



C-533-854
Investigation
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DATE: August 12, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

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

I. SUMMARY

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

II. BACKGROUND

On June 4, 2013, the Department published the *Preliminary Determination* in this investigation.¹ Between June 6, and June 19, 2013, we conducted verification of the questionnaire responses submitted by the Government of India (GOI), Devi Fisheries Limited (Devi Fisheries), and Devi Seafoods Limited (Devi Seafoods). We released verification reports from June 25 through June 27, 2013.²

On July 5, 2013, the Coalition of Gulf Shrimp Industries (Petitioner) submitted a case brief regarding scope issues,³ and on July 10, 2013, the Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC), an interested party, submitted a rebuttal brief.⁴ On July 26, 2013, the Department held a hearing limited to the scope issues addressed in these briefs. We have addressed these issues in the Memorandum to Paul Piquado, Assistant Secretary for Import

¹ See *Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Preliminary Determination*).

² See Memorandum entitled "Verification Report: Government of India ("GOI")," dated June 27, 2013 (GVR); Memorandum entitled "Verification Report for Devi Fisheries Limited ("DF"), Satya Seafoods Private Limited ("Satya"), Usha Seafoods ("Usha"), and DSF Aquatech Private Limited ("DSF")," dated June 27, 2013 (DFVR); and Memorandum entitled "Verification Report for Devi Seafoods Ltd. ("DS")," dated June 25, 2013 (DSVR).

³ See Letter from Petitioner, "Scope Case Brief of the Coalition of Gulf Shrimp Industries" (July 5, 2013).

⁴ See Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from India: Scope Rebuttal Brief," (July 10, 2013).



Administration, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, and Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp,” dated concurrently with this memorandum.

Petitioner, Devi Fisheries, and Devi Seafoods submitted case briefs concerning case-specific issues on July 3, 2013.⁵ Petitioner and the GOI, Devi Fisheries, and Devi Seafoods submitted rebuttal briefs on July 8, 2013.⁶

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

General Issue

Comment 1: Whether the Department Should Investigate Petitioner’s Timely Filed New Subsidy Allegation

Duty Entitlement Passbook Scheme (DEPS)

Comment 2: Whether the Department Should Apply Adverse Facts Available to the DEPS Program

Comment 3: Whether the Department Should Include the Benefits Found for the DEPS Program in the Final Cash Deposit Rates

Duty Drawback

Comment 4: Whether the Department Used the Incorrect Rate for Exports of Prepared Shrimp in Its Calculation of the Benefit Received by Devi Seafoods from the Duty Drawback Program

Chapter 1B Program

Comment 5: Whether the Department Should Correct the Calculation of the Benefit Received by Devi Seafoods under the Chapter 1B Program

⁵ See Letter from Petitioner, “Case Brief of the Coalition of Gulf Shrimp Industries,” (July 3, 2013) (Petitioner’s Case Brief); Letter from Devi Fisheries, “Frozen Warmwater Shrimp from India (C-533-854); Brief – Devi Fisheries,” (July 3, 2013); and Letter from Devi Seafoods, “Frozen Warmwater Shrimp from India (C-533-854); Brief – Devi Seafoods” (July 3, 2013).

⁶ See Letter from Petitioner, “Rebuttal Brief of the Coalition of Gulf Shrimp Industries,” (July 8, 2013); Letter from the GOI, Devi Fisheries, and Devi Seafoods, “Frozen Warmwater Shrimp from India (C-533-854); and Rebuttal Brief – Devi Seafoods, Devi Fisheries and The Government of India” (July 8, 2013).

Export Financing

Comment 6: Whether the Department used an Incorrect Benchmark in the Calculation of Pre-Shipment Benefits on Export Financing Denominated in Indian Rupees (INR)

Comment 7: Whether the Department Erred in the Calculation of Post-Shipment INR Benefits by using the Incorrect Number of Days for Several Post-Shipment INR Loans

Value Added Tax (VAT) Exemptions for Shrimp Seed and Feed

Comment 8: The Determination Not to Investigate VAT Exemptions

Miscellaneous

Comment 9: Whether the Department Improperly Omitted Sales by Satya Seafoods Private Limited (Satya) from the Denominator when Calculating the Benefit Received

III. SUBSIDY VALUATION INFORMATION

A. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2011, through March 30, 2012.

B. Allocation Period

The Department finds the average useful life (AUL) in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.⁷ No party in this proceeding has disputed this allocation period.

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

C. Attribution of Subsidies

19 CFR 351.525(b)(6)(i) states 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) a cross-owned firm supplies the subject company with an input that is produced primarily for the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to the cross-owned subject corporation.

⁷ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

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.⁸

Devi Fisheries

Devi Fisheries responded to the Department's questionnaire on behalf of itself and three affiliates: Satya, Usha Seafoods (Usha) and DSF Aquatech Private Limited (DSF). Devi Fisheries reported that it, Satya, and DSF have common shareholders who own the majority of the three companies' equity share capital. Directors of these companies are also the partners of Usha, a partnership firm.⁹

Based on Devi Fisheries' representations, we find that Devi Fisheries, Satya, Usha, and DSF are cross-owned. We found no evidence of other cross-owned companies.

Devi Fisheries reported that Satya and Usha own frozen seafood production facilities that were leased by Devi Fisheries during the POI. Thus, Satya and Usha did not produce seafood during the POI.¹⁰ Based on this information, we determine that Satya and Usha do not meet any of the conditions under 19 CFR 351.525(b)(6)(ii)-(v). However, Devi Fisheries reported that Satya exported subject merchandise produced by Devi Fisheries during the POI.¹¹ Accordingly, we are cumulating the benefit from subsidies to Satya with the benefit from subsidies to Devi Fisheries, in accordance with 19 CFR 351.525(c). Regarding Usha, we would normally attribute any subsidies received by that company to its own sales, in accordance with 19 CFR 351.525(b)(6)(i), and not include these subsidies in the countervailable subsidy rate for Devi Fisheries. Regardless, consistent with the *Preliminary Determination*, we find no record evidence indicating that Usha received a benefit from countervailable subsidies during the POI.¹²

With respect to DSF, Devi Fisheries reported that DSF produced shrimp seeds, a portion of which was sold to Devi Fisheries for its farm.¹³ In cases where production of the input product is primarily dedicated to production of the downstream product, the Department attributes subsidies received by the input producer to the combined sales of the input and downstream products, in accordance with 19 CFR 351.525(b)(6)(iv). However, consistent with the *Preliminary Determination*, we find no record evidence indicating that DSF received a benefit from countervailable subsidies during the POI.¹⁴

⁸ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁹ See Letter from Devi Fisheries, "Frozen Warmwater Shrimp from India; Devi Fisheries Response to Questionnaire, Section III," (April 2, 2013) (DFQR) at 2.

¹⁰ *Id.*, at 6.

¹¹ *Id.*, at 6 and 11.

¹² See Department Memorandum, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from India," (May 28, 2013) (PDM) at 8.

¹³ See DFQR, at 4.

¹⁴ See PDM, at 9.

Thus, we are attributing subsidies received by Devi Fisheries to its own sales, in accordance with 19 CFR 351.525(b)(6)(i). We are cumulating the benefit from subsidies received by Satya with the benefit from subsidies to Devi Fisheries, pursuant to 19 CFR 351.525(c).

Devi Seafoods

Devi Seafoods responded to the Department's questionnaires on behalf of itself. Although Devi Seafoods reported that it had three affiliates, two of these affiliates have been dormant since their establishment, and the third is incorporated in the United States.¹⁵ We found no evidence of any other cross-owned companies. Accordingly, we are attributing subsidies received by Devi Seafoods to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

D. Application of Section 771B of the Act

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

Consistent with the *Preliminary Determination*, we determine that neither Devi Fisheries nor Devi Seafoods received countervailable subsidies for the production of fresh shrimp.¹⁶

E. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are unchanged from the *Preliminary Determination*, with two exceptions. First, as described below at Comment 11, we have used the combined sales of Devi Fisheries and Satya as the denominator to calculate the rate for subsidies to Satya under 19 CFR 351.525(c). Second, as explained in the DF Final Calculation Memo,¹⁷ DS Final Calculation Memo,¹⁸ DFVR,¹⁹ and DSVR,²⁰ the respondents included certain foreign movement and selling expenses (*e.g.*, antidumping duty deposits and merchandise processing fees) for U.S. export sales in their reported sales values. 19 CFR 351.525(a) states, "Normally, the Secretary will determine the sales value of a product on an f.o.b. (port) basis (if the product is exported) or on an f.o.b. (factory) basis (if the product is sold for domestic consumption)." The Department's questionnaire reflects the guidelines in the

¹⁵ See Letter from Devi Seafoods, "Frozen Warmwater Shrimp from India; Response to Questionnaire, Section III," (March 29, 2013) (DSQR) at 2.

¹⁶ See PDM, at 9.

¹⁷ See Memo from Shane Subler and Thomas Schauer to Susan Kuhbach dated August 12, 2013, "Devi Fisheries Limited Final Calculation Memorandum" (DF Final Calculation Memo).

¹⁸ See Memo from Shane Subler and Thomas Schauer to Susan Kuhbach dated August 12, 2013, "Devi Seafoods Ltd. Final Calculation Memorandum" (DS Final Calculation Memo).

¹⁹ See DFVR, at 4-5.

²⁰ See DSVR, at 5.

regulations, instructing respondents to “report the sales value on an f.o.b. (port) basis with respect to export sales and/or on an f.o.b. (factory) basis for domestic sales.”²¹ Foreign movement and selling expenses are not part of a free on board (FOB, or f.o.b.) price. Therefore, we have removed these foreign movement and selling expenses from respondents’ U.S. and overall sales denominators for this final determination. *See* the DF Final Calculation Memo and DS Final Calculation Memo (collectively, Calculation Memoranda) for additional information on the expenses we removed.

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

As stated in the *Preliminary Determination*, we are investigating loans received by Devi Fisheries and Devi Seafoods. The benchmarks used to identify the existence and the extent of any benefit from these loans are summarized below, with further detail provided in the Calculation Memoranda.

Short-Term and Long-Term INR-Denominated Loans

Based on Devi Fisheries’ and Devi Seafoods’ responses, we find that the respondents did not take out comparable rupee-denominated short-term or long-term loans from commercial banks in the years for which we must calculate benchmark and discount rates. Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we are using national average interest rates. Specifically, we used national average interest rates from the International Monetary Fund’s International Financial Statistics (IFS) as benchmark rates for rupee-denominated short-term and long-term loans. We find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans. Further, the record has no other information on either short-term or long-term rupee-denominated loans.

Short-Term U.S. Dollar-Denominated Loans

As part of the Export Financing program, we are examining short-term loans that Devi Fisheries and Devi Seafoods received in U.S. dollars. When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. Neither respondent reported dollar-denominated loans that we can use as company-specific benchmarks. For U.S. dollar-denominated short-term loans provided under the Export Financing program, we used as our benchmark annual average dollar-denominated short-term lending rates for the United States, as reported in the IFS.

Discount Rate

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government approved non-recurring subsidies.²²

²¹ *See* letter from the Department to the GOI dated February 14, 2013, “Countervailing Duty Investigation: Frozen Warmwater Shrimp from India,” at Section III, page 5.

²² *See* Calculation Memoranda.

IV. ANALYSIS OF PROGRAMS

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

A. Programs Determined To Be Countervailable

1. Duty Entitlement Passbook Scheme (DEPS)

According to the GOI, the DEPS program served to remit duties paid on inputs used in the manufacture of exported products, *i.e.*, as a drawback program.²³ The main objective of the program, which the GOI introduced on April 1, 1997, was to neutralize the incidence of customs duties on the import content of the exported product.²⁴

Under DEPS, exporting companies earned import duty exemptions in the form of credits rather than cash.²⁵ All exporters were eligible to earn DEPS credits on a post-export basis, provided that the GOI had established a standard input-output norm for the exported product.²⁶ DEPS credits could then be applied to subsequent imports of any materials, regardless of whether they were consumed in the production of an exported product. DEPS credits were valid for 12 months and were transferable after the foreign exchange was realized on the export sales from which the DEPS credits were earned.²⁷

The GOI reported that the DEPS program was terminated effective October 1, 2011.²⁸

The Department has previously determined that the DEPS program is countervailable.²⁹ In *PET Film Final Determination*, the Department found that credits under the DEPS were a financial contribution in the form of revenue forgone (*see* section 771(5)(D)(ii) of the Act). The Department further found that the GOI did not have in place and did not apply a system that was reasonable and effective to confirm which inputs, and in what amounts, were consumed in the production of the exported products.³⁰ Therefore, under section 771(5)(E) of the Act and 19 CFR 351.519(a)(4), the Department found that the entire amount of the DEPS credit earned during the POI constituted a benefit.

Similarly, in the instant investigation, the GOI did not claim or provide any information to demonstrate that exemptions under the DEPS program meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Specifically, the GOI's verified questionnaire response shows no evidence that the GOI has in place a system that is reasonable

²³ See Letter from GOI, "Frozen Warmwater Shrimp from India; Response to Questionnaire, Section III" (April 2, 2013) (GQR), at 6.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*, at 5.

²⁹ See, e.g., *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying Issues and Decision Memorandum at "DEPS."

³⁰ *Id.*

and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste.³¹ The GOI also did not carry out examinations of actual inputs involved to confirm which are consumed in the production of the exported product, and in what amounts.³² Thus, we determine that the benefit received by the respondents during the POI is the total amount of the DEPS credits they earned.

Finally, this program is only available to exporters; therefore, it is specific under section 771(5A)(B) of the Act.

In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we find that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the credits are earned.³³ This is because DEPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, the recipients know the exact amount of the benefit (*i.e.*, the value of the credit) when exportation occurs.

