

notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any written briefs, within 90 days of signature of these preliminary results, unless the final results are extended. See section 751(a)(2)(B)(iv) of the Act.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, as well as 19 CFR 351.214(i).

Dated: December 21, 2010.

**Christian Marsh,**

*Acting Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-825]

#### **Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Countervailing Duty New Shipper Review**

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

**SUMMARY:** The Department of Commerce (the Department) is conducting a new shipper review under the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India in response to a request from SRF Limited (SRF). The period of review (POR) is January 1, 2009, through December 31, 2009. The domestic interested parties for this proceeding are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc. (petitioners).

We preliminarily determine that the U.S. sale of subject merchandise produced and exported by SRF was *bona fide*. See Bona Fides Analysis section below. We also preliminarily determine that SRF has benefitted from countervailable subsidies 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 intend to instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this new shipper review. See the "Public Comment" section of this notice, below. The final results will be issued 90 days after the date of signature of these preliminary results, unless extended.

**DATES:** *Effective Date:* December 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum 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 or (202) 482-1398, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On July 1, 2002, the Department published in the **Federal Register** the CVD order on PET film from India. See *Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*PET Film Order*). On December 24, 2009, the Department received a timely request from SRF, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(c), to conduct a semiannual new shipper review of the CVD duty order on PET film from India. The Department found the request for review met all of the requirements for initiation set forth in 19 CFR 351.214(b) and initiated the new shipper review on March 2, 2010, covering the period January 1, 2009, through December 31, 2009. See *Polyethylene Terephthalate Film, Sheet and Strip from India: Initiation of Antidumping Duty and Countervailing Duty New Shipper Reviews*, 75 FR 10758 (March 9, 2010) (*NSR Initiation*).<sup>1</sup>

<sup>1</sup> As stated in the initiation notice, due to the closure of the Federal Government in Washington D.C. between February 5 and February 12, 2010, the Department tolled its deadlines during that period, thereby extending the deadline for the initiation of

The Department issued the initial questionnaires to the Government of India (GOI) and to SRF and to its U.S. customer through SRF on April 6, 2010. On May 27, 2010, the GOI submitted its questionnaire response. SRF and its U.S. customer (through SRF) submitted their questionnaire responses on June 10, 2010. The Department issued its first supplemental questionnaires to the GOI on July 8, 2010, and to SRF and to its U.S. customer (through SRF) on August 10, 2010. On August 10, 2010, the GOI submitted its first supplemental response, and SRF and its U.S. customer submitted their first supplemental responses on September 8, 2010. The Department issued a second supplemental questionnaire to the GOI on August 25, 2010, and the GOI filed its second supplemental response on September 22, 2010.

On August 18, 2010, the Department extended the deadline for the preliminary results of the countervailing duty administrative review from August 29, 2010, to November 22, 2010. See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review*, 75 FR 52717 (August 27, 2010). On November 5, 2010, the Department further extended the deadline for the preliminary results to December 14, 2010, and then on December 14, 2010, the Department again extended the deadline to December 21, 2010. See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review*, 75 FR 69400 (November 12, 2010); *Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review*, 75 FR 79336 (December 20, 2010).

The Department issued a second supplemental questionnaire to SRF on November 22, 2010 and a second supplemental importer questionnaire on December 1, 2010.<sup>2</sup> SRF's U.S. customer (through SRF) filed its response to the second importer questionnaire on December 6, 2010. SRF's second supplemental response is due after the preliminary results, on December 27, 2010.

this new shipper review by one week, to March 8, 2010. See *NSR Initiation*, 75 FR at 10758.

<sup>2</sup> In contrast to the previous importer questionnaire, the second supplemental importer questionnaire was issued separately from the other questionnaires to SRF.

### 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 this proceeding is dispositive.

### Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of the new shipper sale at issue. In evaluating whether or not a sale in an NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) (*TTPC*). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 2005) (*New Donghua*) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum (New Shipper Review of Clipper Manufacturing Ltd.)). In *TTPC*, the court also affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*TTPC*, 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC*, 366 F. Supp. 2d at 1263. Finally, in *New Donghua*, the Court of International Trade affirmed the Department's practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly

benefit from an atypical sale and obtain a lower rate than the producer's usual commercial practice would dictate.

Based on the totality of circumstances, we preliminarily find that the sale made by SRF during the POR was a *bona fide* commercial transaction. The facts that led us to this preliminary conclusion include the following: (1) Neither the price nor quantity were outside normal bounds; (2) neither SRF nor its customer incurred any extraordinary expenses arising from this transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that the sale was not *bona fide*. Since much of the factual information used in our analysis of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision is set forth in the *Memorandum to Thomas Gilgunn, Program Manager, from Toni Page, International Trade Analyst, regarding Bona Fide Nature of the Sale in the Duty New Shipper Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited (Bona Fides Memorandum)*, dated concurrently with this notice and on file in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. We will continue to examine the *bona fides* of SRF's sale after the preliminary results.

### Period of Review

The period of this countervailing new shipper review covers the period January 1, 2009, through December 31, 2009.

### Subsidies Valuation Information

#### Allocation Period

SRF was not a respondent in the original investigation, nor was the company a respondent in any prior segment of this proceeding. In response to the Department's original questionnaire and its first supplemental questionnaire, SRF proposed a company-specific average useful life (AUL) of 16.49 years for its plant and machinery. In Exhibits 9(a)(i-ii) of its original questionnaire response, SRF provided its depreciation schedule over the past 15 years, and a detailed list of assets for plant and machinery related to the production of subject merchandise, respectively.<sup>3</sup> However, SRF also reported that for its two plants in the Packaging Division, SRF has depreciated its assets using a straight-line methodology over either 8 years or

19 years. We note that SRF has not fully explained why it used different depreciation periods for equipment producing the same merchandise nor how these different periods factored into its depreciation schedule. Based on these concerns, we preliminarily determine that SRF has not rebutted the presumption set forth in 19 CFR 351.524 and that its company-specific AUL should not be used to determine the appropriate allocation period for non-recurring subsidies. Rather, for purposes of these preliminary results we are using the IRS Tables. We are continuing to gather information on SRF's calculation and will reconsider using SRF's company-specific AUL in the final results.

### Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate or discount 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 have obtained in 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" 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).

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government provided, short-term loan program, the preference would be to use a company-specific 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 a rupee-denominated short-term loan benchmark rate and a U.S. dollar-denominated short-term benchmark rate to determine benefits received under the Pre-Shipment Export Financing program. For further information regarding this program, see the "Pre-Shipment and Post-Shipment Export Financing" section below.

In prior reviews of this case, the Department determined that Inland Bill Discounting (IBD) loans are more comparable to pre-shipment export financing and post-shipment export financing loans than other types of rupee-denominated short-term loans. See, e.g., *Notice of Preliminary Results and Rescission in Part of Countervailing*

<sup>3</sup> SRF Original Response of June 10, 2010 (QR-SRF), at Exhibits 9(a)(i-ii).

*Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46485 (August 10, 2005) (*PET Film Preliminary Results of 2003 Review*) unchanged in the final results, *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying Issues and Decision Memorandum (*PET Film Final Results of 2003 Review*). In the *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India*, 66 FR 53389, 53390–91 (October 22, 2001) (*PET Film Preliminary Determination*), unchanged in the final determination, *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002), and accompanying Issues and Decision Memorandum (*PET Film Final Determination*), at “Benchmarks for Loans and Discount Rates,” the Department determined that, in the absence of IBD loans, cash credit (CC) loans are the next most comparable type of short-term loans to pre-shipment export financing than other types of loans, for rupee-denominated pre-shipment export financing, because, like pre-shipment export financing, CC loans are denominated in rupees and take the form of a line of credit which can be drawn down by the recipient. See *PET Film Preliminary Determination*, unchanged in the *PET Film Final Determination*, at “Benchmarks for Loans and Discount Rates.” There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. SRF reported receipt of pre-shipment export financing. However, SRF did not obtain IBD loans during the POR. SRF did take out CC short-term loans during the POR. Therefore, for these preliminary results, we used SRF’s weighted average CC loans as the basis for the short-term rupee-denominated benchmarks for all pre-shipment financing.

Further, in prior reviews, the Department determined that U.S. dollar-denominated working capital demand loans (WCDL) are comparable to U.S. dollar-denominated pre-shipment export financing and post-shipment export financing, because these loans and WCDLs are used to finance both inventories and receivables. See *PET Film Preliminary Results of 2003*

*Review*, 70 FR 46484, unchanged in *PET Film Final Results of 2003 Review*, at “Benchmarks for Loans and Discount Rate.” There is no new information or evidence of changed circumstances which would warrant reconsidering this finding.

SRF reported only one U.S. dollar-denominated short-term loan during the POR. However, SRF did not obtain any WCDL during the POR. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), the Department is using a national average dollar-denominated short-term interest rate, as reported in the International Monetary Fund’s publication International Financial Statistics (IMF Statistics) for SRF.

SRF received exemptions from import duties and central sales taxes (CST) on the importation of capital equipment under the Export Promotion Capital Goods Scheme (EPCGS) and the Special Economic Zones (SEZ) programs, which we have preliminarily determined to be non-recurring benefits in accordance with 19 CFR 351.524(c).

Pursuant to 19 CFR 351.505(a)(2)(ii) the Department 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. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. See *PET Film Final Results 2003 Review* at Comment 3. Further, in *PET Film Final Results of 2005 Review*, at “Benchmark Interest Rates and Discount Rates,” the Department determined that the Industrial Finance Corporation of India (IFCI) and the Export-Import Bank of India (EXIM) are government-owned special purpose banks. See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying Issues and Decision Memorandum (*PET Film Final Results of 2005 Review*). As such, the Department does not use loans from the IDBI, IFCI, or EXIM, if reported by respondents, as a basis for a commercial loan benchmark.

In this review, SRF did not have comparable commercial long-term rupee-denominated loans for all required years; therefore, for those years for which we did not have company-specific information, and where the relevant information was on the record, we relied on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR

351.505(a)(2)(iii). 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 long-term interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from the IMF Statistics. Finally, 19 CFR 351.524(d)(3) directs us regarding the selection of a discount 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.

### Denominator

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for respondent’s receipt of benefits under each program at issue. As discussed in further detail below, we preliminarily determine that the benefits received by SRF under all but one of the programs found countervailable, were tied to export performance. Therefore, for those programs, except as cited below for pre- and post shipment export financing, we use total export sales, including deemed exports, as the denominator for our calculations. See 19 CFR 351.525(b)(2). Because pre-shipment and post-shipment export financing requires that the recipient demonstrate physical exports, we used total export sales net of deemed exports. Further, for the one program that was not tied to export performance, the State and Union Territory Sales Tax Exemption program, we have used SRF’s total sales of subject merchandise as the denominator in our calculations.

### A. 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 not more than 180 days, and may be obtained in Indian rupees and in foreign currencies. In the original 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 to the extent that the interest rates provided under these programs are lower than comparable commercial loan interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. See *PET Film Final Determination* at "Pre-Shipment and Post-shipment Financing." There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

SRF reported that it did not receive any post-shipment export financing during the POR. However, it did report receiving pre-shipment export financing during the POR. With regard to pre-shipment loans, the benefit conferred 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 total exports rather than exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit by the value of SRF's total exports, net of deemed exports, during the POR. See 19 CFR 351.525(b)(2). On this basis, we preliminarily determine the countervailable subsidy from pre-shipment export financing for SRF to be 0.13 percent *ad valorem*.

