



C-552-813
Investigation
POI: 1/01/2011 – 12/31/2011
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Office 8, Operations: JC/RC

DATE: December 17, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

RE: Countervailing Duty (CVD) Investigation: Certain Steel Wire
Garment Hangers from the Socialist Republic of Vietnam

SUBJECT: Issues and Decision Memorandum for the Final Determination

I. Summary¹

On June 4, 2012, the Department of Commerce (the Department) published the Preliminary Determination in the above-referenced CVD investigation.² The respondents in this investigation are the South East Asia Hamico Export Joint Stock Company (SEA Hamico), Nam A Hamico Export Joint Stock Company (Nam A), and Linh Sa Hamico Company Limited (Linh Sa) (collectively the Hamico Companies); and Infinite Industrial Hanger Limited (Infinite) and Supreme Hanger Company Limited (Supreme) (collectively the Infinite Companies).

On August 3, 2012, the Infinite Companies withdrew from the investigation.³ On August 8 through 10 and August 17, 2012, we conducted verification with the Government of Vietnam (GOV) in Hanoi and Ho Chi Minh City, covering land, tax and loan programs, and issued the verification report on October 22, 2012.⁴ From July 23 through July 27, 2012, we conducted verification with the Hamico Companies.⁵

¹ All Department memoranda produced for this segment of the proceeding and referenced in this Issues and Decision Memorandum are hereby incorporated in this Issues and Decision Memorandum.

² See 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) (Preliminary Determination).

³ See the Infinite Companies' August 3, 2012, letter titled Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Withdrawal from Investigation.

⁴ See Memorandum to the File, through Melissa Skinner, Director, Antidumping and Countervailing Duty Operations 3, from Robert Copyak, Senior Financial Analyst and John Conniff, Senior International Trade Analyst, , Antidumping and Countervailing Duty Operations, Office 3, regarding "Verification of the Questionnaire Responses Submitted by the Government of Vietnam" (GOV Verification Report) (October 22, 2012).

⁵ See Memorandum to Melissa Skinner, Director, Antidumping and Countervailing Duty Operations 3, through Eric Greynolds, Program Manager, Antidumping and Countervailing Duty Operations 3, from John Conniff, Senior International Trade Analyst, and Robert Copyak, Senior International Trade Analyst, Antidumping and



Petitioners, M&B Metal Products Company, Inc., Innovative Fabrication LLC/Indy Hanger, and US Hanger Company (collectively petitioners), submitted case and rebuttal briefs on October 29, 2012, and November 7, 2012, respectively. The GOV submitted case and rebuttal briefs on October 30, 2012, and November 5, 2012, respectively. The Hamico Companies and the Infinite Companies did not submit case briefs. A hearing was not held in this investigation as no interested party requested a hearing.

On December 4, 2012, the Department issued the Preliminary Critical Circumstances Determination in which it found that critical circumstances do not exist with respect to the Hamico Companies, in accordance with section 703(e)(1) of the Act.⁶ The Department further concluded that critical circumstances exist for the Infinite Companies and for imports from “all other” exporters of garment hangers from Vietnam.⁷ On December 7, 2012, Joobles LLC (Joobles), an importer of garment hangers, submitted comments regarding the Preliminary Critical Circumstances Determination.⁸ On December 10, 2012, the Department rejected Joobles’ critical circumstances submission because it contained untimely filed factual information.⁹ The Department invited Joobles to resubmit its comments with the untimely filed factual information removed; however, Joobles did not resubmit its comments. The Department has otherwise received no other comments regarding the Preliminary Critical Circumstances Determination.

The Department originally extended the deadline for this final determination until December 15, 2012. As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government on October 29 and 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final determination of this investigation is December 17, 2012.¹⁰

The “Subsidies Valuation Information,” “Use of Facts Otherwise Available and Adverse Inferences,” and “Analysis of Programs” sections below describe the subsidy programs and the methodologies used to calculate the countervailable benefits for each of the programs. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s positions on the issues raised in the briefs. Based on the comments received and our verification findings, we have made certain modifications to the Preliminary Determination. These modifications are discussed below. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties:

Countervailing Duty Operations 3, regarding “Verification Report for SEA Hamico” (Hamico Verification Report) (October 2, 2012).

⁶ See Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances, 77 FR 73430 (December 10, 2012) Preliminary Critical Circumstances Determination.

⁷ Id.

⁸ See Joobles December 7, 2012, submission.

⁹ See the Memorandum to the File, “Rejection Untimely Data from Joobles LLC,” (December 10, 2012).

¹⁰ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane” (October 31, 2012).

General Issues

- Comment 1: Whether the Department Should Assign a Rate Based on Total Adverse Facts Available to the Infinite Companies
- Comment 2: Whether Land Leased by SEA Hamcio Provided Countervailable Benefits to Hamico Companies
- Comment 3: Whether Unpaid Annual Rent on Land Leased by SEA Hamico and Used by Linh Sa Provided Countervailable Benefits to the Hamico Companies
- Comment 4: Whether Export Loans from VietinBank Provide a Government Financial Contribution
- Comment 5: Whether Import Duty Exemption or Reimbursements for Raw Materials are Countervailable
- Comment 6: Whether the Department Should Find the Newly Discovered Interest Support Program Countervailable

II. Subsidies 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, which corresponds to the GOV's and respondents' most recently completed fiscal year at the time we initiated this investigation. See 19 CFR 351.204(b)(2).

B. 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)-(v) 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 firm that received a subsidy is a holding or parent company of the subject company; (3) there is cross-ownership between an input supplier and a downstream producer and production of the input is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

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 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. See Fabrique de Fer de Charleroi v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (Fabrique).

The Hamico Companies¹¹

The Department selected the Hamico Companies as a mandatory respondent. The Hamico companies responded to the Department's questionnaires and were verified.

SEA Hamico, the primary company (Nam A. Hamico and Linh Sa Hamico were affiliates during the POI), was formed in 2003 as Dong Nam A Hamico, a name which it still retains in the Vietnamese language but uses "SEA Hamico" for exporting purposes. In 2008 SEA Hamico began to manufacture steel wire hangers for export. In 2009 SEA Hamico changed its name to SEA Hamico Export Joint Stock Company and had its initial stock offering in 2010.¹²

Pursuant to 19 CFR 351.525(b)(6)(vi), we determine that SEA Hamico, Linh Sa Hamico and Nam A Hamico are cross-owned because of common ownership. As such, for this determination, we have attributed any subsidy received by either SEA Hamico, Linh Sa Hamico or Nam A Hamico to the combined sales of the three companies, excluding inter-company sales. Hereinafter, we refer to SEA Hamico, Linh Sa Hamico and Nam A Hamico collectively as the Hamico Companies, unless otherwise indicated.

C. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. No interested party has claimed that the AUL of 12 years is unreasonable.

Further, 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 sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

D. Loan Benchmarks and Discount Rates

The Department has investigated loans received by the respondents from Vietnamese policy banks and state-owned commercial banks (SOCBs). The derivation of the benchmark used to value these subsidies is discussed below.

Short-Term VND-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a

¹¹ For the company information, see the Hamico's Companies' March 31, 2012, Questionnaire Response at 1-7.

¹² See SEA Verification Report, at 1-2.

benchmark.¹³ If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."¹⁴ Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

Based on record evidence available at the time of the Preliminary Determination, the Department determined that it required the use of a short-term benchmark denominated in U.S. dollars.¹⁵ However, based on information obtained since the issuance of the Preliminary Determination, we find that we also require a short-term benchmark denominated in the currency of Vietnam, the *dong* (VND), for calendar years 2010 and 2011.

In the Carrier Bags from Vietnam Preliminary Determination, the Department determined that loans provided by Vietnamese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.¹⁶ We determine that there is no information on the record of the instant investigation that warrants a reconsideration of this finding, which we incorporate by reference. Therefore, we continue to find that the benchmarks that are described under 19 CFR 351.505(a)(3)(i) and (ii) are not appropriate and that we must use an external, market-based benchmark interest rate.

For purposes of deriving an external, market-based benchmark interest rate, we have followed the methodology developed in CVD proceedings involving the People's Republic of China (PRC), in which the Department has made a similar finding regarding the banking sector and the need for an external benchmark. This methodology, which relies on data published by the World Bank and International Monetary Fund, was first developed in CFS Paper from the PRC¹⁷ and more recently updated in Thermal Paper from the PRC.¹⁸ Under this methodology, we first determine which countries are similar to the country in question, in this case Vietnam, in terms of gross national income (GNI), based on the World Bank's classification of countries as: low income, lower-middle income, upper-middle income, and high income. For 2010 and 2011, Vietnam fell in the lower-middle income (LMI) category,¹⁹ hence we selected the countries in the LMI range of the World Bank's GNI rankings for each year.

