




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

C-552-815  
Investigation  
**Public Document**  
AD/CVD 1: MR/DR

DATE: August 12, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Certain Frozen  
Warmwater Shrimp from Vietnam

## I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain frozen warmwater shrimp (frozen shrimp) in the Socialist Republic of Vietnam (Vietnam), as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

On June 4, 2013, the Department published the *Preliminary Determination* in this investigation.<sup>1</sup> Between June 10 and June 19, 2013, we conducted verification of the questionnaire responses submitted by the Government of Vietnam (GOV), Minh Qui Seafood Co., Ltd. (Minh Qui) and Nha Trang Seaproduct Company (Nha Trang) (collectively, the respondents). We released verification reports on July 1, 2013.<sup>2</sup>

On July 5, 2013, the Coalition of Gulf Shrimp Industries (Petitioner) submitted a case brief regarding scope issues,<sup>3</sup> and on July 10, 2013, the Ad Hoc Shrimp Trade Enforcement

<sup>1</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013) (*Preliminary Determination*).

<sup>2</sup> See Department Memorandum, "Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* – Verification Report: Nha Trang Seaproduct Company" July 1, 2013 (Nha Trang Verification Report); Department Memorandum, "Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* – Verification Report: Minh Qui Seafood Co., Ltd. and its cross-owned firms" July 1, 2013 (MPG Verification Report); and Department Memorandum, "Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* – Verification Report: Government of the Socialist Republic of Vietnam," July 1, 2013 (GOV Verification Report).

<sup>3</sup> See Letter from Petitioner, "Scope Case Brief of the Coalition of Gulf Shrimp Industries ('COGSI') July 5, 2013.



Committee (AHSTEC), an interested party to this proceeding, submitted a rebuttal brief.<sup>4</sup> At the request of Petitioner, on July 26, 2013, the Department held a hearing limited to the scope issues raised in these briefs. We have addressed these issues in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, and Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp,” dated concurrently with this memorandum.

Petitioner submitted a case brief concerning case-specific issues on July 10, 2013,<sup>5</sup> and a rebuttal brief on July 16, 2013.<sup>6</sup> The GOV, Minh Qui, and Nha Trang also submitted a case brief on July 10, 2013,<sup>7</sup> and a rebuttal brief on July 16, 2013.<sup>8</sup> A public hearing was held on July 31, 2013.

The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we have analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we have made certain modifications to the *Preliminary Determination*, which are discussed below under each program. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we have received comments from the parties:

#### General Issues

- Comment 1: Aquaculture and Seafood Processing Plans Serving as Basis for Providing Countervailable Subsidies
- Comment 2: Specificity of Sectoral Plans with Respect to Policy Lending and the Provision of Land
- Comment 3: Interest Rate Support Program under the State Bank of Vietnam (SBV)
- Comment 4: Vietinbank Export Lending Program
- Comment 5: Loan Benchmarks
- Comment 6: Land Benchmarks
- Comment 7: Whether Minh Phu Group Benefitted from Import Duty Exemptions for Raw Materials
- Comment 8: The Application of Section 771B of the Act (the Agricultural Processing Provision) to Subsidies to Fresh Shrimp Farmers
- Comment 9: The Attribution of Fresh Shrimp Subsidies to the Respondent Processors: Use of a Simple or Weighted Average

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<sup>4</sup> See Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Scope Rebuttal Brief” July 10, 2013.

<sup>5</sup> See Letter from Petitioner, “Case Brief of the Coalition of Gulf Shrimp Industries (‘COGSI’)” July 10, 2013.

<sup>6</sup> See Letter from Petitioner, “Rebuttal Brief of the Coalition of Gulf Shrimp Industries (‘COGSI’)” July 16, 2013.

<sup>7</sup> See Letter from GOV, Minh Qui, and Nha Trang, “Case Brief on Behalf of GOV, MPG, and NTSF: Certain Frozen Warmwater Shrimp from Vietnam” (Respondents’ Case Brief) July 10, 2013.

<sup>8</sup> See Letter from GOV, Minh Qui, and Nha Trang, “Rebuttal Case Brief on Behalf of GOV, MPG, and NTSF: Certain Frozen Warmwater Shrimp from Vietnam” (Respondents’ Rebuttal Brief) July 16, 2013.

Comment 10: The Attribution of Fresh Shrimp Subsidies to Respondent Processors: Proper Sales Denominator

Comment 11: Two Percent *de minimis* Standard

Comment 12: Income Tax Preference Under Chapter V of Decree 24

### III. SUBSIDY VALUATION INFORMATION

#### A. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

#### B. Allocation Period

The Department finds the average useful life (AUL) in this proceeding to be 12 years,<sup>9</sup> pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>10</sup> No party in this proceeding has disputed this allocation period.

For non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to relevant sales (*e.g.*, total sales or total export sales) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, the benefits are allocated to the year of receipt rather than allocated over the AUL period.

#### C. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(iv) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a holding or parent company receives a subsidy; or (3) a cross-owned firm supplies a downstream producer an input product that is produced primarily for the production of the downstream product.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of

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<sup>9</sup> In accordance with the Department's practice, regardless of the AUL, the Department will not countervail subsidies provided by the Government of Vietnam before the date of that country's accession to the World Trade Organization (WTO), January 11, 2007. See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 3 (*PRCBs Final Determination*).

<sup>10</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>11</sup>

*Minh Qui*

Minh Qui responded to the Department's questionnaires on behalf of itself and eight affiliates: Minh Phu Seafood Corporation (Minh Phu), Minh Phat Seafood Co., Ltd. (Minh Phat), Minh Phu – Hau Giang Seafood Co., Ltd. (MP Hau Giang), Minh Phu – Kien Giang Seafood Co., Ltd. (MP Kien Giang), Minh Phu Organic Shrimp Farming Co., Ltd. (MP Organic), Minh Phu Aquatic Larvae Co., Ltd. (MP Aquatic), Minh Phu Bio Co., Ltd. (MP Bio), and Minh Phu – Loc An Aquaculture Co., Ltd. (MP Loc An) (collectively, Minh Phu Group).<sup>12</sup>

Minh Qui reports the following roles for each of the companies:<sup>13</sup>

- *Minh Phu*: producer of subject merchandise;
- *Minh Qui*: producer of subject merchandise; a subsidiary of Minh Phu;
- *Minh Phat*: producer of subject merchandise; a subsidiary of Minh Phu;
- *MP Hau Giang*: producer of subject merchandise; a subsidiary of Minh Phu;
- *MP Kien Giang*: farmer of fresh shrimp; a subsidiary of Minh Phu, shares management with Minh Phu;
- *MP Organic*: farmer of fresh shrimp; a subsidiary of Minh Phu; shares common management and shareholders with Minh Phu;
- *MP Aquatic*: shrimp larvae breeder; a subsidiary of Minh Phu; the director of MP Aquatic is one of the two largest shareholders of Minh Phu;
- *MP Bio*: produces biological product for aquaculture and bio-fertilizer for agriculture; a subsidiary of Minh Phu; shares management with Minh Phu;
- *MP Loc An*: fresh shrimp farmer; a subsidiary of Minh Phu; controlled by Minh Phu through management.

Minh Phu combines its subsidiaries' results in its consolidated financial statements.<sup>14</sup>

Based on Minh Phu's common ownership, we find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).<sup>15</sup> Because Minh Phu is a parent company, we are attributing subsidies received by Minh Phu to Minh Phu's consolidated sales (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iii).

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<sup>11</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>12</sup> See "Minh Qui Seafood Co., Ltd.'s Response to the Initial CVD Questionnaire" (April 4, 2013) (MQR) at 9.

<sup>13</sup> See MQR at 3-8.

<sup>14</sup> See MQR at 1.

<sup>15</sup> For additional information concerning the cross-owned nature of these firms, see Department Memorandum, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Determination Calculation Memorandum for Minh Qui Seafood Co., Ltd. and its Cross-Owned Affiliates," dated concurrently with this notice (Minh Qui Final Calculation Memo).

Minh Phu is also a producer of subject merchandise, as are Minh Qui, Minh Phat, and MP Hau Giang. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by Minh Qui, Minh Phat, and MP Hau Giang to the combined sales of Minh Phu (unconsolidated), Minh Qui, Minh Phat, and MP Hau Giang.<sup>16</sup>

MP Kien Giang, MP Organic, MP Aquatic, MP Bio, and MP Loc An are input suppliers to the cross-owned subject merchandise producers. We find that the inputs they produce and supply to the subject merchandise producers (fresh shrimp, shrimp larvae, and biological product for aquaculture) are primarily dedicated to the production of the downstream product (frozen shrimp), pursuant to 19 CFR 351.525(b)(6)(iv). As explained above, these input suppliers are cross-owned with the subject merchandise producers because they are all subsidiaries of Minh Phu. Therefore, we are attributing subsidies received by any of these input suppliers to the sales of that input supplier plus the combined sales of Minh Phu (unconsolidated), Minh Qui, Minh Phat, and MP Hau Giang (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv).

#### *Nha Trang*

Nha Trang responded to the Department's questionnaires on behalf of itself and three affiliates: Nha Trang Seafoods – F89 Joint Stock Company (F89), NT Seafoods Corporation (F440), and NTSF Seafoods Joint Stock Company (F461) (collectively, Nha Trang Seafood Group).<sup>17</sup>

Nha Trang reports the following roles for each of the companies:<sup>18</sup>

- Nha Trang: producer of subject merchandise;
- F89: producer of subject merchandise; a subsidiary of Nha Trang;
- F440: producer of subject merchandise; a subsidiary of Nha Trang;
- F461: producer of subject merchandise; a subsidiary of Nha Trang.

Nha Trang combines its subsidiaries' results in its consolidated financial statements.<sup>19</sup>

Based on Nha Trang's common ownership, we find these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).

Because Nha Trang is a parent company, we are attributing subsidies received by Nha Trang to its consolidated sales (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iii).<sup>20</sup>

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<sup>16</sup> See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) (*Coated Paper from the PRC*), and accompanying IDM at 9 and Comment 35, where we discuss application of the attribution regulations at 19 CFR 351.525(b)(6) to a company that is both a parent company and a producer of subject merchandise.

<sup>17</sup> See "Nha Trang Seaproduct Company's Response to the Initial CVD Questionnaire" (April 2, 2013) (NTSCQR) at 9.

<sup>18</sup> See NTSCQR at 10-11.

<sup>19</sup> See NTSCQR at 4.

Nha Trang is also a producer of subject merchandise, as are F89, F440, and F461. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by F89, F440, and F461 to the combined sales of Nha Trang (unconsolidated), F89, F440, and F461.<sup>21</sup>

#### **D. Application of Section 771B of the Act**

Section 771B of the Act directs that subsidies provided to producers of a raw agricultural product shall be deemed to be provided with respect to the manufacture, production or exportation of the processed product when two conditions are met. First, the demand for the prior stage (raw agricultural) product is substantially dependent on the demand for the latter stage (processed) product. Second, the processing operation adds only limited value to the raw commodity.

Consistent with the *Preliminary Determination*,<sup>22</sup> we continue to find that these two conditions have been met in this investigation. As a result and pursuant to Section 771B of the Act, we have included subsidies to fresh shrimp in the final countervailing duty (CVD) rates for the processed product.

To calculate the amount of subsidies to be attributed to frozen shrimp as a result of the GOV's provision of subsidies to producers of fresh shrimp, we have relied on the information submitted with respect to Minh Qui's cross-owned farming companies and Nha Trang's unaffiliated supplier, Mr. Phong. Specifically, we have calculated a rate of fresh shrimp subsidization (measured in Vietnamese dong/kilo) for each respondent based on the subsidies received by that respondent's selected supplier(s) and the volume of total fresh shrimp produced by that supplier. In particular, for Minh Qui, we divided the subsidies received by its cross-owned farming companies by the volume of shrimp they produced and then multiplied this fresh shrimp subsidy rate by the volume of fresh shrimp purchased by Minh Phu Group from its remaining suppliers. This fresh shrimp subsidy was attributed to Minh Phu Group's sales of processed shrimp, pursuant to section 771B of the Act. The subsidies received by Minh Qui's cross-owned farming companies were attributed in accordance with the allocation rules prescribed by 19 CFR 351.525(b)(6)(iv), as explained above. For Nha Trang, we found that its selected supplier received no subsidies. Therefore, we find no fresh shrimp subsidy for Nha Trang.

The methodology for calculating the fresh shrimp subsidy is discussed further in response to Comments 8 through 10, below.

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<sup>20</sup> For additional information concerning Nha Trang's cross-ownership of F89, F440, and F461, see Department Memorandum entitled, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Determination Calculation Memorandum for Nha Trang Seaproduct Company and its Cross-Owned Affiliates," dated concurrently with this notice (Nha Trang Calculation Memorandum).

<sup>21</sup> See, e.g., *Coated Paper from the PRC*, and accompanying IDM at 9 and Comment 35. These sections discuss the Department's application of the attribution regulations at 19 CFR 351.525(b)(6) to a company that is both a parent company and a producer of subject merchandise.

<sup>22</sup> See *Preliminary Determination* and the accompanying Decision Memorandum (PDM) at 11-12.

### **E. Denominators**

As noted above, we have attributed the fresh shrimp subsidy calculated for Minh Phu Group to that Group's total sales of all processed shrimp, in accordance with section 771B of the Act. For the remaining subsidies received by Minh Phu Group and the subsidies received by Nha Trang, the Department considered the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, in accordance with 19 CFR 351.525(b)(1)-(5). The denominator we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Calculation Memoranda" prepared for this final determination.<sup>23</sup>

### **F. Loan Benchmarks and Discount Rate Benchmarks for Allocating Non-Recurring Subsidies**

We are investigating loans received by Minh Qui and Nha Trang. The benchmarks used to identify the existence and the extent of any benefit from these loans is summarized below, with further detail provided in the Calculation Memoranda.

