

Comment 12: Attribution of Subsidies Aero Received under the Post-Shipment Export Financing Program

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(C-533-825)

#### Notice of Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film from India for the period January 1,

2004 through December 31, 2004. We preliminarily determine that subsidies are being provided on the production and export of PET film from India. See the "Preliminary Results of Administrative Review" section, below. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this administrative review. See the "Public Comment" section of this notice. In addition, we are rescinding this review with respect to Garware Polyester Limited (Garware). See the "Partial Rescission of Review" section, below.

**EFFECTIVE DATE:** August 8, 2006

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum, Nicholas Czajkowski, or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0197, (202) 482-1395, or (202) 482-1398, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 1, 2002, the Department published in the **Federal Register** the countervailing duty (CVD) order on PET film from India. See *Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (PET Film Order). On July 1, 2005, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005). On July 27, 2005, MTZ Polyfilms, Ltd. (MTZ), and on July 29, 2005, Jindal Poly Films Limited of India (Jindal), formerly named Jindal Polyester Limited, Indian producers and exporters of subject merchandise, requested that the Department conduct an administrative review of the CVD order on PET film from India with respect to their exports to the United States. On July 29, 2005, Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), (collectively, petitioners), requested that the Department conduct an administrative review of the CVD order on PET film from India with respect to Jindal and Polyplex Corporation Ltd. (Polyplex) (collectively, respondents). Also, on

August 1, 2005, Garware requested that the Department conduct an administrative review of the CVD order on PET film from India with respect to its exports to the United States.

On August 19, 2005, MTZ withdrew its request for review of the CVD order of PET film from India. See Memorandum to File through Howard Smith from Drew Jackson: "Withdrawal of Countervailing Duty Administrative Review Request" (August 23, 2005) (on file in the Central Records Unit (CRU), room B-099 of the main Commerce building). Since this company was the sole requestor for an administrative review, and since its withdrawal occurred prior to the date of initiation, we did not include this company in the initiation of the administrative review. On August 29, 2005, the Department initiated an administrative review of the CVD order on PET film from India covering Jindal, Garware, and Polyplex, for the period January 1, 2004 through December 31, 2004. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005).

The Department issued questionnaires to the Government of India (GOI) and all three respondents. On September 14, 2005, pursuant to 19 CFR § 351.213(d)(1), Garware timely withdrew its request for an administrative review of the CVD order on PET film from India. Because no other party requested an administrative review of this respondent, the Department is rescinding its review with respect to Garware. See the "Partial Rescission of Review" section below.

On September 29, 2005, the GOI submitted its questionnaire response. Jindal and Polyplex submitted their questionnaire responses on October 3, 2005 and October 4, 2005, respectively. The Department issued its first supplemental questionnaires to Jindal and Polyplex on November 4, 2005 and November 7, 2005, respectively. On November 28, 2005, both Jindal and Polyplex submitted their first supplemental responses. On February 21, 2006, the Department extended the preliminary results until July 31, 2006. See *Extension of Time Limit for the Preliminary Results of Administrative Review: Polyethylene Terephthalate (PET) Film from India*, 71 FR 8840 (February 21, 2006). On April 14, 2006, the Department issued a second supplemental questionnaire to Jindal and Polyplex, and its first supplemental questionnaire to the GOI. The GOI submitted its response to the supplemental questionnaire on April 28, 2006, and Jindal and Polyplex

responded on May 8, 2006. On June 20, 2006, the Department issued a second supplemental questionnaire to the GOI, and third supplemental questionnaires to Jindal and Polyplex. The GOI submitted its response on June 27, 2006, and Jindal and Polyplex responded on July 5, 2006. Also, on July 5, 2006, the Department issued its third supplemental questionnaire to the GOI, to which the GOI submitted its response on July 12, 2006.

#### Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Act), we intend to conduct verification of the GOI, Jindal, and Polyplex questionnaire responses following the issuance of the preliminary results.