¹³ See 19 CFR 351.505(a)(3)(i).

¹⁴ See 19 CFR 351.505(a)(3)(ii).

¹⁵ See 77 FR at 32932.

¹⁶ See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR at 45811, 45814 (September 4, 2009) (Carrier Bags from Vietnam Preliminary Determination), which references a Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, "Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam A Review of Vietnam's Banking Sector" (August 28, 2009) (Vietnam Banking Memorandum). We have placed the Banking Memorandum on the record of the instant investigation. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Placement of Banking Memorandum on Record of Investigation," (May 29, 2012). The Department's conclusions in the Vietnam Banking Memorandum were not reversed as a result of the Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 75 FR 16428 (April 1, 2010) (Carrier Bags from Vietnam Final Determination), and accompanying Issues and Decision Memorandum (Carrier Bags from Vietnam Decision Memorandum) at "Application of Facts Otherwise Available and AFA for API and Fotai."

¹⁷ See CFS Decision Memorandum at Comment 10.

¹⁸ See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (Thermal Paper from the PRC), and accompanying Issues and Decision Memorandum (Thermal Paper Decision Memorandum) at 8-10.

¹⁹ See World Bank Country Classification, <http://econ.worldbank.org/>

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 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 Paper from the PRC, the regression captures the broad inverse relationship between income and interest rates. By limiting the analysis to the pool of countries within the GNI range of the country in question, the analysis yields a reasonable inference for the country in question.

Many of the countries in the World Bank’s LMI category 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 “lower middle income” for 2010 and 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. 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.²⁰ Finally, for each year, the Department calculated a short-term benchmark rate that is net of inflation, and we have excluded from the regression any countries that had aberrational or negative real interest rates for the year in question. For the years 2010 and 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.²¹ As stated above, the short-term benchmark is net of inflation. 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 rate that Vietnam reported to the IFS.

For countervailable short-term loans denominated in U.S. dollars, we have continued to follow the methodology developed over a number of successive PRC investigations. Specifically, for U.S. dollar loans, the Department used as a benchmark the one-year dollar interest rates from the London-Interbank Offered Rate (LIBOR) indexes, plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating.

E. Benchmarks for Land

Section 351.511(a)(2) of the Department’s regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided 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; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

²⁰ 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.

²¹ This is consistent with the Department’s approach in prior cases where a regression-based analysis was used to determine an external interest rate benchmark. For a fuller explanation of the details and rationale for that approach, see e.g., *CFS Paper from PRC*.

In Carrier Bags from Vietnam Preliminary Determination, the Department also examined land rent exemptions and established an external benchmark for land in Vietnam.²² The Department explained that it could not rely on the use of so-called “first-tier” and “second-tier benchmarks” to assess the benefits from the provision of land at LTAR in Vietnam. The Department also determined that the purchase of land-use rights in Vietnam is not conducted in accordance with market principles.²³ Therefore, in selecting a benchmark for land, the Department analyzed comparable market-based prices in another country at a comparable level of economic development within the geographic vicinity of Vietnam. As a result of this analysis, the Department selected the cities of Pune and Bangalore in India as providing the closest match among options on the record to Vietnam in terms of per capita GNI and population density, and derived a simple average of all rental rates for industrial property in both cities to use as the appropriate land benchmark for Vietnam.²⁴ The Department retained this methodology in the Carrier Bags from Vietnam Final Determination.²⁵ In the instant investigation, we used this same land benchmark methodology,²⁶ and we find no information on the record that warrants a revision for the final determination. Therefore, we continue to find that we cannot rely on the use of “first” and “second-tier” benchmarks for purposes of the land for LTAR benchmark because the GOV continues to retain land-use pricing authority (including lease rates) for land leased directly from the government, restrictions are still in place with regard to land that is sub-leased by private parties, and the land-use contracts held by private parties, that serve as the basis for sub-leases, have been granted by government agencies that have been set under government decrees.²⁷ For the same reasons, we further continue to find that that the purchase of land-use rights in Vietnam is not conducted in accordance with market principles.

Accordingly, to measure the benefit for land for LTAR in the final determination, we are using a land benchmark based on the rental rates for industrial property in Pune and Bangalore. Using the same data sources used in Carrier Bags from Vietnam Final Determination, we sought 2011 data on those rental rates. We find that the 2008 data from Carrier Bags from Vietnam Final Determination remain the latest data available. Therefore, we are using the same simple average of all rental rates for industrial property in the cities of Pune and Bangalore that was calculated in Carrier Bags from Vietnam Final Determination, indexed forward to 2011 using consumer price index data for Vietnam, as published by the International Monetary Fund.

²² See Carrier Bags from Vietnam Preliminary Determination, 74 FR at 45815, unchanged in Carrier Bags from Vietnam Final Determination. See Carrier Bags from Vietnam Decision Memorandum at “Land Rent Reduction or Exemption for Exporters.”

²³ See Carrier Bags from Vietnam Preliminary Determination, 74 FR at 45815, referencing the Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Land Markets in Vietnam (August 28, 2009) (Land Market Memorandum). We have placed the Land Market Memorandum on the record of the instant investigation. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, Placement of Land Market Memorandum on Record of Investigation, (May 29, 2012).

²⁴ See Carrier Bags from Vietnam Preliminary Determination, 74 FR at 45816.

²⁵ See Carrier Bags from Vietnam Decision Memorandum at Land Rent Reduction or Exemption for Exporters, footnote 23.

²⁶ See Preliminary Determination, 77 FR at 32932.

²⁷ See Land Memorandum at 6.

III. Use of Facts Otherwise Available and Adverse Inferences

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As noted above, on August 3, 2012, the Infinite Companies withdrew from the investigation.²⁸ As a result, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for the Infinite Companies on facts otherwise available. We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By withdrawing from the investigation the Infinite Companies failed to cooperate by not acting to the best of their ability. Accordingly, we find that an adverse inference is warranted to ensure that the Infinite Companies will not obtain a more favorable result than if they had fully complied with our request for information.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”²⁹ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁰

The Department has developed a hierarchy that it uses in CVD proceedings to derive the net subsidy rate assigned to firms for which total AFA is being applied.³¹ Under this hierarchy, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior CVD cases involving the country at issue. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, the Department uses the highest non-de minimis rate calculated for the same or

²⁸ See the Infinite Companies’ August 3, 2012 letter titled “Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Withdrawal from Investigation.”

²⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998)

³⁰ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

³¹ See Lightweight Thermal Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (LWTP from the PRC), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at “Selection of the Adverse Facts Available Rate.”

similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-de minimis subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.³²

We have applied the CVD AFA methodology described above to the Infinite Companies with regard to all programs on which the Department initiated an investigation. Further, where the GOV can demonstrate through complete, verifiable, positive evidence that the Infinite Companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for those companies.³³ However, we find that in this investigation the GOV has not provided any such information. Therefore, we are making the adverse inference that the Infinite Companies had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs on which the Department initiated.

For the two income tax rate reduction or exemption programs at issue in the instant investigation, we are applying an adverse inference that the Infinite Companies paid no income taxes during the POI. The two programs are: (1) Income Tax Preferences for FIEs; and (2) Income Tax Preferences for Enterprises in Industrial Zones. The standard income tax rate for corporations in Vietnam filing income tax returns during the POI was 25 percent.³⁴ Therefore, we are applying a CVD rate of 25 percent on an overall basis for these two income tax programs (*i.e.*, these two income tax programs combined provide a countervailable benefit of 25 percent). This approach is consistent with the Department's past practice.³⁵

The 25 percent AFA rate does not apply to the following income tax credit, refund, rebate or accelerated depreciation programs found countervailable because such programs may not affect the tax rate and, hence, the subsidy conferred, in the current year: (1) Import Duty Exemptions for Raw Materials for Exported Goods; (2) Import Duty Preferences for FIEs; (3) Import Duty Exemptions on Imports of Goods for Encouraged Projects, and (4) Income Tax Refund for Reinvestment by FIEs program. The Hamico Companies used the Import Duty Exemptions for Raw Materials for Exported Goods program during the POI. Therefore, pursuant to the CVD methodology discussed above, we have assigned the net subsidy rate calculated for the Hamico Companies under the program, 4.46 percent ad valorem, to the Infinite Companies.

The Hamico Companies did not use the three remaining non-income exemption/reduction tax programs during the POI, and therefore we lack identical matches for these programs. Therefore, for each of the three remaining programs we have determined to use the highest non-de minimis subsidy rate calculated for the same or similar program (based on treatment of the

³² Id.