#### *Short-Term Vietnamese Dong (VND) Benchmark*

For loans denominated in VND, we are calculating an external benchmark following the regression-based methodology first developed in the CVD investigation of *CFS from the PRC*, and updated in several subsequent investigations on exports from the People's Republic of China (PRC).<sup>24</sup> This methodology bases the benchmark interest rate on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to Vietnam's, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, which is not directly tied to the state-imposed distortions in the banking sector discussed in the Vietnam Banking Sector Update Memo.<sup>25</sup>

Under this methodology, we first determine which countries are similar to the country in question, in this case Vietnam, in terms of GNI, based on the World Bank's classification of countries as: low income, lower-middle income, upper-middle income, and high income. Based on GNI data for 2009-2011, Vietnam falls into the lower-middle income (LMI) category; hence, we selected the countries in the LMI range of the World Bank's GNI rankings for 2009-2011.<sup>26</sup>

After identifying the appropriate interest rates for each year, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of

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<sup>23</sup> See Nha Trang Calculation Memorandum at 2; *see also* Minh Qui Final Calculation Memorandum at 2 (collectively, Calculation Memoranda).

<sup>24</sup> See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying IDM at "Benchmarks" section; *see also, e.g., Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying IDM at "Benchmarks and Discount Rates" section.

<sup>25</sup> See Department Memorandum, "Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam – Banking Sector Update" (May 28, 2013) (Vietnam Banking Sector Update Memo).

<sup>26</sup> See <http://data.worldbank.org>.

governance as reflected in the quality of the countries' institutions. The strength of governance is factored into the analysis by using a statistical regression that relates the interest rates to these governance indicators. As explained in *CFS from the PRC*, the regression captures the broad inverse relationship between income and interest rates.<sup>27</sup> By limiting the analysis to the pool of countries within the GNI range of the country in question, the analysis yields a reasonable estimate of a benchmark interest rate for the country in question.

Many of the countries in the World Bank's LMI categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "lower middle income" for 2009 through 2011. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years because we use real interest rates (*i.e.*, nominal interest rates less inflation) in the regression. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign currency-denominated instruments.<sup>28</sup> Finally, for each year we excluded from the regression any countries that had aberrational or negative real interest rates for the year in question.

For 2009-2011, the results of the regression analysis reflect a normal relationship: stronger institutions were associated with relatively lower real interest rates, while weaker institutions were associated with relatively higher real interest rates.

As stated above, the regression relies on real interest rates. However, the loans under investigation have not been adjusted to remove inflation. Therefore, to ensure an "apples-to-apples" comparison in the benefit calculation, we adjusted the short-term benchmark to include inflation. This adjustment was done using the inflation rates that Vietnam reported to the IFS. The details of our calculation are explained in Loan Benchmark Memorandum.<sup>29</sup>

#### *Long-Term VND Benchmark*

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals

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<sup>27</sup> See *CFS from the PRC* and accompanying IDM at the "Benchmarks" section.

<sup>28</sup> For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

<sup>29</sup> See Department Memorandum, "Interest Rate Benchmarks" (May 28, 2013) (Loan Benchmark Memorandum).



or approximates the number of years of the term of the loan in question.<sup>30</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

#### *Foreign Currency Benchmarks*

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations. For U.S. dollar short-term loans, the Department is using as a benchmark the one-year dollar LIBOR, plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we are using as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.

#### *Discount Rates*

Consistent with 19 CFR 351.524(d)(3), we have based the discount rate on the year in which the subsidy was approved by the GOV. These benchmarks are provided in the Loan Benchmark Memorandum.

#### *Land Benchmarks*

Section 351.511(a)(2) of the Department’s regulations describes the benchmarks we use for determining whether a government is providing a good or service for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (tier one benchmark); (2) world market prices that would be available to purchasers in the country under investigation (tier two benchmark); or (3) an assessment of whether the government price is consistent with market principles (tier three benchmark).

For reasons described in Comment 6, below, we determine that there is no information on the record of the instant investigation that warrants a reconsideration of our finding in *PRCBs Final Determination* that land prices in Vietnam are distorted and, therefore, cannot be used as tier one benchmarks. Instead, following the methodology used in *PRCBs Final Determination*,<sup>31</sup> we have developed an external benchmark for land. Specifically, to measure the benefit for

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<sup>30</sup> See *Citric Acid from the PRC* and accompanying IDM at the “Benchmarks and Discount Rates” section.

<sup>31</sup> See also *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 FR 32930 (June 4, 2012), unchanged in *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 45973 (December 26, 2012) (*Wire Hangers Final Determination*).

industrial land leased from the GOV, we are using rental rates for industrial property in Hyderabad, Andhra Pradesh, India, as reported in “CBRE India Industrial Overview.”<sup>32</sup> We selected Andhra Pradesh because, of the states represented in the India data, it had the closest population density to the province in which F440 is located. Because the Indian lease rate dates to 2008, we have indexed it to the year in which the respondent signed its lease contract using consumer price index data for India, as published by the International Monetary Fund.

These calculations are detailed in the Final Land Benchmark Memorandum.

#### IV. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties’ comments addressed below, we determine the following.

##### 1. Loan Subsidies Provided Pursuant to National and Provincial Plans

During the POI and for many prior years, the national and provincial governments in Vietnam had in place sectoral development plans for aquaculture. Among these plans are:

- Decision No. 224/1999/QD-TTg Approving the Aquaculture Development Program for the 1999-2010 Period (Decision No. 224 – 1999)<sup>33</sup>
- Decision No. 10/2006/QD-TTg Approving the Fisheries Master Plan to 2010 and Oriented to 2020 (Decision No. 10 – 2006)<sup>34</sup>
- Circular 03/2006/TT-BTS of the Ministry of Aquaculture Guiding the Implementation of the Master Plan to Develop the Aquaculture Sector up to 2010 and Orientation to 2020 (Circular No. 03 – 2006)<sup>35</sup>
- Decision No. 2194/QD-TTg Approving the Scheme on Development of Agricultural Plant and Forest Tree Varieties, Livestock Breeds, and Aquatic Strains Up to 2020 (Decision No. 2194 – 2009)<sup>36</sup>
- Decision No. 332/QD-TTg Approving the Scheme on the Development of Aquaculture through 2020, promulgated on March 3, 2011 (Decision No. 332 – 2011)<sup>37</sup>

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<sup>32</sup> See Department Memorandum, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Vietnam – Final Land Benchmark Memorandum” (August 12, 2013) (Final Land Benchmark Memorandum).

<sup>33</sup> See “Government of Vietnam’s Response to the Initial CVD Questionnaire” (April 4, 2013) (GQR) at Exhibit 7.

<sup>34</sup> See “Government of Vietnam’s Response to the Second Supplemental Questionnaire” (May 13, 2013) (G2SR) at Exhibit 125.

<sup>35</sup> See “Government of Vietnam’s Response to the Third Supplemental Questionnaire” (May 21, 2013) (G3SR) at Exhibit 126.

<sup>36</sup> See Letter from Petitioner, “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (C-552-815) – Petitioner’s New Subsidy Allegations on Behalf of the Coalition of Gulf Shrimp Industries (‘COGSI’)” (February 13, 2013) (NSA) at Exhibit 2; *see also* Letter from the GOV, “Government of Vietnam’s Response to the New Subsidy Allegation Questionnaire” (April 8, 2013) (GNSAR) at 1.

<sup>37</sup> See GQR at Exhibit 5.

Beginning in 2011, a separate plan was promulgated for seafood processing:

- Decision No. 2310/QĐ-BNN-CĐ Approving the National Fishery Processing Development Plan Towards 2020 (Decision No. 2310 – 2011)<sup>38</sup>

According to the GOV, the purposes of its economic plans, including the sectoral plans, are to facilitate and act as a catalyst for economic development based on market forces by: identifying priorities for the government in terms of removing regulatory roadblocks, providing incentives for certain development priorities, channeling infrastructure expenditures, providing structural support for the private sector; guiding overseas donors and lenders, and, for private entities, indicating market opportunities and the economic direction of the country.<sup>39</sup>

The goal of Decision No. 224 – 1999 was to develop and modernize Vietnam’s aquaculture sector. Shrimp (prawns) are prominent among the species to be developed and shrimp farmers are targeted for assistance. With regard to investment, Decision No. 224 – 1999 provides that, “The State shall adopt policies to lend capital to poor farmers and fishermen, who have labor and land for aquaculture, without having to mortgage their properties.”<sup>40</sup> Decision No. 224 – 1999 identifies among the various sources of funds, short-, medium- and long-term capital provided in addition to funds provided directly from the State budget.<sup>41</sup>

Starting with Decision No. 10 – 2006 and Circular No. 3 – 2006, the goals of the national plans broadened to include seafood processing. For example, aquaculture processing is part of Decision No. 10 - 2006 and one of the “tasks and solutions” in Circular No. 03 – 2006 is for the provincial aquaculture ministries to adjust their plans to include processing facilities and to collaborate with the Vietnam Association of Seafood Exporters and Processors.<sup>42</sup> The 2006 documents also call for the provision of financing to the sector. For example, in discussing how it will mobilize capital to achieve the goals of the plan, Decision No. 10 – 2006 describes trade banks giving loans to enterprises and the Ministry of Finance ensuring financial policies to implement the plan in addition to preferential loans given to needy areas.<sup>43</sup> The Ministry of Planning and Investment directs local authorities to undertake the plan countrywide.<sup>44</sup> Decision No. 10 - 2006 further requires that local governments implement the plan.<sup>45</sup>

Subsequently, Decision No. 2194 – 2009, sought to promote the development of new varieties and breeds. This plan applied generally to agriculture (including aquaculture), but prioritized the development of common tiger prawn and white-legged green tiger prawn breeds, along with a handful of other agricultural and aquaculture varieties and breeds.<sup>46</sup> Decision No. 2194 – 2009

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<sup>38</sup> See GQR at Exhibit 5 and Letter from the GOV, “Government of Vietnam’s Response to the Supplemental CVD Questionnaire” (April 25, 2013) (GSR) at Exhibit GOV-90.

<sup>39</sup> See GQR at 7.

<sup>40</sup> See GQR at Exhibit 7, provision V.2.1.

<sup>41</sup> *Id.* at provisions IV.3., V.2.3., and V.2.4.

<sup>42</sup> See G2SR at Exhibit 125, provisions I.2, II.1, and II.3; *see also* G3SR at Exhibit 126, provisions II.3. and II.3.a.

<sup>43</sup> See G2SR at Exhibit 125, provisions V.1. and VI.2.

<sup>44</sup> *Id.* at provision VI.1.

<sup>45</sup> *Id.* at provision VI.3.

<sup>46</sup> See NSA at Exhibit 2, provision II.8.

stated that commercial loans would account for 25 percent of the funding under the plan and directed state-run commercial banks to provide favorable conditions for such investment.<sup>47</sup>

In 2010, the GOV laid out a new, comprehensive development strategy focusing on the entire “value chain” from raw material production (fisheries and aquaculture) to processing to consumption.<sup>48</sup> As described by the GOV, Decision No. 1690 – 2010, “addresses wild caught fishing development, aquaculture development, related shipbuilding and repair for the fisheries sector, human resources development for the sector, seafood processing, and various other issues related to the development of the fisheries sector defined broadly.”<sup>49</sup> The details for achieving the goals of Decision No. 1690 – 2010 are laid out in Decision Nos. 332 – 2011 and 2310 – 2011.

While Decision No. 332 – 2010 is targeted at aquaculture, it reflects the breadth of the overall plan, Decision No. 1690 - 2010. In particular, in describing the mechanisms for achieving the plan’s objectives, Decision No. 332 – 2010 includes “to further implement policies on investment and credit to support aquatic breed and feed producers, raisers and processors.”<sup>50</sup> Fifty percent of the funds for financing the objectives of Decision No. 332 – 2010 are to come from commercial banks.<sup>51</sup> Decision 2310 – 2010 which is targeted at the seafood processing sector also appears to rely heavily on bank lending: the State budget accounts for approximately six percent of funds needed to implement this plan from 2011 – 2015, with the remainder coming from domestic and foreign bank loans, preferential loans from the State, and the issuance of shares and bonds.<sup>52</sup>

Based on the information submitted by the GOV on its planning process and the plans themselves, we determine that the GOV has targeted its aquaculture and seafood processing industries for development and that it is supporting this development by providing loans to enterprises operating in these industries. Because the GOV controls the state-run commercial banks that lend to these enterprises, the GOV is providing financial contributions within the meaning of section 771(5)(D)(i) of the Act. These loans confer benefits on the respondents, as described further below. Because the plans are aimed at developing the aquaculture and seafood processing sectors, the financing provided pursuant to them is *de jure* specific within the meaning of section 771(5)(D)(i) of the Act. With respect to Decision No. 2194 – 2009, which is aimed more broadly at agriculture, we find *de facto* specificity because a limited number of products, including shrimp, are prioritized and, thus, the actual recipients of the subsidy are limited in number to the enterprises or industries that produce these products. See section 771(5A)(D)(iii)(I) of the Act.

