-Central Tax (Rate)," dated October 13, 2017 that adds the scrip exemption to section 11 of the Central Goods and Services Tax Act, 2017.¹¹¹ The fact that the GOI exempts such transaction from GST is evidence that Jindal's "purchase" of the license from its cross-owned affiliate, JFIL, is indeed the transfer of JFIL's benefits under this scheme to its parent, Jindal, rather than a business transaction between the entities. As discussed at the "Attribution of Subsidies" section, above, Jindal holds direct and controlling ownership in JFIL. Therefore, for these preliminary results, we determine that Jindal also received benefits under this program in the form of a transfer of a subsidy from a cross-owned entity, pursuant to 19 CFR 351.525(b)(6)(v) and attribute the transferred subsidy to the export products sold by Jindal.

This program provides a recurring benefit because, unlike the scrips in the SHIS scheme, the scrips provided under this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c). We calculated the benefit to Jindal to be the total value of scrips granted during the POR to Jindal, and those scrips earned under this program by the cross-owned affiliate, JFIL, but transferred to Jindal. Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates benefit as having been received as of the date of exportation;¹¹² however, because the MEIS benefit, *i.e.* the scrip, amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.¹¹³ Therefore, for our rate calculations, we divided the face value of the sum of the MEIS licenses by Jindal's total

¹⁰⁷ See Jindal June 16, 2020 R-IQR at 40-48.

¹⁰⁸ See JFIL June 16, 2020 R-IQR at 16-17; *see also* Jindal June 16, 2020 R-IQR at 15.

¹⁰⁹ See JFIL June 17, 2020 SQR at 2-4 and Exhibits S1-12-14.

¹¹⁰ See Jindal June 16, 2020 R-IQR at 42; *see also* JFIL June 17, 2020 SQR at 2.

¹¹¹ See JFIL 17, 2020 SQR at 3 and Exhibit S1-11A.

¹¹² See 19 CFR 351.519(b)(1).

¹¹³ See, e.g., *Steel Threaded Rod from India Final IDM* at "Status Holder Incentive Scrip."

export sales, net of deemed exports. On this basis we determine the countervailable subsidy provided to Jindal under the MEIS to be 2.35 percent *ad valorem*.¹¹⁴

5. Services Export from India Scheme (SEIS)

The GOI reported that the Services Export from India Scheme (SEIS) was introduced in April 2015 to promote the export of specified services from India.¹¹⁵ The duty scrips are calculated at three to five percent of the net foreign exchange earned in the fiscal year. The GOI-issued licenses can be utilized for payment of Custom duties on imports of inputs or goods, including capital goods, or as payment of excise duties on domestically procured inputs or goods.¹¹⁶

We determine that the program is specific within the meaning of sections 771(5A)(A) and (B) of the Act because, as the GOI reports, eligibility to receive the scrips is contingent upon export.¹¹⁷ As Commerce determined for the SHIS program and the MEIS, this scheme provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue forgone by the GOI.¹¹⁸ A benefit is also provided under the SEIS scheme pursuant to 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported inputs or capital equipment.¹¹⁹ Because in this scheme, the benefit is calculated based on foreign exchange earnings, we determine that the license, which contains the date of validity and the amount of duty exemption, as issued by the GOI, is the best method for determining the benefit.

Jindal reported that it benefited from SEIS during the POR.¹²⁰ Specifically, Jindal stated that it participated in this scheme for services exported and received scrips under the scheme, as well as purchased one such SEIS license at “market value” from its cross-owned affiliate JFIL.¹²¹ In its supplemental response, Jindal submitted a copy of the licenses, tax invoices from JFIL to Jindal, and transactional screen shots from each entity’s accounting system, as well as bank statements of lump sum money transfers from one company to the other.¹²² It did not, however, submit any itemized support for those bank transfers it claims would include payment for the transfer of licenses, nor supporting information for its claim of market value for those transfers from and to its affiliate. Importantly, the transactional screen shots of the individual license transaction is inconsistent with Jindal’s statement that “{n}o entries for the credit scrips received under the SEIS are made in the accounting system either in Jindal or JFIL books of account i.e. [sic], Jindal or JFIL accounts for the cost of material imported net of unpaid duties,”¹²³ suggesting a simple transfer of assets from the accounting books of one company to another. Additionally, Commerce requested that Jindal include the bookings of the Goods and Services Tax (GST)

¹¹⁴ See Jindal Prelim Calc Memo 2018.

¹¹⁵ See GOI June 29, 2020 SQR at 51.

¹¹⁶ *Id.* at 51-61 (FTP 3.07); see also Jindal June 17, 2020 SQR at 71.

¹¹⁷ See GOI June 29, 2020 SQR at 57-58.