³³ See, e.g., Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (Racks from the PRC), and accompanying Issues and Decision Memorandum (Racks Decision from the PRC Decision Memorandum) at "Use of Facts Otherwise Available and Adverse Facts Available."

³⁴ See the Law on Corporate Income Tax No 14/2008/QH12 as included in the GOV's March 30, 2012, initial questionnaire response at Exhibit 68.

³⁵ See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) (CWP from the PRC), and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at 2, and LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate."

benefit) in another Vietnamese CVD proceeding. That rate is 2.17 percent ad valorem, calculated for the “Import Duty Exemptions for Imported Raw Materials for Exported Goods” program in Carrier Bags from Vietnam Final Determination.³⁶

Regarding the Preferential Lending to Exporters program, the Hamico Companies used the program during the POI. Therefore, we have assigned the net subsidy rate calculated for the Hamico Companies under the program, 0.79 percent ad valorem, to the Infinite Companies.

Regarding the Land Preferences for Enterprises in Encouraged Industries or Industrial Zones program, the Hamico Companies used the program during the POI. Therefore, we have assigned the net subsidy rate calculated for the Hamico Companies under the program, 25.41 percent ad valorem, to the Infinite Companies.

The following four LTAR programs were not used by the Hamico Companies during the POI: Land Rent Reduction/Exemption for Exporters program, Land-Rent Reduction or Exemption for Foreign Invested Enterprises (“FIEs”) program, Water for LTAR to Enterprises in Industrial Zones program, and Provision of Wire Rod to Enterprises for LTAR program. Therefore, consistent with our AFA CVD methodology, we examined prior CVD proceedings involving Vietnam for a same or similar program (in terms of treatment of the benefit). That rate is 0.71 percent ad valorem, calculated for the “Land Rent Reduction/Exemption for Exporters” program in Carrier Bags from Vietnam Final Determination.³⁷ We have applied this subsidy rate to each of these four programs.

The Export Promotion Grant program was not used by the Hamico Companies during the POI. Therefore, consistent with our AFA CVD methodology, we examined prior CVD proceedings involving Vietnam for a same or similar program (in terms of treatment of the benefit). The Department has not calculated above de minimis rates for any grant programs from prior CVD proceedings involving Vietnam. Therefore, consistent with the CVD AFA methodology, for this program we have determined to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the Infinite Companies. The highest net subsidy rate calculated in a CVD proceeding involving Vietnam is the 25.41 percent ad valorem rate calculated for the Hamico Companies in this investigation under the Land Preferences for Enterprises in Encouraged Industries or Industrial Zones program.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³⁸ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes that the Department need not prove that the information selected as facts available are the best alternative information.³⁹

Regarding the reliability of corroboration of the rates selected, we note that the rates selected were calculated in the instant and prior CVD determinations involving Vietnam.

³⁶ See Carrier Bags from Vietnam Decision Memorandum at “Import Duty Exemptions for Imported Raw Materials for Exported Goods.”

³⁷ See Carrier Bags from Vietnam Decision Memorandum at “Land Rent Reduction/Exemption for Exporters.”

³⁸ See SAA at 870, 1994 U.S.C.C.A.N. at 4199.

³⁹ See SAA at 869.

Further, the calculated rates were based upon verified information about the same or similar programs. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there are typically no independent sources for data on company-specific programs resulting from countervailable subsidy programs.

Regarding the relevance of the corroboration of the rates selected, the Department considers information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that information is not appropriate for use as AFA, the Department will not use it.⁴⁰

As discussed above, the lack of information concerning the extent to which the Infinite Companies benefited from the programs under examination is a consequence of the decision of the Infinite Companies to withdraw from the investigation. Therefore, we have reviewed the information concerning subsidy programs in the instant and prior CVD proceedings involving Vietnam. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any Vietnamese program from which the non-cooperative mandatory respondents could receive a benefit, to use as AFA. The relevance of these rates is that it is an actual calculated CVD rate for a Vietnamese program from which the Infinite Companies could actually receive a benefit. Further, these rates were calculated for periods inside or close to the POI in this case. In addition, the failure of the Infinite Companies to participate in the investigation has “resulted in an egregious lack of evidence on the record to suggest an alternative rate.”⁴¹ Due to the lack of participation by the Infinite Companies and the resulting lack of record information concerning their use of the programs under investigation, the Department has corroborated the rates it selected to use as AFA to the extent practicable.

On this basis, we determine, pursuant to AFA, the total net subsidy rate for the Infinite Companies to be 90.42 percent ad valorem.⁴²

IV. Critical Circumstances

In the Preliminary Critical Circumstances Determination, the Department concluded that critical circumstances do not exist with respect to the Hamico Companies, in accordance with section 703(e)(1) of the Act.⁴³ However, the Department also concluded that critical circumstances exist for the Infinite Companies and for imports from “all other” exporters of garment hangers from Vietnam.⁴⁴ As explained above, Joobles submitted comments regarding

⁴⁰ See, e.g., Wire Decking from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32902 (June 10, 2010) (Wire Decking from the PRC), and accompanying Issues and Decision Memorandum (Wire Decking from the PRC Decision Memorandum) at “Application of Adverse Inferences: Non-Cooperative Companies.”

⁴¹ See Shanghai Taoen Int’l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (Shanghai Taoen).

⁴² See the memorandum to the file titled “Derivation of Adverse Facts Available (AFA) Net Subsidy Rate Applied in Final Determination” (December 17, 2012).

⁴³ See Preliminary Critical Circumstances Determination, 77 FR at 73430.

⁴⁴ Id.

the Preliminary Critical Circumstances Determination.⁴⁵ However, on December 10, 2012, the Department rejected Joobles' critical circumstances submission because it contained untimely filed factual information.⁴⁶ Joobles did not resubmit its comments. The Department has otherwise received no other comments.

Because there are no comments on the record, we have not changed our findings from the Preliminary Critical Circumstances Determination. Therefore, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports from the Infinite Companies and "all other" exporters of garment hangers from Vietnam.

V. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Land Preferences for Enterprises in Encouraged Industries or Industrial Zones

Decree No. 142/2005/NC-CP (Decree 142) of November 14, 2005, provides for the collection of land rents and water surface rents in connection with land leased by the GOV.⁴⁷ Decree 142 states that land rent shall be reduced or exempted under certain circumstances enumerated under the law and also where the Prime Minister determines it is appropriate to do so, based on the recommendation of the agency heads and provincial and municipal governments.⁴⁸ For example, Decree 142 provides for land exemptions for firms located in certain geographical areas facing socio-economic difficulties.⁴⁹

The Hamico Companies reported that on January 12, 2004, the GOV's Department of Natural Resources and Environment granted SEA Hamico land-use rights for its facility in the Chau Son Industrial Zone Area located in Phuong Le Hong Phong, Phu Ly City of Ha Nam Province. The Hamico Companies state that SEA Hamico signed a "new land lease contract" with the GOV with regard to the same plot of land on August 11, 2009. The lease contract in effect during the POI establishes an annual rent charged to SEA Hamico. The lease contract further specifies that the annual rent is subject to the provisions of Decree 142.⁵⁰ However, the preferential investment certificate issued to SEA Hamico indicates that SEA Hamico is exempted from paying the annual rent on the land for ten years, a period that extends into the POI, and shall enjoy a 50 percent reduction in rent during the second ten years of the lease.⁵¹ Further, Decision No. 2459/QD-CT, December 28, 2011, (Decision No. 2459) issued by the GOV's Department of Taxation of Ha Nam Province specifies the amount of rent exemption that SEA Hamico received during the POI.⁵² Decision No. 2459 states that the rent exemption was provided pursuant to the "encouraged investment provisions" of Article 14.4 of Decree 142, which deals with rent exemptions provided to investment projects located in geographic areas facing socio-economic difficulties.⁵³

⁴⁵ See Joobles December 7, 2012, submission.

⁴⁶ See the Memorandum to the File, "Rejection Untimely Data from Joobles LLC," (December 10, 2012).

⁴⁷ See the GOV's March 30, 2012, Questionnaire Response at Exhibit 34.

⁴⁸ Id. at Articles 13 - 15.

⁴⁹ Id. at Article 14.

⁵⁰ See the Hamico Companies' April 2, 2012, Questionnaire Response, Exhibit 7 at 15.

⁵¹ See The GOV's March 30, 2012, Questionnaire Response at Exhibit 43.

⁵² Id. at Exhibit 47.

⁵³ Id. at Exhibit 34.