Both respondents reported that they earned credits under the DEPS during the POI.³⁴ Because DEPS credits are earned on a shipment-by-shipment basis, we would normally calculate the subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by the total value of exports of subject merchandise to the United States during the POI.³⁵ The respondents reported that they earned DEPS credits only on exports of subject merchandise.³⁶ Regarding export markets, however, our analysis indicates that the respondents earned DEPS credits for shipments to multiple countries on the same DEPS license.³⁷ Therefore, since we are unable to tie the benefits to specific markets in accordance with 19 CFR 351.525(b)(4), we have calculated the subsidy rate using the value of all DEPS export credits that the respondents earned during the POI. We divided the total amount of the benefit received by each respondent by the company's total export sales of subject merchandise to all markets during the POI.

On this basis, we determine a countervailable subsidy of 4.36 percent *ad valorem* for Devi Fisheries³⁸ and a countervailable subsidy of 5.60 percent *ad valorem* for Devi Seafoods.³⁹

As stated above, the GOI reported that it terminated the DEPS program effective October 1, 2011. The GOI supported its claim with a copy of relevant part of Foreign Trade Policy and the circular issued by the Ministry of Finance which specified that the DEPS program was

³¹ See, generally, GQR, at 11-20; see also our analysis of the GOI's verification system for drawback programs under the "Duty Drawback" section, below.

³² *Id.*

³³ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India*, 64 FR 73131, 73134, 73140 (December 29, 1999) (*Steel Plate Final Determination*).

³⁴ See DFQR, at 13 and DSQR, at 18.

³⁵ See, e.g., *Steel Plate Final Determination*, 64 FR at 73134.

³⁶ See Letter from Devi Fisheries, "Frozen Warmwater Shrimp from India (C-533-854); Response to Supplemental Questionnaire, Section III," (April 25, 2013) (DF1SQR) at 3 and Letter from Devi Seafoods, "Frozen Warmwater Shrimp from India (C-533-854); Response to Supplemental Questionnaire, Section III," dated (April 24, 2013) (DS1SQR), at 16-17.

³⁷ *Id.*

³⁸ See DF Final Calculation Memo.

³⁹ See DS Final Calculation Memo.

“discontinued for exports made on or after 1.10.2011.”⁴⁰ As we noted in the PDM at 13, the respondents’ reporting of benefits under the program showed no credits earned after September 30, 2011.⁴¹ Regarding potential benefits that the respondents may have received subsequent to the termination of the program, the GOI stated the following:

The application for obtaining credit should be filed within a period of twelve months from the date of exports or within six months from the date of realization or within three months from the date of printing / release of shipping bill, whichever was later.⁴²

Consequently, the last day on which the respondents could have applied for credits under the DEPS program was September 30, 2012.

Under 19 CFR 351.526(a), the Department may take account of a program-wide change in setting the deposit rate if the change was not limited to an individual firm, was effectuated by an official act, and occurred subsequent to the POI, but before the preliminary determination. Further, under 19 CFR 351.526(a), the Department must be able to measure the change in the amount of subsidies provided under the program in question. Logically, such an analysis would also be allowed if the program-wide change took place during the POI. When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be no residual benefits. Moreover, if a replacement program has been implemented, the benefits under the replacement program must be calculable.

With respect to the DEPS, because the benefit is received on an earned basis, no residual benefits existed after September 30, 2011. In the GVR, we stated, “a company wishing to take advantage of the DEPS program had to export on or before September 30, 2011, in order to be able to claim DEPS benefits for that shipment.”⁴³ Also, the GOI did not implement a replacement program, which we also confirmed at verification.⁴⁴ Consequently, consistent with 19 CFR 351.526(a)(2) and (d), we are adjusting the cash deposit rates to exclude the DEPS benefit. *See* the Calculation Memoranda for the calculation of the final cash deposit rates. *See* Comments 2 and 3 below for our analysis of comments that interested parties raised with respect to this program.

2. *Vishesh Krishi and Gram Udyog Yojana (VKGUY)*

The GOI reported that VKGUY also serves as a duty remission program aimed at compensating for high transport costs and offsetting other disadvantages.⁴⁵ Under this program, credits are made available to exporters based on the FOB value of exports of certain products.⁴⁶ The VKGUY credit rate is five percent except in certain cases, such as when the exporter also

⁴⁰ *See* GQR, at Exhibits 1 and 2.

⁴¹ *See* DF Final Calculation Memo; *see also* DS Final Calculation Memo.

⁴² *See* GQR, at 16.

⁴³ *See* GVR, at 3.

⁴⁴ *Id.*, at 4.

⁴⁵ *See* GQR at 15.

⁴⁶ *Id.*

receives duty drawback (DDB) at rates higher than one percent. When this happens, the VKGUY credit rate is three percent.⁴⁷

We determine that the VKGUY program confers a financial contribution in the form of revenue forgone.⁴⁸ Moreover, as with the DEPS program, the GOI did not claim or provide any information to demonstrate that duty remissions under the VKGUY program meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Specifically, the GOI's verified questionnaire response shows no evidence that the GOI has in place a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste.⁴⁹ The GOI also did not carry out examinations of actual inputs involved to confirm which are consumed in the production of the exported product, and in what amounts.⁵⁰ Thus, consistent with 19 CFR 351.519(a)(4), we determine that the benefit received by the respondents during the POI is the total amount of the VKGUY credits they earned. Finally, this program is only available to exporters; therefore, it is specific under section 771(5A)(B) of the Act. Accordingly, we determine that this program is countervailable.

Pursuant to 19 CFR 351.519(b)(2), and in accordance with our treatment of similar programs (e.g., DEPS), we find that benefits from the VKGUY program are conferred as of the date of exportation of the shipment for which the VKGUY credits are earned.⁵¹ We calculated the benefit on an as-earned basis because VKGUY credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at this point that recipients know the exact amount of the benefit (i.e., the value of the duty exemption).

Both respondents reported that they received credits under the VKGUY program during the POI.⁵²

Because VKGUY credits are earned on a shipment-by-shipment basis, we would normally calculate the subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by total exports of subject merchandise to the United States during the POI.⁵³ The respondents reported that they earned VKGUY credits only on exports of subject merchandise.⁵⁴ Regarding export markets, however, our analysis indicates that the respondents earned VKGUY credits for shipments to multiple countries on the same VKGUY license.⁵⁵ Therefore, since we are unable to tie the benefits to specific markets in accordance with 19 CFR 525(b)(4), we have calculated the subsidy rate using the value of all VKGUY export credits that the respondents

⁴⁷ *Id.* Both Devi Fisheries and Devi Seafoods used the DDB program at rates higher than one percent. *See* the "Duty Drawback" section, below.

⁴⁸ *See* section 771(5)(D)(ii) of the Act.

⁴⁹ *See, generally*, GQR, at 20-29; *see also* our analysis of the GOI's verification system for drawback programs under the "Duty Drawback" section, below.

⁵⁰ *Id.*

⁵¹ *See, e.g., Steel Plate Final Determination*, 64 FR at 73134.

⁵² *See* DF1SQR, at Exhibit SQ8 and DS1SQR, at Appendix Supp-3.

⁵³ *See, e.g., Steel Plate Final Determination*, 64 FR at 73134, where we used this methodology for a similar program (i.e., DEPS).

⁵⁴ *See* DF1SQR, at 5 and DS1SQR, at 20-21.

⁵⁵ *Id.*

earned during the POI. We divided the total amount of the benefit received by each respondent by the company's total export sales of subject merchandise to all markets during the POI.

On this basis, we determine a countervailable subsidy of 4.10 percent *ad valorem* for Devi Fisheries⁵⁶ and a countervailable subsidy of 4.37 percent *ad valorem* for Devi Seafoods.⁵⁷

3. *Special Duty Exemption Scheme for Marine Sector Under Chapter 1B of Foreign Trade Policy*

Under this program, the GOI allows duty-free importation of certain specialized inputs/chemicals and flavoring oils up to one percent of the FOB value of the preceding financial year's exports.⁵⁸

We determine that this program confers a financial contribution in the form of revenue forgone.⁵⁹ Moreover, as with the DEPS and VKGUY programs, the GOI did not claim or provide any information to demonstrate that duty remissions under this program meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Specifically, the GOI's verified questionnaire response shows no evidence that the GOI has in place a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste.⁶⁰ The GOI also did not carry out examinations of actual inputs involved to confirm which are consumed in the production of the exported product, and in what amounts.⁶¹ Thus, consistent with 19 CFR 351.519(a)(4), we determine that the benefit received by the respondents during the POI is the total amount of the exemptions they earned. Finally, this program is only available to exporters; therefore, it is specific under section 771(5A)(B) of the Act. Accordingly, we determine that this program is countervailable.

Both respondents reported that they received exemptions under this program during the POI.⁶²

Pursuant to 19 CFR 351.524(c), we analyzed the duty savings on the imports of inputs during the POI as recurring subsidies. Because these exemptions are earned on the total FOB exports from the previous year, we are unable to tie the benefits to specific merchandise or to specific markets in accordance with 19 CFR 351.525(b)(4) and (5). Accordingly, we calculated the subsidy rate by dividing the total amount of each company's duty savings during the POI by that company's total export sales to all markets during the POI.

On this basis, we determine a countervailable subsidy of 0.07 percent *ad valorem* for Devi Fisheries⁶³ and a countervailable subsidy of 0.13 percent *ad valorem* for Devi Seafoods.⁶⁴

⁵⁶ See DF Final Calculation Memo.

⁵⁷ See DS Final Calculation Memo.

⁵⁸ See GQR, at 23.

⁵⁹ See section 771(5)(D)(ii) of the Act.

⁶⁰ See, generally, GQR at 23-30; see also our analysis of the GOI's verification system for drawback programs under the "Duty Drawback" section, below.

⁶¹ *Id.*

⁶² See DFQR, at Exhibit 41 and DSQR, at Appendix 26.

⁶³ See DF Final Calculation Memo.

⁶⁴ See DS Final Calculation Memo.

4. Duty Drawback

This program was not alleged by the Petitioner, but both mandatory respondents reported receiving duty rebates under this program in response to our request that they report “other subsidies.”⁶⁵ Accordingly, we requested the GOI to provide a response with respect to this program. The GOI did so under protest, arguing that the Department has not properly initiated an investigation of the program and, therefore, cannot include it in the investigation. The GOI requested that the Department terminate its investigation of this program.

Section 775 of the Act provides that if the Department “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition ... then the administering authority (1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” We are examining programs which operate in a manner similar to DDB (*i.e.*, DEPS, VKGUY). Accordingly, the statute authorizes us to investigate this program.

According to the GOI, the DDB program provides rebates of duties or taxes chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export goods.⁶⁶ Specifically, the duties and tax “neutralized” under the program are the (i) Customs and Union Excise Duties on inputs and (ii) Service Tax in respect of input services.⁶⁷ The DDB is generally fixed as a percentage of the FOB price of the exported product.⁶⁸

Import duty exemptions on inputs for exported products are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁶⁹ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.⁷⁰ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁷¹ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.⁷²

Regarding its establishment of applicable DDB rates, the GOI stated the following:

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the Government. The committee makes its

⁶⁵ See DFQR, at 26 and DSQR, at Appendix 65.

⁶⁶ See Letter from GOI, “Frozen Warmwater Shrimp from India (C-533-854); Response to Supplemental Questionnaire, Section III,” (April 22, 2013) (G1SQR), at 18.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See 19 CFR 351.519(a)(1)(ii).

⁷⁰ See, e.g., *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at “DEPS.”

⁷¹ *Id.*

⁷² See 19 CFR 351.519(a)(4)(i)-(ii).

recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analysed and this information is used to form the basis for the rate of Duty Drawback.⁷³

We requested that the GOI provide a copy of the recommendations (and supporting documents) for the drawback rates in effect during the POI, but the GOI reported that “{t}he documents requested are not readily available.”⁷⁴ We reiterated our request for these recommendations and supporting documents,⁷⁵ but the GOI reported that “it is not able to collect and present the documents within such a short time.”⁷⁶ Based on the GOI’s questionnaire responses and lacking the documentation to support that the GOI has a system in place, we conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.

Accordingly, we determine that the DDB confers a countervailable subsidy. Under the DDB, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because the rebated duties represent revenue forgone by the GOI. Moreover, as explained above, the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported products. Therefore, under 19 CFR 351.519(a)(4), the entire amount of import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under section 771(5A)(B) of the Act.

Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred as of the date of exportation of the shipment for which the pertinent drawbacks are earned.⁷⁷ We calculated the benefit on an as-earned basis upon export because drawbacks under the program are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at this point that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

Both respondents reported that they received drawbacks under the DDB program during the POI.⁷⁸ Because drawbacks under the program are earned on a shipment-by-shipment basis, we would normally calculate the subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by total exports of subject merchandise to the United States during

⁷³ See G1SQR at 28-29.

⁷⁴ See Letter from the GOI, “Frozen Warmwater Shrimp from India; Response to First Supplemental Questionnaire with regard to the Duty Drawback and Duty Exemption,” (May 15, 2013) (G2SQR) at 2.

⁷⁵ See Letter from the Department to the GOI, “Countervailing Duty Investigation: Frozen Warmwater Shrimp from India,” (May 16, 2013) (G3SQ) at 1.

⁷⁶ See Letter from the GOI, “Frozen Warmwater Shrimp from India (C-533-854); Response to Third Supplemental Questionnaire,” (May 23, 2013) (G3SQR) at 1. The GOI did not request an extension for filing its response.

⁷⁷ See, *e.g.*, *Steel Plate Final Determination*, 64 FR at 73134 and 73140.

⁷⁸ See DFQR, at Exhibit 83 and DSQR, at Appendix 66.

the POI.⁷⁹ With respect to drawbacks under the program, we are able to tie the benefits for subject merchandise to specific markets, in accordance with 19 CFR 351.525(b)(4).