#### 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. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

#### Partial Rescission of Review

As provided in 19 CFR § 351.213(d)(1), "the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." Garware withdrew its review request within 90 days of the date of publication of the notice of initiation of the instant administrative review. Because no other interested parties requested an administrative review of Garware, the Department is rescinding the instant administrative review of this company.

#### Subsidies Valuation Information

##### Allocation Period

Under 19 CFR § 351.524(d)(2)(i), we 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 investigative segment of this proceeding, 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*). In the previous 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*, 69 FR 51063 (August 17, 2004) (*First PET Film Review - Final Results*). Because there is no new evidence on the record that would cause the Department to reconsider this decision in this review, the Department has preliminarily determined to continue to use an AUL of 17 years for Jindal and 18 years for Polyplex in allocating non-recurring subsidies.

#### Benchmark Interest Rates and Discount 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 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 *First PET Film Review - Final Results* and the accompanying *Issues and Decision Memorandum (Issues Memorandum - First Review)*, at 15-16. As such, the Department did not use loans from the IDBI reported by Jindal and Polyplex in its 2004 benchmark calculations.

Pursuant to 19 CFR § 351.505(a)(2)(iv), if a program under review is a government-provided, short-term loan, the preference would be 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.

Both Jindal and Polyplex have provided information on rupee-denominated short-term commercial loans outstanding during the period of review (POR). Jindal provided the following rupee-denominated short-term commercial loans: Inland Bill Discounting (IBD); Working Capital Development Loans (WCDL); Cash Credit (CC); and Other Short-Term Loans. Polyplex provided the following rupee-denominated short-term commercial loans: IBD; WCDL; CC; Commercial Paper Loans; and Other Short-Term Loans.

In previous reviews of this case, the Department has determined that IBD loans are more comparable to pre-shipment and post-shipment export financing loans than other types of rupee-denominated short-term loans. See *Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46485 (August 10, 2005) (*Second PET Film Review - Preliminary Results*) (unchanged in the final results); and *Issues Memorandum - First Review* at 10. There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to use IBD loans as the basis for the short-term rupee-denominated benchmark for all applicable programs for both Jindal and Polyplex.

Polyplex provided information on US dollar-denominated WCDL received during the POR to use as the basis for US dollar-denominated short-term benchmark rates. The Department, therefore, has calculated Polyplex's US dollar-denominated short-term benchmark rates based on its US dollar-denominated WCDLs.

Jindal did not have any US 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 International Monetary Fund's publication International Financial Statistics (IMF Statistics) for Jindal.

For those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated long-term benchmark rate, we used, where available, company-specific, weighted-average interest rates on comparable commercial long-term, rupee-denominated loans. For this review, the Department required 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 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). 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 IMF Statistics.

#### **Programs Preliminarily Determined to be Countervailable**

##### **1. Pre-Shipment and Post-Shipment Export Financing**

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. 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. Companies may also establish pre-shipment credit lines upon which they

draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. 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 conferred countervailable subsidies on the subject merchandise because: (1) The provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of 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 Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film)*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*) and accompanying Issues and Decision Memorandum, at "Pre-Shipment and Post-Shipment Financing" (*PET Film Final Determination - Decision Memorandum*). There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program 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 tied to a company's exports rather than exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit by the value of each respondent's total 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. *See* 19 CFR § 351.525(b)(4). On this basis, we preliminarily determine the net countervailable subsidy from pre-shipment export financing to be 0.02 percent *ad valorem* for Jindal, and 0.30 percent *ad valorem* for Polyplex. We also preliminarily determine the net countervailable subsidy provided to Jindal from post-shipment export financing to be 0.05 percent *ad valorem*. Polyplex did not receive any benefits under the post-shipment export financing program during the POR.

##### **2. 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 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 and Polyplex used advance licenses to import certain materials duty free.