The Hamico Companies report that Nam A also received exemptions on annual lease payments in connection with its land lease with the People’s Committee of Ha Nam Province during the POI.⁵⁴ The Hamico Companies state that Nam A’s benefit is “similar” to that received by SEA Hamico in that the GOV provided the lease exemption contingent upon Nam A leasing land in a geographically designated area.⁵⁵

After the Preliminary Determination, the Hamico Companies reported that Linh Sa also received exemptions on annual lease payments in connection with a land lease with the People’s Committee of Nam Dinh Province during the POI for land located in the Hoa Xa Industrial Zone.⁵⁶ SEA Hamico held the lease on the land and rented it back to Linh Sa. As the lease holder, SEA Hamico, in turn, was the entity ultimately responsible for paying the lease payments to Provincial authorities. Record evidence indicates that SEA Hamico made no payments to the Provincial authority during the POI.⁵⁷ We find that the Hamico Companies received this rent exemption in connection with Linh Sa’s location in an industrial zone.⁵⁸

As explained above, we have adopted January 11, 2007, the date on which Vietnam became a member of the WTO, as the date from which the Department will identify and measure subsidies in Vietnam. Concerning land directly leased and used by SEA Hamico, the lease contract was signed prior to the cut-off date. However, as indicated by the Hamico Companies, SEA Hamico signed a “new lease contract” with the GOV concerning the plot of land at issue on August 11, 2009, which established the relevant terms of the lease after the cut-off date. Therefore, we are including this lease contract for purposes of our subsidy analysis.

Information on the record indicates that SEA Hamico, Nam A, and Linh Sa received the rent exemptions because the land plots were located in designated geographical areas and, thus, we determine that the exemptions are specific under section 771(5A)(D)(iv) of the Act. We also determine that these rent exemptions constitute a financial contribution, in the form of a provision of a good, within the meaning of section 771(5)(D)(iii) of the Act, which confer a benefit in accordance with section 771(5)(E) of the Act and 19 CFR 351.511(a).

We find that the Hamico Companies’ land contracts with the GOV did not require lump-sum payments at the time the original leases were signed. Rather, the contracts call for annual rent payments, which the GOV subsequently exempted. Thus, in accordance with 19 CFR 351.524(c)(1), we determine that the rent exemptions received by the Hamico Companies constitute recurring subsidies. Therefore, pursuant to 19 CFR 351.524(a), we have allocated benefits from the rent exemptions to the year in which the exemptions were received. See also 351.511(b). As a result, for purposes of this determination, we have limited the benefit calculations to the rent exemptions received by the Hamico Companies during the POI.

As discussed above in the “Land Benchmark” section, we continue to find that land prices in Vietnam are not based on market principles, consistent with the findings in the Carrier Bags from Vietnam Final Determination, which we incorporate by reference.

Consequently, we continue to find that we cannot rely on the use of “first” and “second-tier” benchmarks for purposes of the land for LTAR benchmark and, as was done in

⁵⁴ See the Hamico Companies May 16, 2012, supplemental questionnaire response at 5 and Exhibit 3, which contains Nam A’s lease contract.

⁵⁵ Id. at 5.

⁵⁶ See the Hamico Companies June 20, 2012, supplemental questionnaire response at 1 and Exhibit 1 which contains Linh Sa’ lease contract.

⁵⁷ Id.

⁵⁸ See the SEA Hamico May 22, 2012, supplemental questionnaire response at Exhibit 1 at Article 8, which contains the Certificate on Investment corresponding to the land Linh Sa leased in the Hoa Xa Industrial Zone.

Carrier Bags from Vietnam Final Determination, we must use a benchmark based on comparable market-based prices outside Vietnam. Therefore, for purposes of this determination, we have used as our benchmark the calculated average of the rental rates for Pune and Bangalore, which corresponds to \$6.088 per square meter per month.⁵⁹ This rate corresponds to rental prices during calendar year 2008, which we determine to be the latest such data available. Therefore, in our calculations, we indexed the 2008 price into a 2011 price using consumer price index data for India, as published by the International Monetary Fund.

To calculate the benefit, we multiplied the land benchmark discussed above by the total area of the land plots at issue. In this manner, we derived the benefit attributable to the land lease exemptions enjoyed by the Hamico Companies during the POI. To calculate the net subsidy rate, we converted the benefits into VND and divided the total benefit by the total sales of the Hamico Companies, net of intra-company sales. On this basis, we determine the net countervailable subsidy to be 25.41 percent ad valorem for the Hamico Companies.

2. Corporate Income Tax Reductions for Newly Established Investment Projects

We initiated an investigation of corporate income tax exemptions and reductions pursuant to alleged income tax preferences in industrial zones, and sought relevant information from the GOV and the respondents. The Hamico Companies reported that SEA Hamico received a 50 percent reduction in income taxes payable with regard to the 2010 tax return that it filed during the POI. The 2010 tax returns of Nam A and Linh Sa indicated that the firms were in a tax-loss position and, therefore, had no taxable income to exempt.

Information from the Hamico Companies and the GOV indicate that SEA Hamico received the exemption pursuant to the 1997 Law on Enterprise Income Tax, No. 57/L-CTN (Law No. 57), Law on Domestic Investment Encouragement, No. 03/1998/QH10 (Law No. 03) and the Implementing Decree of Law on Domestic Investment Encouragement of 1998, Decree No. 51/1999/ND-CP (Decree No. 51).⁶⁰ This income tax exemption is also referenced in the certificate of investment incentives issued to SEA Hamico by the People's Committee of Ha Nam Province.⁶¹

The investment certificate identifies the applicable laws and regulations, including Law No. 57, Law No. 3, and Decree 51, but does not identify the specific sections of the laws or decree. The GOV stated that this entitlement is based on Law No. 3, Article 15.7, "Branches and trades that should be given priority in each period of socio-economic development."⁶² Therefore, in the Preliminary Determination, the Department found that this program was specific to a group of enterprises as described under section 771(5A)(D)(i) of the Act.⁶³ However, we found that Article 15 of Law 3 contains other investment activities with equal entitlement to the same incentives, e.g., Article 15.3, investment projects related to "the production of and trading in export goods," under which Hamico could also qualify for the same exemption and reduction in income tax.⁶⁴ There are a number of eligibility criteria under Article

⁵⁹ See Land Memorandum.

⁶⁰ See the GOV's May 22, 2012, Supplemental Questionnaire Response at 3; see also the Hamico Companies' May 14, 2012, questionnaire response, Exhibit 1 at 9.

⁶¹ Id. at Exhibit 4.

⁶² See the GOV's May 22, 2012, Supplemental Questionnaire Response at 3 – 4.

⁶³ See Preliminary Determination, 77 FR at 32934.

⁶⁴ See the GOV's May 22, 2012, Supplemental Questionnaire Response at 3; see also the Hamico Companies' May 14, 2012, questionnaire response, Exhibit 1 at 9.

15 of Law No. 3, which include export activities. Consequently, we stated in the Preliminary Determination that we would continue to investigate the precise basis on which SEA Hamico received these incentives.⁶⁵ Since the Preliminary Determination, we have seen no information demonstrating that SEA Hamico received these incentives specifically on the basis of the “branches and trades” provision, or some other non-export contingent provision. Consequently, we find that export performance is one of several conditions under which SEA Hamico received these incentives. Therefore, we are revising our specificity finding regarding this program. We determine that benefits under this program are specific under section 771(5A)(B) of the Act because we find that export performance is among the eligibility criteria under Article 15 of the relevant law.

We further determine that the income tax reduction and exemption 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 SEA Hamico in the amount of tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).

To calculate the net subsidy rate, we divided the amount of SEA Hamico’s tax savings, as indicated on the 2010 tax return it filed during the POI, by the combined total export sales of SEA Hamico, Nam A, and Linh Sa, net of intra-company sales. On this basis, we determine a net countervailable subsidy rate of 0.92 percent ad valorem for the Hamico Companies.

3. Import Duty Exemptions or Reimbursements for Raw Materials

Duty exemptions on raw materials are addressed in the Law on Import Duty and Export Duty, Law No. 45/2005/QH-11 (Law No. 45) and Decree No. 87/2010/ND-CP (Decree 87).⁶⁶ Specifically, under Law No. 45, Chapter IV, import duty exemption is provided for “raw materials and supplies used for manufacture of equipment and machinery” (Article 16.6(d)) and “Raw materials, supplies and accessories imported for production activities of investment projects on the list of domains where investment is particularly encouraged or the list of geographical areas meeting with exceptional socio-economic difficulties” (Article 16.9).⁶⁷ We find that the raw materials may also be imported duty-free under Article 16.4, “goods imported for processing for foreign partners then exported or goods exported to foreign countries for processing for Vietnam then re-imported under processing contracts.”⁶⁸ Additionally, Article 19 provides for reimbursement of duties on raw materials or supplies imported for the production of export goods, for which import tax has been paid.⁶⁹

Decree No. 87, enacted in August 2010 reflects the implementation of Law No. 45 that was in effect during the POI.⁷⁰ Article 12 of Decree 87 provides additional detail for the duty exemptions on raw materials originally provided under Law No. 45. Articles 12.6(d) and 12.14 specify that the exemptions for “raw materials and supplies used for manufacture of equipment and machinery” and “raw materials, supplies and accessories imported for production activities of investment projects on the list of domains where investment is particularly encouraged or the list of geographical areas meeting with exceptional socio-economic difficulties” will apply only

⁶⁵ See Preliminary Determination, 77 FR at 32934.