Therefore, we calculated the subsidy rate using the value of all DDB duty rebates that the respondents earned on U.S. sales of subject merchandise during the POI. We divided the total amount of the benefit received by each respondent by the company's total exports of subject merchandise to the United States during the POI.

On this basis, we determine a countervailable subsidy of 1.71 percent *ad valorem* for Devi Fisheries⁸⁰ and a countervailable subsidy of 0.94 percent *ad valorem* for Devi Seafoods.⁸¹

5. Duty Incentives under the Export Promotion Capital Goods (EPCG) Program

The EPCG program provides for a reduction of or exemption from customs duties and excise taxes on imports of capital goods used in the production of exported products.⁸² Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to six times the duty saved within a period of six years.⁸³ Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods.⁸⁴ If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus an interest penalty.⁸⁵

The Department has previously determined that import duty reductions or exemptions provided under the EPCG program are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provides two different benefits under section 771(5)(E) of the Act; and (3) is specific pursuant to section 771(5A)(B) of the Act because the program is contingent upon export performance.⁸⁶ Because the above-cited evidence with respect to this program is consistent with the findings in *PET Film Final Determination*, we determine that this program is countervailable.

Under the EPCG program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).⁸⁷ Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCG program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has

⁷⁹ See, e.g., *Steel Plate Final Determination*, 64 FR at 73134 and 73140.

⁸⁰ See DF Final Calculation Memo.

⁸¹ See DS Final Calculation Memo.

⁸² See GQR, at 35.

⁸³ *Id.*

⁸⁴ *Id.*, at 36.

⁸⁵ *Id.*

⁸⁶ See, e.g., *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at "EPCGS."

⁸⁷ *Id.*

completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble to our regulations states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring ...”⁸⁸ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁸⁹

Both respondents imported capital goods at reduced import duty rates under the EPCG program both in the POI and in the years prior to the POI.⁹⁰ Information provided by the respondents indicates that their EPCG licenses were issued for the purchase of capital goods for the production of both subject and non-subject merchandise.⁹¹ However, this information does not allow us to tie particular EPCG licenses to particular products within the meaning of 19 CFR 351.525(b)(5). As such, we are attributing the EPCG benefits received by the respondents to their total exports.

The respondents met the export requirements for certain EPCG licenses prior to March 31, 2012, the last day of the POI, and the GOI has formally waived the relevant import duties.⁹² For a number of their licenses, however, the respondents had not yet met their export obligation as required under the program as of the end of the POI. Therefore, although the respondents received a deferral from paying import duties for the capital goods that were imported, the final waiver of the obligation to pay the duties had not yet been granted for a number of these imports as of the end of the POI.⁹³

To calculate the benefit received from the GOI’s formal waiver of import duties on the respondents’ capital equipment imports where the export obligations were met prior to March 31, 2012, the last day of the POI, we used the total amount of duties waived. We treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in the *PET Film Final Determination*, we determine the year of receipt of the benefit to be the year in which the GOI formally waived the respondents’ outstanding import duties.⁹⁴ Next, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted the respondents an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of the

⁸⁸ See *Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998).

⁸⁹ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 9.

⁹⁰ See DF1SQR, at Exhibit SQ10 and DS1SQR, at Appendix Supp-5.

⁹¹ See DF1SQR, at 10-11 and DS1SQR, at 16. Devi Fisheries reported that one of its capital goods imports was solely for non-subject merchandise. See DF1SQR, at 10-11. However, this import occurred prior to the POI, and the benefit expenses to the year incurred pursuant to 19 CFR 351.524(b)(2). See DF Preliminary Calculation Memo.

⁹² See DF1SQR, at Exhibit SQ10 and DS1SQR, at Appendix Supp-5.

⁹³ *Id.*

⁹⁴ See *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at Comment 5.

respondent's total export sales, we expensed the amount of the waived duties to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of the respondent's total export sales in that year, we allocated the waived duty amount using the allocation period of 12 years for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2). See the "Allocation Period" section, above. For purposes of allocating the value of the waived duties over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties. See "Benchmarks and Discount Rates" section, above.

As noted above, import duty reductions or exemptions that the respondents received on the imports of capital equipment for which they had not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.⁹⁵

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but had not been officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondents would have paid during the POI had they borrowed the full amount of the duty reduction or exemption at the time of importation.⁹⁶

As stated above, the time period for fulfilling the export requirement expires six years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the "Benchmarks and Discount Rates" section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POI from the formally waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) interest due on the contingent-liability loans for imports of capital equipment that have unmet export requirements during the POI. We then divided the total benefit received by the respondents under the EPCG program by the respondents' total exports during the POI.

We made no changes to the calculation from the *Preliminary Determination*, with one exception. For the *Preliminary Determination*, we inadvertently used 366 days as the term for all contingent

⁹⁵ See 19 CFR 351.505(d)(1); see also *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at "EPCGS;" see also *PET Resin Final Determination*, and accompanying Issues and Decision Memorandum at "Export Promotion Capital Goods Scheme (EPCGS)."

⁹⁶ See, e.g., *Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46488 (August 10, 2005) (unchanged in *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006)).

liability loans that respondents received during the POI. For those loans that respondents received during the POI, we have corrected the term to reflect the correct number of days between importation of the capital good under the program and the end of the POI. *See* Calculation Memoranda.

On this basis, we determine a countervailable subsidy of 0.02 percent *ad valorem* for Devi Fisheries⁹⁷ and a countervailable subsidy of 0.06 percent *ad valorem* for Devi Seafoods.⁹⁸

6. Export Financing

During the POI, the GOI provided pre- and post-export financing to make short-term working capital available to exporters at internationally comparable interest rates.⁹⁹ The financing was denominated in INR and in foreign currencies.

With respect to the rupee-denominated export financing, the Reserve Bank of India (RBI) previously capped the interest rate that commercial banks could charge on these loans.¹⁰⁰ However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and set only a floor rate for these loans. At the same time, the RBI instituted an interest subvention program for certain exporting companies, including small and medium enterprises.¹⁰¹ In order to receive this interest assistance, the interest rate on the rupee-denominated export financing had to be less than the bank's benchmark prime lending rate minus 4.5 percent.¹⁰² Thus, rupee-denominated pre- and post-export loans that were eligible for the subvention were subject to an interest-rate cap. Devi Fisheries qualified for the subvention,¹⁰³ but Devi Seafoods did not.

We determine that rupee-denominated pre- and post-export loans that were eligible for the interest rate subvention confer countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans; (2) these loans give rise to a benefit, as described further below, because the interest rates are lower than the interest rates on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act); and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. Further, we determine that rupee-denominated pre- and post-export loans that were not eligible for the subvention do not confer countervailable subsidies on the subject merchandise because there is no financial contribution.

With respect to export financing denominated in foreign currencies during the POI, the RBI required banks to fix the rates of interest with reference to ruling LIBOR, EURO LIBOR or EURIBOR, and these rates were subject to caps, with the size of the cap varying depending on

⁹⁷ *See* DF Final Calculation Memo.

⁹⁸ *See* DS Final Calculation Memo.

⁹⁹ *See* GQR, at 50.

¹⁰⁰ *See, e.g., PET Film Final Determination*, and accompanying Issues and Decision Memorandum at "Pre-Shipment and Post-Shipment Export Financing."

¹⁰¹ *See* GQR, at 45.

¹⁰² *Id.*

¹⁰³ *See* DF1SQR, at 33.

the duration of the loan.¹⁰⁴ Both respondents reported receiving both pre- and post-shipment export loans denominated in foreign currencies during the POI.¹⁰⁵

We determine that pre- and post-export loans that were denominated in foreign currencies confer countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) the Act, as a direct transfer of funds in the form of loans; (2) these loans give rise to a benefit, as described further below, because the interest rates are lower than the interest rates on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act); and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance.

To measure the benefit conferred by the pre-shipment and post-shipment loans, we compared what the companies paid for their loans to the amount of interest they would have paid on a comparable commercial loan, using the short-term benchmarks described above under “Benchmarks and Discount Rates.” We divided the interest savings each company received during the POI by the company’s exports during the POI.

As discussed under Comments 6 and 7, below, we have made two changes to the calculations from the *Preliminary Determination*. First, we have used IMF benchmarks for the same year in which Devi Fisheries took out its loans. Second, for Devi Fisheries’ post-shipment rupee-denominated loans, we have based the benefit calculation on the actual term of the loan, not the due date.

On this basis, we determine the countervailable subsidy for Devi Fisheries of 0.04 percent *ad valorem* for pre-shipment loans denominated in INR, of 0.01 percent *ad valorem* for pre-shipment loans denominated in U.S. Dollars, of 0.16 percent *ad valorem* for post-shipment loans denominated in INR, and of 0.01 percent *ad valorem* for post-shipment loans denominated in U.S. Dollars.¹⁰⁶ We calculated no benefit for Devi Seafoods under this program.¹⁰⁷

The GOI reported that the foreign currency export lending program was terminated on May 5, 2012. Specifically, as of that date the RBI is not involved in setting interest rates (caps or floors) for these loans.¹⁰⁸ The GOI supported its claim with a copy the Master Circular - Rupee / Foreign Currency Export Credit & Customer Service To Exporters issued by RBI, which specified that “banks are free to determine the interest rates on export credit in foreign currency with effect from May 5, 2012.”¹⁰⁹

As explained above, 19 CFR 351.526(a) permits the Department to take account of program-wide changes in setting the deposit rate in certain circumstances. When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be no residual benefits and that if a replacement program has been implemented the benefits under the replacement program be calculable.

¹⁰⁴ *Id.*, at 46-47.

¹⁰⁵ *See* DF1SQR, at Exhibits SQ18 through SQ21 and DS1SQR, at Appendices Supp-8 through Supp-11.

¹⁰⁶ *See* DF Final Calculation Memo.

¹⁰⁷ *See* DS Final Calculation Memo.

¹⁰⁸ *See* GQR, at 46.

¹⁰⁹ *See* GQR, at Exhibit 21.

The GOI reported that the maximum term for pre-shipment credits in foreign currencies was 360 days prior to shipment, and the maximum term for post-shipment credits in foreign currencies was six months from the date of shipment.¹¹⁰ Thus, the last day on which the respondents could have paid reduced interest on their foreign currency export loans was April 30, 2013 (360 days after May 5, 2012). Therefore, no residual benefits exist beyond that date. Moreover, the GOI has not implemented a replacement program. Consequently, in accordance with 19 CFR 351.526(a)(2) and (d), we are adjusting the cash deposit rates to exclude the foreign currency denominated export loan benefit. *See* the DF Final Calculation Memo for the calculation of the final cash deposit rate.

7. MPEDA Sea Freight Assistance

The Marine Products Export Development Authority (MPEDA)¹¹¹ implemented the Sea Freight Assistance program to extend financial assistance to entrepreneurs intending to import raw material for processing and re-export value-added products.¹¹² The scheme also provides assistance for the export of value-added products relying on raw materials sourced indigenously.¹¹³ Receipt of sea-freight assistance grants is contingent upon exporting.¹¹⁴

We determine that a financial contribution, as defined under section 771(5)(D)(i) of the Act, is provided under this program and that the respondents receive a benefit in the amount of the grants. Moreover, this program is only available to exporters; therefore, it is specific under section 771(5A)(B) of the Act. Accordingly, we determine that this program is countervailable.

Both respondents reported that they received assistance under this program during the POI.¹¹⁵ Although these grants are earned on a shipment-by-shipment basis, we are unable to tie the benefits to specific markets for every shipment, in accordance with 19 CFR 351.525(b)(4) and (5). Therefore, we divided the total benefit received by the respondents under the program by the respondents' total exports during the POI.

On this basis, we determine a countervailable subsidy of 0.06 percent *ad valorem* for Devi Fisheries¹¹⁶ and a countervailable subsidy of 0.04 percent *ad valorem* for Devi Seafoods.¹¹⁷

B. Programs Determined To Be Not Used or Not To Confer a Benefit During the POI

We determine that the respondents did not apply for or receive measurable benefits during the POI under the following programs:

¹¹⁰ *See* GQR, at 52-53.

¹¹¹ MPEDA is a government agency which operates under the Ministry of Commerce and was established by the GOI in 1972 to promote seafood exports from India. *See* Letter from COGSI, "Petitioner's Response To The Department's January 4, 2013, Supplemental Questions on India on Behalf of {COGSI}" (January 9, 2013), at 7.

¹¹² *Id.*, at 171.

¹¹³ *Id.*

¹¹⁴ *Id.*, at 176.

¹¹⁵ *See* DFQR, at Exhibit 63 and DSQR, at Appendix 50.

¹¹⁶ *See* DF Final Calculation Memo.

¹¹⁷ *See* DS Final Calculation Memo.

1. Programs Determined To Be Not Used or Benefitted From During the POI

Both respondents reported they did not use these programs during the POI or during the AUL period.