*Loan Benefit:* Under section 771(5)(E)(ii) of the Act, government-provided loans confer a benefit to the extent that the recipient pays less than it would pay on a comparable commercial loan. As described above under “Interest Rate Benchmarks,” we have constructed short- and

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<sup>47</sup> *Id.* at V.3.

<sup>48</sup> See GQR at Exhibit 5 (Decision No. 1690/QD-TTg Approving Vietnam’s Fisheries Development Strategy Through 2020 (Decision No. 1690 – 2010) at I.2.

<sup>49</sup> *Id.* at 12.

<sup>50</sup> See GQR at Exhibit 5, provision 5.c.

<sup>51</sup> *Id.* at 7.a.

<sup>52</sup> See GQR at Exhibit 5, Appendix V and 5.

long-term commercial benchmarks for Vietnam. Comparing what the respondents paid on their loans given under the plans to what they would have paid under the benchmark rates, we find that a benefit exists. We divided the benefit each company received during the POI by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we determine that Minh Phu Group and Nha Trang Seafood Group received countervailable subsidies of 0.71 percent *ad valorem* and 0.26 percent *ad valorem*, respectively, from the loans given under the aquaculture and seafood processing plans.

In the *Preliminary Determination*, we found that under these plans, the GOV was also providing subsidies in the form of the provision of land for LTAR. We are concluding otherwise in this final determination, as discussed below in response to Comment 1.

## 2. Export Credits from the Vietnam Development Bank (VDB)

Based upon Petitioner’s allegation, we initiated an investigation into “Preferential Export Lending; Export Credits and Export Credit Guarantees under Decree 51.”<sup>53</sup> The GOV and Minh Qui reported that Minh Phu utilized an export credit line through the VDB, which the GOV explains is one of two government-owned policy banks in Vietnam.<sup>54</sup> The VDB lends to designated industries or projects according to specified criteria, pursuant to Decision 108/2006/QD/TTG (Decision 108).<sup>55</sup> Specifically, Article 4 of Decision 108 states that the function of the bank is to mobilize and receive funds from domestic and foreign organizations to implement the State’s development assistance programs and its export credit policies.<sup>56</sup> Thus, one of the VDB’s primary functions is to provide export financing pursuant to state-directed export credit policies.<sup>57</sup>

Under the program, the VDB provides lines of credit to exporters, with the loan contracts stipulating that a penalty interest rate will be charged if the loan proceeds are not used for the intended purpose of supporting the production and shipment of exported goods.<sup>58</sup> Minh Qui explains that, in practice, Minh Phu enters into an export line of credit with the VDB and, in order to receive the “preferential export” interest rate, it must provide documentation demonstrating it utilized the funds to produce exported goods or otherwise pay the “agreed” rate.<sup>59</sup> If Minh Phu does provide this documentation, interest payments are reimbursed (for payments already made) at the difference between the agreed interest rate and the export credit interest rate.<sup>60</sup>

Consistent with the *Preliminary Determination*, the Department finds that the export loans made by the GOV policy bank, VDB, to Minh Phu are a financial contribution within the meaning of

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<sup>53</sup> See “Countervailing Duty Investigation Initiation Checklist: Frozen Warmwater Shrimp from the Socialist Republic of Vietnam” (January 17, 2013) (Initiation Checklist) at 19-21.

<sup>54</sup> See GQR at 29 and 41-42; MQR at 26.

<sup>55</sup> See GQR at 29 and Exhibit GOV-25.

<sup>56</sup> See GQR at Exhibit GOV-25.

<sup>57</sup> See GSR at 8.

<sup>58</sup> See GQR at 66.

<sup>59</sup> See MQR at 26.

<sup>60</sup> *Id.*

section 771(5)(D)(i) of the Act. Pursuant to section 771(5)(E)(ii) of the Act, these loans confer a benefit equal to the difference between what the recipient paid on the loans and what it would have paid under the benchmark interest rates described in the “Interest Rate Benchmarks” section. Finally, receipt of these loans is tied to actual or anticipated exportation. We therefore determine that this program is specific under section 771(5A)(A) and (B) of the Act.

To calculate the benefit, we summed the interest savings on the VDB loans outstanding during the POI and divided the total by the appropriate POI export sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we determine a net countervailable subsidy rate of 0.21 percent *ad valorem* for the Minh Phu Group.

### **3. Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank)**

The GOV and Minh Qui reported that Minh Phu participated in the export lending program through the VDB, as discussed above. In the course of our investigation, we learned that Minh Phu Group also participated in an export lending program administered by Vietinbank. The Department found Vietinbank administers a countervailable export lending program in *Wire Hangers Final Determination*.<sup>61</sup> Due to the proprietary nature of Minh Phu Group’s participation in this program, it is separately discussed in Minh Qui Final Calculation Memorandum.<sup>62</sup>

Section 775 of the Act provides that if the Department “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition ... then the administering authority (1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding...” *See also* 19 CFR 351.311(b). Accordingly, the statute authorizes us to investigate this program.

The Department has previously found that Vietinbank is a state-owned commercial bank (SOCB).<sup>63</sup> This finding is supported by the record in the instant proceeding as the GOV characterizes Vietinbank as an SOCB in which the GOV holds an 80.31 percent ownership position.<sup>64</sup> (Further information on the role of SOCBs – including Vietinbank -- in the banking sector can be found in the Vietnam Banking Sector Update Memo.) Therefore, we determine that the export loans issued to Minh Phu Group by Vietinbank are a financial contribution within

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<sup>61</sup> *See Wire Hangers Final Determination* and accompanying IDM at Comment 4.

<sup>62</sup> *See Minh Qui Final Calculation Memorandum* at 5-6.

<sup>63</sup> *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Determination Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 45811, 45817 (September 4, 2009). The Department’s finding that Vietinbank was a government authority operating as a SOCB was not reversed as a result of the *PRCBs Final Determination*. *See PRCBs Final Determination* and accompanying IDM at “Application of Facts Otherwise Available and AFA for API and Fotai.”

<sup>64</sup> *See GQR* at 28-29 and *GSR* at 3.

the meaning of section 771(5)(D)(i) of the Act. Pursuant to section 771(5)(E)(ii) of the Act, these loans confer a benefit equal to the difference between what the recipients paid on the loans and what they would have paid under the benchmark interest rates described in the “Interest Rate Benchmarks” section. Finally, receipt of these loans is tied to actual or anticipated exportation.<sup>65</sup> We therefore determine that this program is specific under section 771(5A)(A) and (B) of the Act.

To calculate the benefit, we summed the interest savings on the Vietinbank loans outstanding during the POI and divided the total by the appropriate POI export sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we determine a net countervailable subsidy rate of 1.17 percent *ad valorem* for Minh Phu Group.

#### **4. Interest Rate Support Program under the State Bank of Vietnam (SBV)**

Based upon information in the petition, we initiated an investigation of an interest rate support program the GOV allegedly directed toward exporters.<sup>66</sup> In response to our questionnaire, the GOV clarified that this program is not limited to exporters. Instead, an interest rate support program was instituted in January of 2009 under Decision No. 131/QD-TTG to stimulate the economy in the midst of an economic downturn by providing capital support to organizations and individuals carrying out business projects.<sup>67</sup> Circular 2/2009/TT-NHNN of February 3, 2009, provides detail on the implementation of the program.

The SBV is responsible for implementing the program.<sup>68</sup> Initially, the program provided four percent interest rate support on short-term loans for qualifying businesses but the SBV subsequently expanded it to include medium- and long-term loans of up to 24 months.<sup>69</sup> Circular 21/2009/TT-NHNN of October 9, 2009 (Circular 21) amended and clarified Circular 5. Decision No. 2072/QD-TTg of December 11, 2009, which was implemented by SBV Circular 27/2009/TT-NHNN of December 31, 2009, extended the period for obtaining interest rate support on medium- and long-term loans through 2010 but lowered the support level to two percent.<sup>70</sup>

Several of these decisions and circulars specify eligibility criteria for the interest support, including Circular 21, which expands and clarifies previous eligibility criteria and adds a list of projects ineligible for interest rate support from the SBV.<sup>71</sup> This list of ineligible projects includes, “Loans in Vietnamese Dong for purchasing foreign currency to make payment to foreign countries for the import of consumer commodities or to make payment to domestic suppliers for the purchase of consumer commodities, imported from foreign countries, as

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<sup>65</sup> Due to the proprietary nature of the facts supporting this conclusion, please see the Minh Qui Final Calculation Memorandum.

<sup>66</sup> See Initiation Checklist at 19.

<sup>67</sup> See GSR at 13.

<sup>68</sup> *Id.*

<sup>69</sup> See GSR at 14, referencing Circular 05/2009/TT-NHNN of April 7, 2009 (Circular 5) (Exhibit GOV-104).

<sup>70</sup> See GSR at 14-15, Exhibit GOV-106 and GOV-107.

<sup>71</sup> See GSR at Exhibit GOV-105, Article 1.

materials, raw materials and assets for performing project of production, business investment and development, ....”<sup>72</sup> At verification, the SBV confirmed that recipients are prohibited from using interest-supported loans to purchase foreign exchange to pay for imports and that only VND-denominated loans are eligible for support, as discussed further under Comment 3 below.<sup>73</sup> Thus, the SBV will not provide support to projects making use of imported goods used in the production process.

Minh Qui reported that in addition to itself, Minh Phu, Minh Phat, and MP Hau Giang received interest rate support under this program.<sup>74</sup>

We determine that the interest rate support from the central bank of Vietnam, the SBV, is a financial contribution within the meaning of section 771(5)(D)(i) of the Act, which provides a benefit in the amount of the interest savings.<sup>75</sup> We also determine that this program is specific within the meaning of section 771(5A)(A) and (C) of the Act as receipt of the interest support is contingent upon the use of domestic goods over imported goods, alone or as one of two or more conditions.

To measure the benefit, we summed the amount of interest rate support received in the POI and divided it by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we determine a net countervailable subsidy rate of 0.05 percent *ad valorem* for Minh Phu Group.

## INCOME TAX PROGRAMS

Based upon information Petitioner provided in its allegation, we initiated investigations into preferential income tax programs identified under several different Vietnamese laws. Specifically, we initiated on different provisions identified in Decree No. 51/1999/ND-CP (Decree 51), Decree No. 164/2003/ND-CP (Decree 164), Decree No. 24/2000/ND-CP (Decree 24), and Decree No. 101/2011/ND-CP. In response to the petition, the GOV informed the Department that Decree 51 was repealed by Decree No. 108/2006/ND-CP (Decree 108), which provides guidelines for implementation of the Law on Investment, No. 59/2005/QH11 (Law on Investment).<sup>76</sup> Since the enactment of Decree 108, there have been several additional tax laws offering variations of the income tax preferences adopted in Vietnam.

The GOV explains that with respect to income tax preferences, when a new law or decree is

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<sup>72</sup> See GSR at Exhibit GOV-105, Article 1.b.4.

<sup>73</sup> See GOV Verification Report at 12.

<sup>74</sup> See Letter from Minh Qui, “Minh Qui Seafood Co., Ltd.’s Response to the Supplemental CVD Questionnaire” (April 25, 2013) (MSR) at 11-12 and Exhibits MPG Supp-15 through MPG Supp-18.

<sup>75</sup> Any loans from SOCBs that benefitted from the interest rate support program are also being countervailed under the loan programs described above in the amount of the difference between the benchmark and what the recipient would have paid without the interest rate support.

<sup>76</sup> See Memorandum to the file, “Consultations with Officials from the Government of Vietnam on the Countervailing Duty Petition on Certain Frozen Warmwater Shrimp from Vietnam” (January 17, 2013) at Attachment A, point II.B; see also GQR at 23.



passed, there is always a clause that specifies that enterprises may maintain the tax preferences granted under the previous law(s) but if the preferences are higher under the new law, enterprises may opt for the preferences under the new law.<sup>77</sup> Thus, despite the repeal of Decree 51, firms in Vietnam may continue benefitting under certain tax preferences in Decree 51.<sup>78</sup> Nevertheless, it appears that, during the period of this investigation, income tax preferences under Decree 51 were not used, as firms opted for income tax preferences under more recent laws, as discussed below.

Based on the information provided by the respondents, our examination of income tax preferences also included preferences granted under Decree 24 and Decree 124,<sup>79</sup> in addition to Decree 164. To the extent that these Decrees constitute different programs from among those that we enumerated in our initiation, section 775 of the Act and 19 CFR 351.311(b) allow the Department to investigate other possible countervailable subsidies discovered during the course of a proceeding.

## **5. Income Tax Preferences under Chapter V of Decree 164**

Laws concerning income tax are implemented at the national level in Vietnam through the Ministry of Finance. According to the GOV, Decree 164, detailing the implementation of the Law on Enterprise Income Tax 2003, was replaced by Decree 24, also detailing the implementation of the Law on Enterprise Income Tax 2003.<sup>80</sup> However, certain provisions of Decree 164 were grandfathered with respect to Nha Trang, Minh Qui, and Minh Phat.

Chapter V of Decree 164 governs enterprise income tax exemptions and reductions.<sup>81</sup> Article 35 provides incentives for newly established business investments including, *inter alia*, income tax rate reductions for enterprises that operate in a sector identified in the list of “encouraged industries” and/or operate in geographical areas of difficult socio-economic conditions.<sup>82</sup> Article 36 of Decree 164 provides a variety of additional income tax benefits for firms in “encouraged” industries, for firms that operate in areas of difficult socio-economic conditions, and/or satisfy certain labor requirements.<sup>83</sup> Article 39 of Decree 164 provides additional benefits for certain firms that export and also meet the conditions of Articles 35 and 36.<sup>84</sup>

The Appendix to Decree 164 is comprised of lists identifying the “encouraged” industries and regions that may qualify for the preferences described therein. List A identifies branches, lines, and domains qualifying as “encouraged” industries, and includes aquaculture in unexploited water areas; processing of agricultural, forestry, and aquatic products; and export oriented

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<sup>77</sup> See GQR at 25.