The Department previously found the 1997–2003 Export/Import Guidelines underlying the ALP to be not countervailable. *See PET Film Final Determination*. However, in the last administrative review, the Department examined the 2002–2007 Export/Import Policy Guidelines underlying the ALP and found the program to be countervailable because 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). *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 accompanying *Issues and Decision Memorandum (Issues*

*Memorandum - Second Review*). In that 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, as the GOI provides the respondents with an exemption of import duties; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR § 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products; 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 Issues Memorandum - Second Review*, at 3–5. There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, 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 certain import duties for inputs that were used in the production of merchandise. Thus, we treated the benefit provided under the ALP as a recurring benefit. 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 to the actual amount in accordance with section 771(6) of the Act (in order to receive the benefits of the ALP, companies must pay application fees). We then divided the resulting net benefit by the company's value of total export sales. We did not include either respondents' "deemed exports" sales (*i.e.*, sales of goods which do not leave the country) as part of their total value of export sales for this or any program. We will examine the issue of "deemed exports" further at verification and invite parties to comment on this issue in their briefs. On this basis, we preliminarily determine the net countervailable subsidy provided under the ALP to be 5.33 *ad valorem* for Jindal and 2.07 percent *ad valorem* for Polyplex.

### 3. 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 export shortfall, plus penalty interest.

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 - Decision Memorandum*, at 7–8. There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

These import duty exemptions were 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." *See Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998). Accordingly, we are treating these exemptions as non-recurring benefits in accordance with 19 CFR 351.524(c)(2)(iii).

Jindal and Polyplex reported that they imported capital goods under the EPCGS in the years prior to and during the POR. Jindal received various EPCGS licenses, which were for the production of: (1) Both subject merchandise and non-subject merchandise; or (2) non-subject merchandise. Polyplex received EPCGS licenses which indicated that it was allowed to import capital goods for

the production of: (1) subject merchandise; (2) both subject merchandise and non-subject merchandise; or (3) non-subject merchandise. Based on the information and documentation submitted by Jindal and Polyplex, we cannot determine that their respective 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 each company's respective EPCGS licenses benefit all of the company's exports.

Polyplex met the export requirements for certain EPCGS licenses prior to December 31, 2004 and the GOI has formally waived the relevant import duties. For some of its licenses, however, Polyplex has not yet met its export obligation as required under the program. Jindal has not yet met its export obligation for any of its imports of capital goods under the program. Therefore, although Jindal and Polyplex have received a deferral from paying import duties when the capital goods were imported, the final waiver on the obligation to pay the duties has not yet been granted for many of these imports.

For Polyplex's imports for which the GOI has 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. 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. 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 - 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 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 will treat the unpaid import duty liability as an interest-free loan. See 19 CFR § 351.505(d)(1); and *PET Film Final Determination–Decision Memorandum*, at “EPCGS”; see also *Final Affirmative Countervailing Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) (*Final - Indian PET Resin*).

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 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 *Second PET Film Review - Preliminary Results*, 70 FR at 46488 (unchanged in the final results); see also (*Final - Indian PET Resin*).

As stated above, 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 (*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 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 the “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 grant 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 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.

For Jindal, we divided the benefit from the contingent liability loans under the EPCGS by Jindal's total exports to determine a subsidy of 2.85 percent *ad valorem*. For Polyplex, we summed the benefits attributable to the POR from the duty waivers under the EPCGS with the benefits from the contingent liability loans and divided that total by Polyplex's total exports to determine a subsidy of 4.29 percent *ad valorem*.

#### 4. 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*, 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 consistent with 19 CFR § 351.525(b)(2). On this basis, we preliminarily determine the net countervailable subsidy under section 80HHC to be 0.28 percent *ad valorem*

for Jindal and 1.60 percent *ad valorem* for Polyplex.