- a. *Tax and Duty Incentives under the Special Economic Zone (SEZ) Program*
- b. *Tax and Duty Incentives under the Export-Oriented Unit (EOU) Program*
- c. *Subsidized Loans to the Marine Products Industry*
- d. *Marine Products Export Development Authority (MPEDA) Subsidies for New Shrimp Farms*
- e. *MPEDA Subsidies for Shrimp Hatcheries*
- f. *MPEDA Subsidies for Shrimp Farm Effluent Treatment Systems*
- g. *MPEDA Assistance for Organic Shrimp Farmers*
- h. *MPEDA Technology Upgrade Scheme for Marine Products*
- i. *Development of Inland Fisheries and Aquaculture Scheme*
- j. *Assistance from the National Fisheries Development Board (NFDB) – Direct Transfers*
- k. *MPEDA: Financial Assistance for Improving Infrastructure Facilities for Preservation and Processing of Fish*
- l. *Subsidy in the form of Provision of Goods or Services for Development of Inland Fisheries and Aquaculture*
- m. *State Sales Tax Incentive*
- n. *Andhra Pradesh Incentives for Food Processing*
- o. *Andhra Pradesh Industrial Investment Promotion Policy*
- p. *Export Credit Insurance*

During the POI, Devi Fisheries reported that it purchased export credit insurance for certain of its export sales, but that it did not make any claims or receive any settlement for prior claims.¹¹⁸ 19 CFR 351.520(a)(2) instructs that the Department shall calculate the benefit for export insurance programs as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the POI. Because Devi Fisheries did not make any claims or receive settlement for prior claims during the POI, we determine that Devi Fisheries did not receive a benefit during the POI under this program.

2. Programs Determined to Expense to Years Prior to the POI under 19 CFR 351.524(b)(2)

The respondents received benefits under these programs during the AUL period, but prior to the POI. We found that the benefits received were less than 0.5 percent of the export¹¹⁹ sales of the respondents in the year in which the subsidies were approved.¹²⁰ Therefore, in accordance with 19 CFR 351.524(b)(2), we expensed the benefits both respondents received pursuant to these programs to the year in which they received the benefit. As a result, neither respondent received a benefit pursuant to these programs that is attributable to the POI.¹²¹

¹¹⁸ See DFQR, at 41.

¹¹⁹ Although we have made no determination that these programs are countervailable export subsidies, we have used respondents' export sales as a conservative figure to carry out the 0.5 percent test under 19 CFR 351.524(b)(2).

¹²⁰ See Calculation Memoranda.

¹²¹ *Id.*

- a. *MPEDA Subsidies for Hatchery PCR Labs*
- b. *MPEDA Refrigerated Truck and Container Subsidy*
- c. *MPEDA Cold Storage Subsidy*
- d. *MPEDA Insulated Fish Box Subsidy*
- e. *MPEDA Subsidies for In-Process Quality Control Labs*
- f. *MPEDA Subsidies for the Construction and Renovation of Pre-Processing Centers*
- g. *MPEDA Subsidy Scheme for Installation of Water Purification System*
- h. *MPEDA Subsidies for Installation of Gen-sets*
- i. *MPEDA Subsidy for Installation of Flake Ice Making Machine*
- j. *MPEDA: Financial Assistance for Acquisition of Various Processing Machinery and Equipment for Production of Value-Added Marine Products*
- k. *MPEDA: Financial Assistance for Setting Up Effluent Treatment Plants (ETP) in Seafood Processing Units*
- l. *MPEDA: Financial Assistance for the Establishment of Chill Room Facilities in Seafood Processing Plants*
- m. *Grant in Aid from the Ministry of Food Processing for Upgrading of Existing Seafood Processing Plants*
- n. *MPEDA: Financial Assistance for Procurement of Quick Testing Kits for Antibiotics*
- o. *MPEDA Subsidy for Establishing Effluent Treatment Systems in Shrimp Hatchery*
- p. *MPEDA Interest Subsidy Assistance*
- q. *MPEDA Setting up Food Processing Plant*
- r. *MPEDA Worker Insurance Subsidy*

3. *Program Determined to Yield a Benefit of Less Than .005 Percent During the POI*

- a. *Service Tax Drawback Scheme for Exporters*

Devi Seafoods received a benefit under this program during the POI. However, any potential subsidy is less than 0.005 percent and, as such, does not have an impact on Devi Seafoods' overall subsidy rate.¹²²

V. ANALYSIS OF COMMENTS

General Issue

Comment 1: Whether the Department Should Investigate Petitioner's Timely Filed New Subsidy Allegation

Petitioner's Arguments

The Department has a legal duty to consider new subsidy allegations that are filed on a timely basis.

- The CIT has found that timely filed allegations must be considered in accordance with 19 CFR 351.301(d)(4)(i)(A).¹²³

¹²² See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at 15.

- The regulatory deadline for filing new subsidy allegations exists “to ensure that the agency has sufficient time to investigate the allegation.”¹²⁴
- The Department itself has stated that the deadline is “intended to ensure that the Department is informed of any allegation that it must include in its investigation.”¹²⁵
- The Department has also stated that new subsidy allegations that are made before the submission deadline “provide Commerce with sufficient time to investigate the allegation.”¹²⁶
- Only when new subsidy allegations are made on a non-timely basis, or when the Department discovers a program in the course of an investigation, may the Department consider time and resource constraints in deciding not to investigate a program.
- The Department acknowledged that timely allegations are not covered by 19 CFR 351.311(b), which permits deferral of an investigation into subsidy programs discovered in the course of an investigation.¹²⁷
- Time and resource constraints do not justify the Department’s departure from its legal obligation to consider timely filed new subsidy allegations.
- The Department’s regulation regarding the filing deadline for new submissions is the only procedural protection available to Petitioner to ensure that allegations will be considered; absent this deadline, Petitioner have no basis for knowing the factors that determine the Department’s ability to investigate allegations, including resource and time constraints.
- The only notification available to a petitioner regarding the impact of those constraints on the Department’s ability to consider new subsidy allegations is the deadline set out in the regulation; if the Department determined it could not comply with the regulation in this case, it could have advised Petitioner ahead of time of a different deadline by which such allegations would have been accepted. This would have given Petitioner fair warning that the regulations were not going to be followed and prevented the Petitioner from relying on those regulations to its ultimate detriment.
- In the case of the Department’s procedural regulations, compliance with a regulation intended to provide important procedural benefits is required; the only exception is if noncompliance would constitute harmless error.¹²⁸
- The Department’s decision caused a serious and harmful loss of a procedural benefit to Petitioner, and will cause substantial prejudice to Petitioner.
- The Department’s refusal to consider the timely filed new subsidy allegation has deprived the Petitioner of the possibility of obtaining effective relief from the subsidy.
- Even if the Department does issue an affirmative final determination for all respondents, deferral of consideration of the timely alleged new subsidy to an administrative review will not make Petitioner whole.

¹²³ See *Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354, 1361 (Ct. Int’l Trade 2001) (*Bethlehem I*).

¹²⁴ See *Bethlehem Steel Corp. v. United States*, 162 F. Supp. 2d 639, 642 (Ct. Int’l Trade 2001) (*Bethlehem II*).

¹²⁵ See *Countervailing Duties, Final Rule*, 53 FR 52306 (December 27, 1988) (the current version of 19 CFR 351.301(d)(4) is unchanged from the 1988 regulations).

¹²⁶ See *Bethlehem Steel I*, 140 F. Supp. 2d at 1359.

¹²⁷ See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 72 FR 7015 (*DRAMS from Korea AR*), and accompanying Issues and Decision Memorandum at Comment 4.

¹²⁸ See *Guangdong Chemicals Import & Export Corp. v. United States*, 414 F. Supp. 2d 1300, 1309 (CIT 2006).

- Pursuit of an administrative review requires the commitment of additional resources and efforts on behalf of Petitioner that should not be necessary to achieve accurate margins based on information timely submitted in the investigation.
- Corrected margins achieved in an administrative review would only cover entries since the imposition of the order. Other duties which rightly should be due on entries made will never be collected, even if an administrative review ultimately corrects the subsidy margins.
- The Department’s consistent practice is to defer the investigation of subsidies only where those subsidies have not been alleged by the regulatory deadline or where they were discovered by the Department after that deadline; the Department’s actions in this investigation violate this long-standing practice.¹²⁹
- In only one case, *OCTG from China*, has the Department deferred the investigation of timely filed subsidy allegations;¹³⁰ the appeal of the Department’s decision in that investigation is still pending.¹³¹
- The facts in *OCTG from China* are distinguishable from those in this case.
- The new subsidy allegations in *OCTG from China* were more complicated than those filed in this investigation because debt-for-equity swaps would require the Department to make an equityworthiness determination.
- The petitioners in *OCTG from China* did not seek to align the deadlines for the final countervailing duty and antidumping investigations; in this case, Petitioner has requested all extensions available to it under the statute and the regulations, providing the Department with as much time as possible to consider the timely filed new subsidy allegation.

GOI’s, Devi Fisheries’, and Devi Seafoods’ Rebuttal Arguments

The Department correctly declined to initiate Petitioner’s new subsidy allegation concerning electricity in Andhra Pradesh.

¹²⁹ See, e.g., *Final Affirmative Countervailing Duty Determination; Certain Granite Products From Spain*, 53 FR 24,340, 24,350 (June 28, 1988) (allegation after verification); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37,315, 37,326 (July 9, 1993) (discovered at verification); *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40,474, 40,502 (July 29, 1998) (same); *Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 63 FR 64,050, 64,060 (November 18, 1998) (same); *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy*, 64 FR 15,508, 15,517-15,518 (March 31, 1999) (same); *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34,905 (May 16, 2002) and the accompanying Issues and Decision Memorandum at “Capital Subsidy” (same); *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15,545 (April 2, 2002) and the accompanying Issues and Decision Memorandum at “Timber Damage Compensation in Alberta” (alleged four months after the preliminary determination); *Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 41,801 (July 19, 2010) and the accompanying Issues and Decision Memorandum at Comment 3 (discovered at verification).

¹³⁰ See *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from China*), and the accompanying Issues and Decision Memorandum at Comment 28.

¹³¹ See *TMK IPSCO et al. v. United States*, CIT Consol. Court No. 10-00055.

- As a matter of law, the Department has the authority to defer the investigation until any subsequent administrative review.
- 19 CFR 351.311 gives the Department the authority to defer consideration of a program until an administrative review.
- 19 CFR 351.311 provided Petitioner with an option if it did not want to defer consideration of this program until an administrative review.
 - Petitioner chose not to take that option in this case.
- 19 CFR 351.301(d)(4)(i)(A) provides the deadline for submission of new subsidy allegations, but does not impose an affirmative obligation on the Department to review all subsidies that are alleged.
 - The position that simply filing an allegation by the deadline does not create an affirmative obligation on the Department was confirmed by the Court of International Trade in *Bethlehem Steel II* and in *Royal Thai Government*.¹³²

Department’s Position: Prior to the *Preliminary Determination*, the Department deferred examination of Petitioner’s new subsidy allegation regarding the provision of electricity for less than adequate remuneration (LTAR), pursuant to 19 CFR 351.311(c)(2).¹³³ While we acknowledge that the allegation was timely filed under 19 CFR 301(d)(4)(i)(A), we were unable to conduct an adequate investigation of this program given the extraordinarily complex nature of the allegation, the amount of time left in our investigation, and the constraints on our resources, which were already devoted to investigating the 42 subsidy programs alleged by Petitioner and on which we initiated this investigation.

On April 18, 2013, Petitioner submitted additional new subsidy allegations with regard to three¹³⁴ programs; these allegations were timely filed in accordance with 19 CFR 351.301(d)(4)(i)(A). In its May 8, 2013, NSA Memo, the Department found that Petitioner’s allegations with respect to Andhra Pradesh incentives for food processing and the Andhra Pradesh Industrial Investment Promotion Policy met the standard for initiation, and we initiated an investigation into these programs. With respect to Petitioner’s allegation regarding the provision of electricity for -LTAR, the Department decided to defer its examination of this program due to the extraordinarily complex nature of this allegation, the amount of time left in our investigation, and the constraints on our resources.¹³⁵

Section 775 of the Tariff Act of 1930 provides, in relevant part, that if, during the course of a countervailing duty proceeding, the Department “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition,” then the Department “shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” The relevant legislative history explains that this provision was meant to avoid “unnecessary separate” investigations and

¹³² See *Bethlehem Steel II* at 646; see also *Royal Thai Government v. United States*, 341 F. Supp. 2d 1315, 1322 (CIT 2004) (RTG).

¹³³ See Memorandum entitled “Analysis of Additional New Subsidy Allegations,” (May 8, 2013) (NSA Memo).

¹³⁴ Petitioner also requested that we reconsider our decision to not initiate an investigation with respect to VAT exemptions on prawn feed and prawn seed. See Comments 8, 9, and 10, below, for our discussion of this program.

¹³⁵ See NSA Memo at 7-8.

“increased expenses and burdens” by “including such practices within the scope of any current investigation, . . . {However,} {t}he inclusion of such a practice should not delay the conclusion of any current investigation any more than absolutely necessary.” *Trade Agreements Act of 1979, Sen. Rep. No. 96-249, at 98 (1979)*. Within this statutory framework, and to ensure timely consideration of those allegations not originally included in a petition, the Department promulgated the deadline set out in the current version of its regulations, 19 CFR 351.301(d)(4)(i)(A), that a petitioner must file new subsidy allegations no later than 40 days before the preliminary determination. At the same time, the Department promulgated what is now 19 CFR 351.311 to address the time frame for considering countervailable subsidy practices discovered during the course of a proceeding. Petitioner argues that the Department has previously acknowledged that timely filed new subsidy allegations are only governed by 19 CFR 351.301(d)(4)(i)(A), and that 19 CFR 351.311 is explicitly limited to subsidy practices that were “not alleged” in the proceeding.¹³⁶

In the past the Department has read 19 CFR 351.311 to apply to later discovered subsidy practices not originally alleged in the proceeding; however, we consider that the general concept of deferring investigation of subsidy programs, explicitly referenced in 19 CFR 351.311(c)(2), is not necessarily limited to that provision. Moreover, the courts have acknowledged that in conjunction with petitioners’ obligation arising from 19 CFR 351.304(d)(4)(i)(A) to allege new subsidies at least 40 days prior to the preliminary determination to ensure that the agency has sufficient time to investigate the allegation, there exists an “independent obligation” on behalf of the Department to investigate newly discovered practices that reasonably appear to be countervailable if sufficient time remains before the final determination. Thus, regardless of the timeliness of the allegations under 19 CFR 351.301(d)(4)(i)(A), the courts have held that “Commerce must investigate only those allegations that reasonably appear to be countervailable and are discovered within a reasonable time prior to the completion of the investigation.”¹³⁷

The courts have also recognized that, while the Department has a general duty to investigate subsidy allegations that arise during the course of an investigation, that duty is tempered by the acknowledgment that investigating subsidies takes time, and that the Department may not always have sufficient time or resources before the final determination to investigate a newly alleged subsidy. Thus, “[b]ased upon the plain meaning of th[e] statute and regulation, it is clear that Commerce has an affirmative duty to investigate subsidies discovered during the course of an investigation, even if (for practical reasons) the investigation of the newly discovered subsidies must wait for an administrative review.”¹³⁸ In *Allegheny Ludlum*, the CIT noted that “a petitioner who does not timely make a subsidy allegation, even though it could, risks having Commerce defer its investigation to a subsequent administrative review. . . . Thus, it is always in a petitioner’s interest to expeditiously make {Commerce} aware of potential subsidies.”¹³⁹

¹³⁶ See Petitioner Case Brief at 33-34 (citing *DRAMS from Korea AR*, 72 FR 7015, and accompanying Issues and Decision Memorandum at Comment 4).