⁶⁶ See the GOV’s March 30, 2012, questionnaire response at Exhibits 60.

⁶⁷ Id. at Exhibit 60.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id. at Exhibit 61.

where such raw materials and supplies “cannot be domestically produced yet.”⁷¹ With regard to “goods imported for processing for foreign parties,” Article 12.4 leaves the import duty exemption unchanged, but adds that the exported processed products are also exempt from export duty.

During the POI SEA Hamico and Linh Sa received duty exemptions on raw materials. Nam A did not import raw materials during the POI.

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 to confirm which inputs are consumed in production and in what amounts; otherwise, the exemptions confer a benefit equal to the total amount of duties exempted. In the Retail Carrier Bags from Vietnam Final Determination, 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.⁷² No information on the record of the instant proceeding warrants a reconsideration of that finding; therefore, 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 receipt of import duty exemptions on raw materials were contingent upon export performance as one or more criteria, we determine that they are specific in accordance with section 771(5A)(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.

To calculate the benefit, we summed the amount of duties saved during the POI. To calculate the net subsidy rate, we divided the benefit by respondents’ total export sales, net of intra-company sales. On this basis, we determine a net countervailable subsidy rate of 4.46 percent ad valorem for the Hamico Companies.

4. Preferential Lending to Exporters

The Hamico Companies reported that SEA Hamico and Linh SA had loans outstanding during the POI that were issued by the Vietnam Joint Stock Commercial Bank for Industry and Trade (VietinBank) as well as an additional lending institution.⁷³ The GOV states that SEA Hamico and Linh Sa received these loans in connection with an “export loan program” operated by the respective lending institutions.⁷⁴ According to the GOV, under this program, the lending institutions offered “supported” interest rates to exporters, provided that they use the proceeds of the loan in the manner specified in the contract, follow the payment schedule specified in the contract, conduct payment for exporting through the lending institution, and sell the foreign exchange earned from the export sale through the lending institution.⁷⁵ Regarding the VietinBank, information from the GOV specifically indicates that VietinBank offered the

⁷¹ Id.

⁷² See Carrier Bags from Vietnam Decision Memorandum at “Import Duty Exemptions for Imported Raw Materials for Exported Goods.”

⁷³ See the Hamico Companies’ April 2, 2012, questionnaire response at Attachment 1; see also the Hamico Companies May 22, 2012, Supplemental Questionnaire Response at Attachment I, which contains the loan information of the additional lending institution. The identity of this lending institution is business proprietary.

⁷⁴ See the GOV’s March 30, 2012, questionnaire response at 24.

⁷⁵ Id.

“preferential” interest rates to exporters in an effort to implement its “Export Loan Program.”⁷⁶ The Hamico Companies reported that Nam A did not have any loans outstanding during the POI. The Infinite Companies similarly reported that they did not have any loans outstanding during the POI.

In past CVD proceedings involving Vietnam, the Department has found VietinBank to be a state-owned commercial bank (SOCB) and thus, a government authority capable of providing a financial contribution as described under section 771(5)(D)(i) of the Act.⁷⁷ Information provided by the GOV indicates that it owned approximately 80 percent of VietinBank during the POI.⁷⁸ Hence, we continue to find that VietinBank is a government authority. Therefore, we preliminarily determine that the loans issued to SEA Hamico and Linh Sa by VietinBank constitute a financial contribution by a government authority within the meaning of section 771(5)(D)(i) of the Act. Regarding the additional lending institution, because the Hamico Companies identified loans outstanding from this institution as financing offered “under the export loan program” we find, for purposes of the final determination, that such loans constitute a financial contribution by a government authority within the meaning of section 771(5)(D)(i) of the Act.

We continue to find that, pursuant to section 771(5)(E)(ii) of the Act, loans issued to SEA Hamico and Linh Sa under this program confer a benefit equal to the difference between what the recipients paid on the loans from the lending institutions and the amount they would have paid on comparable, commercial loans. In determining the amount SEA Hamico and Linh Sa would have paid on comparable, commercial loans, we employed the interest rate benchmark discussed above in the “Interest Rate Benchmark” section. Information from the GOV indicates that receipt of the VietinBank loans are contingent, in part, upon export activities and, thus, we preliminarily determine that this program is specific under section 771(5A)(B) of the Act.

Next, we summed the benefit calculated on each loan the firms had outstanding under the program during the POI and divided the total benefit by the combined total export sales of SEA Hamico, Nam A, and Linh Sa, net of intra-company sales. On this basis, we determine a net countervailable subsidy rate of 0.79 percent ad valorem for the Hamico Companies.

⁷⁶ See the GOV’s May 16, 2012, supplemental questionnaire response at Exhibit 2.

⁷⁷ See Carrier Bags from Vietnam Preliminary Determination, 74 FR at 45817. The Department’s finding that VietinBank was a government authority operating as a SOCB was not reversed as a result of the Carrier Bags from Vietnam Final Determination. See Carrier Bags from Vietnam Decision Memorandum at “Application of Facts Otherwise Available and AFA for API and Fotai.”

⁷⁸ See the GOV’s May 16, 2012, supplemental questionnaire response at 4.

B. Programs Determined Not To Provide Countervailable Benefits During the POI

1. Import Duty Exemptions on Imports of Goods for Encouraged Projects

Article 12.6 of Decree 87 allows firms with investment in encouraged projects and/or located in certain geographical areas (which includes industrial zones) to receive duty exemptions on import of goods to create fixed assets and equipment. SEA Hamico and Linh Sa are located in industrial zones. The Hamico Companies reported that they qualified for duty exemptions under the program. However, the record information indicates that the equipment that the Hamico Companies imported were already zero-rated under Vietnam's tariff schedule. Hence, absent the program, they still would have paid no import duties on the equipment. Therefore, the program conferred no benefits to the Hamico Companies during the POI.

C. Programs Determined To Be Not Used During the POI⁷⁹

1. Grants to Firms that Employ More than 50 Employees

The GOV self-reported the existence of this program in which it provides grants to firms that employ more than 50 employees. See the GOV's March 30, 2012, questionnaire response at 101. The GOV further reported that the Hamico Companies may have received benefits under the program given that the investment certificate for Nam A indicates that Nam A is eligible to receive funds under the program. Id.; see also the Hamico Companies' May 14, 2012, questionnaire response at Exhibit 5, which contains Nam A's investment certificate.

The Hamico Companies, however, reported that although they were eligible to participate in the program, they have not received any funds under the program from the GOV. See the Hamico Companies May 16, 2012, questionnaire response at 7. This was confirmed by the Department at verification. On this basis, we have determined that this program was not used by the Hamico Companies.

2. Provision of Water for LTAR

Source documents for SEA Hamico indicate that it paid water fees to the GOV during the POI and that these fees were the same as fees charged generally to businesses engaged in commercial and production activities, as set by the provincial government. See the Hamico Companies' April 2, 2012, questionnaire response at 28 and Exhibits 11 – 13. Concerning Nam A, its investment certificate provides that it is eligible to receive exemptions on its "water rent." See the Hamico Companies' May 14, 2012, questionnaire response at Exhibit 5. However, despite qualifying for such an exemption, the Hamico Companies state that Nam A did not use the program because it did not use "surface water" (i.e., water drawn from GOV sources) in its production process. See the Hamico Companies' May 16, 2012, questionnaire response at 6 – 7. Notwithstanding the Hamico Companies' claims regarding Nam A, information from the Hamico Companies indicates that Nam A paid water fees to the GOV during the POI. However, as with SEA Hamico, these fees were the same as the fees charged generally to businesses engaged in commercial and production activities, as set by the provincial government. See the

⁷⁹ The Department's findings in this section pertain to the participating mandatory respondent, the Hamico Companies.

Hamico Companies May 22, 2012, Supplemental Questionnaire Response at Exhibit 9. Similarly, information from Linh Sa and the GOV indicates that the firm paid the same water rate charged generally to businesses engaged in commercial and production activities. See the GOV's March 30, 2012, Questionnaire response at Exhibit 3 and the Hamico Companies' May 22, 2012, Supplemental Questionnaire Response at Exhibit 10. Therefore, we continue to determine that the provision of water is not specific to the industrial zones in which the respondents are located, and find that the Hamico Companies did not use the program.