The GOI, Jindal, and Polyplex have argued that the 80HHC exemption was phased out effective March 31, 2004, and have provided documentation to support their claim. See *Government of India's Questionnaire Response*, at Exhibit 10 (September 29, 2005); Jindal's Questionnaire Response, at Exhibit 24a (October 3, 2005); and Polyplex's Questionnaire Response, at Exhibit 23 (October 3, 2005). According to these submissions, the 80HHC program ended March 31, 2004. As a result, Jindal and Polyplex only claimed deductions of profits derived from exported goods through March 31, 2004 in computing their total taxable income during the POR. Due to the phase out of the 80HHC program, both Jindal and Polyplex have requested that the Department determine that the elimination of this deduction constitutes a program-wide change under 19 CFR § 351.526. In the Finance Act of 2000, the GOI amended the Income Tax Act of 1961, stating that the 80HHC exemption would be phased out on April 1, 2004. In addition, Jindal and Polyplex submitted their October 31, 2005 tax returns (which cover the tax year April 1, 2004 through March 31, 2005) in which neither company claimed an 80HHC exemption. After analyzing the documentation on the record, the Department preliminarily determines that there has been a program-wide change with respect to the 80HHC Tax Exemption Scheme. If we find in the final results of review that this program was terminated in accordance with the provisions of 19 CFR § 351.526, we will include these subsidies in the assessment rate but exclude them from the cash deposit rate.

#### 5. 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–Decision Memorandum*, at “Capital Subsidy.” The Department determined at that time that there was insufficient time to establish whether the program was specific under section 771(5A)(D) of the Act. Thus, the Department stated its intention to re-examine the program in a future administrative review pursuant to 19 CFR § 351.311(c)(2). *Id.* 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.

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 was able to provide any information regarding the subsidy. As facts available, the Department determined that the subsidy was specific. *See Second PET Film Review - Preliminary Results*, at 46489 (unchanged in the final results).

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. There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find, as facts available, that the subsidy is specific under section 771(5A)(A) of the Act.

Because the benefit was provided through 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. In allocating this capital grant, we used the Department's standard allocation methodology for non-recurring subsidies under 19 CFR § 351.524(d). To calculate the net subsidy to Polyplex from this capital subsidy, we divided the benefit attributable to the POR by the company's total sales during the same period. On this basis, we preliminarily determine the net countervailable subsidy provided to Polyplex under this program to be 0.01 percent *ad valorem*.

#### 6. 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 within India; (3) purchase of materials and other 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 - Preliminary Results*, at 46489 (unchanged in the final results). 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. For the other two types of benefits received by Jindal, the Department previously determined that the purchase of materials and/or inputs free of central excise duty is not countervailable. *See Final - Indian PET Resin*. 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 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) (unchanged in final determination) (*PET Resin from India - Preliminary Determination*). There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program 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 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. See also PET Resin from India - Preliminary Determination*, at 52870 (unchanged in final determination).

However, according to the GOI and Jindal, until an EOU demonstrates that it has fully met its export requirements, the company retains a contingent liability to repay the import duty exemptions. 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 "Benchmark 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. To calculate the subsidy, we divided the total amount of benefits under the program during the POR by Jindal's total value of export sales. We preliminarily determine the net countervailable subsidy provided to Jindal through the duty-free importation of capital goods under the EOU program to be 3.53 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 - 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 would 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 find 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. Therefore, the benefit is the amount of CST reimbursements received during the POR. *See* 19 CFR § 351.524(b)(2).

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. We divided this amount by the total value of export sales during the POR. On this basis, we preliminarily determine the countervailable subsidy provided to Jindal through the reimbursement of CST under the EOU program to be 0.07 percent *ad valorem*.

#### 7. State Sales Tax Incentive Programs

According to the GOI, various state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. *See Government of India's Questionnaire Response*, at 45 (September 29, 2005). These incentives allow privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers, that are in selected industries and which are located in the designated regions, to sell goods without charging or collecting state sales taxes. As a result of these programs, the respondents did not pay sales taxes on their purchases from suppliers located in certain states. The states from which Jindal and Polyplex made purchases but did not pay sales taxes during the POR are the states of: Uttaranchal/Uttar Pradesh (SOU/SUP), Maharashtra (SOM), West Bengal, Gujarat, Himachal Pradesh, Daman, Union Territory of Dadra & Nagarhaveli, Karnataka, Delhi, Chattisgarh, Tamilnadu, Rajasthan, and Punjab. In the previous review, we determined that the operation of these types of state sales tax programs confers a countervailable subsidy. *See Second PET Film Review - Final Results*, at 46490. The financial contribution is the tax revenue foregone by the respective state governments and the benefit equals the amount of sales taxes not paid by Jindal and Polyplex. Pursuant to section

771(5A)(D)(iv) of the Act, these programs are also *de jure* specific because they are limited to certain regions within the respective states administering the programs. There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

To calculate the benefit, we first calculated the total sales tax reduction or exemption the respondents received during the POR by subtracting taxes paid from the amount that would have been paid on their purchases during the POR absent these programs. We then divided these amounts by each respondent's total sales during the POR to calculate a net countervailable subsidy of 1.02 percent *ad valorem* for Jindal and 4.90 percent *ad valorem* for Polyplex.