¹³⁷ See *Bethlehem II*, 162 F. Supp. 2d at 642-43 (internal quotations omitted) (quoting *Bethlehem I*, 140 F. Supp. 2d at 1361).

¹³⁸ See *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150 (CIT 2000) (*Allegheny Ludlum*).

¹³⁹ See *Allegheny Ludlum*, 112 F. Supp. 2d at 1150 n.12 (citing 19 CFR 351.311(c)(2)).

The CIT has also recognized that when the Department is faced with unreasonably late or extraordinarily complex subsidy allegations it may “lack the resources or time necessary to investigate” the new allegations. In *Bethlehem I*, the CIT found:

...Commerce was made aware of the subsidy allegation in July 1999. The Final Determination was not issued until December 1999 thus providing Commerce with at least four full months in which to conduct its investigation. Although the Court recognizes that when Commerce is faced with unreasonably late or extraordinarily complex subsidy allegations it may “lack the resources or time to investigate” the new allegations, the present case does not implicate these concerns. The fact that Commerce had over four months to investigate what appeared to be a straightforward subsidy allegation forces the Court to conclude that Commerce’s failure to so investigate was simply legal error.¹⁴⁰

Thus, while the CIT found that the Department should have investigated the newly alleged “straightforward” subsidy allegation in the administrative proceeding underlying *Bethlehem I*, the Court also acknowledged that limited time and lack of resources might prevent the Department from conducting such an investigation. It is noteworthy that the single, straightforward subsidy allegation addressed in *Bethlehem I* was identified to the Department on July 8, 1999, and the final determination in the underlying investigation dated to December 29, 1999. In other words, in that case the Department had more than five months to investigate a single allegation.

A later CIT decision further elaborated on the need for time to investigate complex subsidy allegations.¹⁴¹ Quoting the above-cited passage from *Bethlehem I*, in *RTG* the CIT stated that equity infusion allegations “implicate[d] precisely” that concern:

Thus, although four months may have been sufficient time in *Bethlehem Steel* where a straightforward subsidy allegation was at issue, the five months that Commerce had in this case was not sufficient time to investigate U.S. Steel's complex equity infusion allegations.¹⁴²

Admittedly, in the administrative determinations underlying both the *Bethlehem I* and *RTG* decisions, the petitioners’ allegations were untimely filed according to the deadline established in 19 CFR 351.301(d)(4)(i)(A). Nevertheless, neither decision recognized the Department's deadline as a determinative factor but, instead, focused on the complexity of the allegations and the amount of time the Department had to investigate them. The *Bethlehem I* decision also specifically acknowledged resource constraints as a factor in the Court’s consideration of whether the Department is required to investigate newly alleged subsidies that arise near the end of an investigation. Contrary to Petitioner’s assertion, none of these cases hold that the Department may consider time and resource constraints only when new subsidy allegations are made on a non-timely basis, or when the Department discovers a program in the course of an investigation.

¹⁴⁰ See *Bethlehem I*, 140 F. Supp. 2d at 1361.

¹⁴¹ See *RTG*, 341 F. Supp. 2d 1315.

¹⁴² *Id.*, at 1320.

In the instant case, in making its determination to defer consideration of the new subsidy allegation, the Department noted that at the time of its consideration of the new subsidy allegation, it was already experiencing intense resource constraints to complete the investigation by the final determination due date of August 12, 2013:

The Department has been analyzing questionnaire responses from the GOI and from both mandatory respondent companies, as well as deficiency comments submitted by petitioners with regard to these responses. To have adequate information upon which to make a preliminary determination within the statutory deadlines, the Department has prepared and issued supplemental questionnaires regarding the original programs which the Department is investigating and the Department prepared and issued a questionnaire regarding the newly alleged subsidy program on which the Department initiated an investigation. Additionally, while in the process of analyzing these new subsidy allegations, the Department has received supplemental questionnaire responses from the GOI and from both respondents companies and has issued additional supplemental questionnaires. Once these additional supplemental questionnaire responses are submitted, the Department will fully analyze the record in preparation for the preliminary determination, for which the statutory due date is May 28, 2013.

In addition, unlike in most other CVD investigations, there is no companion antidumping duty (AD) investigation with which the deadline for the final CVD determination can be aligned. As it stands, because the Department's schedule is compressed, extensive resource commitments will be required to complete this investigation by August 12, 2013, even without investigating the newly alleged subsidies. Verification is set to begin shortly after the preliminary determination. Prior to that, the Department will have to disclose its preliminary calculations (see 19 CFR 351.224(b)), prepare verification outlines, and review new submissions by the parties in preparation for verification. Verification will be conducted over two weeks. In the remaining time before the final determination, we will prepare verification reports, provide an opportunity for the parties to file briefs and rebuttal briefs, hold a hearing (if requested), analyze the parties' comments and prepare a final determination. We will have less than two months to do this before the final determination on August 12, 2013.¹⁴³

The Department further emphasized that in the current investigation, unlike in *Bethlehem I* and *RTG*, the Department faced even less time and at least three new subsidy allegations. In those cases, and as is typical in CVD investigations, the Department had aligned its CVD final determination with companion AD final determination, which extended the overall deadlines for the CVD final determination.¹⁴⁴ Here, there are no companion AD investigations; thus, the Department is operating under much shorter deadlines, and extensive resource commitments are required to complete the investigation in this shorter timeframe (in the cases underlying

¹⁴³ See NSA Memo at 5-6.

¹⁴⁴ See *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy*, 64 FR 40416 (July 26, 1999); *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 20251 (April 20, 2001).

Bethlehem I and *RTG*, there were 5 months between the preliminary determination and the final determination; in this case, there are merely 75 days).¹⁴⁵ In short, the submission of the new subsidy allegation on April 18, 2013, with the final determination date of August 12, 2013 (which could not be extended) left the Department with fewer than four months to complete its analysis of the programs already under investigation, some of which were quite complex, as well as to begin and complete its analysis of the newly alleged subsidy program, which was also complex.

In deferring an investigation of the LTAR programs, the Department noted that investigation of such programs is particularly time-consuming because it requires gathering detailed information regarding the market for the provision of electricity, and research into possible benchmarks, including gathering market and pricing data. Such an analysis would be difficult to complete at that late stage in the investigation.¹⁴⁶ The Department also noted that such information typically requires at least one supplemental questionnaire, and typically amounts to several hundred pages of documents that must be analyzed.¹⁴⁷

We explained that the analyses required to investigate the newly alleged program would be in addition to the analyses already ongoing, and the calculations, conduct of verification, and issuance of reports that must be completed before the final determination.¹⁴⁸ Again, with fewer than four months to complete the investigation, we simply lacked the time and or resources necessary to complete the required examination of the newly alleged subsidy program.

In addition, because the newly alleged subsidy program has not been previously investigated, a complex specificity analysis would be required. This complex analysis would require the Department to issue detailed questionnaires, to analyze the questionnaire responses and related government laws, decrees and regulations; and then to analyze the actual program usage including analysis of the actual number of enterprises and industries using the alleged program and the amount of benefits on an enterprise- and industry-specific basis. This is in addition to the data about program usage that we would need to request from the mandatory respondent companies and their cross-owned companies. This information could not have been gathered, analyzed, and followed-up with supplemental questionnaires with further analysis of supplemental questionnaire responses before the *Preliminary Determination* and the start of verification at the beginning of June.

In making this determination, the Department also looked to its recent practice in similar cases in which the Department found it appropriate to defer investigation of extraordinarily complex subsidy allegations, given the limitations on time and other resources in the proceeding. In

¹⁴⁵ See also *OCTG from the PRC* and accompanying Issues and Decision Memorandum at Comment 28 (noting that “[b]ecause the CVD deadline was not aligned with the AD deadline, the Department schedule was compressed and extensive resources had to be committed in order to complete this investigation by November 23, 2009, even without investigating the newly alleged subsidies.”).

¹⁴⁶ See NSA Memo at 8.

¹⁴⁷ *Id.* (citing *Crystalline Silicon Photovoltaic Cells. Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying Issues and Decision Memorandum at Comment 10).

¹⁴⁸ *Id.*

OCTG from the PRC, along with finding debt-for-equity swap allegations to be extraordinarily complex, the Department also found LTAR allegations to be similarly complex.¹⁴⁹ Even for those seemingly more straightforward subsidy allegations, the Department noted that those programs represented various types of assistance provided by different levels of the government (e.g., national, regional, municipal) adding to the time it would take to develop a proper investigative record.¹⁵⁰ Likewise, as noted above, the Department was similarly faced with a complex LTAR allegation in this case, and the Department determined that it did not have sufficient time or resources to investigate that allegation. In contrast, as noted above, the Department determined that it had the time and resources to initiate an investigation of the more straightforward new subsidy allegations on Andhra Pradesh’s incentives for food processing and the Andhra Pradesh Industrial Investment Promotion Policy.

Lastly, we disagree with Petitioner’s argument that 19 CFR 351.301(d)(4)(i)(A) is meant to confer important procedural benefits upon petitioners. Rather, this regulation is meant to aid the Department in the “orderly transaction of business,” *i.e.*, the orderly administration of countervailing duty investigations.¹⁵¹ This provision states that a countervailable subsidy allegation made by the petitioner is due no later than 40 days before the preliminary determination. It does not provide that the Department shall investigate all timely filed allegations. The primary intent of this regulation is to aid the Department in providing it, generally, with sufficient time to investigate such allegations if time and resources permit, and it is not meant to require the Department to do so or to confer important procedural benefits upon petitioners. Here, the Department determined that the time provided for in the regulation generally was insufficient for purposes of investigating the new subsidy allegation in this case, given the extraordinarily complex subsidy programs already under investigation along with the lack of time and resources it was then experiencing.

While we acknowledge that there are consequences to our decision that affect Petitioner, the Department must consider these consequences in light of the deadlines provided for in the Act and the impact on all parties in this proceeding. In this case these deadlines did not allow us sufficient time to investigate the additional subsidy, which would include giving the GOI and respondent companies an opportunity to respond to the allegation. Even if the Department had initiated its investigation of the new subsidy allegation in this proceeding, it is only speculation that the Department would have been able to complete its investigation of those subsidies by the

¹⁴⁹ See *OCTG from the PRC*, 74 FR 64045 and accompanying Issues and Decision Memorandum at Comment 28 (where the Department determined that with less than four months until the final determination, it could not investigate certain complex and timely-filed new subsidy allegations, given its limited time and resources, and deferred such examination until the first review).

¹⁵⁰ *Id.*

¹⁵¹ See *American Farm Line vs. Black Ball Freight Service*, 397 U.S. 532, 539 (1970) (“{I}t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.”).

final determination,¹⁵² and that the Department would have reached an affirmative finding of a countervailable subsidy as a result of investigating the additional alleged subsidy. As explained above, as neither the statute nor the regulations require the Department to initiate an investigation of extraordinarily complex subsidy programs not originally alleged in the petition in the face of time and resource constraints, we do not agree that Petitioner has been prejudiced as a result of our deferral.¹⁵³

Comment 2: Whether the Department Should Apply Adverse Facts Available to the DEPS Program

Petitioner's Arguments

The Department should apply adverse facts available to the DEPS program.

- The GOI has represented to the Department that the DEPS program has been terminated, that DEPS credits may not be earned on exports made after September 30, 2011, and that the last day on which respondents could have applied for credits under the program was September 30, 2012.
 - At verification, the GOI clarified that the very latest date on which a company could have received a DEPS credit for an export made prior to September 30, 2011, was March 31, 2013.
- The Department discovered at verification a notification regarding the DEPS program, Public Notice No. 06, which was published while this investigation was pending.
 - This previously undisclosed notice makes DEPS re-credits available up until at least September 30, 2013, a date after the cash deposit rates will go into effect in this case.
- The GOI's failure to disclose this information until verification merits the application of adverse facts available.
 - The GOI withheld Public Notice No. 06 from the Department until it was discovered at verification, despite the Department's requests for information about the program and its claimed termination.
 - The GOI's failure to provide this requested information has significantly impeded the Department's investigation by preventing the Department from fully investigating the extent to which benefits continue to be available under DEPS.
- The GOI has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information regarding this program.