<sup>78</sup> This was the case in *PRCBs from Vietnam*, where the Department discovered at verification that a respondent maintained its tax preferences granted under Decree 51, despite its repeal. See *PRCBs Final Determination* and accompanying IDM at 6-7.

<sup>79</sup> Decree 124/2008/ND-CP (Decree 124).

<sup>80</sup> See GQR at 71.

<sup>81</sup> The standard corporate income tax rate in Vietnam during the POI was 25 percent. See GQR at 23-24.

<sup>82</sup> See GQR at 71-72 and Exhibit GOV-22.

<sup>83</sup> See GQR at 72-73 and Exhibit GOV-22.

<sup>84</sup> See GQR at 73-74 and Exhibit GOV-22.

industries.<sup>85</sup> List B and List C specify the regions entitled to investment preferences because of socioeconomic difficulties and “special” socioeconomic difficulties, respectively.<sup>86</sup>

Minh Qui qualified for tax preferences under Article 35 as a company in an encouraged industry defined by List A, while Minh Phat qualified for tax preferences pursuant to Article 35 as a company in an encouraged industry because it satisfied certain labor conditions, pursuant to Article 36.<sup>87</sup>

Under Articles 35, 36, and 39, Nha Trang qualified for a 20 percent corporate income tax rate because it operates in an industry specified on List A of the Appendix, an additional reduction for satisfying specified labor conditions and, finally, a reduction in income tax paid on export related income, for meeting export quotas, respectively.<sup>88</sup>

We determine that the income tax reductions under Chapter V of Decree 164 are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act and provide a benefit to Minh Qui, Minh Phat, and Nha Trang in the amount of tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). These income tax reductions are specific because they are limited to an industry or group of industries (*i.e.*, preferred industries identified on List A to the Appendix to the Decree), pursuant to section 771(5A)(D)(i) of the Act, and/or limited to enterprises or industries located within designated geographical regions (*i.e.*, regions of socioeconomic difficulty), pursuant to section 771(5A)(D)(iv) of the Act. Finally, with respect to Nha Trang, we find the program specific, pursuant to section 771(5A)(A) and (B) of the Act because Nha Trang qualified for its income tax preferences based on its export performance, in accordance with Article 39 of Decree 164.

To calculate the net subsidy rate, we divided the amount of the respondents’ tax savings, as indicated on their 2010 tax returns filed during the POI, by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we determine that Minh Phu Group and Nha Trang Seafood Group received countervailable subsidies of 0.21 percent *ad valorem* and 0.40 percent *ad valorem*, respectively.

## **6. Income Tax Preferences Under Chapter V of Decree 24**

As discussed above, the GOV reported that Decree 24 replaced Decree 164 in 2007, in part to phase out export subsidies under the terms of Vietnam’s Accession to the WTO.<sup>89</sup> Many of the income tax reductions under Chapter V of Decree 24 are similar to those described above for Decree 164. Article 33 of Decree 24 details these preferences, which include income tax reductions for projects undertaken by sectors qualifying for special investment incentives and/or preferences for firms operating in regions of difficult socioeconomic conditions or operating in

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<sup>85</sup> See GQR at Exhibit GOV-22, Appendix provisions I., III., and IV.

<sup>86</sup> See GQR at Exhibit GOV-22, Appendix.

<sup>87</sup> See MQR at 31.

<sup>88</sup> See NTSCQR at 33.

<sup>89</sup> See GQR at 71.

regions of “specially” difficult socioeconomic conditions.<sup>90</sup> The list of sectors entitled to special investment incentives is found in Appendix I to Decree 108 and includes “breeding, rearing, growing and processing agricultural, forestry and aquaculture products.”<sup>91</sup>

Among the respondents and their cross-owned firms, several enjoyed income tax preferences under Chapter V of Decree 24. MP Kien Giang and F440 qualified for tax reductions because they operate in Kien Giang province, which is included in the list of regions experiencing especially difficult socioeconomic conditions.<sup>92</sup> F461 qualified for tax reductions under Chapter V of Decree 24 because it is considered a “Labor Intensive” firm, based on having met particular employee quotas.<sup>93</sup>

We determine that the income tax reductions under Chapter V of Decree 24 are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act and provide a benefit to MP Kien Giang, F440 and F461 in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). With respect to F461, we find the income tax reductions are specific under 771(5A)(D)(i) of the Act because access to the subsidy is limited to an enterprise or group of enterprises (*i.e.*, those sectors entitled to special investment incentives in Appendix I to Decree 108). With respect to MP Kien Giang and F440, which operate in Kien Giang province, we find the tax preferences under Chapter V of Decree 24 are specific pursuant to section 771(5A)(D)(iv) of the Act, as they are limited to enterprises or industries located within designated geographical regions (*i.e.*, regions experiencing especially difficult socioeconomic conditions).

To calculate the net subsidy rate, we divided the respondents’ tax savings, as indicated on their 2010 tax returns filed during the POI, by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we determine that Minh Phu Group and Nha Trang Seafood Group received countervailable subsidies of 0.28 percent and 0.32 percent *ad valorem*, respectively. Please see discussion in Comment 12, below, regarding the calculation of F461’s subsidy rate.

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<sup>90</sup> The lists specifying the sectors or regions entitled to preferences may be found in Exhibit GOV-19 (Decree 108/2006/ND-CP, detailing the implementation of the Law on Investment 2005 (Decree 108)). See “Government of Vietnam’s Response to the Second New Subsidy Allegations Questionnaire and Supplemental Questionnaire: Certain Frozen Warmwater Shrimp from Vietnam,” (May 13, 2013) (GNS2QR) at 7; see also GQR at Exhibit GOV-64 (Decree 24).

<sup>91</sup> See GQR, Exhibit GOV-19 at Appendix I.

<sup>92</sup> See GNS2QR at 9; MSR at 7; GNSAR at 5; GQR at Exhibit GOV-19, Article 22.2 and Appendix II.

<sup>93</sup> See letters from Nha Trang to the Department, “Nha Trang Seaproduct Company’s Response to the Supplemental CVD Questionnaire” (April 29, 2013) (NTSCSQR) at 6. “Labor Intensive Industries” are categorized under Decree 108/2006 in Appendix I “List of investment incentive sectors,” at list B, part IV, point 29 “Projects regularly employing between five hundred (500) and five thousand (5,000) employees.” See GOV QR Exhibit GOV-19 at 44.

## OTHER TAX PROGRAMS

### 7. Import Duty Exemptions for Imported Raw Materials for Exported Goods

Import duty exemptions are governed by the Law on Import Duty and Export Duty, No.45/2005/QH-11 (Law 45) and Decree No. 87/2010/ND-CP (Decree 87).<sup>94</sup> Article 15 of Law 45 provides that when a firm imports raw materials that are used for the production of exported goods and such exportation occurs within 275 days, no duty liability is incurred.<sup>95</sup> Article 19 of Law 45 provides for reimbursement of duties on raw materials or supplies imported for the production of export goods, for which import tax has been paid.<sup>96</sup>

For import duty exemptions on raw materials for exported goods, the exemptions cannot exceed the amount of duty levied; otherwise, the excess amounts exempted confer a countervailable benefit under 19 CFR 351.519(a)(1)(i). Moreover, under 19 CFR 351.519(a)(4), the government must have a system or procedure to confirm which inputs are consumed in production and in what amounts and such system or procedure must be reasonable, effective for the purposes intended and based on generally accepted commercial practices in the country of export; otherwise, the exemptions confer a benefit equal to the total amount of duties exempted. In previous investigations, the Department concluded that the GOV does not have in place a system to confirm which inputs are consumed in the production of the exported products and in what amounts, including a normal allowance for waste.<sup>97</sup>

The GOV has provided, in the instant investigation, a description of the multi-step process which the Vietnam customs authority employs to determine eligibility for duty exemptions, as governed by Circular No. 194/2010/TT.<sup>98</sup> First, firms must register the materials to be used in the production of exported goods prior to importation of those materials. Next, firms must register “consumption norms” prior to exportation of the finished products. These norms identify the actual quantity of inputs used in the production of the exported products, allowing for waste, and may be adjusted by the firm if a change to the registered norms is detected during the production process. After exportation of the finished product, Vietnam’s customs office may inspect the registered consumption norm against the materials that constitute the final exported product.<sup>99</sup>

The GOV further explains that norm inspection is conducted through documentary inspection and in some cases physical inspection.<sup>100</sup> According to the GOV, Minh Phu and Minh Phat were both subject to random physical inspection by the provincial customs authority of Ca Mau during the POI and both were verified by the provincial customs authority to have declared the correct consumption norm.<sup>101</sup> The GOV also provided a customs norms inspection report for another,

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<sup>94</sup> See GQR at 86 and Exhibit GOV-64.

<sup>95</sup> See GQR at 86.

<sup>96</sup> *Id.*

<sup>97</sup> See *PRCBs Final Determination* and accompanying IDM at “Import Duty Exemptions for Imported Raw Materials for Exported Goods;” see also *Wire Hangers Final Determination* and accompanying IDM at Comment 5.

<sup>98</sup> See GQR at 88 and Exhibit GOV-65.

<sup>99</sup> See GQR at 88-91.

<sup>100</sup> See GSR at 18.

<sup>101</sup> See GSR at 20, Exhibit GOV-120, 121, and 122.

unrelated company that reported incorrect norms for its production process and was, therefore, sanctioned by the customs authority.<sup>102</sup>

The GOV has confirmed that the consumption norms used in Vietnam allow producers to recover and sell “waste” material from imported inputs without paying duties on that waste.<sup>103</sup> The Ministry of Finance Circular No. 194/2010/TT-BTC of December 6, 2010 (Circular 194) provides guidance for Vietnamese customs procedures. Article 33(2)(d) of Circular 194 states that consumption norms, as reported to and verified by Vietnam’s customs officials, include not only the proportion of imports used in production of exported goods but also scrap and waste.<sup>104</sup> Further, Article 113(5)(D) of Circular 194 states that, “The portion of scraps and discarded products within the consumption norm recovered in the production of exports from imported materials and supplies...is exempt from import duty.”<sup>105</sup>

As stated in 19 CFR 351.519(a), “[t]he term ‘remission or drawback’ includes full or partial exemptions and deferrals of import charges.” Under 19 CFR 351.519(a)(1)(ii), in the case of exemptions of import charges upon export, “...a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste...” Under 19 CFR 351.519(a)(4)(i), the entire amount of such exemptions will confer a benefit, unless the Department determines that “[t]he government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.” As stated in *Hot-Rolled Steel from Thailand*, we consider whether the production process produces resalable scrap to be essential to the calculation of a normal allowance for waste.<sup>106</sup>

As explained above, the GOV’s system does not account for resalable waste, because such waste is exempt from duties. Thus, we find that the import duty exemptions on raw materials confer a benefit equal to the total amount of the duties exempted, in accordance with 19 CFR 351.519(a)(4). Because the import duty exemptions on raw materials are contingent upon export performance, we determine that they are specific in accordance with section 771(5A)(A) and (B) of the Act. We further determine that the exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act.

Normally, we treat exemptions from indirect taxes and import charges on raw materials as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. Thus, to calculate the net subsidy rate for Minh Phu Group, we first determined the total value of duties exempted during the POI by multiplying the value of each raw material imported during the POI by the applicable tariff rate. We then divided this by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

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<sup>102</sup> See GSR at 21-22, Exhibits GOV-112 through GOV-115.

<sup>103</sup> See G3SR at 1-2.

<sup>104</sup> See G3SR at 1 and GQR at Exhibit 65.

<sup>105</sup> See G3SR at 2 and GQR at Exhibit 65.

<sup>106</sup> See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Steel from Thailand*) and accompanying IDM at “Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36(1).”

Following this same calculation for Nha Trang Seafood Group, we determine that the company received no measurable benefit from its import duty exemptions during the POI.

On this basis, we determine a net countervailable subsidy rate of 1.09 percent *ad valorem* for the Minh Phu Group.

## **8. Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets**

We initiated an investigation of import duty exemptions on equipment and machinery under Decree 51. No respondents received such exemptions under Decree 51, but the GOV and Minh Qui reported that several cross-owned firms in the Minh Phu Group received import duty exemptions for equipment and machinery imported to create fixed assets under Article 16 of Law 45 and Article 12(6)(a) of Decree 87/2010/ND-CP (Decree 87), which details a number of the articles of Law 45.<sup>107</sup> Article 16 of Law 45 states that, *inter alia*, projects entitled to investment incentives shall be exempted from import duties for those imports used to create fixed assets.<sup>108</sup> Article 12 of Decree 87 provides additional detail, stating that “goods imported to create fixed assets of investment projects in domains entitled to import duty preferences listed in Appendix I” to the Decree or projects located in geographical areas entitled to certain incentives shall be exempted from import duties.<sup>109</sup> Thus, Decree 87, implementing Law 45, explicitly limits access to import duty exemptions to, *inter alia*, the industrial sectors included in Appendix I’s list of “preferred industries.” Appendix I to Decree 87 begins with a list of sectors in which “investment is particularly promoted,” which includes “aquaculture in unclaimed land areas and unexploited water areas.”<sup>110</sup> The second list in the appendix is reserved for those sectors where “investment is promoted,” including investment in the preservation of farm and aquatic products as well as investment in fishery product processing.<sup>111</sup>

We determine that these duty exemptions are specific pursuant to section 771(5A)(D)(i) of the Act, because they are only provided to designated, preferred industries as identified in Appendix I of Decree 87. In addition, we determine that a financial contribution exists pursuant to section 771(5)(D)(ii) of the Act because the exempted duties represent revenue forgone by the GOV. Finally, there is a benefit equal to the total amount of the duties exempted, in accordance with 19 CFR 351.519(a)(4).