¹¹⁸ See GOI January 13, 2020 IQR at Exhibit 5 (FTP 3.02).

¹¹⁹ *Id.*

¹²⁰ See Jindal June 16, 2020 R-IQR at 70-73 and Exhibit 108A.

¹²¹ *Id.*

¹²² *Id.*; see also Jindal June 17, 2020 SQR at 14-15 and Exhibits S1-67-72.

¹²³ See Jindal June 17, 2020 SQR at 14.

associated with that sale/transfer of scrips for both, Jindal and JFIL, to which both parties claimed that such scrip transaction of scrip are excluded from the GST. To support that claim, Jindal provided “Notification No. 35/2017-Central Tax (Rate),” dated October 13, 2017 that adds the scrip exemption to section 11 of the Central Goods and Services Tax Act, 2017.¹²⁴ The fact that the GOI exempts such transaction from GST is evidence that Jindal’s “purchase” of the license from its cross-owned affiliate, JFIL, is indeed the transfer of JFIL’s benefits under this scheme to its parent, Jindal, rather than a business transaction between the entities. As discussed at the “Attribution of Subsidies” section, above, Jindal holds direct and controlling ownership in JFIL. Therefore, for these preliminary results, we determine that Jindal received benefits under this program in the form of a transfer of a subsidy from a cross-owned entity, pursuant to 19 CFR 351.525(b)(6)(v) and attribute the transferred subsidy to the export products sold by Jindal.

To determine the benefit received by Jindal under this scheme, we divided the total amount of the SEIS license’s face value by Jindal’s total export sales net of deemed exports to arrive at a countervailable subsidy of 0.21 percent *ad valorem*.

6. Section 35 R&D Deductions of the Income Tax Act, 1961, Sub-Section 35DD

Under this section of the Income Tax Act any firm that incurs expenditures exclusively for the purposes of amalgamation or de-merger is permitted a deduction equal to one-fifth the of such expenditure for each of the five successive previous years beginning with the year prior to the demerger. This provision went into effect April 1, 1999 effect.¹²⁵ Jindal reported benefitting from income tax deductions under *sub-section 35 DD*.¹²⁶

Based on the information above, we determine that, pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by Jindal, pursuant to section 771(5)(E) of the Act. As noted in the “Use of Facts Otherwise Available and Adverse Inferences,” section above, the GOI failed to provide necessary information regarding “*Section 35 R&D Deductions of the Income Tax Act, 1961*,” *sub-section 35 DD*, and, thus, we have no basis for evaluating the program on specificity pursuant to section 771(5A)(D)(i) of the Act and 19 CFR 351.502. Accordingly, we are relying on AFA in determining that the income tax deductions under *Section 35 R&D Deductions of Income Tax Act, 1961 - sub-section 35DD* is *de facto* specific within the meaning of section 771(5A)(D)(i) of the Act.

To determine the reported benefit, respondents calculated the amount of income tax they would have had to pay on the income tax return filed in the POR less the amount respondents actually paid during the POR.¹²⁷ That benefit is again capped by the MAT, which is a company’s

¹²⁴ *Id.* at 14 and Exhibit S1-66

¹²⁵ See GOI January 13, 2020 IQR at 109-124 and Exhibits 28-29; see also GOI June 29, 2020 SQR at 47-51 and Exhibit S1-27.

¹²⁶ See Jindal June 16, 2020 R-IQR at 76-78 and Exhibits 116-117.

¹²⁷ See 19 CFR 351.509(c).

minimum tax liability, computed at certain percent of the book profit.¹²⁸ We then divided this benefit by Jindal's total sales during the POR, to determine countervailable subsidy rates as below. We further determine Jindal's benefit under this program not measurable.

7. State Government of Maharashtra Subsidies Under the Package Scheme of Incentives 1993 and 2007

Under the PSI, incentives are offered to encourage dispersal of industries to the less industrially developed areas of the state of Maharashtra to achieve higher and sustainable economic development. Pursuant to this objective, Annexure I of the PSI-2007 places all "*talukas*," i.e., district subdivisions, into six different development zones: A, B, C, D, D+, and "no industry." The zones cover the entire state of Maharashtra. Benefits under the PSI-2007 vary by zone.¹²⁹ Commerce previously determined this program to be countervailable.¹³⁰

Jindal reported that it participated in the PSI under the provisions for "mega projects," and specifically the Industrial Promotion Subsidy (IPS) under this program.¹³¹ According to paragraph 5.10 "Mega Projects:"

The quantum of incentives within the approved limit will be decided by the High Power Committee under the chairmanship of Chief Secretary, Government of Maharashtra. The Infrastructure Committee under the chairmanship of the Chief Minister of Maharashtra will have the power to customize and offer special / extra incentives for the prestigious Mega Projects on a case to case basis.¹³²

a. Industrial Promotion Subsidy (IPS)

The IPS, at paragraph 5.1, is part of the PSI-2007 incentives offered for new or expanding projects.¹³³ Commerce has previously determined this program to be countervailable.¹³⁴ The extent of the benefits is determined by the zone the project is located in or by whether the project qualifies as a "mega project." The amount of the subsidy is also linked to the fixed capital investment.¹³⁵

¹²⁸ See, e.g., Memorandum, "Post-Preliminary Analysis of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India; 2017," dated October 21, 2019, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 14463 (March 12, 2020), and accompanying IDM.