3. Provision of Wire Rod for LTAR

The Hamico Companies state that they did not purchase wire rod from Vietnamese sources during the POI. Instead, they report that they either imported wire rod from foreign sources or purchased wire, not wire rod, from domestic sources.

The allegation on which the Department initiated its investigation centers on the provision of wire rod, not drawn wire. We find that wire is a good that is distinct from wire rod. On this point, we note that the Hamico Companies have submitted source documents (e.g., invoices) which indicate the specifications (e.g., diameter) of the wire they purchased from domestic sources during the POI. See the Hamico Companies' May 16, 2012, supplemental questionnaire response at Exhibits 1 – 4. Our review of these source documents, confirms our finding that the inputs the Hamico Companies purchased from domestic sources constitute wire products and not wire rod. This was confirmed by the Department at verification. On this basis, we continue to find that the Hamico Companies did not use the provision of wire rod for LTAR program during the POI.

4. Export Promotion Program
5. Land Rent Reduction/Exemption for Exporters
6. Land-Rent Reduction or Exemption for Foreign Invested Enterprises (“FIEs”)
7. Income Tax Preferences for FIEs
8. Income Tax Refund for Reinvestment by FIEs
9. Income Tax Preferences in Industrial Zones
10. Import Duty Preferences for FIEs

D. Program for Which More Information is Needed

1. Medium- and Long-Term Loan Interest Support Program

At the verification of the Hamico Companies, we discovered that certain medium- and long-term loans received by Hamico were provided under a government interest support program. Specifically, SEA Hamico's loan contracts indicate that the company's loans were provided pursuant to the Prime Minister Decision No. 443/QD-TTg and SBV Circular No. 05/2009/TT-NHNN.

We met with SBV officials and discussed the program. According to the SBV officials, this program was included in a set of measures that were issued on December 11, 2008, and designed to improve the economy. These measures were set forth in Resolution No. 30/2008/NQ-CP entitled "On Urgent Measures to Curb Economic Decline, Maintain Economic Growth and Ensure Social Welfare" and, the program is set forth in section III.2 pertaining to monetary policies. The program was also administered under Prime Minister Decision No. 131/QD-TTg (January 23, 2009), Prime Minister Decision No. 333/QD-TTg (March 10, 2009), and SBV Circular No. 05/2009/TT-NHNN, which was issued by the SBV on April 7, 2009, and is entitled "Providing in Details for the Implementation of Giving Interest Rate Support to Organizations, Individuals that Borrow Medium, Long Term Loans from Banks to Make New Investments for Productions and Business Development." We collected copies of all of these documents.⁸⁰

Because the nature of this program did not become clear until late in this proceeding, the Department lacks a comprehensive record with regard to this program. Therefore, we are not including an analysis of this program in this final determination. If this proceeding results in a countervailing duty order, we will examine this program in the next administrative review, if one is requested.

VI. Analysis of Comments

Comment 1: Whether the Department Should Assign a Rate Based on Total Adverse Facts Available to the Infinite Companies

Petitioners' Arguments:

- After the Department released its Preliminary Determination, the Infinite Companies, a mandatory respondent, notified the Department that it was withdrawing from this investigation and that it will not be participating in the verification.
- The governing statute states that if an interested party withholds information, provides information which cannot be verified, or significantly impedes the proceeding, the Department "shall . . . use the facts otherwise available in reaching the applicable determination." Further, if the Department finds that a respondent "has failed to cooperate by not acting to the best of its ability" to provide requested information, the Department may use an adverse inference in selecting among the facts otherwise available.

⁸⁰ See GOV Verification Report at 6.

- Because the Infinite Companies withdrew from the investigation, thereby preventing the Department from verifying any of the information submitted by the respondent and preventing the Department from making a determination on the basis of any such information, they impeded the investigation and failed to cooperate to the best of their ability. Under these circumstances, the Department should resort to the use of AFA to assign a final countervailing duty rate to the Infinite Companies.
- In other investigations where a respondent has refused to participate in verification, the Department has applied AFA to select an appropriate countervailing duty rate. For example, in Galvanized Steel Wire from the PRC, two mandatory respondents notified the Department that they would not participate in verification.⁸¹ In Galvanized Steel Wire from the PRC, the Department found that an adverse inference was warranted to ensure that these respondents would not obtain a more favorable result than they would have if they had allowed the Department to conduct verification.

GOV Arguments:

- The GOV did not file arguments with regard to this topic.

Department’s Position: We agree with Petitioners. As explained above in the “Use of Facts Otherwise Available and Adverse Inferences” section, we have applied our standard AFA methodology with regard to the Infinite Companies and have applied an appropriate CVD rate for each program pursuant to that methodology.

Comment 2: Whether Land Leased by SEA Hamico Provided Countervailable Benefits to Hamico Companies

GOV Arguments:

- According to the GOV, the legal basis for the land rent exemption and reduction provided to SEA Hamico is based on provisions provided in the Domestic Investment Encouragement Law.
- Because these documents were issued before January 11, 2007, the land rent exemption granted to SEA Hamico transpired before Vietnam became a WTO member. Further, the WTO granted Vietnam a transition period of up to five years from the date of its accession on January 11, 2007, to eliminate such incentives.
- Thus, any benefit received in connection with SEA Hamico’s rent exemption cannot be treated as a countervailable subsidy because they were bestowed prior to the July 11, 2007, “cut-off” date. Further, the terms of Vietnam’s accession to the WTO permit it to

⁸¹ See Galvanized Steel Wire from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 77 Fed. Reg. 17,418, 17419 (March 26, 2012) (Galvanized Steel Wire from the PRC).

continue to provide such exemptions up to five years after the January 11, 2007, “cut-off” date.

Petitioners’ Rebuttal Arguments:

- Holders of Investment Certificates are entitled to rent exemptions. The Investment Certificate in question was originally issued to South East Asia Lt., Co.. However, in February 2010, SEA Hamico was issued a new Investment Certificate that entitled it to receive rent exemptions in connection with the land question.
- Further, SEA Hamico received a new land lease contract on August 11, 2009. Thus, SEA Hamico was granted countervailable benefits, in the form of land rent exemptions, subsequent to the cut-off date of January 11, 2007.

Department’s Position: As explained in the Preliminary Determination, on August 11, 2010, SEA Hamico signed a new contract with respect to the land it leases directly from the GOV.⁸² Under this new lease contract, which was in effect during the POI, SEA Hamico was to make annual lease payments to the GOV.⁸³ However, SEA Hamico was exempted from paying the annual rent on the land for ten years (a period encompassing the POI), and was also granted a 50 percent reduction in rent during the second ten years of the lease, pursuant to the Adjusted Investment Certificate issued to SEA Hamico in 2010.⁸⁴ No interested party has submitted information that calls these facts into question. Therefore, the terms under which SEA Hamico received the rent exemption and reduction on land it leased from the GOV occurred after the January 11, 2007, “cut-off date.” Moreover, the Department verified that under these terms SEA Hamico did not pay rent during the POI and, thus, we find that the GOV bestowed the benefit in question (i.e., the lease payment exemption) during the POI. Consequently, the GOV’s comments concerning the treatment of subsidies bestowed prior to the January 11, 2007, “cut-off” date are moot.

With regard to the GOV’s argument regarding the 5-year phaseout period granted to Vietnam under its WTO accession, we find that the argument is misplaced. First, the Department conducts these CVD investigations and issues its CVD determinations pursuant to U.S. law and regulation, under which there is no exception provided for subsidies subject to a country’s WTO accession phase-out period. Second, even in the context of the WTO accession, such a phase-out period simply allows the country to accede while still maintaining WTO-inconsistent subsidies for a limited time, but it does not negate the rights of another Member to impose countervailing duty to those subsidies where warranted under that Member’s CVD law. Accordingly, the Department finds that Vietnam’s WTO accession phase-out arrangement does not preclude the Department’s investigation and determination with regard to the land rent exemption program.

⁸² See Preliminary Determination, 77 FR at 32933.

⁸³ Id.

⁸⁴ See Preliminary Determination, 77 FR at 32933; see also the GOV’s March 30, 2012, Questionnaire Response at Exhibit 43.