Consistent with 19 CFR 351.524(c)(1), we generally treat exemptions from indirect taxes and import charges as conferring recurring benefits. Thus, we allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

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<sup>107</sup> *See* GQR at 100 and MQR at 43-44.

<sup>108</sup> *See* GQR at Exhibit GOV-64, Article 16.6.

<sup>109</sup> *See* GQR at Exhibit GOV-67, Article 12.6.

<sup>110</sup> *See* GQR at Exhibit GOV-67, Article A.II.8.

<sup>111</sup> *See* GQR at Exhibit GOV-67, Article B.II.19 and B.II.24.

Minh Qui provided lists of tariff exemptions that Minh Phu Group cross-owned firms received for equipment and machinery imported to create fixed assets.<sup>112</sup> For the years prior to the POI, the duty exemptions on equipment and machinery were less than 0.5 percent of Minh Phu Group's consolidated sales in each of those respective years. Therefore, in accordance with 19 CFR 351.524(b)(2), the benefits were expensed in the year of receipt and did not give rise to a countervailable subsidy in the POI. Regarding its imports during the POI, Minh Phu Group's import exemptions in the POI were also less than 0.5 percent and, hence, expensed in the POI.

To calculate the net subsidy rate, we divided the total amount of exemption by the appropriate POI sales total, as described in the "Attribution of Subsidies" section above.

On this basis, we determine a net countervailable subsidy rate of 0.03 percent *ad valorem* for the Minh Phu Group.

## **9. Exemption from Land and Water Rents for Encouraged Industries**

The Department is investigating land rent exemptions under Article 18 of Decree 51 and land and water rent exemptions under Decree No. 142/2005/NC-CP of November 14, 2005 (Decree 142). Nha Trang reported that F440 received a rent exemption for its facility under Article 14.4(d) of Decree 142.<sup>113</sup> This article provides land rent exemptions for projects in "geographic areas facing exceptional socio-economic difficulties."<sup>114</sup> Nha Trang did not receive an exemption from water rent under this program.

We determine that the GOV's provision of land is a financial contribution within the meaning of section 771(5)(D)(iii). We further determine that the land was provided for LTAR based on a comparison of the rent paid (zero) to the benchmark described under the "Land Benchmark" section above. Finally, the land rent exemption under Decree No. 142/2005 is specific within the meaning of section 771(5A)(D)(iv) because it is limited to companies in designated geographical regions.

On this basis, we determine a net countervailable subsidy rate of 0.17 percent *ad valorem* for the Nha Trang Seafood Group.

## **10. Fresh Shrimp Subsidies**

As explained above under "Application of Section 771B of the Act," we have calculated a fresh shrimp subsidy for Minh Phu Group based on the subsidies received by Minh Phu's cross-owned farms. Minh Phu's cross-owned farms received income tax preferences under Chapter V of Decree 24. Nha Trang's supplier, Mr. Phong received no subsidies. Therefore, we find no fresh shrimp subsidies for Nha Trang.

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<sup>112</sup> See MQR at Exhibits MPG-59 through MPG-62.

<sup>113</sup> See GNSAR at 11.

<sup>114</sup> See QGR at Exhibit GOV-76, Article 14.1.

Based on the methodology described above under Section D, “Application of Section 771B of the Act,” we determine that the fresh shrimp subsidies result in a countervailable subsidy rate of 4.13 percent *ad valorem* for Minh Phu Group.

**B. Programs Determined Not to Confer a Benefit During the POI**

**1. Land-Use Tax Exemption/Reduction Under Article 19 of Decree 51**

Minh Qui informed the Department that, while no Minh Phu Group entity applied for, used, or benefited from this program during the POI, it did describe an instance in which its land-use tax was exempted or reduced.<sup>115</sup> However, any potential subsidy is less than 0.005 percent and, as such, does not have an impact on Minh Phu Group’s overall subsidy rate.<sup>116</sup>

**2. Income Tax Preferences Under Chapter IV of Decree 124**

The GOV and Minh Qui informed the Department that MP Bio received income tax preferences under Chapter IV of Decree 124, which provides preferential income tax rates along with reductions or exemptions on income taxes for newly established industries in certain regions of socioeconomic difficulty. However, any potential subsidy is less than 0.005 percent and, as such, does not have an impact on Minh Phu Group’s overall subsidy rate.<sup>117</sup>

**C. Programs Determined Not to Be Used**

1. Enterprise Income Tax Preferences under Articles 20 and 21 of Decree 51
2. Enterprise Income Tax Preferences Under Article 23 of Decree 51
3. Income Tax Preferences for FIEs
4. Income Tax Reduction for Labor-Intensive Enterprises Under Decree No. 101/2011/ND-CP
5. Preferential Loans for Aquaculture Upgrades
6. Preferential Loans to Shrimp Farms for Hatcheries
7. Investment Support Under Article 30 of Decree 51
8. Land-Use Levy Exemption/Reduction Under Article 17 of Decree 51
9. Land Use Levy Exemption under the Aquatic Strains Development Scheme
10. Grants under the Aquaculture Scheme
11. Grants under the Seafood Processing Development Plan
12. Grants under the Aquatic Strains Development Scheme
13. Exemption of Irrigation Charge under the Aquatic Strains Development Scheme

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<sup>115</sup> See MQR at 47.

<sup>116</sup> See Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Vietnam: Preliminary Affirmative Countervailing Duty Determination: Minh Qui Seafoods Co., Ltd., and its Cross-Owned Affiliates Preliminary Calculation Memorandum” (May 28, 2013) (Minh Qui Preliminary Calculation Memo) at 10.

<sup>117</sup> *Id.*



14. Provision of Broodstock, Fries, and Fingerlings by Public Hatcheries for LTAR
15. Agricultural Insurance Premium Support Under Decision 315

**D. Programs Determined to Not Exist**

1. Provision of land for LTAR under the Aquaculture and Seafood Processing Development Plans

We countervailed this program in the *Preliminary Determination*. For this final determination, we find that there is no program for the provision of land for LTAR under the Aquaculture and Seafood Processing Development Plans as explained in response to Comment 1 below.

**V. ANALYSIS OF COMMENTS**

**I. SECTORAL PLANS**

**Comment 1: Aquaculture and Seafood Processing Plans Serving as Basis for Providing Countervailable Subsidies**

*The Respondents' Affirmative Arguments*

- Contrary to the Department's conclusions in its *Preliminary Determination*, there is no record evidence that the aquaculture and seafood processing plans limit subsidy access to the aquaculture sector, to the seafood processing sector, or to a limited number of products (*i.e.*, shrimp).
- The Department incorrectly assumes that these plans have been implemented; additional actions are required to implement the plans if they are to be realized.
- The plans merely act as a framework to channel private and public resources into developing industries, are organized in a manner in which additional actions are required to realize plan targets, and are focused on new investment not on the short-term support of the existing industry.
- The record demonstrates that the lending terms available to seafood processors are the same as those available to all sectors.
- All land transactions between GOV authorities and the respondents were based on the same land valuation methodology applied to all sectors, which is the normal land valuation methodology. The GOV's zoning function does not constitute a financial contribution nor does it convey a benefit.
- Despite the Department's position in the *Preliminary Determination* that Decision 10 directs local authorities to implement the plan nationwide, no provincial government has implemented Decision 10.
- The principal tools for implementing Decision 1690 are zoning, provision of infrastructure, and research projects yet, due to a lack of funding, plan implementation is limited almost exclusively to the GOV exercising its zoning function and land recovery.
- The GOV has not made available to the aquaculture and processing industries the benefits available under Vietnamese law. Neither aquaculture farming nor seafood processing is eligible for incentives under the Law on Land, Law on Investment,

Enterprise Income Tax Law or for VDB Investment Credits. This undermines the Department's interpretation of the plans as serving as a basis for providing countervailable subsidies.

Petitioner's Rebuttal Arguments

- The Department correctly relied on decrees and decisions on the record that govern the GOV's activity and economic activity in Vietnam to determine that the aquaculture and aquaculture processing industries have been targeted by the GOV for support and that support is indeed provided. The Department relied on the GOV's own statement that through its plans it prioritizes sectors and provides incentives, while the GOV operates in a governmental system based on laws, decrees, decisions, and resolutions that govern the authority and individual government agencies in Vietnam.
- GOV policies that prioritize the aquaculture and aquaculture processing industries coupled with the evidence of preferential loans and land at LTAR constitute specific subsidies to participants in the industries.
- Contrary to respondents' position, Vietnamese laws do indeed provide preferential treatment to the aquaculture and aquaculture processing industries.

**Department's Position:**

*Preferential Lending*

With respect to policy lending under the plans, we disagree with the respondents. After thorough examination of all the information on the record, the Department continues to find that, through these plans, the GOV has a policy in place to encourage and support the growth and development of the aquaculture and seafood processing industries through preferential lending. Further, the Department continues to find that loans provided by SOCBs in Vietnam constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act.

As explained in *CFS from the PRC*, to determine whether a certain plan or policy confers countervailable subsidies on the producers and exporters of the subject merchandise, the Department must first ascertain whether the government subject to the investigation has a policy in place to support the development of the industry.<sup>118</sup> According to the respondents, no such policy exists. An examination of the record evidence, however, supports the conclusion that the GOV carries out industrial policies that encourage and support the growth of the industry, and moreover, that the GOV intends to meet its industrial policy goals through, *inter alia*, the provision of preferential loans, as discussed below.

The respondents assert that the plans, in themselves, merely identify development priorities and are not self-executing. Separate, distinct policies are required for implementation, the respondents continue, which have not been developed. Such assertions, however, are contradicted by the GOV's explanation that "Vietnam's centrally planned system has been replaced with a system based on rules (laws, decrees, decisions, resolutions) which govern both

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<sup>118</sup> See *CFS from the PRC* and accompanying IDM at 49.

the authority and actions of individual government agencies and of economic activities within Vietnam.”<sup>119</sup> Based on the GOV’s representation of its legal system, Decrees and Decisions, such as those on the record here, govern the authority and activities of the Prime Minister and government agencies within a hierarchy described in the Law on the Organization of the Government.<sup>120</sup> The various aquaculture and seafood processing plans adopted in Vietnam since 1999, which served as the basis for our *Preliminary Determination* with respect to preferential lending, are official GOV Decisions and Decrees which have gone through Vietnam’s legislative process, were originally proposed by relevant GOV ministries (*e.g.*, Ministry of Agriculture and Rural Development) and ultimately approved by the Prime Minister of Vietnam. For example, Decision No. 10- 2006 “Approving the Fisheries Master Plan to 2010 and Oriented to 2020”<sup>121</sup> was issued by the Prime Minister on January 11, 2006 “pursuant to the Law on Organization of the Government” in response to requests from the Ministry of Fisheries and the Ministry of Planning and Investment (in 2005).<sup>122</sup> According to Decision No. 10- 2006, it came into force 15 days after publication in the Official Gazette, which is a requirement for a legal document issued pursuant to the Law on Organization of the Government.<sup>123</sup> The Prime Minister also directs ministries and local levels to implement the decision.<sup>124</sup>

We further disagree with the respondents’ assertion that these plans merely provide a developmental framework and are meaningless without the adoption of additional policies to implement them. Contrary to the respondents’ arguments, a consistent theme throughout these plans is the provision of loans, mobilized through the state budget and commercial banks, on preferential terms:

- Decision 224 (1999) (*specific to aquaculture*): capital sources to meet the targets of the plan include the state budget and commercial loans;<sup>125</sup> farmers and fishermen who borrow capital shall be entitled to preferential regimes.<sup>126</sup>
- Decision 10 (2006) (*includes both aquaculture and processing*): calls for the promotion of all sectors to take part in capital investment; policies on preferential loans to be given to needy areas to promote the development of the sector.<sup>127</sup>
- Decision 1690 (2010): investment incentives for aquaculture development shall be established.<sup>128</sup>
- Decision 332 (2010): calls for “further implementation” of credit policies to support aquaculture and seafood processing sectors;<sup>129</sup> the central budget, local budgets, and commercial loans shall provide, combined, 70 percent of the funds for implementation;<sup>130</sup>

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<sup>119</sup> See GQR at 7.

<sup>120</sup> See G2SR at Exhibit 125.

<sup>121</sup> See G2SR at Exhibit 125.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at provision VI.2. See also GQR at Exhibit 6, Article 36.

<sup>124</sup> See G2SR at Exhibit 125 at provision VI.3.

<sup>125</sup> See GQR at Exhibit GOV-7 at IV.3.

<sup>126</sup> *Id.* at V.2.1.

<sup>127</sup> See G2SR at GOV-125, V.1.

<sup>128</sup> See GQR at Exhibit GOV-5 at Decision 1690, IV.6.

<sup>129</sup> See GQR at GOV-9, III.6.