## 2. Advance License Program (ALP)

Under the ALP, aka Advance Authorization scheme,<sup>4</sup> 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, SRF used advance licenses to import certain materials duty free.

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the ALP during that POR. The Department analyzed the changes introduced by the GOI to the ALP in 2005 and acknowledged that certain improvements to the ALP system were made. However, the Department found that, based on the information submitted by the GOI and examined during previous reviews of this proceeding, systemic issues continued to exist in the ALP system during the POR. See *PET Film Final Results of 2005 Review*, Issues and Decision Memorandum, 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 Issues and Decision Memorandum at Comment 1. In the 2005 review, the Department specifically stated that it continues to find the ALP countervailable because of the systemic deficiencies in the ALP identified in that review, including:

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.

*PET Film Final Results of 2005 Review*, at Comment 3.

Further, in that same review, the Department found that PET film producers "do not have to keep track of wastage since it is not recoverable for the production of PET film." *Id.* Accordingly, no allowance was made by the GOI to account for waste to ensure that the amount of duty deferred would not exceed the amount of import charges on imported inputs consumed in the production of the exported subject merchandise. See *id.* Furthermore, the Department found that, in developing the SIONs for PET film, the GOI did not tie the relevant production numbers to a producer's accounting system or financial statement. *Id.*

In this review, SRF pointed to the revisions addressed in the above referenced 2005 administrative review of the order, stating that the GOI introduced those measures in order to strengthen the supervision and monitoring of the ALP.<sup>5</sup> Further, in response to the Department's request, SRF submitted "a complete set of documents submitted to the" Directorate General of Foreign Trade (DGFT). The cited documents include copies of SRF's application for redemption and its documentation received from the DGFT and Customs at the time of redemption.<sup>6</sup> This information includes the application for redemption, which contains the import and export data from the ALP license, a back-up detail on imports and exports made by SRF, SRF's Appendix 23 as submitted to the GOI, which lists the total quantity consumed for the exported product, and the total quantity authorized.<sup>7</sup> All of SRF's documents were certified by an accountant. The total values of the GOI redemption document reflect the import and export data SRF reported to the GOI. However, we note that the actual consumption and export data deviate from those specified in the original license.

<sup>5</sup> See QR-SRF, at 65-66, and Exhibits 31(a)-(c).

<sup>6</sup> See SRF's First Supplemental Response of September 8, 2010 (SQR1-SRF), at 32-33 and Exhibits S1-23(a) and (b).

<sup>7</sup> See SQR1-SRF, at Exhibit S1-23(a) and (b).

<sup>4</sup> See Government of India Original Response of May 27, 2010 (QR-GOI), at 19.

The GOI submitted a “detailed note,” which, it states, contains the step-by-step procedures, including management, enforcement and maintenance, involved in the issuance of an ALP and in the discharge of its export obligation.<sup>8</sup> Specifically, in this note, the GOI states that the holder of an advance license is required to produce the relevant Bank Certificate of export and realization, along with a copy of the shipping bill(s) containing the details of the shipment (physical exports) or a copy of the invoice duly signed by the unit receiving the material and their jurisdictional excise authorities (deemed exports) for redemption of the ALP. It further states that, before discharging the bank guarantee against the ALP, the Indian Customs verifies that the details of exports as given in the redemption certificate are in accordance with their records.<sup>9</sup>

The Department requested that the GOI submit a complete set of documentation with respect to SRF’s export obligation under the ALP, or any other company’s complete set of documentation, but in its response, the GOI deferred to the respondent.<sup>10</sup> Thus, to date the Department has not received from the GOI a complete set of documents, which would include documents from each Indian Government entity involved in the processing of the redemption of an export obligation under the ALP. The GOI has not provided SRF’s relevant Bank Certificate(s) of export and realization, along with a copy of the shipping bill(s) containing the details of the shipment (physical exports) or a copy of the invoice duly signed by the unit receiving the material and their jurisdictional excise authorities (deemed exports) for redemption of the ALP. As such, the record does not include supporting documentation that demonstrates that Indian Customs verified that the details of exports as given in the redemption certificate are in accordance with the records maintained by Indian Customs with respect to imports and exports. Further, copies of those specific customs records have also not been submitted by the GOI.

Thus, for the preliminary results, the Department was unable to examine the totality of documents involved in the processing of an Application for Redemption of Advance License, as examined by the DGFT and the Indian

customs, to assess the monitoring procedures in place. The Department was unable to determine whether Appendix 23 is indeed effective in tracing the consumption of the quantities of inputs imported duty free to the quantities of subject merchandise exported, in accordance with the 2005 SION for PET film. Therefore, there is insufficient record evidence demonstrating the functionality and accuracy of the GOI’s monitoring procedures to ensure that the inputs imported duty free were consumed in the production of subject merchandise exported, in accordance with the newly established PET film SION. Moreover, contrary to the GOI’s claim that the present ALP scheme permits for monitoring which inputs listed in the SION are actually consumed in the production of the exported product, the GOI did not address the concerns the Department had in the 2005 review with respect to the formulation and verification of the PET film SION. In particular, the Department verified in *PET Film Final Results 2005 Review* that the GOI did not require the producer to tie the inventory and consumption data to the producer’s accounting systems and financial statements in order to verify the accuracy of the producer’s data, or to account for waste normally incurred in the production. See *PET Film Final Results 2005 Review*, Issues and Decision Memorandum, at Comment 3. In fact, the GOI states in its response that it considers “that the system need not provide for determination of ‘what amounts of inputs have actually been consumed’ and whether an excess has been allowed in a particular situation and in a given case, as an exporter is required to provide on annual basis a copy of the consumption register Appendix 23, duly certified by a Chartered Accountant.”<sup>11</sup>