Comment 3: Whether Unpaid Annual Rent on Land Leased by SEA Hamico and Used by Linh Sa Provided Countervailable Benefits to the Hamico Companies

Petitioners' Arguments:

- During the POI, the Hamico Companies received an additional benefit that was not included in the preliminary subsidy calculations. Specifically, SEA Hamico did not make any payment to the Nam Dinh People's Committee during the POI with regard to land utilized by Linh Sa.
- There is nothing on the record to indicate that the delay and/or failure to make the required payment is not part of an incentive program and there is no indication that this amount will be paid in the future.
- Petitioners urge the Department to treat the full amount owed as a countervailable subsidy

GOV's Rebuttal Arguments:

- The GOV acknowledges that the provincial authority exempted SEA Hamico from making payments for the land used by Linh Sa.
- However, pursuant to the terms of Vietnam's accession to the WTO, the GOV claims it has until January 11, 2012, to maintain the investment incentives granted to the Hamico Companies.
- The GOV argues that the land rent exemption on the land used by Linh Sa is consistent with Vietnam's Protocol of Accession and its commitments and cannot be treated as a countervailable subsidy.

Petitioners' Rebuttal Arguments:

- The Hamico Companies received an added benefit of during the POI for the non-payment of annual rent owed to the Nam Dinh People's Committee on behalf of Linh Sa Hamico. The benefit was received under a new investment certificate dated March 5, 2010, and should be included in the final benefit calculations.

Department's Position: Information obtained after the Preliminary Determination indicates that SEA Hamico was obligated to pay the Nam Dinh People's committee an annual payment with regard to land that it lease on behalf of Linh Sa.⁸⁵ At verification, we confirmed that SEA Hamico made no rent payment on this land during the POI, pursuant to the same terms established under its 2010 Adjusted Investment Certificate that also granted rent exemptions and reductions for land used by SEA Hamico itself, as discussed under Comment 2 above.⁸⁶

⁸⁵ See SEA Hamico's June 20, 2012, supplemental questionnaire at Exhibit 1.

⁸⁶ See Hamico Verification Report at 6.

Therefore, we agree with petitioners that the Hamico Companies rented land for LTAR from the GOV during the POI with regard to the land used by Lihn Sa. Accordingly, we have included the benefit received during the POI on this land in the final benefit calculations for land for LTAR.

Further, for the same reasons outlined in the previous comment, we find that the GOV's arguments concerning the terms of its WTO accession are also inapposite in this regard.

Comment 4: Whether Export Loans from VietinBank Provide a Government Financial Contribution.

GOV's Arguments:

- The GOV does not exercise control, influence or intervene in VietinBank's individual lending decisions that benefitted the mandatory respondents during the POI.
- Distinctions exist between the operations of the state-owned banks (SOCBs) and commercial banks, such as VietinBank, in terms of the Export Loan program. The operations and actions of VietinBank are independent from the SOCBs and the GOV.
- VietinBank was one of four SOCBs that were privatized and all of its operations, loan decisions and investments are done according to its own criteria independent of SOCBs and the GOV.
- The Export Loan Program in 2010 was an individual product of VietinBank and the State Bank of Vietnam affirmed that it did not have any involvement in the program.

Petitioners' Arguments:

- The GOV's assertions are contradicted by the record. The Department's GOV Verification Report states that the {commercial} banks are required to report to the SOCBs on a periodic basis for inspection, supervision of the implementation of interest support rate that undermines any distinction between policy lending and commercial lending.⁸⁷
- Furthermore, the GOV owns 80% of the VietinBank shares.

GOV's Rebuttal Arguments:

- The policy lending is separate from commercial lending, such as the export loans issued by VietinBank.
- Policy loans are undertaken only by two policy banks: the Vietnam Development Bank and the Bank for Social Policy. VietinBank does not issue policy loans.

⁸⁷ See GOV Verification Report at 9.

Department’s Position: We agree with petitioners. In past CVD proceedings involving Vietnam, the Department found VietinBank to be a SOCB and thus, a government authority capable of providing a financial contribution as described under section 771(5)(D)(i) of the Act.⁸⁸ Information provided by the GOV indicates that it owned approximately 80 percent of VietinBank during the POI.⁸⁹ Hence, we continue to find that VietinBank is a government authority. Therefore, we have determined that the loans issued to SEA Hamico and Linh Sa by VietinBank constituted a financial contribution by a government authority within the meaning of section 771(5)(D)(i) of the Act. Regarding the additional lending institution, because the Hamico Companies identified loans outstanding from this institution as financing offered “under the export loan program” we find, for purposes of the final determination, that such loans constitute a financial contribution by a government authority within the meaning of section 771(5)(D)(i) of the Act.

Comment 5: Whether Import Duty Exemption or Reimbursements for Raw Materials are Countervailable

Petitioners’ Arguments:

- In the Preliminary Determination, the Department found that the GOV does not have 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.
- The GOV Verification Report confirmed that this program is specific to exporters. The GOV Verification Report described the process by which the GOV monitors exporters pursuant to this program, and GOV officials acknowledged that they performed only "a quick check" of SEA Hamico's documents and "did not formally corroborate the reported amounts with industry norms."
- The Hamico Verification Report stated that Linh Sa Hamico did not report or pay the correct import duties on two of its three importations of raw materials (*i.e.*, steel wire rod). The fact that GOV officials never discovered these incorrect amounts paid by Linh Sa Hamico is further evidence that the GOV lacks an adequate system for administering this subsidy program.
- For these reasons, the Department should continue to treat the GOV's program for import duty exemptions or reimbursements for raw materials as a countervailable subsidy.

GOV Arguments:

- The Department’s use of Plastic Bags as the basis to determine that all of Vietnam’s tax exemption and reimbursement is unreliable and inaccurate.

⁸⁸ See Carrier Bags from Vietnam Preliminary Determination, 74 FR at 45817. The Department’s finding that VietinBank was a government authority operating as a SOCB was not reversed as a result of the Carrier Bags from Vietnam Final Determination. See Carrier Bags from Vietnam Decision Memorandum at “Application of Facts Otherwise Available and AFA for API and Fotai.”

⁸⁹ See the GOV’s May 16, 2012, supplemental questionnaire response at 4.

- As a matter of law, the GOV has instituted detailed and comprehensive measures to monitor Customs activity.
- Under Article 14 of Circular 194/2011/TT-BTC (Circular 194), Custom authorities are required to conduct inspections during the process of customs clearance. These inspections include an examination of custom dossiers, tax examination and physical inspection.
- Article 32 of Circular 194 contains the customs procedures for importing materials and supplies to be used for exported and require the filing of form No. 06/DMNVL-SXXX, which is Appendix VI to the Circular 194.
- Article 33 of Circular 194 contains the procedures for the notification of norms of materials and supplies used in the production of exported products. Norms must be notified for each product code according with the filing of form No. 7/DKDM-SXXX, which is Appendix VI to Circular 194.
- Under Article 33(b) of Circular 194, the norms notified by the enterprise should reflect proportion of materials and supplies actually used in export production, including the proportion of scrap and discarded products.
- Article 33.5(b) of Circular 194 stipulates that the Customs offices will examine norms notified by enterprises under the Finance Ministry's guidance on examination of norms applicable to exported processed products (*i.e.*, Circular 117/2011/TT-BTC). The process of norm inspection by Vietnamese Customs authorities confirms which inputs are consumed in the production of exported products and in what amounts. The inspection may be conducted anytime, and the fact that an enterprise's self-declared norm is approved upon registration does not exclude it from being subject to inspection at later stages (*i.e.*, during the production process or even during custom clearance).
- The GOV implements a complete and comprehensive system to examine norms. Inspections are conducted regularly and sufficiently to ensure the correct management of raw materials imports declared by enterprises and ensure the basis for tax reimbursement or tax exemption with respect to export processing.
- The GOV has devoted considerable time and resources to ensuring that the Department has a thorough and complete understanding of the monitoring systems in place in Vietnam. During the verification with Customs officials in Ha Nam province, Customs provided the full records of SEA Hamico and explained the monitoring systems in place to ensure accurate reporting by SEA Hamico.
- Customs regularly checks the reporting by importers and exporters, and these checks occur at each stage of the process. Customs inspects declarations and supporting documents to ensure consistency between what is being reported and what is actually

being imported or exported by the enterprises. Customs also conducts random physical inspections.

- The GOV provided evidence at verification that a shipment by SEA Hamico was randomly selected for inspection as part of the Customs Office's quality control procedures. This evidence demonstrated that Customs in Vietnam monitors imports and exports in accordance with Vietnamese Customs regulations.
- Customs may conduct inspection of an enterprise's registration of its norms (1) upon initial registration, (2) upon an adjustment to registered norms, or (3) upon Customs becoming suspicious of fraudulent activity at any time.
- In CWP from Vietnam, the GOV also demonstrated with substantial evidence that Customs conducted physical inspection of a processor for a foreign trader's registered norms after Customs became suspicious of fraudulence. The DOC verified that Customs may elect to conduct an actual inspection of the goods, which may be done through the collection of a sample and that Customs uses risk management software to identify potential errors in documents submitted by companies that GOV.
- The customs procedures governing the import of raw materials and supplies for the production of export goods are applicable to all domestic enterprises who want to claim duty drawback or duty exemption for their imported raw materials and supplies consumed in the production of exported products.
- All evidence and supporting documents demonstrated that the Customs in Vietnam has procedures in place which are effectively implemented for ensuring full compliance with all Customs laws and regulations. The GOV has fully complied with all of the Department's requests on this issue in an effort to make clear that Vietnam has an effective and reasonable system for monitoring imports and exports. The GOV is unsure what additional evidence it could provide to demonstrate this fact.
- The PRCB from Vietnam determination did not set forth any standard or discussion of the conclusion reached. Instead, it simply offered conclusory statements, and no additional record evidence was addressed. In this case, the GOV has provided substantial evidence that demonstrates the existence of an effective monitoring system.