<sup>130</sup> *Id.* at III.6. and III.7.

calls for the Ministry of Agriculture and Rural Development along with the State Bank of Vietnam, *et al.*, to create favorable conditions for economic sectors to access loans.<sup>131</sup>

- Decision 2310 (2011) (*specific to seafood processors*): capital shall be mobilized from, *inter alia*, domestic banks and preferential loans of state.<sup>132</sup>
- Decision 2194 (2009): establishes that state run commercial banks shall provide favorable conditions for borrowers for investment for the production and processing of breeds;<sup>133</sup> combined, the state budget, commercial loans, and investment credits shall provide 72 percent of the funds for implementation.<sup>134</sup>

We also disagree with the respondents' assertions that, although the GOV has established specific development priorities for the aquaculture and seafood processing sectors since 1999, clearly targeting these industries for special assistance, no assistance has been provided under the plans because the GOV never created separate implementation mechanisms. Contrary to the respondents' claims that these plans are not self-executing, the plans specifically direct various GOV entities to implement these plans at both the central and provincial levels. For example, Decision 224 calls for various ministries to coordinate with Ministry of Agriculture and Rural Development to formulate mechanisms to create favorable conditions for implementation.<sup>135</sup> Decision 224 also directs People's Committees of the provinces to formulate programs in conformity with the national plan.<sup>136</sup> Decision 1690 directs People's Committees to implement the plan locally while also calling for "{o}ther ministries and branches" to coordinate with one another in implementing the strategy related to their respective branches and sectors.<sup>137</sup> Decision 10 states that the Ministry of Fisheries will direct local authorities to implement the plan and that the Ministry of Planning and Investment and Ministry of Finance shall arrange the investment capital and ensure the financial policies for best implementation of the plan.<sup>138</sup> Thus, GOV ministries and departments have been directed to carry out these plans and, therefore, there is no requirement for additional directives.

As explained in the *Preliminary Determination* and the Banking Sector Update Memo,<sup>139</sup> it is our position that the GOV intervenes in its banking sector through its direct and indirect ownership as well as through other means such as interest rate controls, policy, plans, and administrative guidance. Further, SOCBs operate as GOV agents for implementing policies that reflect a broad range of priorities. It stands to reason that these plans would govern the authority and economic activity of the SOCBs with respect to lending to aquaculture and seafood processors, given the GOV's intervention in the banking industry and the role of the SOCBs in Vietnam's economy. Thus, it is our determination that SOCBs are part of the GOV framework to provide lending to targeted industries in the economy and the aquaculture and seafood processing industries are targeted industries.

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<sup>131</sup> *Id.* at V.2.

<sup>132</sup> *See* GSR at GOV-90, 5.

<sup>133</sup> *See* NSA at Exhibit 2, VI.4.

<sup>134</sup> *Id.* at V.1.

<sup>135</sup> *See* GQR at Exhibit GOV-7 at VI.2.

<sup>136</sup> *Id.* at VI.3.

<sup>137</sup> *See* GQR at Exhibit GOV-5 at Decision 1690, V.

<sup>138</sup> *See* G2SR at GOV-125, VI.

<sup>139</sup> *See Preliminary Determination* and accompanying PDM at 12-13, citing Vietnam Banking Sector Update Memo.

As for the respondents' argument that the lending terms to seafood processors are the same as those available to all sectors, the Department explained in the Banking Sector Update Memo that domestic interest rates in Vietnam are distorted and inappropriate for use as benchmarks due to the predominant role of the GOV in the banking sector.<sup>140</sup> Therefore, given the distortion of the market as a whole, comparing particular lending terms and conditions within Vietnam is a meaningless exercise.

We agree with Petitioner that, contrary to the respondents' argument, aquaculture and seafood processing indeed are eligible for incentives under various Vietnamese laws. The Law on Investment No. 59/2005/QH11 includes farming and the processing of agricultural, forest, or aquatic products as a domain entitled to investment preferences, including tax and land-use fee exemptions and reductions.<sup>141</sup> Decree 164 implements the Enterprise Income Tax Law No. 09/2003/QH11 and includes aquaculture and seafood processing on the list of domains eligible for tax incentives.<sup>142</sup> The Law on the Land, decree 13-2003-QH-11, provides exemptions and reductions in land use fees to sectors entitled to investment incentives, which includes aquaculture and seafood processing.<sup>143</sup>

Based on the analysis described above, we continue to find that the GOV has targeted its aquaculture and seafood processing industries for development and that it is supporting this development by providing loans to enterprises operating in these industries.

#### *Provision of Land for LTAR*

In the *Preliminary Determination*, we countervailed the respondents' purchases of land from the GOV because we found that Vietnam's aquaculture and seafood processing development plans prioritize these industries with respect to land access through the conversion of land from household to farming use or from farming to industrial use. Specifically, several provisions in the plans *discuss* access to land for the aquaculture and seafood processing industries:

- Decision 224 (1999) (*specific to aquaculture*): the state budget capital shall be invested in building infrastructure;<sup>144</sup> the state shall assign or lease land or water surface already incorporated into the planning to different economic sectors for stable and long term aquaculture;<sup>145</sup> and land designated for salt and rice fields may be shifted to aquaculture.<sup>146</sup>
- Decision 10 (2006) (*includes both aquaculture and processing*): calls for concentrated aquaculture areas.<sup>147</sup>
- Circular 03 (2006): directs provincial governments to consider/approve new processing facilities.<sup>148</sup>

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<sup>140</sup> See Vietnam Banking Sector Update Memo at 13.

<sup>141</sup> See GQR at Exhibit 20, Articles 27, 33, and 36.

<sup>142</sup> See GQR at Exhibit

<sup>143</sup> See GQR at GOV-68 at 60.1.

<sup>144</sup> See GQR at Exhibit GOV-7 at V.2.2.

<sup>145</sup> *Id.* at V.1.

<sup>146</sup> *Id.*

<sup>147</sup> See G2SR at GOV-125, V.3.

<sup>148</sup> See G2SR at GOV-126, II.3.a.

- Decision 1690 (2010): calls for the development of organic aquaculture areas in mangrove forests.<sup>149</sup>
- Decision 332 (2010): aims to increase the number of hectares dedicated to aquaculture.<sup>150</sup>

In addition, the GOV explained that, with respect to Decree 2194, “local authorities must and do facilitate the conversion of land from {one use to another} in order to promote the objectives of the plans.”

At verification, we gained a better understanding of how land-use rights are conveyed and the role of provincial-level GOV authorities with respect to the provision of land and the approval of land use changes. The price for land leased from the government is generally established by reference to published land price tables which provide base prices for land, by category, in each province. The three broad land categories are residential, agricultural, and non-agricultural (includes industrial and commercial).<sup>151</sup> Land use changes occur when an investor approaches the local authorities and requests such a change for purposes of the investment project. If the proposed activity is, *e.g.*, shrimp farming, the land must be zoned for agricultural use. If, on the other hand, the project calls for, *e.g.*, shrimp processing, the land must be zoned for industrial use. Thus, the economic activity and land use must be in conformity, and People’s Committees in the provinces are responsible for approving the change in the land use. If the change in land use is approved, *e.g.*, from agricultural to industrial use, the investors must pay a fee that is also derived from the values in the published land rate tables.

Also at verification, we met with central and provincial level ministries and departments responsible for leasing land-use rights and also changing the purpose of the land from one use (*e.g.*, agricultural) to another (*e.g.*, non-agricultural).<sup>152</sup> Further, we discussed land procurement with the respondent companies in addition to examining their original land use contracts.<sup>153</sup> We found no indication that the processes for leasing land or for changing the land use were more favorable for shrimp farmers and processors than for any other investors. Instead, land use changes occur at the request of investors establishing projects and officials approve the proposed land use based on zoning regulations, which define approved land use(s) for any particular area.<sup>154</sup>

As explained above, a consistent theme throughout the aquaculture and aquaculture processing plans is the provision of loans on preferential terms. In contrast to this policy lending, these plans do not call on GOV authorities to create “favorable” or “preferential” conditions for land acquisition by shrimp farmers and seafood processors, and we saw no evidence of any favorable or preferential conditions for them. While land-use changes were approved, there is no evidence that the changes were initiated by the government or that the changes were anything more than changes in the zoning of the land. Moreover, we found no evidence that GOV authorities exercised their zoning authority to favor or prioritize the aquaculture or seafood processing

<sup>149</sup> See GQR at Exhibit GOV-5 at Decision 1690, III.1.

<sup>150</sup> *Id.* at I.2.

<sup>151</sup> See GOV Verification Report at 4.

<sup>152</sup> See GOV Verification Report at 2-11.

<sup>153</sup> See MPG Verification Report at 7-9, *see also* Nha Trang Verification Report at 7-9.

<sup>154</sup> See GOV Verification Report at 5-6.

industries. Therefore, we determine that the GOV does not provide land for LTAR under the various aquaculture and seafood processing plans.

**Comment 2: Specificity of Sectoral Plans with Respect to Policy Lending and the Provision of Land**

*The Respondents' Affirmative Arguments:*

- There is no evidence of specificity as required by Section 771(5A) of the Act with respect to preferential lending or the provision of land. The Department did not analyze whether the alleged preferential financing or land pricing was *de jure* or *de facto* specific. Without a specificity determination under 771(5A) of the Act, the Department cannot find a subsidy to be countervailable.
- The Department based its determination on whether the benefits of the loans and land could be measured in Vietnam but that isn't relevant unless there is a finding of specificity.
- The respondents did not receive loans from state-owned banks on terms specific to the aquaculture processing industry.
- The Department's final determination in *Citric Acid from the PRC* established that Chinese law mandates implementation of plans by the government at all levels and, thus, that as a matter of law, plans must be implemented. This is not the case in Vietnam, where there is no similar mandate requiring implementation of plans. The record does not show that government plans in Vietnam compel a particular action.
- Even if the plans did mandate government action, a finding of specificity requires evidence showing a causal link between a government program of general control and the alleged subsidy received,<sup>155</sup> which is not demonstrated in this case. In *CFS Paper from the PRC* and *Coated Paper from the PRC*, the Department found explicit links between the plan(s) and loans, which were tied to the Banking Law, thus establishing a causal link. The language in the Banking Law provided the crucial causal link between the plan and a government directive to provide preferential lending, which does not exist in any of the plans or laws on the record of this investigation.
- The loan documents (the probative value of which the Department has previously recognized) on the record of this investigation demonstrate the plans are irrelevant to the terms and conditions of the loans offered by SOCBs. The loan documents on the record identify the legal basis for the loan, and none references government plans. The respondents received lower interest rates from private banks than from SOCBs.
- The respondents did not acquire land from the GOV on terms *de jure* specific to the processing industry. No law limits receipt of land to any enterprise or industry nor limits access to a particular price. Land prices in Vietnam are calculated for all enterprises and industries based on the same formula. The GOV does not have the discretion to deviate from the calculations required by law, regardless of the existence of sectoral plans. This situation is virtually identical to that addressed in *Wire Hangers Final Determination*, where the Department found no specificity.<sup>156</sup>

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<sup>155</sup> *British Steel plc v. United States*, 879 F. Supp. 1254, 1326 (CIT 1995) (*British Steel*).

<sup>156</sup> See Respondents' Case Brief at 23, citing *Wire Hangers Final Determination* and accompanying IDM at 18.

- The record lacks evidence of *de facto* specificity for land prices.
- The plans on the record do not direct preferential land terms for processors or producers of organic fertilizer such as MP Bio.
- The Department should use an internal interest rate benchmark, as the Vietnamese central bank's actions are similar to those of other central banks.
- The Department did not verify whether loans and land transactions in other sectors were under different terms than the respondents' so the Department cannot determine that the terms of the respondents' loans and land transactions were different than the terms generally available to all sectors in Vietnam.

Petitioner's Rebuttal Arguments:

- The respondents received loans from SOCBs in accordance with government decisions and decrees providing preference to aquaculture and aquaculture processing industries.
- The Department correctly found that, because GOV plans limit access to loans to these industries, these loans are *de jure* specific, as supported by record evidence.
- The "causal link" respondents insist upon is not a statutorily required element for a finding of specificity under section 771(5A) of the Act. Regardless, the causal link is satisfied in this case, as the Department found that SOCBs are the primary agents for implementing GOV policies, including the aquaculture development plans, as SOCBs carry out the lending preferences identified in the plans.
- The respondents received land on preferential terms in accordance with government decisions and decrees providing preference to aquaculture and aquaculture processing industries.
- The Department correctly found that, through its actions to support the conversion of land to aquacultural uses, the GOV enabled the processors to obtain land not available to other industries. Thus, the provision of land is specific to the aquaculture industry.
- The Law on the Land provides an exemption from or reduction of land use fees and land rent to the aquaculture industry.

**Department's Position:**

We have determined that loans provided under the aquaculture and seafood processing plans are *de jure* specific, within the meaning of 771(5A)(D)(i) of the Act, because the plans call for direct implementation, and because the SOCBs extend preferential credit terms to the aquaculture and seafood processing industries.

In *Citric Acid from the PRC*,<sup>157</sup> we explained that where "government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals...we will find a policy lending program that is specific to the named industry." The respondents rely on this quote to argue that the plan must compel action to be specific. For the reasons explained response to Comment 1, we have determined that the aquaculture and seafood processing plans did compel government departments and ministries, and SOCBs to take action by providing favorable lending conditions and preferential loans to

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<sup>157</sup> See *Citric Acid from the PRC* and accompanying IDM at 53.



those industries. Thus, we find that the aquaculture and seafood processing plans are *de jure* specific because they lay out objectives and call for lending to support those objectives.