#### 8. 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 SION, within the following 24 months, 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 fact. *See also* page 13 of the Government of India's Supplemental Questionnaire Response dated April 28, 2006. 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.

Although 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, we preliminarily find 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 preliminarily determine that the date of receipt is linked to when the company imports an input duty free with the certificate. *See 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). In the case in which the company sells the certificate, the date of sale is when the benefit occurs. *See Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review* 62 FR 32297 (June 13, 1997) (1994 *Indian Castings Final Results*).

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 import licenses confers a countervailable export subsidy. *See e.g., 1994 Indian Castings Final Results*. Therefore, in accordance with section 771(5A)(B) of the Act, we determine that Polyplex's partial sale of its 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. There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

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 (net of required application fees). We then calculated the subsidy by dividing the total benefit by the total

value of Polyplex's export sales during the POR. 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 preliminarily determine 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*

#### Preliminary Results of Administrative Review

In accordance with 19 CFR § 351.221(b)(4)(i), we have calculated individual subsidy for Jindal and Polyplex for the POR. We preliminarily determine the total estimated net countervailable subsidy to be 13.15 percent *ad valorem* for Jindal and 13.19 percent *ad valorem* for Polyplex.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP, within 15 days of publication, to liquidate shipments of PET film from India entered, or withdrawn from warehouse, for consumption on or after January 1, 2004 through December 31, 2004 at 13.15 percent *ad valorem* for Jindal and at 13.20 percent *ad valorem* for Polyplex.

We will instruct CBP to collect cash deposits for Jindal and Polyplex at the rates indicated above. As discussed above, if we determine in the final results that the Section 80HHC program has been terminated, we will remove the rate for that program from the cash deposit rate for each company. In addition, we will instruct CBP to continue to collect cash deposit rates for non-reviewed companies at the most recent rate applicable to the company.

#### Public Comment

Pursuant to 19 CFR § 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR § 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise instructed by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, pursuant to 19 CFR § 351.309(c)(ii). Rebuttal briefs, limited to arguments raised in case

briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department, pursuant to 19 CFR § 351.309(d). Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of their arguments. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 351.303(f). Also, pursuant to 19 CFR § 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR § 351.309(c)(ii), are due. See 19 CFR § 351.305(b)(3). The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR § 351.221(b)(4).

Dated: July 31, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-S**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Hawaiian Islands Humpback Whale National Marine

Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for both primary and alternate members of the following seats on its Sanctuary Advisory Council (Council): Business/Commerce, Citizen-At-Large, Commercial Shipping, Conservation, Ocean Recreation, Tourism, and Whale Watching. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

**DATES:** Applications are due by August 31, 2006.

**ADDRESSES:** Application kits may be obtained from Mary Grady, 6600 Kalaniana'ole Hwy., Suite 301, Honolulu, HI 96825 or [Mary.Grady@noaa.gov](mailto:Mary.Grady@noaa.gov). Completed applications should be sent to the same address. Applications are also available online at <http://hawaiihumpbackwhale.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Naomi McIntosh, 6600 Kalaniana'ole Hwy., Suite 301, Honolulu, HI 96825 or [Naomi.McIntosh@noaa.gov](mailto:Naomi.McIntosh@noaa.gov) or 808.397.2651.

**SUPPLEMENTARY INFORMATION:** The HIHWNMS Advisory Council was established in March 1996 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, state and federal governmental jurisdictions.

The Council is supported by three committees: A Research Committee chaired by the Research Representative, and Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the