Petitioners' Rebuttal Arguments:

- The Departments' *GOV Verification Report* contradicts the GOV's claim that it can effectively monitor its program for granting import duty exemptions or reimbursements for raw materials which are used in the production of exported products. The report describes in detail the flawed process by which the GOV monitors exporters pursuant to this program. GOV officials acknowledged that they performed only "a quick check" of SEA Hamico's documents and "did not formally corroborate the reported amounts with industry norms." Thus, the GOV conceded at verification that it does not have a system

in place to confirm the usage of imported inputs in the production of garment hangers for export to the United States.

- The GOV's lack of effective procedures for monitoring the importation and exportation of goods was previously confirmed in the countervailing duty investigation of polyethylene retail carrier bags. There the Department found at verification 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.” The GOV did not provide any new evidence in this investigation to contradict the Department's finding in Polyethylene Retail Carrier Bags. Indeed, the Department's verification in this investigation also showed that the GOV lacks an effective and reliable system for monitoring the importation and exportation of goods.
- The Department's report on the verification of the Hamico Companies stated that Linh Sa Hamico did not report or pay the correct import duties on two of its three importations of raw materials (*i.e.*, steel wire rod). The fact that GOV officials never discovered these incorrect amounts paid by Linh Sa Hamico is further evidence that the GOV lacks an adequate system for administering this subsidy program.

The GOV's Rebuttal Arguments:

- The Carrier Bags from Vietnam Final Determination, which the Department uses to reach the conclusion in the Preliminary Determination, did not set forth any standards or discussion of the conclusion reached. It simply offered conclusory statements.
- With regard to the evidence cited by Petitioners that, at verification, the GOV officials acknowledged that they performed only a “quick check” of SEA Hamico's documents and did not formally corroborate the reported amount with industry norms, the GOV does not dispute the accuracy of the verification report or the statements made at verification. The GOV does dispute, however, the implication that companies have boundless, unchecked discretion in registering norms. Upon registration, Customs routinely and randomly inspects the accuracy of the registered norms using a database that tracks comparable products and the reported norms. Thus, Vietnam has a system for ensuring the accuracy of the norms based on the particular facts and circumstances of a given export.
- With regard to evidence cited by the Petitioners that Linh Sa Hamico did not report or pay the correct import duties on two of three imports of steel wire rod, this is not totally true. A company self-declares its import duty rates and cannot avoid misunderstanding the import duty rate schedule, which is different in each period. Customs officials found the mistake in the duty rate applied, but there was no duty collection or reimbursement because Linh Sa Hamico exported their products within 275 days. The Petitioners' argument that GOV officials never discovered these incorrect amounts is not true because, after finding the mistake, the Customs required Linh Sa Hamico to correct the mistake on their next shipment. This evidence demonstrates that Vietnamese Customs conducts its checks for any incorrectness or mistakes by the company.

Department’s Position: We agree with Petitioners. The information on the record of this investigation does not warrant a change in the Department’s previous determinations with regard to import duty exemptions on raw materials for exported goods. As explained above, pursuant to 19 CFR 351.519(a)(4), we continue to determine that the entire amounts of duty exemptions on raw materials received by SEA Hamico and Linh Sa Hamico are countervailable subsidies attributable to the companies’ export sales.

At verification, the GOV officials described its system for providing exemptions/reimbursements of import duties on raw materials imported for the production of exports. Under this system, using form No. 7/DKDM-SXXK, a company first notifies the Customs Office of the per unit amounts of raw materials used to produce a unit of the product that will be exported and the per-unit amounts of scrap. Then, the company applies for import duty exemptions by submitting an application package within 275 days of the time it imported the raw materials and the date it exports the finished products. The application package consists of a checklist of import declarations, a checklist of export declarations, and a reconciliation of these import declarations and export declarations titled “Report on Tax Calculation on Imported Raw Materials and Supplies.” This reconciliation lists the imported materials, the import duties on those materials, the exports against which the company is claiming non-liability for the import duties, and the total amounts of requested duty exemptions.⁹⁰

The GOV has not sufficiently demonstrated that its system ensures that the imported materials, against which import duty exemptions/reimbursements are claimed, are used in the production of the products exported and that the company properly accounts for scrap. At verification, the Customs Officials stated that they performed a “quick check” of the norms reported by SEA Hamico and that they did not corroborate that the reported per-unit amounts of raw materials and scrap were the amounts used in the production of the exported goods.⁹¹ The GOV officials explained that Customs Officials may conduct inspections and provided examples of inspections that were conducted with regard to SEA Hamico. However, there is no indication that these inspections confirmed that the amounts of raw materials and scrap notified by the company were the same amounts used in the production of the exports.⁹² Similarly, SEA Hamico’s application package contains a list of the amount of import duties to be exempted and a list of exports against which the exemptions are claimed.⁹³ Again, with regard to the quantities of raw materials listed used for the export production, there was no examination by the GOV of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

For these reasons, we continue to find that the GOV has not demonstrated that its system ensures the amounts of import duties exemptions claimed reflect the actual amounts of raw material and scrap used in the production of exported products or that these amounts are consistent with industry norms. Therefore, the GOV has not demonstrated that its system effectively ensures that the correct amounts of import duty exemptions/reimbursements are provided.

With regard to the identification by Customs Officials of mistakes by importers with regard to identifying the correct import duty rates, checking documentation for accuracy is a key

⁹⁰ See the GOV Verification Report at pages 4-6.

⁹¹ *Id.* at 5.

⁹² *Id.* at 5, GOV EX 3-118 and 3-119 and GOV EX 3-133 and 3-134.

⁹³ *Id.* at 5, GOV EX 3-142 through 3-147.

component of any import duty system. However, merely being able to confirm whether the importer identified the correct duty rate on its import documents is not a sufficient basis to conclude that the GOV's system ensures that the correct amount of duty exemptions are granted.

Comment 6: Whether the Department Should Find the Newly Discovered Interest Support Program Countervailable

Petitioners' Arguments:

- During its verification of the Hamico Companies, the Department discovered that SEA Hamico received loans that were provided under an interest support program. The Department should find this new program, which was discovered during verification, to be countervailable.
- The GOV Verification Report indicates that the GOV, via the State Bank of Vietnam ("SBV"), conferred a benefit to the Hamico Companies under an interest rate support program.⁹⁴ Information concerning this program states that "commercial banks were instructed to collect 4 percent less from the borrowers, and the SBV then refunded the commercial banks the uncollected interest." Further, "the {commercial} banks are required to report to the State Bank of Vietnam, on a periodic basis, for inspection, supervision of the implementation of the interest rate support."⁹⁵

GOV's Arguments:

- The objective of the verification meeting between the Department officials and SBV officials on August, 17, 2012, was to clarify the contents of two documents relating to the interest rate support program: Decision No.443/QD-TTg and Circular 05/2009/TT-NHNN, which the Department identified during its verification of SEA Hamico's loan documents. SBV officials' explanations regarding the two documents were not correctly reflected in the GOV Verification Report.
- The interest rate support program was carried out based on the Prime Minister Decision 443/QD-TTg, dated April 4, 2009, in order to promote development support and social welfare. Circular 05/2009 implements Decision 443.
- Decision 131/QD-TTg indicates that: (i) this program was applied generally to a variety of economic industries, without discrimination based on the type of ownership of a company, including whether the company is a foreign invested enterprise, and (ii) interest rate support is provided under the normal credit regime (Point 1, Article 3, Decision 131/QD-TTg).
- Provisions of Circular 05/2009/TT-NHNN also indicate that the interest rate support program was applied generally.

⁹⁴ See GOV Verification Report, at 10.

⁹⁵ Id.

Department's Position: As explained above in the "Program for Which More Information is Needed" section, if this proceeding results in a countervailing duty order, we will examine this program in the next administrative review.

VII. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly where applicable. If these Department positions are accepted, we will publish the final determination in the Federal Register.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

Date