¹⁵² Even assuming we had initiated on the allegation within one week of receiving the allegation, we might have issued the necessary questionnaires as early as April 25. If we were to allow the respondent government and companies 37 days to respond, the responses would be due on June 3 (assuming no extensions of the deadline to respond), nearly one week after the preliminary determination was due and a mere week before verification was scheduled to begin. In the unlikely event that there was no need to follow-up with supplemental questionnaires, there was still no flexibility for scheduling verification later to allow time to analyze the information and determine an appropriate approach for verification and briefing of, and a possible hearing on the issues, because the final determination was due on August 12. The Department simply recognized that there was insufficient time to conduct any investigation, much less a thorough and meaningful one, and reach a decision on the newly alleged subsidy program by the final determination.

¹⁵³ See *Intercargo Insurance Co. v. United States*, 83 F.3d 391, 396 (Fed. Cir 1996) (explaining that "prejudice...means injury to an interest that the statute, regulation or rule in question was designed to protect.").

- The notice was readily identified and retrieved by the Department at verification, and the GOI offered no explanation as to why it was not provided to the Department in response to earlier requests.
- The failure to provide this information thus constitutes a failure of the GOI to act to the best of its ability to comply with the Department's request for information.

GOI's, Devi Fisheries', and Devi Seafoods' Rebuttal Arguments

Petitioner has provided no legal basis for application of facts available in this case.

- The Department had all of the information necessary on the record to make its determination.
- Neither the GOI nor the companies withheld any information relevant to that determination.
- All information related to DEPS was provided by the applicable deadlines.
- Neither the GOI nor the companies impeded the investigation in any way.
- All of the information provided by the GOI and the companies was verified.
- Petitioner has misunderstood the program and the Department's approach to countervailing this program.
 - Petitioner appears to have mixed the concept of when a benefit can be "earned," "applied for," and received.
 - DEPS benefits could not be earned on any exports after September 30, 2011.
 - However, benefits cannot be applied for until after the exporter receives payment (bank realization date).
- Under the Department's method for determining the benefit under the DEPS program, anything that happens after September 30, 2011, the last date of export when a company could have earned DEPS credits, is irrelevant.
 - The Department determined that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the credits are earned.
- The Public Notice cited by Petitioner relates to the manner of utilization of DEPS credits that have already been earned based on exports made prior to September 30, 2011.
 - This in no way impacts or extends when benefits can be earned.
 - This public notice was dealing with certain residuary issues relating to the utilization of DEPB credits that were earned prior to September 30, 2011.

Department's Position:

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching its determination if "necessary information is not available on the record," or if an interested party or any other person: (1) withholds information that has been requested by the Department; (2) fails to provide such information by the deadlines or in the form and manner requested, subject to sections 782(c)(1) and 782(e) of the Act; (3) significantly impedes a proceeding; or (4) provides information that cannot be verified. We find that all information necessary to reach a determination with respect to the DEPS program is available on the record. Petitioner argues that the GOI withheld Public Notice No. 06 from the Department. However, while it is true that the GOI did not submit Public Notice No. 06 in its

responses prior to verification, we find that this public notice does not materially affect our determination. Public Notice No. 06 extended the deadline for the “utilisation” of DEPS credits that had already been earned; it did not make available new benefits under the DEPS program.¹⁵⁴ As we observed in the GVR, “this public notice did not alter the September 30, 2011 deadline,” by which date companies had to make exports in order to be eligible to earn benefits under the DEPS program.¹⁵⁵ In other words, Public Notice No. 06 has no effect on our determination regarding this program; all the facts we need are available on the record. We further find that the GOI did not fail to provide information by the deadlines or in the form or manner requested, did not significantly impede the proceeding, and did not provide information that we could not verify. Accordingly, we have not relied on the facts available, adverse or otherwise, with respect to the DEPS program.

Comment 3: Whether the Department Should Include the Benefits Found for the DEPS Program in the Final Cash Deposit Rates

Petitioner’s Arguments

If the Department does not apply adverse facts available to the DEPS program, the Department should include the benefits found for the DEPS program in the final cash deposit rates.

- Mere “official notifications” of changes have not been sufficient to constitute change, because these changes often prove to be temporary.
 - The temporary suspension of the DEPS program does not constitute a “program-wide” change or a termination of the program under the Department’s regulations.
 - It appears that residual benefits of the DEPS program continue.
- The public notice regarding termination of the DEPS program on September 30, 2011, is not sufficient to constitute a “program-wide change” under the Department’s regulations.
 - The GOI’s continued actions and public notifications regarding the DEPS program demonstrate that the GOI can restart the DEPS program at any time.
 - The GOI explained at verification that the Directorate General of Foreign Trade (“DGFT”) has broad authority to amend the policies governing the DEPS program at any time.
 - The GOI also explained at verification that DEPS benefits can be restored at any time by the DGFT simply issuing another public notice.
 - During verification, the Department located an additional notification regarding the DEPS program, Public Notice No. 06.
 - While this public notice does not appear to alter the September 30, 2011 deadline, the notice does make DEPS re-credits available up until at least September 30, 2013, a date after the cash deposit rates will go into effect in this case.
- Residual benefits of the DEPS program continue, indicating that the program is not “terminated.”

¹⁵⁴ See GVR at Exhibit GOI-4. By contrast, Public Notice No. 54 did extend the deadline for the termination of the DEPS program from June 30, 2011, to September 30, 2011. See GVR, at 3 and Exhibit GOI-1. The September 30, 2011, termination date was reflected in the GOI’s response. See GQR, at 5 and Exhibits 1 and 2.

¹⁵⁵ *Id.*, at 4.

- The GOI verification Exhibit 4 shows that DEPB re-credits can be used up until September 30, 2013, which is after the countervailing duty cash deposit rates go into effect.
- The Department has previously determined that changes to India’s DEPS program effectuated merely through GOI official notifications that could be changed at any time were not sufficient to constitute “program-wide changes” meriting adjustment of the countervailing duty cash deposit rate.
 - For example, the Department has found that “published DEPS rates in official notifications are not reliable since the GOI can, at any time, adjust the rates to account for changes in the custom duties on imported inputs, and that these adjustments can be made retroactively.”¹⁵⁶
 - While the Department did find there was a program-wide change to the DEPS rate in *PET Film Final Determination*,¹⁵⁷ that case is distinguishable from this one.
 - In *PET Film Final Determination*, the Department found that a “program-wide change” to the DEPS rate had occurred when the change was made through an official notification as well as “an official act” in the Indian Department of Commerce’s Handbook of Procedures.
 - The GOI has already made at least two changes to the DEPS program since 2009 without having undertaken an “official act.”
 - The GOI has admitted that it could make DEPS benefits available again by issuing another Public Notice extending the September 30, 2011, deadline to a later date.
- The CIT has affirmed the Department’s practice of not adjusting the countervailing duty cash deposit rate where the alleged “program-wide change” is not effectuated through an “official act.”
- The facts in this investigation can be distinguished from those in *Neenah Foundry*, where the CIT affirmed the Department’s redetermination that a program had been terminated and was unlikely to be reinstated.¹⁵⁸
 - The CIT based its conclusion in that case on the fact that the subsidy program at issue was not only withdrawn some five years before the sunset review, but also was not used for several years.
 - In this investigation, the alleged termination of the DEPS program occurred during the POI.

¹⁵⁶ See *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) (*PET Resin Final Determination*), and accompanying Issues and Decision Memorandum at 18; see also *Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 (CVP-23) from India*, 69 FR 67321 (November 17, 2004) (*CVP-23 Final Determination*), and accompanying Issues and Decision Memorandum at 22-25; see also *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 66 FR 53389, 53393 (October 22, 2001) (*PET Film Preliminary Determination*).

¹⁵⁷ See *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at Comment 7.

¹⁵⁸ See *Neenah Foundry Co. v. United States*, 155 F. Supp. 2d 710, 714 (CIT 2001) (*Neenah Foundry*).

GOI's, Devi Fisheries', and Devi Seafoods' Rebuttal Arguments

The Department correctly determined that the DEPS program was terminated.

- The public notice dated June 17, 2011, and the Notification dated June 5, 2012, referenced by Petitioner are official acts.
 - The notification is issued by the Indian Central Government in exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act 1992.
 - The Public Notice is issued in exercise of powers conferred under paragraph 2.4 of the Foreign Trade Policy.
 - Because the Foreign Trade Policy has been issued under the Foreign Trade (Development and Regulation) Act 1992 and the Foreign Trade Policy empowers the DGFT to issue public notices, the issuance of public notice by DGFT is also an official act.
- The Department explained why the issue of residual benefits was not relevant in its preliminary decision memorandum.¹⁵⁹

Department's Position:

We agree with the GOI and respondents that the DEPS program was terminated. 19 CFR 351.526(a)(2) instructs that a program-wide change be “effectuated by an official act, such as enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.” 19 CFR 351.526(d)(1) instructs that no residual benefits may continue to be bestowed under a terminated program. Petitioner asserts that the termination of the DEPS program does not meet the conditions of 19 CFR 351.526(a)(2) or 19 CFR 351.526(d)(1).

We determine, consistent with 19 CFR 351.526(a)(2), that the termination of the DEPS program was effectuated by a formal, official act. At page 2 of the GVR, we stated, “Foreign Trade (Development and Regulation) Act of 1992...provides the DGFT with the authority to formulate and, as necessary, amend the Foreign Trade Policy (‘FTP’) and the accompanying Handbook of Procedures (‘HBP’).” We also stated, “the HBP describes how programs in the FTP should be practically implemented,” “notifications ... modify the FTP,” and “public notices ... modify the HBP.”¹⁶⁰ The FTP that the GOI submitted in the GQR indicates that the GOI discontinued the program effective October 1, 2011.¹⁶¹ Public Notice No. 54, which we reviewed at verification, “amended the HBP to extend the deadline for DEPS-eligible exports from June 30, 2011 to September 30, 2011.”¹⁶²

Petitioner claims that *PET Film Final Determination* is distinguishable from this investigation because in *PET Film Final Determination* the GOI made the change through an official notification and an official act in the Indian Department of Commerce’s Handbook of

¹⁵⁹ See PDM, at 13; see also the summary of GOI’s, Devi Fisheries’, and Devi Seafoods’ rebuttal arguments under Comment 1, above.

¹⁶⁰ See GVR, at 2 and 4.

¹⁶¹ See GQR, at Exhibit 4, page 53. As we stated in the GVR, “notifications ... modify the FTP,” while “public notices ... modify the HBP.” See GVR at 4.

¹⁶² See GVR, at 3 and Exhibit GOI-1.

Procedures. In *PET Film Final Determination*, the Department stated, “{t}his change was effectuated by an official act in the Indian Department of Commerce’s Handbook of Procedures, and listed in an official notification of the Director General of Foreign Trade.” As explained above, notifications modify the FTP, public notices modify the HBP, and the HBP describes how the GOI should practically implement programs in the FTP. Because the Foreign Trade (Development and Regulation) Act of 1992 provides the DGFT with the authority to formulate and amend the FTP and the HBP, both the notifications and public notices are official acts. Thus, the public notice dated June 17, 2011, and the notification dated June 5, 2012, are official acts under Indian law. Moreover, although they are described slightly differently, we see no difference in the procedures the GOI followed with respect to the termination of the DEPS program and the procedure it used to change the program in *PET Film Final Determination*. Therefore, our decision here is consistent with our decision in *PET Film Final Determination*.

In addition, although the record indicates that the GOI could reinstate the program by issuing another Public Notice, it has not done so, and it is not the Department’s practice to consider subsidies not terminated merely because a government could hypothetically reinstate a subsidy in the future by official means. Under that standard, virtually no subsidy would be considered terminated under 19 CFR 351.526(d). Under Petitioner’s view, the Department can only find a program to be terminated if it is impossible for a government to reinstate the program. We do not believe that interpretation of 19 CFR 351.526(d) and its application is reasonable.

Petitioner’s citations to *CVP-23 Final Determination* and *PET Resin Final Determination* are not directly applicable to the issues in the instant investigation. The Department found in those proceedings that “published DEPS rates in official notifications are not reliable” on the grounds that “the GOI can, at any time, adjust these rates to account for changes in the custom duties on imported inputs, as illustrated during the POI, and...these adjustments can be made retroactive.”¹⁶³ Thus, in *CVP-23 Final Determination*, evidence on the record indicated that the GOI not only could adjust the rates retroactively, but actually did so during the POI. By contrast, in this investigation, there is no evidence on the record that the termination of the DEPS program is “temporary” or that the GOI has taken any steps to reinstate the program in the future.

Further, although Petitioner cited the *PET Film Preliminary Determination* in support of its argument that changes to a program effectuated merely through official notifications were not sufficient to constitute “program-wide changes,” the Department concluded that a program-wide change did occur with respect to the Special Import License (SIL) program in the *PET Film Final Determination*. In the *PET Film Preliminary Determination*, the Department declined to make a finding of a program-wide change on the grounds that “the GOI has not yet submitted a copy of any legislation to substantiate the termination of this program.”¹⁶⁴ In the *PET Film Final Determination*, however, the Department stated,

¹⁶³ See *CVP-23 Final Determination*, and accompanying Issues and Decision Memorandum at 25; see also *PET Resin Final Determination*, and accompanying Issues and Decision Memorandum at 18 (citing *CVP-23 Final Determination*).

¹⁶⁴ See *PET Film Preliminary Determination*, 66 FR at 53393, with respect to the Special Import License (SIL) program. No program-wide change was referenced with respect to DEPS in *PET Film Preliminary Determination*.

At the verification of the GOI, we confirmed that the SIL scheme was abolished by reviewing the applicable sections of the Indian Department of Commerce's Handbook of Procedures (incorporating amendments made up to March 31, 2000), which stated that existing SILs were only valid until March 31, 2001, and which no longer contained any provisions for issuing SILs. Since the termination of the SIL scheme was not limited to an individual firm or firms, and was effectuated by an official act in the Handbook of Procedures, we determine that a program-wide change as defined under 19 CFR 351.526(b) has occurred with respect to the SIL scheme. Therefore, pursuant to 19 CFR 351.526, the net subsidy rates that we have calculated for this program will not be included in the final cash deposit rates issued by the Department.¹⁶⁵

Thus, for the SIL program in *PET Film Final Determination*, the termination was effected by an amendment of the HBP, as was the termination of the DEPS in the instant investigation. Accordingly, Petitioner's citation to *PET Film Preliminary Determination* in support of its position is inapposite.