¹²⁹ See GOI January 13, 2020 IQR at 127-134 and Exhibits 30-34.

¹³⁰ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163, (March 2, 2015) (*PET Film Final Results 2012 Review*), and accompanying IDM at 21 and Comment 5; see also *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*OCTG from India 2012*), and accompanying IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007."

¹³¹ See Jindal June 16, 2020 R-IQR at 59-65 and Exhibits 97-100.

¹³² *Id.* at Exhibit 97; see also GOI January 13, 2020 IQR at 127-133 and Exhibits 30-34.

¹³³ See Jindal June 16, 2020 R-IQR at Exhibit 97.

¹³⁴ See *PET Film Final Results 2012 Review* IDM at 21 and Comment 5; see also *OCTG from India 2012* IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy."

¹³⁵ See Jindal June 16, 2020 R-IQR at Exhibit 97.

As stated in *OCTG from India 2012*, the SGOM's *Modalities of Sanction and Disbursement of Industrial Promotion Subsidy to Mega Projects under the PSI 2001 and PSI 2007*, at 1.1:

“Industrial Promotion Subsidy” in respect of Mega Projects under PSI 2001 & 2007 means an amount equivalent to the percentage of “Eligible Investments” which has been agreed to as a part of the customized package, or the amount of tax payable under Maharashtra Valued Added Tax Act (MVAT) 2002 and Central Sales Tax (CST) Act, 1956 by the eligible Mega Projects in respect of sale of finished products eligible for incentives before adjustment of set off or other credit available for such period as may be sanctioned by the State Government, less the amount of benefits by way of Electricity Duty exemption, exemption from payment of Stamp Duty, refund of royalty and any other benefits (as may be specified by the Government) availed by the eligible Mega Projects under PSI 2001/2007, whichever is lower.¹³⁶

Jindal is eligible for this benefit for seven years from the date of commencement of commercial production. The annual amount of the benefit is determined by SGOM each year through an annual application. Because its project in Maharashtra meets the criteria of a “mega project,” Jindal was allowed to propose the means through which it would receive its benefits. It chose exemption of state value-added-tax (VAT) and CST payments.¹³⁷ Thus, the amount of the benefit determined each year is based on amount of exempted state VAT and CST for Jindal paid that year.

We find that this program provides a financial contribution in the form of revenue forgone by the SGOM pursuant to section 771(5)(D)(ii) of the Act.

Under the SGOM's VAT system, taxpayers are required to remit VAT collected from customers (output VAT) to the SGOM.¹³⁸ Before doing so, they reduce the amount of output VAT collected by the amount of VAT they have paid to their own suppliers (input VAT). Alternatively, instead of crediting output VAT with input VAT in this manner, they may receive a rebate of input VAT paid to their suppliers. Either way, the net amount of VAT the taxpayer pays to the SGOM equals the difference between output VAT and input VAT. Under the IPS program as applied to Jindal, however, that amount is refunded.¹³⁹ A refund for this amount would not be available absent the IPS program. Likewise, under the SGOM's CST system, the taxpayer pays to the SGOM the difference between the CST it collects from its customers and the CST it pays to its suppliers. Under the IPS program as applied to Jindal, however, that amount is also refunded; a refund that would not be available absent the IPS program.¹⁴⁰ The

¹³⁶ See *OCTG from India 2012* IDM at “SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy.”

¹³⁷ See Jindal June 16, 2020 R-IQR at 59-64 and Exhibit 97. Note: Effective July 1, 2017, the GOI replaced the system of indirect taxes with the uniform and centralized Goods and Services Tax (GST) regime. Accordingly, the SGOM's VAT and the CST have been replaced by the State Goods and Service Tax (SGST) and the Central Goods and Services Tax (CGST). See GOI January 13, 2020 IQR at 68.

¹³⁸ See Jindal June 16, 2020 R-IQR at 59-63 and Exhibit 97; see also *OCTG from India 2012*, IDM at SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy.

¹³⁹ See Jindal March 11, 2019 IQR at 79-80.