Citing *British Steel*, the respondents argue that to support a specificity finding, the evidence must demonstrate a causal link between a government program of general control and the alleged subsidy received which, they claim, is not demonstrated in this case. We disagree that *British Steel* is relevant here. *British Steel* dealt with two periods of Korean Government direction of credit to the Korean steel industry. In one period there were explicit laws and regulations promoting loans to specific industries which included the steel industry and the court found that there was a *de jure* specific lending program aimed at the steel industry. In the period after these laws and regulations were revoked, the Court found that there was no longer a *de jure* lending program, and required the Department to explain the connection between the *de facto* program and lending to the steel industry to support a determination of *de facto* specificity. In short, *British Steel* involved a finding of *de facto* specificity with respect to an indirect subsidy program while we are finding preferential lending under the aquaculture and seafood processing plans to be *de jure* specific.

Our specificity finding rests on a broad range of features of Vietnam's system of direct credit allocation which we have explained in detail in the Vietnam Banking Sector Update Memo. Briefly, we describe there the legal and institutional framework that provides for an administrative relationship between the government and SOCBs as evidenced by the degree of the SOCBs' responsiveness in fulfilling the GOV's plans, objectives, mandates, and *ad hoc* instructions regarding the price and allocation of credit. Also, while the respondents attempt to contrast the aquaculture and seafood processing plans at issue here with the plans examined in *CFS Paper from the PRC* and *Coated Paper from the PRC*, we have detailed in our response to Comment 1 the multiple references to preferential loans in the aquaculture and seafood processing plans.

Citing *Citric Acid from the PRC*,<sup>158</sup> the respondents further assert that the Department has relied on loan documents in making its specificity findings with respect to government lending under plans and that the loan documents in this investigation do not show policy direction. We acknowledge that loan documents showing that particular loans were made pursuant to government plans would support a finding of specificity as in *Citric Acid*, but they are not necessary (especially here, where there is no question that the plans cover aquaculture and seafood processing). As we stated elsewhere in *Citric Acid*:<sup>159</sup>

In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support the objectives or goals. Where such plans or policy directives exist, then we will find a policy lending program that is specific to the named industry.

Those are the very circumstances in this investigation with respect to the loans made to the aquaculture and seafood processing industries.

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<sup>158</sup> *Id.* at 54.

<sup>159</sup> *Id.* at 52.

For the reasons explained in response to Comment 1, we are no longer finding that national and provincial plans for the aquaculture and seafood processing industries directed the preferential provision of land use rights to these industries. Thus, we do not reach the question of their specificity.

### **Comment 3: Interest Rate Support Program under the State Bank of Vietnam (SBV)**

#### *The Respondents' Arguments*

- The Department should reverse its *Preliminary Determination* with respect to this interest rate support program, as it was based on a misunderstanding of the program.
- The program was open to enterprises in virtually all sectors.
- The program was not an import substitution program and was not contingent on the use of domestic goods over imported goods. The program was available for VND-denominated loans but did not limit use of the funds to domestically produced goods; rather, the payment for the goods had to be made in VND.

*Petitioner did not comment on this issue.*

#### **Department's Position:**

We acknowledge that the program was open to enterprises in virtually all sectors. However, at verification, SBV officials confirmed that companies importing goods would pay for them in foreign currency, and that foreign currency loans are not supported under this program.<sup>160</sup> Because the interest rate support was limited to VND-denominated loans, borrowers could use the supported funds to purchase domestic goods and not imported goods. Borrowers were also prohibited from using the funds to purchase currency to buy imported goods. Given these facts, we continue to find that the loans receiving interest rate support were contingent on the use of domestic goods over imported goods and, thus, specific within the meaning of section 771(5A)(A) and (C) of the Act.

### **Comment 4: Vietinbank Export Lending Program**

#### *The Respondents' Arguments*

- Processors did not receive a benefit from discounts on working capital loans guaranteed against foreign currency receivables; the discounts were provided to attract foreign exchange to the bank which is a common, commercially-justifiable practice.

*Petitioner did not comment on this issue.*

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<sup>160</sup> See GOV Verification Report at 12.

### Department's Position:

The respondents argue that the purpose of this program is for Vietinbank to attract foreign exchange. Irrespective of Vietinbank's motive for establishing the "Export Loan Program in 2010," Vietinbank is an SOCB and, hence, these loans are a financial contribution. These loans are also contingent on export, for reasons described in the *Preliminary Determination* and in *Wire Hangers Final Determination*, where we also countervailed this program.<sup>161</sup> Finally, pursuant to section 771(5)(E)(ii) of the Act, these loans confer a benefit equal to the difference between what the recipients paid on the loans and what they would have paid under the benchmark interest rates described in the "Interest Rate Benchmarks" section.

To the extent that Vietinbank receives additional revenue in making these loans because it also receives foreign exchange from the borrower, the Department might take that additional revenue into consideration in calculating the effective interest rate paid on these loans. *See* 19 CFR 351.505(a)(1). However, the respondents have not provided the information that would allow us to do so.

### Comment 5: Loan Benchmarks

#### The Respondents' Affirmative Arguments

- In the respondents' view, the Department has not analyzed the Vietnam government's intervention in its banking sector in relation to intervention conducted by other central banks, but has rather analyzed intervention in Vietnam in a vacuum. Absent an objective standard, the respondents argue, the Department cannot make a judgment on whether Vietnam's banking sector or that of a country used as an external benchmark is market based.
- In support of their argument the respondents call attention to the extraordinary interventions by the U.S. government in the past five years, to the Asian financial crises of the 1990's in which governments assumed control of entire banking systems, and to India – a country that has a history of controlling interest rates and of state ownership of banks.
- The respondents also argue that to the extent that the Department uses an external lending benchmark, that rate should be based on rates paid by prime customers, rather than an average of rates across several categories of risk. The respondents both receive prime rates; therefore, a benchmark based on average rates including non-prime lending is inaccurate.

#### Petitioner's Rebuttal Arguments

- The Department should continue using external loan benchmarks because Vietnam does not have market-based interest rates due to the pervasive intervention by the GOV in the banking sector.

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<sup>161</sup> *See Wire Hangers Final Determination* and accompanying IDM at Comment 4.

### **Department's Position:**

For the reasons explained in the Vietnam Banking Sector Update Memo, we continue to find that the domestic interest rates in Vietnam are distorted due to the predominant role of the GOV in the banking sector through its direct and indirect ownership, as well as through other means such as interest rate controls, policies plans, and administrative guidance.

With respect to the need to compare the interventions of the SBV in its financial market to the actions of the central banks of other countries, neither the statute nor the regulations require the Department to undertake such an analysis. To do so in this case would lead the Department to draw conclusions about parties not subject to this proceeding and that do not have an opportunity to clarify or rebut information submitted on the record of this investigation.

Finally, we disagree that the benchmark should be based on prime borrowing rates. In the Vietnam Banking Sector Update Memo, the Department found that the relationship between the SBV and the SOCBs is administrative in nature and that the SOCBs are highly responsive to fulfilling the GOV's plans, objectives, and mandates which includes the pricing of risk. Because of this, we do not accept the premise that these banks can make meaningful distinctions between prime and non-prime interest rates from a market-based risk pricing and management standpoint. Therefore, we see no relevance of the prime rate in Vietnam to our loan benefit calculation.

### **Comment 6: Land Benchmarks**

#### *The Respondents' Affirmative Arguments*

- The respondents argue that record evidence establishes that land-use rights in Vietnam are sold based on market principles, and that internal prices should be used to establish the benchmark.
- The respondents also argue that land rents charged by the GOV are based on market prices for comparable transactions involving only private parties.

#### *Petitioner's Rebuttal Arguments*

- The Department should continue using external land benchmarks because Vietnam does not have market-based land prices due to the pervasive distortion by the GOV in the land market.

### **Department's Position:**

For the reasons explained in the *Preliminary Determination*, we continue to find that we cannot rely on tier one benchmarks to determine whether the GOV is receiving adequate remuneration for land. Consistent with the *PRCBs Final Determination*, we find that the GOV retains ultimate ownership of all land in Vietnam and that the government determines land prices, which are set by decree and provide the starting point for all land prices in Vietnam. Thus, regardless of what valuation methods are utilized, the resulting rates are not market-determined. While some sub-leasing transactions occur between private parties, the GOV had placed restrictions on those

leasing rights. We also find that the GOV has significant control over the supply of land on the market through conversions and that the government -- not the market -- decides land allocations.<sup>162</sup> Together, these aspects of the GOV's role in this sector preclude the formation of market-based prices for land-use rights prices in Vietnam.

**Comment 7: Whether Minh Phu Group Benefitted from Import Duty Exemptions for Raw Materials**

*The Respondents' Affirmative Arguments*

- The Department should reverse its preliminary conclusion that the entire amount of Minh Phu Group's import duty exemptions is countervailable.
- The GOV has, as a matter of law, a reliable system and effective procedures for monitoring and tracking which imports are consumed in the production of exported products and in what quantities, as well as stringent norm inspection procedures.
- In *Certain Steel Pipe from Vietnam*, the Department acknowledged that Vietnam has rigorous customs enforcement measures to monitor compliance with Vietnam's export laws.<sup>163</sup>
- The GOV has demonstrated that customs authorities in Vietnam monitor imports and exports in accordance with Vietnamese law.
- The GOV does account for resalable scrap in the calculation of the loss rate. The GOV accurately and reasonably confirmed the inputs consumed and the reported amounts. In *Hot-Rolled Steel from Thailand*, the concern was that the Thai government approved inaccurate norms, which is not the case here.
- Minh Phu Group's resalable scrap, as verified by the Department, consisted of shrimp shell and, as the Department learned, the import duty rate applicable to shrimp shell is zero. Thus, Minh Phu Group receives no benefit for its sale of shrimp shells in the domestic market.

*Petitioner's Rebuttal Arguments*

- The Department should continue countervailing the import duty exemptions for raw materials.
- The respondents' reliance on *Certain Steel Pipe from Vietnam* is misplaced, as the Department in that case found the respondent was designated as an export processing enterprise and operated outside of Vietnam's customs territory. Minh Phu Group is not an export processing enterprise and operates within Vietnam's customs territory so *Certain Steel Pipe from Vietnam* does not apply here.
- The fact that Minh Phu Group complies with the GOV's inadequate system is irrelevant as the GOV does not have an adequate system to accurately track the consumption of inputs consumed in the production of exported products, including a normal allowance for waste.

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<sup>162</sup> See *PRCBs Final Determination* and accompanying IDM at Comment 9.

<sup>163</sup> See *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012) (*Certain Steel Pipe from Vietnam*).

### Department's Position:

We agree with Petitioner. As explained above, pursuant to 19 CFR 351.519(a)(4), we continue to determine that the entire amount of the duty exemptions on raw materials received by Minh Phu Group is countervailable subsidies attributable to the companies' export sales.

The GOV has confirmed that Vietnamese customs law allows for the domestic sale of scrap recovered from duty-free imports of raw materials used in the production of exported goods.<sup>164</sup> At verification, Minh Phu Group confirmed that it does indeed sell shrimp shell in the domestic market that is recovered from the duty-free imports of shrimp.<sup>165</sup>

Under section 351.519(a)(1)(ii) of the regulations, in the case of exemptions of import charges upon export, “. . . a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste...” Under section 351.519(a)(4)(i) of the regulations, the entire amount of such exemptions will confer a benefit, unless the Department determines that “{t}he government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.” In *Hot-Rolled Steel from Thailand*, the Department established that by the very definition of the term “waste,” a company is unable to recover and use any waste incurred during the production process. Thus, recoverable and saleable scrap cannot be considered waste, as it does have value and can be sold.<sup>166</sup> The Court of Appeals for the Federal Circuit affirmed the Department's practice in that case.<sup>167</sup> Just as in that case, Minh Phu Group recovers and sells its production waste in the domestic market and the GOV does not collect import duties on that waste.

We agree with Petitioner that that *Certain Steel Pipe from Vietnam* is not relevant here because Minh Phu Group operates within the customs territory of Vietnam.

Finally, we disagree with the respondents as to the relevance of the zero percent import duty rate on shrimp shell. If customs authorities in Vietnam were to collect duties on the product sold in the domestic market, those duties would have to be derived from and assessed on the imported product. The relevant import duty in this case would be that established for the raw material imported by Minh Phu Group and used to produce the exported product and not the import duty rate applicable to the resalable waste.

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<sup>164</sup> See Letter from the GOV, “Government of Vietnam's Response to the Third Supplemental Questionnaire: Certain Frozen Warmwater Shrimp from Vietnam” (May 21, 2013) at 1-2.

<sup>165</sup> See MPG Verification Report at 12.

<sup>166</sup> See *Hot-Rolled Steel from Thailand* and accompanying IDM at “Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36(1).”

<sup>167</sup> *Royal Thai Govt. v. United States*, 436 F.3d 1330, 1337-41 (CAFC 2006).

## **General Issues**

### **Comment 8: The Application of Section 771B of the Act (the Agricultural Processing Provision) to Subsidies to Fresh Shrimp Farmers**

Section 771B of the Act directs that subsidies provided to a raw agricultural product “shall be deemed to be provided with respect to the manufacture, production or exportation of the processed product” when two conditions are met. First, the demand for the prior stage (raw agricultural) product is substantially dependent on the demand for the latter stage (processed) product. Second, the processing operation adds only limited value to the raw commodity.