Further, the Department determined in the 2005 review that the GOI, in its revisions to the ALP, did not address the Department’s concerns that it has no specific procedure in place to monitor that these finished products are ultimately exported. Specifically, the Department determined that Appendix 23 does not differentiate and identify sales as being either physical exports, deemed exports, or sales to intermediate suppliers, nor does it segregate imported inputs from domestically procured ones, nor does it differentiate the exported product produced from these inputs by separately identifying physical exports from deemed exports. In this new shipper review, neither the GOI nor SRF claimed that the laws and procedures

underlying the ALP had changed with respect to “deemed exports.” The Appendix 23 submitted by SRF does not indicate any changes to the Appendix 23 examined in the 2005 review, and thus still does not address the Department’s concern regarding deemed exports.<sup>12</sup> Thus, with respect to physical exports versus deemed exports, the GOI still did not demonstrate that it has a reliable monitoring system in place to determine which inputs, and in which amounts, are consumed in the production of the exported product. See 19 CFR 351.519(a)(4).

Because there is no evidence on the record demonstrating that the systemic deficiencies in the ALP system identified above have been resolved, the Department continues to find 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 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. Under this program, during the POR, SRF did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we are treating the benefit provided under the ALP as a recurring benefit.

SRF received various ALP licenses, which it reported separately for the production of subject merchandise and non-subject merchandise.<sup>13</sup> However, because the original license(s) identify Polyester Film only, it cannot be established whether the licenses were issued for subject merchandise only, or

<sup>8</sup> See QR–GOI, at 20 and Exhibit 1.

<sup>9</sup> *Id.* 31.

<sup>10</sup> See Government of India (GOI) First Supplemental Response of August 10, 2010 (SQR1–GOI), at 18–19 and GOI Second Supplemental Response of September 22, 2010 (SQR2–GOI), at 13.

<sup>11</sup> See QR–GOI, at 37.

<sup>12</sup> See SQR1–SRF, at Exhibit S1–23(a).

<sup>13</sup> See Exhibits 30, QR–SRF, and S1–22(a), SQR1–SRF.

for both subject- and non-subject merchandise, e.g., metalized film. Therefore, we were not able to determine whether the licenses were in fact tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Accordingly, we find that SRF's ALP licenses benefit all of the company's exports.

To calculate the subsidy, we first determined the total value of import duties exempted during the POR for SRF. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act. We then divided the resulting benefit by the total value of export sales. On this basis, we determine the countervailable subsidy provided under the ALP to be 0.59 percent *ad valorem*.

### 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 shortfall in foreign currency earnings, plus an interest penalty.

In the investigation, the Department determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies because the scheme: (1) Provides a financial contribution pursuant to section 771(5)(D); (2) provides two different benefits under section 771(5)(E) of the Act; and (3) is specific pursuant to section 771(5A) (A) and (B) of the Act because the program is contingent upon export performance. See, e.g., *PET Film Final Determination* at "EPCGS." Because there is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable, we continue to find that this program is countervailable for these preliminary results.

Since the unpaid duties are a liability contingent on subsequent events, under the EPCGS, the exempted import duties would have to be paid to the GOI if

accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future, as a contingent liability interest-free loan pursuant to 19 CFR 351.505(d)(1). See *PET Film Final Determination* at "EPCGS." These contingent-liability loans constitute the first benefit under the EPCGS. 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 \* \* \*" See *Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.<sup>14</sup>

SRF reported that it imported capital goods under the EPCGS in the years prior to the POR. SRF received various EPCGS licenses, which it reported were for the production of subject merchandise and non-subject merchandise. Information provided by SRF indicates that some of the licenses were issued for the purchase of capital goods and materials to be used in the production of both subject and non-subject merchandise.<sup>15</sup> Based on the information and documentation submitted by SRF, we cannot 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 SRF's EPCGS licenses benefit all of the company's exports.

SRF met the export requirements for certain EPCGS licenses prior to

December 31, 2009, and the GOI has formally waived the relevant import duties. For most of its licenses, however, SRF has not yet met its export obligation as required under the program. Therefore, although SRF has 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.

To calculate the benefit received from the GOI's formal waiver of import duties on SRF's capital equipment imports where its export obligation was met prior to December 31, 2009, we considered the total amount of duties waived, i.e., the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, 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 SRF's outstanding import duties. See *PET Film Final Determination* 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 SRF an import duty waiver. Those waivers with values in excess of 0.5 percent of SRF's total export sales in the year in which the waivers were granted were allocated using the allocation period for non-recurring subsidies to be the AUL prescribed by the Internal Revenue Service (IRS) for renewable physical assets for 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), in accordance with 19 CFR 351.524(d)(2)(i), while waivers with values less than 0.5 percent of SRF's total export sales were expensed in the year of receipt. See "Allocation Period" section, above.

As noted above, import duty reductions or exemptions that SRF 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* and Issues and Decision Memorandum, at "EPCGS"; see also *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*,

<sup>14</sup> See e.g., *Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634, (February 10, 2010) and accompanying Issues and Decision Memorandum at Comment 9.

<sup>15</sup> See Exhibits 16 and 18(a), QR-SRF.

70 FR 13460 (March 21, 2005) (*Indian PET Resin Final Determination*), and accompanying Issues and Decision Memorandum at “Export Promotion Capital Goods Scheme (EPCGS).”

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the 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 SRF would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation. See, e.g., *PET Film Preliminary Results of 2003 Review*, 70 FR 46483, 46488 (August 10, 2005) (unchanged in the final results, 71 FR 7534).

As stated above, under the EPCGS program, the time period for fulfilling the export requirement 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 (*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 “Benchmarks for Loans and Discount Rate” section above 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 license was approved and summed these amounts to determine the total benefit for each company.

The benefit 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, 2009, 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 received by SRF under the EPCGS program by SRF’s total exports to determine a countervailable subsidy of 0.04 percent *ad valorem*.

#### 4. Special Economic Zones (SEZs) Formerly Known as Export Process Zones/Export Oriented Units (EPZs/EOUs)

In the original questionnaire, we asked the GOI and SRF whether SRF had received benefits under the EPZs/EOUs program. This program was found not to have been used in the original investigation. See *PET Film Final Determination* at “Programs Determined to be Not Used,” and aspects of EOUs were subsequently found countervailable in *Indian PET Resin Final Determination*. See *Indian PET Resin Final Determination*, at e. to g. In its questionnaire response the GOI stated that this program had been converted into a different program, the SEZ program. In response to the Department’s request to explain and describe in detail the conversion of the program into a different program, the GOI responded that the conversion of the EPZs/EOUs to the SEZ program was via the Special Economic Zones Act, 2005, effective February 2006 (SEZ Act). The GOI stated that this was not really a new program but only a renaming of the EPZs/EOUs.<sup>16</sup> This new shipper review is the first review under this order where this program was reported to be used by a respondent. In response to the Department’s questionnaire requesting information on EPZs and EOUs, SRF reported that it first received approval to set up an SEZ from the Development Commissioner<sup>17</sup> in August 2003 and commenced production in October 2004.<sup>18</sup> Subsequently, SRF expanded its SEZ unit twice, once in 2007 and then again in 2009.<sup>19</sup>

In response to the Department’s original questionnaire, and specifically concerning EPZs and EOUs, the GOI stated that the nature of an SEZ is to provide a long-term and stable policy framework with a minimum of regulatory regime and to provide an expeditious and single window clearance mechanism for all eligible to apply for an SEZ. An SEZ may be established jointly or individually by the Central Government, the State Government or a person, *i.e.*, companies like SRF, to manufacture goods or provide services, or both, as well as to serve as a Free Trade and Warehousing Zone.<sup>20</sup> Companies/persons or

Governments that want to set-up an SEZ in an identified area, can submit their proposal to the relevant State Government. To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services. Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production. In return, the companies inside the SEZ are eligible to receive various forms of assistance.

Companies in a designated SEZ may receive the following benefits: (1) Duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of central sales tax (CST) thereon; (3) exemption from the services tax for the services consumed within the SEZ;<sup>21</sup> (4) exemption from stamp duty of all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit; (6) income tax exemptions under the Income Tax Exemption Scheme Section 10A;<sup>22</sup> and (7) discounted land in an SEZ.<sup>23</sup>

In this new shipper review, SRF reported that it produced subject and non-subject merchandise in an SEZ unit located in Indore during the POR. Specifically, SRF reported using the SEZ program to obtain: (1) Duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of central sales tax (CST) thereon; (3) exemption from stamp duty of all transactions and transfers of immovable property, or documents related thereto within the SEZ; (4) exemption from electricity duty and cess thereon on the sale or supply to the

<sup>21</sup> The Department previously determined central excise duty exemptions to be not countervailable. See *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005), and accompanying Issues and Decision Memorandum at “Export Oriented Units (EOUs) Programs: Purchase of Material and other Inputs Free of Central Excise Duty.”

<sup>22</sup> See QR–GOI, at 16 and QR–SRF, at 50–51.

<sup>23</sup> See SQR1–SRF, at Exhibits S1–20(a)–20(c).

<sup>16</sup> See SQR1–GOI, at 11–12.

<sup>17</sup> The Central Government of India may appoint any of its officers of a certain rank to the position of Development Commissioner of one or more SEZs.

<sup>18</sup> See SQR1–SRF, at Revised Exhibit 9(a)(I).

<sup>19</sup> See QR–SRF, at Exhibits 19(a) and (b), and SQR1–SRF, at 26–27.

<sup>20</sup> See QR–GOI, at 15 and SQR1–GOI, at 12.

SEZ unit; (5) income tax exemptions under Income Tax Exemption Scheme Section 10A; and (6) discounted land in an SEZ.

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

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

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

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

With regard to these import duty exemptions provided on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Absent such information, the Department finds that all of the import duty exemptions provided under this category of the SEZ program are countervailable. Based on the information provided by SRF in the form of copies of its "Executed Legal agreement for SEZ Unit" with the GOI, until an SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties.<sup>24</sup> SRF has not yet met its export requirement under this program and will owe the unpaid duties if the export requirement is not met. Therefore, consistent with 19 CFR 351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we

consider the unpaid duties to be an interest-free loan made to SRF at the time of importation. We determine the benefit to be the interest that SRF would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation.

Pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.*, under the SEZ program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). We used the long-term, rupee-denominated benchmark interest rate discussed in the "Benchmarks for Interest Rates and Discount Rates" section above for each year in which capital goods were imported as the benchmark.

We calculated the benefit from these exemptions by multiplying the value of the item imported by the applicable duty rates for customs duty and cess, and multiplied these amounts by the appropriate interest rate. We then summed the results, and divided that total by SRF's exports to determine the countervailable subsidy of 0.44 percent *ad valorem*.

**b. Exemption From Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material**

Under this program, SRF did not have to pay CST on raw materials, capital goods and other goods, such as packaging materials procured domestically. We preliminarily determine that the exemption from payment of CST on purchases of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of CST payments. This SEZ program confers benefits in the amount of exemptions of CST not collected, in accordance with section 771(5)(E) of the Act. Specifically, the benefit associated with domestically purchased materials is the amount of CST due and uncollected on those purchases by SRF during the POR.

Normally, uncollected indirect taxes, such as the CST, are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the

purchase of capital goods. As such, pursuant to 19 CFR 351.524(c)(2)(iii), we would normally treat such uncollected taxes due on purchases of capital goods as non-recurring benefits. However, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) and found that the amount of uncollected CST that was tied to the purchase of capital goods during the POR was less than 0.5 percent of total export sales during the POR. We also performed the "0.5 percent test on SRF's uncollected CST on its purchases of capital goods in 2008, 2007, 2006, 2005 and 2004, and found that each year's uncollected CST was less than 0.5 percent of total export sales for each year. Therefore, each annual benefit for 2004–2008 was expensed in the year earned and the only benefit attributable to the POR was the amount of the uncollected CST on purchases of capital goods under this program during the POR. See 19 CFR 351.524(b)(2).

With regard to the CST exemptions on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.518. Absent such information, the Department finds that all of the CST exemptions provided under this category of the SEZ program are countervailable. Therefore, we are treating all other CST exemptions on all purchases (other than capital goods) as recurring benefits pursuant to 19 CFR 351.524.

To calculate the benefit, we summed the total value of uncollected CST for capital goods purchased during the POR and the total value of uncollected CST due on all other purchases during the POR. We then divided this amount by the total value of SRF's export sales during the POR. On this basis, we preliminarily determine the countervailable subsidy provided to SRF through the CST exemptions under the SEZ program to be 0.53 percent *ad valorem*.

**c. Exemption From Stamp Duty of all Transactions and Transfers of Immovable Property, or Documents Related Thereto Within the SEZ**

According to SRF, "{t}he Indian Stamp Act, 1899, is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899, with amendments to the same to suit the transactions peculiar to each State," and that the state of Madhya Pradesh has made amendments and imposed various types of Stamp duty. These amendments include the Stamp Duty, Surcharge on

<sup>24</sup> See QR-SRF, at 58 and Exhibit 21(a); see also *id.* Exhibit 20(c).

Stamp Duty (under Madhya Pradesh Upkar Adhiniyam), Gram Panchayat Taxes (under Madhya Pradesh Panchayat Raj Adhiniyam, 1993), and Municipalities tax (under Madhya Pradesh Municipalities Act, 1961). Further, SRF states that under Section 13(2) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the transfers of immovable property or documents related thereto within the SEZ shall be exempt from stamp duty, and that SRF has been exempted from payment of stamp duty on its land lease deed.<sup>25</sup>

In response to the Department's request to explain how the GOI monitors the exemption from stamp duty, the GOI responded that the monitoring criterion is that the documents on which stamp duty is being exempted should relate to the transfer of immovable property within the SEZ. In addition, the GOI provided an exhibit containing the applicable rates of stamp duty.<sup>26</sup>

For these preliminary results, we determine that the program provides a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. We also determine that the SEZ exemption from stamp duty/taxes provides a recurring benefit under 19 CFR 351.524(c).

To calculate the benefit, we first calculated the value of the uncollected stamp duties and taxes, as listed above, which SRF did not pay during the POR, by multiplying the value of the immovable property based on the tax rates provided. We then divided this amount by SRF's total export sales during the POR to calculate a countervailable subsidy of 0.01 percent *ad valorem*.

#### d. Exemption From Electricity Duty and Cess Thereon on the Sale or Supply to the SEZ Unit

SRF reports that under Section 11(4) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the supply of electricity to an SEZ is exempt from electricity duty and cess.<sup>27</sup> In response to the Department's request to explain its monitoring procedure, the GOI cited to Section 11(4) of The Indore Special Economic Zone (Special Provisions) Act, 2003, stating that the

unit to which electricity duty is exempted should be located within the Special Economic Zone as approved by the GOI. In addition, the GOI provided an exhibit including the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 and the Madhya Pradesh Ordinance No. 18 of 200, *i.e.*, the State's laws governing the taxation of electricity.<sup>28</sup>

For these preliminary results, we determine that the electricity duty and cess exemptions provide a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. We also determine that the SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).

To calculate the benefit, we first calculated uncollected electricity duty and cess which SRF did not pay during the POR, by multiplying the monthly billed amount of electricity consumed by the tax rates provided. We then divided this amount by SRF's total export sales during the POR to calculate a countervailable subsidy of 0.18 percent *ad valorem*.

#### e. SEZ Income Tax Exemption Scheme (Section 10A)

SRF reported that, in accordance with Section 10A of the Indian Income Tax Act, 1961, it was allowed to deduct its profits derived from the export sales as an SEZ, as defined in the Foreign Trade Policy (FTP), from its taxable income during the POR. Specifically, Section 10A states that:

Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee.<sup>29</sup>

In its first supplemental response, the GOI also provided a copy of the "Special provision in respect of newly established undertakings in free trade zones, *etc.*; 10A."<sup>30</sup>

According to SRF, a company located in an SEZ does not have to file a formal application to make this deduction under the program, and the plant started production on or after April 2001.<sup>31</sup>

According to the GOI, "no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2011 and subsequent years."<sup>32</sup>

Based on the information above, we preliminarily determine that, pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue foregone. 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 SRF, pursuant to section 771(5)(E) of the Act. To determine the benefit, we calculated the amount of income tax SRF would have had to pay on the income tax return filed in the POR less the amount SRF actually paid during the POR. *See* 19 CFR 351.509(c). We then divided this benefit by SRF's total export sales during the POR, to determine a countervailable subsidy of 1.29 percent *ad valorem*.

#### f. Discounted Land Fees in an SEZ

The Indore SEZ where SRF has its plant is located in the State of Madhya Pradesh and as such, the relevant State SEZ Act of Madhya Pradesh State, *i.e.*, the Indore Special Economic Zone (Special Provisions) Act, 2003, applies,<sup>33</sup> and the State Government of Madhya Pradesh is in control of SRF's land lease agreement within the SEZ. SRF reported that, because its SEZ unit is a Mega Project by virtue of its large investment, totaling more than 25 crores (250,000,000 rupees), the State Government of Madhya Pradesh has allowed a concession of 75 percent of the lease premium on the land.<sup>34</sup> This is confirmed by the directive of the Government of Madhya Pradesh, Department of Commerce, Industry and Employment Ministry, submitted by SRF.<sup>35</sup> Information placed on the record by SRF confirms that SRF obtained a discount of 75 percent on the annual all inclusive lease premium.<sup>36</sup>

Based on the information above, we preliminarily determine that, pursuant to section 771(5)(D)(ii) of the Act, the State Government of the State of Madhya Pradesh provides a financial contribution in the form of revenue foregone. The benefit equals the difference between the actual land premium that would be payable absent this program and the actual amount

<sup>25</sup> See QR-SRF, at p. 57 and Exhibit 26(b) and SQR1-SRF, at 29-30.

<sup>26</sup> See SQR1-GOI, at p. 16 and Exhibit 6.

<sup>27</sup> See QR-SRF, at p. 58 and Exhibits 27(a) and (b).

<sup>28</sup> See SQR1-GOI, at 16 and Exhibit S1-7.

<sup>29</sup> See QR-SRF, at Exhibit 33(a).

<sup>30</sup> See SQR1-GOI, at Exhibit S1-7.

<sup>31</sup> See QR-SRF, at p. 77.

<sup>32</sup> See QR-GOI, at 26.

<sup>33</sup> See QR-SRF, at 50.

<sup>34</sup> See SQR1-SRF, at 25.

<sup>35</sup> See *id.* at 25 and Exhibits S1-20(a), (b) (English translation of the Madhya Pradesh Directive in Supplement to SQR1-SRF of September 8, 2010, and (c).

<sup>36</sup> See Exhibit S1-20(a), at 3 and Exhibit S1-20(c).

paid by SRF, net of advances, *i.e.*, down payments on the lease made by SRF, pursuant to section 771(5)(E) of the Act. We also determine that the discount of the land premium in an SEZ scheme provides a recurring benefit under 19 CFR 351.524(c), because the premium is paid annually. We took the discount on the lease, as reported by SRF to be the benefit and divided this benefit by SRF's total export sales during the POR, to determine a countervailable subsidy of 0.35 percent *ad valorem*.<sup>37</sup>

#### 5. Union Territories Sales Tax Exemption

This program allows sellers located in a Union Territory not to collect CST on their sales outside the Union Territory. In the 2005 administrative review the Department determined this program to be countervailable. The Department found that this program provides a financial contribution in the form of revenue foregone 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 or territories administering the programs. *See Polyethylene Terephthalate Film Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying Issues and Decision Memorandum at "Union Territories Central Sales Tax (CST) Program."

In this new shipper review, the GOI reported that SRF did not participate in either of these programs, and stated that it obtained such information from SRF.<sup>38</sup> SRF reported that it did not receive any benefits under the Union Territory CST program or the State Sales Tax Incentive Schemes. However, SRF did report purchases for which the supplier did not collect sales taxes.<sup>39</sup> SRF states that it was not charged sales tax "because of a sales tax exemption applied for and availed of by the seller," and that SRF is not "required to keep track of the program under which the seller has not charged sales tax, \* \* \*"<sup>40</sup> We preliminarily determine that the uncollected CST on SRF's purchases provides a recurring benefit

under 19 CFR 351.510(c) and 19 CFR 351.524(c).

To calculate the benefit, we first calculated the total CST exemption SRF received during the POR by multiplying the purchase value by the applicable tax rate to determine the amount that would have been paid on SRF's purchases during the POR absent this program. We then divided this amount by SRF's total sales during the POR to calculate a countervailable subsidy of 0.01 percent *ad valorem*.

#### B. Programs Preliminarily Determined To Be Not Used

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

##### GOI Programs

1. *Duty Free Replenishment Certificate (DFRC) (GOI)*.
2. *Target Plus Scheme (GOI)*.
3. *Capital Subsidy (GOI)*.
4. *Exemption of Export Credit From Interest Taxes (GOI)*.
5. *Loan Guarantees From the GOI*.
6. *Duty Entitlement Passbook Scheme (DEPS/DEPB)*.

##### State Programs

7. *State Sales Tax Incentive Schemes*.
8. *Octroi Refund Scheme State of Maharashtra (SOM)*.
9. *Waiving of Interest on Loans by SICOM Limited (SOM)*.
10. *State of Uttar Pradesh (SUP) Capital Incentive Scheme*.
11. *Infrastructure Assistance Schemes (State of Gujarat)*.
12. *Capital Incentive Scheme Uttaranchel*.
13. *Capital Incentive Schemes (SOM)*.
14. *Electricity Duty Exemption Scheme (SOM)*.

##### Preliminary Results of New Shipper Review

In accordance with section 751(a)(2)(B)(i) of the Act and 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for SRF for the POR. We preliminarily determine the total countervailable subsidy to be 3.57 percent *ad valorem* for SRF.

##### Assessment Rates/Cash Deposits

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department intends to instruct CBP to liquidate shipments of subject merchandise produced and exported by SRF entered or withdrawn from warehouse, for consumption from January 1, 2009, through December 31,

2009, at 3.57 percent *ad valorem* of the entered value.

The Department intends to also instruct CBP to collect cash deposits of estimated countervailing duties at the rate of 3.57 percent *ad valorem* of the entered value on shipments of the subject merchandise produced and exported by SRF, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. We intend to instruct CBP to continue to collect cash deposits for non-reviewed companies at the applicable company-specific CVD rate for the most recent period or all-others rate established in the investigation. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Further, effective upon publication of the final results, we intend to instruct CBP that importers may no longer post a bond or other security in lieu of a cash deposit on imports of PET film from India, manufactured and exported by SRF. These cash deposit requirements, when imposed, shall remain in effect until further notice.

##### Verification

As provided in section 782(i)(3) of the Act, the Department intends to conduct verification of the GOI and SRF questionnaire responses following the issuance of the preliminary results.

##### Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within ten days of the public announcement of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are

<sup>37</sup> *See* SQR1-SRF, at Exhibit S1-20(c).

<sup>38</sup> *See* QR-GOI, at 24 and SQR1-GOI, at 25 and 26.

<sup>39</sup> *See* QR-SRF, at 69 and Exhibit 32.

<sup>40</sup> *Id.* *See* QR-SRF, at 71-72.

requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

Unless extended, the Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any written briefs, not later than 90 days after the date of signature of this notice, pursuant to section 751(a)(2)(B)(iv) of the Act.

These preliminary results are 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: December 21, 2010.

**Christian Marsh,**

*Acting Deputy Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA041

#### Endangered and Threatened Species; Recovery Plan for the Sperm Whale

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of Availability; recovery plan for the sperm whale.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the adoption of an Endangered Species Act (ESA) Recovery Plan for the Sperm whale (*Physeter macrocephalus*). The Recovery Plan contains revisions and additions in consideration of public comments received on the proposed draft Recovery Plan for the sperm whale.

**ADDRESSES:** Additional information about the Recovery Plan may be obtained by writing to Monica DeAngelis, National Marine Fisheries Service, Southwest Regional Office, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802 or send an electronic message to [Monica.DeAngelis@noaa.gov](mailto:Monica.DeAngelis@noaa.gov).

Electronic copies of the Recovery Plan and a summary of NMFS' response to

public comments on the Recovery Plan are available online at the NMFS Office of Protected Resources Web site:

<http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/spermwhale.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Monica DeAngelis (562) 980-3232, e-mail [Monica.DeAngelis@noaa.gov](mailto:Monica.DeAngelis@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate (1) Objective, measurable criteria that, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species. NMFS' goal is to restore endangered sperm whale (*Physeter macrocephalus*) populations to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA.

The sperm whale was listed as an endangered species under the ESA on December 2, 1970 (35 FR 18319). Sperm whales have a global distribution and can be found in the Atlantic, Pacific, and Indian Oceans. They were subject to commercial whaling for more than two and a half centuries and in all parts of the world. The long history of whaling and the complex social structure and reproductive behavior of sperm whales have confounded assessments of population status and structure. Historical catch records are sparse or nonexistent in some areas of the world and over long periods of time, and gross under-reporting or mis-reporting of modern catch data has taken place on a large scale. The wide-ranging, generally offshore distribution of sperm whales and their long submergence times, complicate efforts to estimate abundance. Although the aggregate abundance worldwide is probably at least several hundred thousand individuals, the extent of depletion and degree of recovery of populations are uncertain. Currently, the population structure of sperm whales has not been adequately defined. Most models have assigned arbitrary boundaries, often based on patterns of historic whaling

activity and catch reports, rather than on biological evidence. Populations are often divided on an ocean basin level. Therefore, the Recovery Plan is organized, for convenience, by ocean basin and discussed in three sections: Those sperm whales in the Atlantic Ocean/Mediterranean Sea, including the Caribbean Sea and Gulf of Mexico, those in the Pacific Ocean and its adjoining seas and gulfs, and those in the Indian Ocean. There is a need for an improved understanding of the genetic differences among and between populations, in order to determine distinct population units. Although there is new information, existing knowledge of population structure for this nearly continually distributed species remains poor. New information is currently insufficient to identify units that are both discrete and significant to the survival of the species.

NMFS released the draft Recovery Plan and requested comments from the public on July 6, 2006 (71 FR 38385). A summary of comments and NMFS responses to comments are available electronically (*see ADDRESSES*). Concurrent with the public comment period, NMFS requested comments from three independent peer-reviewers. The peer-review comment period was extended for another 60 days after the public comment period was closed to allow peer-reviewers more time.

The final Recovery Plan contains:

(1) A comprehensive review of sperm whale ecology, (2) a threats assessment, (3) biological and recovery criteria for downlisting and delisting, (4) actions necessary for the recovery of the species, (5) an implementation schedule, and (6) estimates of time and cost to recovery.

The Recovery Plan presents a recovery strategy to address the potential threats based on the best available science and presents guidance for use by agencies and interested parties to assist in the recovery of the sperm whale. The threats assessment ranked threats as either having a/an Unknown, Unknown but Potentially Low, Low, Medium, or High relative impact to the recovery of sperm whales. Ranking assignments were determined by an expert panel with contributions from reviewers. Following are the threat rankings relative to the recovery of the sperm whale:

- Fishery interactions in the Indian Ocean, anthropogenic noise from ship noise, oil and gas exploration, military sonar and explosives, contaminants and pollutants, and loss of prey base due to climate and ecosystem change were ranked as having an unknown impact.