Moreover, we determine that residual benefits are not conferred under this program, consistent with 19 CFR 351.526(d)(1). The last date on which DEPS credits could be earned was September 30, 2011.¹⁶⁶ As explained in the *Preliminary Determination*, we have consistently treated benefits under the DEPS program as being received on the date of exportation of the shipment for which the recipient earned DEPS credits.¹⁶⁷ No party contested this finding, and no record evidence contradicts this finding. Therefore, we continue to find that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the recipient earned the credits. The last date on which a company could apply for DEPS credits was March 31, 2013,¹⁶⁸ and the last date on which a company could use DEPS credits is September 30, 2013.¹⁶⁹ These dates, however, reflect the post-export application process and the use of DEPS credits that companies already earned by virtue of exportation. Thus, we determine that no benefits have been conferred under this program since September 30, 2011, and, thus, that there are no residual benefits.

Accordingly, we determine that a program-wide change has occurred in that the DEPS program has been terminated during the POI. Therefore, consistent with 19 CFR 351.526(a)(2) and (d), we are adjusting the cash deposit rates to exclude the DEPS benefit from our calculation.

¹⁶⁵ See *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at Comment 6.

¹⁶⁶ See GQR, at 5 and GVR, at 3.

¹⁶⁷ See PDM at 12, citing *Steel Plate Final Determination*, 64 FR at 73134 and 73140; see also 19 CFR 351.519(b)(2).

¹⁶⁸ Based on our observation at verification that “[t]he deadline for applying for DEPS is either 12 months from the date of export, or six months from receiving the bank realization certificate,” combined with our observation at verification that “companies are required to realize (receive) payment for exported goods within 12 months after the date of export.” See GVR, at 3.

¹⁶⁹ See GVR, at Exhibit GOI-4.

Duty Drawback

Comment 4: Whether the Department Used the Incorrect Rate for Exports of Prepared Shrimp in Its Calculation of the Benefit Received by Devi Seafoods from the Duty Drawback Program

Devi Seafoods' Arguments

The Department used the incorrect rate for exports of prepared shrimp in its calculation of the benefit received by Devi Seafoods from the DDB program.

- The Department calculated the benefit Devi Seafoods received from the DDB program for the *Preliminary Determination* by using the amount received by Devi Seafoods on its original application for DDB, which was equal to 4 percent of the value of the FOB value of shipments.
- Devi Seafoods claims that it explained in Appendix 65 of its March 29, 2013, response that it was originally under the impression that it was entitled to 4 percent of the FOB value on all shipments of warmwater shrimp. After a number of shipments, though, Indian Customs informed Devi Seafoods that in fact it was only eligible for 2 percent DDB on “prepared shrimp,” which includes cooked shrimp.
- Devi Seafoods asserts that it reported the amount that it has already refunded and the amount to be refunded, and that these figures were verified by the Department.
- The Department should use the amount DDB Devi Seafoods received net of the amount that it has already refunded and the amount to be refunded.

Rebuttal Arguments

No party submitted a rebuttal to this argument.

Department's Position:

We agree with Devi Seafoods in part. We verified that Indian Customs required Devi Seafoods to refund a portion of the drawback it had received on exports of cooked shrimp.¹⁷⁰ Moreover, we verified the amounts Devi Seafoods reported that it refunded to the GOI.¹⁷¹ Therefore, the entire amount of the DDB Devi Seafoods received under 19 CFR 351.519(a)(4), in this instance, is the DDB net of the amount Devi Seafoods refunded to the GOI. Accordingly, we have adjusted the benefit Devi Seafoods received under this program for the amounts that Devi Seafoods has refunded.

With respect to the amounts Devi Seafoods reported as “to be refunded,” Devi Seafoods explained, and we observed at verification, that these were exports of cooked shrimp for which Indian Customs had not requested a refund.¹⁷² Because Devi Seafoods has not refunded these amounts and Indian Customs has not requested a refund, the record shows no evidence that Devi

¹⁷⁰ See DSVR, at 8.

¹⁷¹ *Id.*

¹⁷² *Id.*

Seafoods will refund these amounts. Therefore, we have not adjusted the benefit Devi Seafoods received under this program for the amounts that Devi Seafoods reported as “to be refunded.”

Chapter 1B Program

Comment 5: Whether the Department Should Correct the Calculation of the Benefit Received by Devi Seafoods under the Chapter 1B Program

Devi Seafoods’ Arguments

The Department should correct the calculation of the benefit Devi Seafoods received under the Chapter 1B program for the minor correction it reported at verification.

- Devi Seafoods submitted a correction at the start of verification with respect to this program.
- The Department should use the verified, correct amounts in the final determination.

Rebuttal Arguments

No party submitted a rebuttal to this argument.

Department’s Position: We agree with Devi Seafoods. We have incorporated the minor correction into the final calculation for Devi Seafoods.¹⁷³

Export Financing

Comment 6: Whether the Department Used an Incorrect Benchmark in the Calculation of Pre-Shipment Benefit on Export Financing Denominated in INR

Devi Fisheries’ Arguments

The Department used an incorrect benchmark in calculating the benefit from pre-shipment export financing denominated in INR.

- Devi Fisheries contends that the Department used the benchmark from 2012-2013 for the financing taken out in 2011-2012.
 - The Department used a 2012 rate of 10.60 percent for all loans in its calculation of the benefit for pre-shipment INR loans, instead of the 2011 rate of 10.17 percent.

Petitioner’s Rebuttal Arguments

Devi Fisheries does not establish that the Department used an incorrect benchmark in the calculation of pre-shipment INR benefit.

- The regulations make no mention of using benchmark rates from specific years when the POI spans two different calendar years, as it does in this case.
 - The IMF INR benchmark rate used by the Department is reasonable, given that it is the most recent rate available and covers part of the POI.

¹⁷³ See DS Final Calculation Memo.

- In the alternative, the Department should only use the 2011 loan benchmark rate of 10.17 percent for loans taken out in 2011.

Department’s Position:

We agree with Devi Fisheries and Petitioner that the appropriate annual benchmark for comparison is for the same year in which Devi Fisheries took out the loan. 19 CFR 351.505(a)(2)(iv) states, “the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out...” Therefore, for loans that Devi Fisheries took out in 2011, the correct comparison is to the 2011 IMF benchmark. For loans that Devi Fisheries took out in 2012, the correct comparison is to the 2012 IMF benchmark. *See* DF Final Calculation Memo for the incorporation of this change into the benefit calculation for Devi Fisheries.

Comment 7: Whether the Department Erred in the Calculation of the Post-Shipment INR Benefits by using the Incorrect Number of Days for Several Post-Shipment INR Loans

Devi Fisheries’ Arguments

The Department erred in the calculating the benefit from post-shipment INR loans because it used the incorrect number of days principal was outstanding for certain loans.

- The Department incorrectly used the due date as the date of payment for loans that Devi Fisheries repaid before the due date.

Petitioner’s Rebuttal Arguments

The Department should not revise the margins preliminarily calculated for this program.

- Devi Fisheries provides no legal or factual support for its allegation.
- Devi Fisheries’ request is overly burdensome and will do little, if anything, to change the preliminary subsidy margin.

Department’s Position: We agree with Devi Fisheries that we should base the calculation on the actual term of the loan, not the due date. This applies to instances where Devi Fisheries repaid the loans *ahead* of the due date and *after* the due date. This methodology is consistent with 19 CFR 351.505(a), which states, “a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market.” The basis for the amount of interest Devi Fisheries paid on these loans is the actual term of the loan; therefore, the actual term of the loan is the correct basis for calculation of the benefit under 19 CFR 351.505(a). *See* DF Final Calculation Memo for the revised calculation incorporating this change.

VAT Exemptions for Shrimp Seed and Feed

Comment 8: The Determination Not to Investigate VAT Exemptions

On March 5, 2013, the Department initiated investigations of two newly alleged subsidies.¹⁷⁴ In this First NSA Initiation Memorandum, we recommended not initiating on an alleged program of VAT exemptions for shrimp seed and feed.¹⁷⁵ In making this recommendation, we referred to the *DRAMS from Korea Investigation*, wherein the Department stated, “VAT is a consumption tax which the company merely conveys to the government, ultimately paying nothing because it is the final consumer who actually shoulders the tax burden.”¹⁷⁶ Accordingly, we declined to initiate on this allegation because producers do not receive a benefit under such a program.

Subsequently, Petitioner submitted a request for reconsideration regarding the VAT exemption allegation.¹⁷⁷ We again declined to initiate on Petitioner’s allegation, stating that Petitioner had not alleged the elements of a subsidy or supported the allegation with reasonably available information.¹⁷⁸ Specifically, we stated that evidence Petitioner submitted for the mandatory respondents did not mention VAT.¹⁷⁹ We also stated that Petitioner relied on a general description of India’s VAT system, but did not provide information specific to the state of Andhra Pradesh (where Devi Fisheries and Devi Seafoods are located) or provide an explanation of why such information was not available.¹⁸⁰

Petitioner’s Arguments:¹⁸¹

- Since the input VAT exemptions at issue are not contingent on export performance, the benefit conferred is to be calculated under 19 CFR 351.510(a)(1), which provides no exception for respondents that may otherwise take advantage of certain reconciliation or rebate programs to settle the amount of VAT owed to the government, nor specifies that the benefit of exemptions is to be limited to the time value of money.
- The regulatory scheme of 19 CFR 351.510(a) makes clear that the benefit should be limited to the time value of money only where taxes are deferred, not where a respondent is exempted from tax liability outright, which differs from 19 CFR 351.518(a), under which the full amount of VAT revenue forgone is included in the benefit calculations.¹⁸²
- The CIT has confirmed that 19 CFR 351.510(a)(1) requires the Department to include the

¹⁷⁴ See Memorandum to Susan Kuhbach, “New Subsidy Allegations” (March 5, 2013) (First NSA Initiation Memorandum) at 9.

¹⁷⁵ *Id.* at 5-6.

¹⁷⁶ *Id.* at 6, citing *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMS from Korea Investigation*), and accompanying Issues and Decision Memorandum at Comment 34.

¹⁷⁷ See Petitioner’s Letter to the Department dated March 7, 2013, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from India (C-533-854) – Request to Reconsider VAT Subsidy Allegations” (NSA Reconsideration Request).

¹⁷⁸ See Memorandum from Thomas Schauer to Susan Kuhbach dated May 8, 2013, “Analysis of Additional New Subsidy Allegations” (Second NSA Initiation Memorandum) at 6.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ See Petitioner’s Case Brief at 32-45.

¹⁸² See *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey*, 67 FR 55815 (August 30, 2002) and accompanying Issues and Decision Memorandum at 13-14.

total amount of an input VAT or duty exemption in its benefit calculations, and that the benefit may not be limited to the time value of money,¹⁸³ noting that the import duty reduction program was not contingent on export.

- In *Bethlehem Steel II*, the CIT stated that the principle it was applying also applied to indirect tax exemptions, and the benefit of such exemptions is the difference between the full tax rate and the reduced rate.¹⁸⁴
- The regulation that formed the basis of the CIT's opinion used the same language to refer to both import charge exemptions and indirect tax exemptions. Both kinds of programs are subject to the same exemptions for export programs, which the court considered in the ruling.¹⁸⁵
- The justification for taking a time value approach that the CIT rejected in *Bethlehem Steel II* is similar to the Department's argument that any import duties that would have otherwise been due could have been eventually returned through duty drawback.
- The CIT's rejection of the duty drawback theory applies with the same force to the VAT reconciliation theory, as either approach understates the full benefit of the VAT or duty exemption under 19 CFR 351.510(a)(1).
- The Department did not address *Bethlehem Steel II* in its initiation memoranda, instead citing *Thai Hot-Rolled Steel*, which was no longer controlling and is contrary to the Department's practice following *Bethlehem Steel II*, where it has consistently countervailed the full amount of indirect tax exemptions, reductions, and rebates that are not contingent on export.
- The two instances since *Bethlehem Steel II* in which the Department has employed the time value approach to a VAT exemption under 19 CFR 351.510 are insufficient to overcome the Department's practice in numerous other cases.¹⁸⁶
- Even if the Department could apply the time-value approach, facts in this case still require initiation of investigations to determine the benefit conferred by the VAT exemptions.
- The Department has only declined to countervail the full value of input VAT exemptions where it determined that respondents reconciled VAT on a monthly basis such that the time value benefit of the exemptions was insignificant.¹⁸⁷
 - Record evidence in this case indicates that respondents do not use the type of monthly reconciliation system found to eliminate the benefit of VAT exemptions in other cases.
 - The respondents are required to pay state VAT on all inputs unless the inputs are specifically listed among the items exempt from VAT; the respondents

¹⁸³ See *Bethlehem Steel II*, 162 F.Supp.2d 639, 646-648 wherein the CIT stated that 19 CFR 351.510(a)(1) "provides that when a government foregoes otherwise lawful taxes or import charges it is providing a countervailable benefit. The only exception contained in the regulation applies to export programs."

¹⁸⁴ See *Bethlehem Steel II* at 648.

¹⁸⁵ See *Bethlehem Steel II* at 647.

¹⁸⁶ See, e.g., *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428, and accompanying Issues and Decision Memorandum at 10; and *DRAMS from Korea Investigation* Issues and Decision Memorandum at 32-33.

¹⁸⁷ See *Ball Bearings and Parts Thereof from Thailand: Preliminary Results of a Countervailing Duty Administrative Review*, 60 FR 22563, 22564, unchanged in 60 FR 53271, 52373; see also *Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review*, 65 FR 13368 (March 13, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

both reported that they do not apply for or receive rebates of any internal taxes.

- Neither respondent appears to apply for or receive rebates of input VAT assessed by the state.
- The exemption from VAT liability on certain inputs would appear to confer a significant benefit even under the Department's time value of money methodology.
- The only alternative interpretation of the respondents' statements is that they pay no VAT tax whatsoever.
 - This conclusion appears inconsistent with the state VAT system verified by the Department.
 - Even if this were the case, that fact alone would not justify refusing to initiate an investigation to determine whether those VAT taxes confer a benefit.
 - To the contrary, the fact that VAT exemptions may cover all of the goods procured by the two companies indicates that the benefits conferred by the program are indeed likely to be very significant.

GOI's, Devi Fisheries', and Devi Seafoods' Rebuttal Arguments

The Department correctly declined to initiate on the alleged VAT exemption for seeds and feed.

- Petitioner never provided the Department with sufficient evidence to warrant an initiation.
 - The Department did not initiate an investigation because VAT is a consumption tax which the company merely conveys to the government, ultimately paying nothing, because it is the final consumer who actually pays the tax burden.
 - Petitioner submitted information from the administrative reviews of the antidumping duty order on frozen warmwater shrimp in order to rebut this position.
 - The Department found no basis to infer from this information whether or how the VAT would be rebated in the absence of the alleged exemptions.
 - The Department also found that the Petitioner did not provide information specific to the state of Andhra Pradesh or provide an explanation of why such information was not available.
 - The CIT has consistently held that the Department must investigate only those allegations that reasonably appear to be countervailable.¹⁸⁸

Department's Position:

We agree with the GOI, Devi Fisheries, and Devi Seafoods that initiation on the alleged VAT exemption for seed and feed was not warranted. Citing information in the GOI Verification Report, Petitioner alleges that respondents do not use a monthly reconciliation system that the Department, according to Petitioner, has found to have eliminated the benefit of VAT exemptions in past cases.¹⁸⁹ This is not information, however, to which Petitioner cited in its

¹⁸⁸ See *Bethlehem II*, F. Supp. 2d at 642.

¹⁸⁹ See Petitioner's Case Brief, at 29, citing GOI Verification Report at 16.

allegation. Therefore, regardless of the relevance of this information to the subsidy program that Petitioner alleged, this is not information that was on the case record at the time of Petitioner's allegation. Should this investigation result in a countervailing duty order, we will consider this information in any new subsidy allegation that Petitioner submits in a subsequent administrative review.

The second source that Petitioner cited in its case brief, the NSA Reconsideration Request, was on the record prior to our decision on initiation.¹⁹⁰ In the Second NSA Initiation Memorandum, however, we determined that Petitioner had not supported the allegation with reasonably available information.¹⁹¹ At page 6 of the Second NSA Initiation Memorandum, we stated, "As the VAT is not mentioned among these taxes, we see no basis to infer from this information whether or how the VAT would be rebated in the absence of the alleged exemptions." This analysis took into account the information that Petitioner submitted at Exhibit 1 of the NSA Reconsideration Request. Petitioner cited this same evidence in its case brief, but did not provide a new explanation of how this source demonstrated the existence of a subsidy program. Accordingly, we do not find that the information Petitioner is citing from the NSA Reconsideration Request demonstrates that Petitioner provided reasonably available information to support its allegation of a subsidy program.

Finally, citing four past cases, Petitioner claims the following: "when the Department investigates an input VAT exemption and is not able to confirm that there is a monthly reconciliation system in place, it will include the entire amount of the VAT exemptions in the subsidy margin."¹⁹² The cases Petitioner cited, however, address how the Department has treated similar programs after it has determined to investigate them, not the Department's decision of whether to initiate an investigation into the subsidy programs. Accordingly, Petitioner's argument does not address the question of whether it provided reasonably available information to support its allegation of a subsidy program. Therefore, we have made no changes for this final determination with regard to our decision from the Second NSA Initiation Memorandum.

Even though we have made no changes with regard to our decision not to initiate an investigation into this allegation, we address the comments submitted by the parties with regard to VAT in the sections below.

Whether VAT Exemptions Provide a Benefit Under 19 CFR 351.510

As we explained in *Thai Hot-Rolled Steel* and other proceedings, under a normal VAT system, a producer pays input VAT on its purchases from suppliers and collects output VAT on its sales to customers. The producer merely conveys the tax forward and the ultimate tax burden is borne by the final (non-producing) consumer. This is achieved through a reconciliation mechanism in which the input VAT paid is offset against the output VAT collected. Any excess output VAT is remitted by the producer to the government. Any excess input VAT is refunded back to the

¹⁹⁰ See NSA Reconsideration Request at 5-6.

¹⁹¹ See Second NSA Initiation Memorandum at 5-6.

¹⁹² See Petitioner's Case Brief at 28, citing, e.g., *Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review*, 65 FR 13368 (March 13, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

producer by the government or credited to the producer to offset against future input VAT, as the case may be. Under this mechanism, the producer ultimately keeps no surplus output VAT and pays no excess input VAT. Thus, the net VAT incidence to the producer is ultimately zero, with the actual VAT burden conveyed forward to the final, non-producing consumer.

As Petitioner has correctly identified, 19 CFR 351.510(a)(1) governs the identification and measurement of any benefit that might arise from an indirect tax such as a VAT, under a program other than an export program. Section 351.510(a)(1) states that a benefit exists under a remission or exemption of taxes “to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.” As indicated in the plain text of the regulation, and as noted in *Thai Hot-Rolled Steel*, 19 CFR 351.510(a) makes no distinction between a remission of the tax and an exemption of the tax and, therefore, does not require the Department to apply different means by which to identify and measure benefits that arise from a VAT refund compared to a VAT exemption. Instead, 19 CFR 351.510(a) directs the Department to determine a benefit by assessing whether the producer pays less under the refund or exemption program than it would normally pay without the program.

In the normal reconciliation mechanism for VAT, in which input VAT is offset against output VAT, there is no benefit within the meaning of 19 CFR 351.510(a), because the net VAT incidence to the producer is ultimately zero both under the program and in the absence of the program. This holds true whether the program involves a refund as part of the reconciliation mechanism or an exemption that obviates the need for reconciliation in the first place. In other words, 19 CFR 351.510(a) recognizes no distinction between the producer getting a refund instead of an exemption and the producer getting an exemption instead of a refund.

Petitioner is incorrect in claiming that *Thai Hot-Rolled Steel* is no longer relevant to this issue in the face of *Bethlehem II*, which the CIT decided subsequent to the Department’s decision in *Thai Hot-Rolled Steel*. Importantly, the facts before the CIT in *Bethlehem II* are distinguishable from the facts in this case. In *Bethlehem II*, no VAT programs were at issue. That litigation involved import duty exemptions.¹⁹³ While Petitioner is correct that *Bethlehem II* implicated the same section of the Department’s regulations that applies to VAT, namely 19 CFR 351.510(a), Petitioner ignores the crucial difference between an import duty and a VAT that makes *Bethlehem II* inapposite to the issues in the instant proceeding. An import duty imposes an actual tax burden on the producer, whereas under a normal VAT program, the final consumer, not the producer, bears the ultimate tax burden. Hence, a refund or exemption of an import duty has a different effect than a refund or exemption of a VAT. In the former, the producer does indeed pay less tax than otherwise owed in the absence of the program, whereas in the latter, the producer ultimately pays zero tax both under the program and in the absence of the program. Consequently, the CIT’s decision in *Bethlehem II* offers no useful instruction for the Department’s practice with regard to VAT.

Petitioner also points to some of the Department’s past proceedings, such as *Citric Acid from the PRC*,¹⁹⁴ which it claims reflect a change in our practice following *Bethlehem II*. We note that the

¹⁹³ See *Bethlehem Steel II* at 646.

¹⁹⁴ See *Citric Acid from the PRC* and accompanying Issues and Decision Memorandum at 15-16.

overwhelming majority of those cases involved VAT programs in the People's Republic of China (PRC), under which the VAT exemptions applied to purchases of certain domestic equipment by foreign-invested enterprises. Under a normal VAT system, the effect of an exemption for the purchase of equipment (whether domestically-produced or imported) is exactly the same as an exemption for raw materials, *i.e.*, the producer pays no less in tax under the program than otherwise payable in the absence of the program, because the net tax burden is zero under both circumstances, with the final consumer shouldering the actual VAT burden. However, in the PRC system, the producer would have incurred an actual VAT burden without the exemption because PRC law did not allow for input VAT on either domestically produced or imported equipment to be offset against the producer's output VAT. Consequently, under the VAT exemption, the producer paid less tax than otherwise owed, thus receiving a benefit within the meaning of 19 CFR 351.510(a). Therefore, Petitioner's reliance on those cases is misplaced.

Thus, contrary to Petitioner's claim, the CIT's decision in *Bethlehem II* did not pertain to the Department's practice with regard to its treatment of VAT exemptions. Setting the PRC cases aside which, as noted involved the non-crediting of input VAT for equipment, the Department has continued the practice since *Thai Hot-Rolled Steel*, such as in the *DRAMS from Korea Investigation*.¹⁹⁵

Whether a Time-Value-of-Money (TVM) Benefit Exists

As noted above, under 19 CFR 351.510(a), the Department makes no distinction between a VAT refund and a VAT exemption for the purpose of identifying and measuring any countervailable benefit. As explained above, with the exception of the PRC's VAT exemption on equipment (both domestically-produced and imported) and a few other aberrational cases elsewhere, we have otherwise generally recognized that the reconciliation mechanism in a typical VAT system, which ultimately zeroes out the difference between the input VAT paid and the output VAT collected by a producer, does not provide a benefit under 19 CFR 351.510(a)(1) because the actual tax incidence is borne by the final consumer. Exempting the VAT in the first place makes no difference under the regulation and confers no benefit for the same reason, because the tax burden would otherwise have been borne not by the producer but by the final consumer.

However, as the parties have noted, we have allowed the possibility, addressed in *Thai Hot-Rolled Steel*, *DRAMS from Korea Investigation* and other cases, that under certain circumstances a TVM benefit could arise from the difference between a refund and an exemption where, as it was stated in *Thai Hot-Rolled Steel*, "the amount of time ... to reconcile ... is inordinate."¹⁹⁶ While the Department has thus far not defined what would be inordinate, and such a finding would depend on the particular case facts, we note that in the *Shrimp from Indonesia Preliminary Determination*,¹⁹⁷ the Department recognized one year to be within the bounds of a typical or

¹⁹⁵ See *DRAMS from Korea Investigation* and accompanying Issues and Decision Memorandum at 32-33.

¹⁹⁶ See *Thai Hot-Rolled Steel* and accompanying Issues and Decision Memorandum at Comment 8.

¹⁹⁷ See *Certain Frozen Warmwater Shrimp From Indonesia: Negative Preliminary Countervailing Duty Determination*, 78 FR 33349 (June 4, 2013) (*Shrimp from Indonesia Preliminary Determination*) and accompanying Decision Memorandum at 21.

normal VAT system.¹⁹⁸ Within these time parameters, and where the record information indicates that the VAT system in question is the typical system in other respects, such as providing a clear mechanism to reconcile input VAT against output VAT, and the final consumer, not the producer, bears the ultimate tax burden, the Department will adhere to the explicit requirements of 19 CFR 351.510(a)(1), *i.e.*, making no distinction between a refund and an exemption in measuring a benefit. Thus, where we find no benefit under a refund (as part of the reconciliation process), we will also find no benefit under an exemption. Therefore, we disagree with Petitioner that if the VAT period is a year or less, a calculation for TVM is relevant for purposes of our benefit analysis under 19 CFR 351.510(a)(1).

Miscellaneous

Comment 9: Whether the Department Improperly Omitted Sales by Satya from the Denominator when Calculating the Benefit Received

Devi Fisheries' Arguments

Devi Fisheries argues that the Department improperly omitted sales by Satya from the denominator when calculating the benefit for subsidies Satya received.

- In the *Preliminary Determination*, the Department intended to cumulate subsidies received by Satya pursuant to 19 CFR 351.525(c).
- The Department cumulated the amounts received by both Devi Fisheries and Satya in its calculation of the benefit for the VKGUY program, but did not include the sales amount for Satya in the denominator.

Rebuttal Arguments

No party submitted a rebuttal to this argument.

Department's Position:

We agree with Devi Fisheries that the Department omitted sales by Satya in the *Preliminary Determination*. Under 19 CFR 351.525(c), the Department cumulates the benefit from subsidies provided to a trading company that exports subject merchandise with benefits from subsidies provided to the firm producing subject merchandise sold through the trading company. The appropriate denominator to use for this attribution combines the sales of the trading company with the sales of the company producing subject merchandise (net of inter-company sales).¹⁹⁹ Therefore, for calculating the subsidy rate for subsidies the GOI provided to Satya (*i.e.*, VKGUY, EPCGS, and MPEDA Sea Freight Assistance), we have used the combined sales of Devi Fisheries and Satya (net of inter-company sales).²⁰⁰

¹⁹⁸ To the extent that a wait period may be longer than a year, if the government is mandated to compensate producers by paying a reasonable level of interest on the money to be refunded for any time past a year, as was the case in *Shrimp from Indonesia Preliminary Determination*, then there is no TVM benefit even past one year.

¹⁹⁹ See, e.g., *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying Issues and Decision Memorandum at 5.

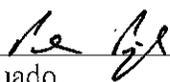
²⁰⁰ See DF Final Calculation Memo.

VI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

12 August 2017

Date