#### **The Respondents’ Affirmative Arguments**

- The respondents argue that the Department’s preliminary determination to apply to individual household farmers a benefit that is by definition limited to farming enterprises is not supported by substantial record evidence.
- In the respondents’ view, the entire “fresh shrimp subsidy” is based on Minh Phu Kien Giang’s receipt of a small tax exemption which equates to a 0.28 percent *ad valorem* subsidy rate. The respondent does not agree with the Department’s methodology in the preliminary determination by which we extrapolated this margin producing a 1.94 percent farmer subsidy rate for the Minh Phu Group and a 5.07 percent farmer subsidy rate for NTSG.
- The respondents argue that this subsidy should not be applied to Nha Trang because its fresh shrimp suppliers could not benefit from Decree 24/2007/ND-CP on Enterprise Income Tax, Article 2 tax incentives because all of Nha Trang’s fresh shrimp suppliers are household farmers subject to personal income tax not enterprises subject to Decree 24 taxes.
- The respondents also argue that Minh Phu Group’s unaffiliated fresh shrimp suppliers did not benefit from this program, and Nha Trang did not benefit from this type of subsidy.
- The respondents argue that because the Department chose not to verify GOV supplied records describing Nha Trang’s and Minh Phu Group’s other fresh shrimp suppliers there is no information on the record to support a finding that Nha Trang’s or other MPG fresh shrimp suppliers benefited from Decree 24, Article 2 subsidies.

#### **Petitioner’s Rebuttal Arguments**

- The Department should reject the respondents’ arguments regarding the calculation of fresh shrimp subsidies.
- Whether MPG’s or Nha Trang’s unaffiliated shrimp suppliers could have benefitted from the same subsidies found to benefit their individually investigated shrimp suppliers is irrelevant. There are no verified facts on the record to permit the Department to determine whether the uninvestigated unaffiliated suppliers in fact benefited from subsidies equal to, less than, or greater than, the subsidies found to benefit the investigated farms.

- The purpose of the all others rate is to arrive at an estimate for all uninvestigated suppliers based on the rates found for investigated suppliers and whether those uninvestigated suppliers in fact received the same subsidies is irrelevant.
- The Department's approach is consistent with the normal "all others" rate methodology but the Department should use a weighted average to derive the average per-kilogram benefit rate.

Petitioner's Affirmative Arguments

- The GOV provided additional information on the respondents' suppliers of fresh shrimp, including suppliers not previously reported.<sup>168</sup> The Department should rely on the respondents' shrimp purchase volumes contained in that submission to calculate the fresh shrimp subsidy, rather than the shrimp purchase volumes reported by the respondents.

The Respondents' Rebuttal Arguments

- A household farmer could not benefit from the enterprise income tax law so the overwhelming majority of fresh shrimp farmers in Vietnam received zero countervailable subsidies.
- Petitioner's argument that the Department did not use the proper volume of fresh shrimp for purposes of the MPGs shrimp farmer subsidy calculation is based on a misreading of record evidence, as the GOV's submission is for fresh shrimp suppliers to all Minh Phu Group processors while the February 19 submission lists suppliers of fresh shrimp to Minh Qui only.

**Department's Position:**

Due to the large number of farmers that supplied fresh shrimp to the mandatory processor respondents,<sup>169</sup> we limited our examination to one supply source for each of the mandatory respondents. Specifically, for Minh Phu Group, we sought information on subsidies provided to the cross-owned farms within the Group; for Nha Trang Seafood Group, we sought information on subsidies provided to its largest unaffiliated supplier of fresh shrimp.

In the *Preliminary Determination*, the Department found that Minh Qui's cross-owned farmer, MP Kien Giang, benefitted from countervailable income tax reductions.<sup>170</sup> We also found that Nha Trang's unaffiliated supplier received no countervailable subsidies.<sup>171</sup> We averaged the

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<sup>168</sup> Petitioner references the GOV's June 3, 2013, supplemental factual information submission at 5, Exhibits GOV-150 and GOV-151.

<sup>169</sup> See Minh Qui's Letter, "Minh Qui Seafoods Co. Ltd.'s Response to the Department's Questionnaire on Sources of Fresh and Frozen Shrimp – Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam" (February 19, 2013); and Nha Trang's Letter, "Response to the Department's Questionnaire on Sources of Fresh and Frozen Shrimp – Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam" (February 19, 2013). These responses showed that the number of suppliers for these two companies (and not including suppliers of their cross-owned shrimp processing companies) exceeded 100.

<sup>170</sup> See Preliminary Determination Memorandum at 25-26.

<sup>171</sup> *Id.* at 30.



rates calculated for the Minh Phu Group's cross-owned suppliers and Nha Trang's unaffiliated supplier and applied the result to all other fresh shrimp purchased by the respondents.<sup>172</sup>

For this final determination, the Department is no longer averaging the two fresh shrimp subsidy rates and applying the resulting rate to all other fresh shrimp purchased by the respondents. To calculate rates that reflect the production experience of each respondent, the Department finds it more appropriate to attribute subsidies received by suppliers only to their respective downstream processor. The approach taken by the Department in the *Preliminary Determination* created an average that did not reflect the actual experience of any respondent and their suppliers, based on verified information. Moreover, while it is necessary to determine a "general" level of fresh shrimp subsidization that might have benefited all other producers and exporters, that determination is subsumed within the calculation of the all others rate itself, whereby the Department averages the total countervailable subsidy rates calculated for the respondents that were individually examined, which include all fresh shrimp subsidies attributed to the respondents under section 771B of the Act.

With respect to the respondents' argument that the Department must take into account the GOV's June 3 submission and find that the uninvestigated suppliers of Minh Phu Group and Nha Trang Seafood Group did not receive the same income tax subsidies used by Minh Phu Kien Giang, we disagree. As explained above, due to the large number of suppliers to the mandatory processor respondents, we limited our examination to one supply source for each of them. The information placed on the record by the GOV purporting to show the experience of other suppliers has not been relied upon. The June 3 submission was an unsolicited questionnaire response for those other uninvestigated suppliers. Accordingly, the submission addressed only the possible tax subsidies received by those suppliers to the exclusion of all the other subsidies we are investigating in this proceeding. To the extent that the respondents are arguing that the uninvestigated suppliers could not have received those income tax subsidies because they were household farms rather than enterprises, this issue is moot with respect to Nha Trang Seafood Group because we found that it received no fresh shrimp subsidy. For Minh Phu Group, household farms accounted for an insignificant proportion of its supply,<sup>173</sup> so there would be no meaningful impact on the rate even if we were to consider this argument.

Finally, we agree with Petitioner that we should calculate the fresh shrimp subsidy using the total supply of fresh shrimp to Minh Phu Group. Originally, we requested the total fresh shrimp supply to the selected respondent, Minh Qui, during the POI.<sup>174</sup> This was prior to receiving questionnaire responses from which the Department could identify Minh Qui's cross-owned producers of subject merchandise. The total purchases of fresh shrimp by the cross-owned processors in the Minh Phu Group was included in the GOV's June 3 submission and we have relied on that total volume for this final determination.<sup>175</sup>

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<sup>172</sup> *Id.* at 11-12.

<sup>173</sup> See Minh Qui Final Calculation Memorandum at 7.

<sup>174</sup> See Letters to Minh Qui and Nha Trang, "Countervailing Duty (CVD) Investigation on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Questionnaire on Sources of Fresh and Frozen Shrimp" (February 13, 2013).

<sup>175</sup> See GOV's June 3 submission; see also Respondents' Rebuttal Brief at 4, where the respondents explain that the additional fresh shrimp volume identified in the GOV's June 3 submission was supplied to the cross-owned subject merchandise producers.

**Comment 9: The Attribution of Fresh Shrimp Subsidies to the Respondent Processors:  
Use of a Simple or Weighted Average**

*Petitioner's Arguments*

- The Department determined a fresh shrimp subsidy rate by selecting respondents' largest suppliers, akin to how it calculates an all others rate for uninvestigated respondents. The Department must, therefore, weight-average the subsidies received by the farmers selected as representative just as it weight averages subsidies received by mandatory respondents in calculating an all others rate.

*The Respondents' Arguments*

- The Department should disregard Petitioner's argument to calculate a shrimp farmer subsidy using a weighted average of the benefit calculated for Minh Phu Kien Giang.
- The Department should add the *ad valorem* subsidy rate calculated for each respondent's shrimp farmers to the *ad valorem* rate of the respondent that purchased shrimp from that farmer.

**Department's Position:** As noted above, we are no longer averaging fresh shrimp subsidy rates across respondents. Instead, we will attribute the fresh shrimp subsidies on a respondent-specific basis. Therefore, this issue has become moot for this final determination.

**Comment 10: The Attribution of Fresh Shrimp Subsidies to Respondent Processors:  
Proper Sales Denominator**

*Petitioner's Arguments*

- The Department should divide the amount of fresh shrimp subsidies we attribute to respondents by their sales of the "downstream product."
- By analogy, 19 CFR 351.525(b)(5)(ii) and 19 CFR 351.525(b)(6)(iv) require that subsidies to input suppliers be attributed to the combined sales of the input and "downstream products," excluding intra-company sales.
- Relying on *Rice from Thailand; Final Results of Countervailing Duty Administrative Review*, 56 FR 68 (January 2, 1991) and, in accordance with section 771B of the Act, the Department should use respondents' sales of processed shrimp as the denominator in calculating the fresh shrimp subsidy.

*The Respondents' Arguments*

- There is no legal or regulatory basis for Petitioner's position that processed shrimp sales, rather than total sales, should be used as the denominator for the fresh shrimp subsidy calculation.

- The general attribution rule for a domestic subsidy is to attribute the subsidy to all sales, in accordance with 19 CFR 351.525(b)(3). The circumstances under which the Department may deviate from this rule do not apply here.
- The regulation to which Petitioner refers, 19 CFR 351.525(b)(6)(iv), addresses attribution between cross-owned input suppliers and downstream producers, which is not applicable in this case.

**Department's Position:** In applying section 771B of the Act in the *Preliminary Determination*, the Department determined the amount of benefits received by the respondents and their unaffiliated farmers and then calculated the net subsidy rate for the program at issue by dividing the benefit by each individual respondent's total sales.<sup>176</sup> For the reasons explained below, we have modified this aspect of our approach in the final determination.

Section 771B of the Act states that, "subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production or exportation of the processed product." Upon further review, we find that phrase "deemed to be provided with respect to the . . . processed product" directs the Department to limit the attribution of farmer subsidies to the sales of all processed shrimp. Accordingly, in this instance, we are not looking to 19 CFR 351.525 for guidance on attributing subsidies under section 771B of the Act. This reading of section 771B of the Act is supported by the plain text of that provision. In particular, the subject of section 771B of the Act concerns "an agricultural product processed from a raw agricultural product . . ." This passage demonstrates that the import of section 771B of the Act centers on the processed product derived from the "raw agricultural product."

Other reasons support the Department's interpretation. The subsections of section 771B of the Act provide two criteria the Department must consider in determining whether the facts of the particular case support its application. Section 771B(1) of the Act instructs the Department to evaluate the dependency of demand for the raw product on demand for the processed product. Section 771B(2) of the Act instructs the Department to evaluate whether processing adds only limited value to the raw product. Taken together, section 771B of the Act contemplates the foreign government subsidizing the processed product by subsidizing the raw product.

Thus, as explained in the "Denominators" section above, for those subsidies apportioned to respondents' suppliers or farmers under section 771B of the Act, we attributed subsidies to each respondents' sales of processed shrimp. Because the record lacks information with respect to respondents' total processed shrimp sales, as facts available pursuant to section 776(a) of the Act, we are using sales of subject merchandise as a proxy for the respondents' processed sales.

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<sup>176</sup> See Preliminary Decision Memorandum at 11-12.

### Comment 11: Two Percent *de minimis* Standard

#### The Respondents' Affirmative Arguments

- The Department should apply a two percent *de minimis* standard to the respondent companies for the final determination, pursuant to Article 27 of the Agreement on Subsidies and Countervailing Duty Measures. Vietnam satisfies the conditions there because it is a developing country.
- The respondents argue that Vietnam joined the WTO nearly nine years after the Office of the United States Trade Representative's (USTR's) most recent publication of "Developing and Least-Developed Country Designation under the Countervailing Duty Law" and although that list has not been updated the Department has an obligation to make a WTO-consistent determination in this case.

*Petitioner did not comment on this issue.*

#### **Department's Position:**

The *de minimis* rates for countervailing duty investigations are set forth in section 703(b)(4) of the Act. Under section 703(b)(4)(A), the *de minimis* rate is one percent. Section 703(b)(4)(B) provides that a two percent *de minimis* rate will be applied only to countries designated as a "developing country" by USTR. Because USTR has not designated Vietnam as a developing country,<sup>177</sup> the one percent *de minimis* rate is applicable to this investigation.

### Comment 10: Income Tax Preference Under Chapter V of Decree 24

#### Petitioner's Affirmative Arguments

- Petitioner argues that the Department incorrectly calculated the subsidy rate for Nha Trang F461 by using, as the numerator, the corporate income tax paid by Nha Trang F461 rather than the tax reduction it received. The Department should revise its calculation for the final results.

*The respondents did not comment on this issue.*

#### **Department's Position:**

We agree and have recalculated the subsidy rate for Nha Trang F461's tax reduction accordingly. See NTSG Final Determination Calculation Memorandum at 5 for the calculation used in these final results.

## **VI. RECOMMENDATION**

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final

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<sup>177</sup> See *Developing and Least-Developed Country Designations under the Countervailing Duty Law*, 63 FR 29945 (June 2, 1998).

determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree ✓

Disagree \_\_\_\_\_

Paul Piquado  
Assistant Secretary  
for Import Administration

12 August 2013  
Date