¹⁴⁰ *Id.* at Exhibit 89.

excessive refund of VAT provides a benefit under 19 CFR 351.510(a) (the refunded output VAT is only collected on domestic sales) and the remission of CST otherwise due provides a benefit under 19 CFR 351.510(a).

Pursuant to section 771(5A)(D)(iv) of the Act, the program is specific because it is limited to certain geographical regions within the state of Maharashtra. There is no new information or evidence of changed circumstances that would warrant reconsidering our determinations that this program is countervailable.¹⁴¹

In order to calculate the benefit, we divided the total amount of the refunds Jindal received during the POR by its total sales during the POR. On this basis, we determined a countervailable subsidy rate of 2.80 percent *ad valorem* for Jindal.¹⁴²

8. State Sales Tax Incentive Programs

Certain state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. These incentives allow privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers, that are in selected industries and are located in the designated regions, to sell goods without charging or collecting state sales taxes.¹⁴³

In the original CVD investigation, we determined that the operation of these types of state sales tax programs confer countervailable subsidies.¹⁴⁴ Specifically, Commerce found that these programs provide a financial contribution in the form of revenue forgone by the respective state governments pursuant to section 771(5)(D)(ii) of the Act, and confer a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(A) and (D)(iv) of the Act, these programs are specific because they are limited to certain geographical regions within the respective states administering the programs. There is no new information or evidence of changed circumstances that would warrant reconsidering our determinations that these programs are countervailable.

Jindal reported not having to pay state sales tax, *i.e.*, SCST and GCST¹⁴⁵ for certain purchases of inputs and supplies from certain locations within India for both subject- and non-subject merchandise.¹⁴⁶ To calculate the benefit, we first calculated the total sales tax reduction or exemption Jindal and SRF received during the POR by subtracting taxes paid from the amount that would have been paid on its purchases during the POR absent these programs. We then divided these amounts by Jindal's and SRF's total sales during the POR, to calculate a net countervailable subsidy rate of 0.10 *ad valorem* for Jindal.¹⁴⁷

¹⁴¹ See GOI June 16, 2020 IQR at 127-133 and Exhibits 30-34.

¹⁴² See Jindal Prelim Calc Memo 2018.

¹⁴³ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007) (*PET Film Final Results 2004 Review*) and accompanying IDM at State Sales Tax Incentive Programs.

¹⁴⁴ See *PET Film Final Determination* IDM at State of Maharashtra Programs and State of Uttar Pradesh Programs: Sales Tax Incentives; see also *PET Film Final Results of 2005 Review* IDM at State Sales Tax Incentive Programs.

¹⁴⁵ See FN 140.

¹⁴⁶ See Jindal June 16, 2020 R-IQR at 68-69 and Exhibit 102.

¹⁴⁷ See Jindal Prelim Calc Memo 2018.

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

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

GOI Programs

1. Special Economic Zones (SEAs) formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs), and all its sub-programs
2. Incremental Exports Incentivization Scheme (IEIS)
3. Duty Drawback Program
4. Duty Free Replenishment Certificate (DFRC)
5. Target Plus Scheme
6. Capital Subsidy
4. Exemption of Export Credit from Interest Taxes
5. Loan Guarantees from the GOI
7. Export Oriented Units
8. Focus Market Scheme/Focus Product Scheme
9. Pre- and Post-Shipment Export Financing in Indian Rupees
10. Section 35 R&D Deductions of the Income Tax Act, 1961
 - Sub-Section 35(iii)
 - Sub-Section 35(iv)
 - Sub-Section 35(2AB)
11. Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961, and all its sub-programs
12. Section 80-IA Deductions of the Income Tax Act, 1961 for Enterprises Engaged in Infrastructure Development

State Programs

13. Octroi Refund Scheme State of Maharashtra (SOM)
14. Waiving of Interest on Loans by SICOM Limited (SOM)
15. State of Uttar Pradesh Capital Incentive Scheme
10. Infrastructure Assistance Schemes (State of Gujarat)
11. Capital Incentive Scheme Uttaranchel
12. Capital Incentive Schemes (SGOM)
13. Electricity Duty Exemption Scheme (SGOM IPS 2007)
14. Exemption of Electricity Duty on Account of Electricity Generation (State of Gujarat)
15. State Government of Mah
15. Interest Subsidy under Special Textil Package of Industrial Policy (State of Madhya Pradesh)
16. State Government of Madhya Pradesh (SGOMP) Industrial Promotion Policy (IPP) 2014

VIII. Recommendation

Based on our analysis, we recommend adopting the preliminary results described above. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.

☒

Agree

☐

Disagree

11/17/2020

X



Signed by: JOSEPH LAROSKI
Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations