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Investigation  
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ADCVDopsII:DJG

**DATE:** January 8, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Countervailing Duty Investigation of Certain Uncoated Paper from  
Indonesia: Issues and Decision Memorandum for the Final  
Affirmative Determination

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## I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of certain uncoated paper from Indonesia, as provided for in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are Great Champ Trading Limited (Great Champ); Indah Kiat Pulp & Paper TBK (IK) and Pabrik Kertas Tjiwi Kimia (TK); and PT Anugrah Kertas Utama (AKU) and APRIL Fine Paper Macao Commercial Offshore Limited (AFPM) (collectively, the APRIL companies, or APRIL). The petitioners in this investigation are United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; Finch Paper LLC; P.H. Glatfelter Company; and Packaging Corporation of American (collectively, the petitioners). Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Adverse Facts Available for Great Champ
- Comment 2: Whether the Stumpage Program Meets the Specificity Requirement
- Comment 3: Whether the Stumpage Program Applies to Purchases of Felled Trees
- Comment 4: Whether to Include APRIL's Harvest of Mixed Hardwood Timber in Calculating Countervailable Benefits
- Comment 5: Whether to Use Malaysian Stumpage Fees as a Benchmark
- Comment 6: Whether the Log Export Ban Constitutes a Countervailable Subsidy
- Comment 7: Selection of Timber Benchmark Values
- Comment 8: Adjustments to Log Benchmark Values
- Comment 9: Corrections and Revisions to APRIL's Log Harvesting and Purchase Data
- Comment 10: Whether APRIL Received a Countervailable Debt Forgiveness Benefit

Comment 11: Whether APRIL Received a Countervailable Benefit for Preferential Loans  
Comment 12: Uncreditworthiness

## II. BACKGROUND

### A. Case History

On June 29, 2015, we published the Preliminary Determination for this investigation.<sup>1</sup> We conducted verifications of the questionnaire responses submitted by the APRIL companies and the GOI between October 7 and October 15, 2015.<sup>2</sup>

On October 2, 2015, Gartner Studios Inc. (Gartner Studios) submitted its case brief regarding the scope of the antidumping duty (AD) and countervailing duty (CVD) uncoated paper investigations. On October 19, 2015, American Greetings Corporation (American Greetings) submitted its case brief regarding the scope of the investigations.<sup>3</sup> On October 29, 2015, the petitioners submitted their rebuttal brief regarding the scope of the investigations.<sup>4</sup> On November 13, 2015, we issued a post-preliminary analysis memorandum in this investigation.<sup>5</sup> We received a case brief from the petitioners,<sup>6</sup> and a consolidated brief from the APRIL companies and the Government of Indonesia (GOI),<sup>7</sup> on November 17, 2015. We received rebuttal briefs from the same parties on November 23, 2015.<sup>8</sup> We held a public hearing on December 2, 2015.

The Department is issuing a scope comments decision memorandum for the final determinations of the AD and CVD investigations of certain uncoated paper, which is incorporated by reference in, and hereby adopted by, this final determination.<sup>9</sup>

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<sup>1</sup> See Certain Uncoated Paper From Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 80 FR 36971 (June 29, 2015) (Preliminary Determination), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memoranda to the File, “Verification of the Questionnaire Responses of the APRIL Companies,” dated November 9, 2015 (APRIL Verification Report); and “Verification of the Questionnaire Responses of the Government of the Republic of Indonesia (Indonesia),” dated November 9, 2015 (GOI Verification Report).

<sup>3</sup> See Letter from American Greetings entitled, “Certain Uncoated Paper From Australia, Brazil, The People’s Republic of China, Indonesia, and Portugal: Case Brief of American Greetings Corporation,” dated October 19, 2015.

<sup>4</sup> See Letter from the petitioners entitled, “Certain Uncoated Paper From Australia, Brazil, The People’s Republic of China, Indonesia, and Portugal: Scope Rebuttal Brief,” dated October 29, 2015.

<sup>5</sup> See memorandum entitled, “Post-Preliminary Analysis in the Countervailing Duty (CVD) Investigation of Certain Uncoated Paper from Indonesia,” dated November 13, 2015 (Post-Preliminary Analysis Memo).

<sup>6</sup> Hereafter, Petitioners Case Brief.

<sup>7</sup> Although the brief represents both the APRIL companies’ and the GOI’s positions, for simplicity we refer to this brief hereafter as APRIL Case Brief.

<sup>8</sup> Hereafter, Petitioners Rebuttal Brief, and APRIL Rebuttal Brief, respectively. As with the APRIL Case Brief, the APRIL Rebuttal Brief includes both APRIL’s and the GOI’s rebuttal comments.

<sup>9</sup> See the Department’s memorandum to the file entitled, “Less-Than-Fair-Value Investigations of Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal; and Countervailing Duty Investigations of Certain Uncoated Paper from the People’s Republic of China and Indonesia: Scope Comments Decision Memorandum for the Final Determinations,” dated January 8, 2016.

## B. Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

## III. **USE OF FACTS OTHERWISE AVAILABLE**

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>10</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>11</sup>

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>12</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>13</sup>

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<sup>10</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>11</sup> See Applicability Notice, 80 FR at 46794-95.

<sup>12</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>13</sup> See also 19 CFR 351.308(c).

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>14</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>15</sup> Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>16</sup>

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.<sup>17</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>18</sup>

For purposes of this final determination, we find it necessary to rely on adverse facts available (AFA) for Great Champ and IK/TK,<sup>19</sup> as detailed below.

#### A. Application of AFA to Great Champ and IK/TK

As discussed in the PDM, the Department selected Great Champ and IK/TK as mandatory respondents, but these companies did not respond to the Department’s CVD questionnaire and failed to participate in this investigation. Therefore, we find that Great Champ and IK/TK withheld information that had been requested and failed to provide information within the deadlines established. Further, by not responding to the questionnaire, these companies significantly impeded this proceeding. We reach the same finding for the GOI with respect to those programs for which it failed to provide pertinent information. Thus, in reaching our final determination, pursuant to sections 776(a)(1), (2)(A), (B) and (C) of the Act, we based the CVD rate for Great Champ and IK/TK entirely on facts otherwise available, as we did in the preliminary determination.

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<sup>14</sup> See also 19 CFR 351.308(d).

<sup>15</sup> See SAA, at 870 (1994).

<sup>16</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>17</sup> See section 776(d)(1) of the Act; TPEA, section 502(3).

<sup>18</sup> See section 776(d)(3) of the Act; TPEA, section 502(3).

<sup>19</sup> We preliminarily found IK and TK (and PT Pindo Deli Pulp and Paper Mills) to be part of the Asia Pulp and Paper/Sinar Mas Group (APP/SMG) and cross-owned under 19 CFR 351.525(b)(6)(vi). See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa G. Skinner, Director, Office II, Antidumping and Countervailing Duty Operations, entitled “Cross-Ownership of Asia Pulp and Paper/Sinar Mas Group Companies: Countervailing Duty Investigation of Uncoated Paper from Indonesia,” dated June 22, 2015. No party commented on this determination. Therefore, we continued to treat these companies as cross-owned and accordingly assigned them the same CVD rate in the final determination.

Furthermore, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because by not responding to the Initial CVD Questionnaire, Great Champ and IK/TK failed to cooperate by not acting to the best of their ability to comply with a request for information in this investigation. Accordingly, we find that AFA is warranted to ensure that Great Champ and IK/TK do not obtain a more favorable result by failing to cooperate than had they fully complied with our request for information.<sup>20</sup>

In this investigation, the Department is examining the programs on which we originally initiated the investigation based upon information provided in the Petition, as well as programs on which we initiated based on additional information provided by the petitioners.<sup>21</sup> Because the GOI did not provide pertinent information on these 11 programs, we are making an adverse inference on financial contribution and specificity.<sup>22</sup> Therefore, as AFA, we determine that these 11 programs provide a financial contribution within the meaning of section 771(5)(D) of the Act, and are specific in accordance with section 771(5A) of the Act. Because Great Champ and IK/TK failed to act to the best of their ability in this investigation, as discussed above, we are making an adverse inference that each of these programs were used by Great Champ and IK/TK. As AFA, we also determine that the programs confer a benefit in accordance with section 771(5)(E) of the Act.

#### B. Selection of the AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>23</sup> The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>24</sup>

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<sup>20</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (SAA), at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

<sup>21</sup> See "Petitions for the Imposition of Antidumping Duties on Imports of Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal and Countervailing Duties on Imports from China and Indonesia," dated January 21, 2015 (Petition), at Exhibit IV-10 and IV-12, respectively; Department Memorandum regarding "Countervailing Duty Initiation Checklist: Certain Uncoated Paper from Indonesia" (February 10, 2015) (Initiation Checklist), at pages 7-19; and Post-Preliminary Analysis Memo.

<sup>22</sup> In our AFA rate analysis, we did not include the Special Arrangements for the Depreciation of Tangible Assets Used by the Hardwood Plantations and Forestry Sectors for Income Tax Purposes because we verified that paper producing and/or exporting companies such as the companies at issue could not have used this program. See GOI Verification Report, at pages 9-10.

<sup>23</sup> See, e.g., Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011); see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

<sup>24</sup> See SAA, at 870.

It is the Department's practice in CVD proceedings with cooperative respondents to compute an AFA rate for the non-cooperating company(ies) using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>25</sup> Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, even if the rate is de minimis, excluding a rate of zero. If no responding company used the identical program in the instant case, or if the rate of the identical case is zero, the Department will use the rate from the identical program from another CVD proceeding involving the same country, unless the rate is de minimis. If there is no identical program match within the investigation, or if the rate from the identical program from another CVD proceeding involving the same country is de minimis, the Department uses the highest above-de minimis rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rate was calculated. Absent an above-de minimis subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating company(ies).<sup>26</sup>

In applying AFA to Great Champ and IK/TK, we are guided by the Department's methodology detailed above. As in the preliminary determination, we begin by selecting, as AFA, the highest calculated identical program-specific (non-zero) rates determined for the cooperating respondents in the instant investigation. Accordingly, we are applying the subsidy rate we calculated for the APRIL companies in the final determination for the following programs:

- **Provision of Standing Timber for Less Than Adequate Remuneration**
- **Government Prohibition of Log Exports**

For all programs other than those previously mentioned, we are applying, where available, the highest subsidy rate calculated for the same or similar program in a CVD investigation or administrative review involving Indonesia.<sup>27</sup> For the final determination, we are following the same

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<sup>25</sup> See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unchanged in Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum, at "Application of Facts Available, Including the Application of Adverse Inferences"); Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum, at "Application of Adverse Inferences: Non-Cooperative Companies;" and Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012), and accompanying Issues and Decision Memorandum, at "Selection of the Adverse Facts Available Rate."

<sup>26</sup> Id.; see also, e.g., Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum, at 8-10.

<sup>27</sup> In our AFA rate analysis for Great Champ, we did not include the two debt forgiveness programs listed below, i.e., Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value, and Debt Forgiveness through APP/SMG's Buyback of Its Own Debt from the GOI, as these programs were specific to APP/SMG (which includes IK and TK).

methodology as we did in the preliminary determination and matched based on program name, description,<sup>28</sup> and treatment of the benefit, the following programs to the same programs from other CVD proceedings involving Indonesia:

- **Debt Forgiveness through the Indonesian Government’s Acceptance of Financial Instruments with No Market Value**<sup>29</sup>
- **Debt Forgiveness through APP/SMG’s Buyback of Its Own Debt from the GOI**<sup>30</sup>
- **Export Financing from Export-Import Bank of Indonesia**<sup>31</sup>
- **Export Credit Guarantees**<sup>32</sup>
- **Exemptions from Import Income Tax Withholding for Companies in Bonded Zone Locations**<sup>33</sup>

For the following programs we were unable to find a similar program based on program type and treatment of the benefit from other CVD proceedings involving Indonesia:

- **Export Credit Insurance**
- **Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia’s Investment Coordinating Board (BKPM) – Corporate Income Tax Deduction**
- **Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Accelerated Depreciation and Amortization**
- **Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Extension of Loss Carry-Forwards**
- **Preferential Treatment for Bonded Zone Locations – Waiver of License and Fee Requirements**
- **Exemptions From Sales Taxes for Capital Goods and Equipment Used to Produce Exports**

With respect to the program rate for the three above-mentioned income tax programs alleged in the Petition, which pertain to the reduction of income tax paid, we applied an adverse inference that Great Champ and IK/TK paid no income tax during the POI. The standard income tax rate for corporations in Indonesia in effect during the POI was 25 percent.<sup>34</sup> Thus, the highest possible benefit for these three income tax programs is 25 percent. Accordingly, we are applying the 25

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<sup>28</sup> For descriptions of these programs, see Initiation Checklist, at pages 7-19.

<sup>29</sup> See Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007) (CFS Final), and accompanying Issues and Decision Memorandum (CFS IDM), at “4. Debt Forgiveness Through the GOI’s Acceptance of Instruments that Had No Market Value.”

<sup>30</sup> See CFS Final, and CFS IDM at “VI.A.5. Debt Forgiveness through SMG/APP’s the Buyback of its Own Debt from the GOI.”

<sup>31</sup> See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia, 64 FR 73155, 73161-2 (December 29, 1999), at “F. Rediscount Loan Program.”

<sup>32</sup> Id.

<sup>33</sup> Id. The name of the program we initiated on was “Preferential Treatment for Bonded Zone Locations-Income Tax Reductions on Imported Capital Goods, Equipment, and Raw Materials for the Portion of the Production Destined for Export.” We revised the title of the program based on the description provided by the GOI.

<sup>34</sup> See GOI Supplemental Questionnaire Response, dated June 15, 2015 (GOI SQR), at page 2.

percent AFA rate on a combined basis (i.e., the three programs combine to provide a 25 percent benefit).

For each of the other programs, we used the highest calculated rate from any non-company-specific program, 14.21 percent,<sup>35</sup> from other CVD proceedings involving Indonesia that could have been used by Great Champ and IK/TK.<sup>36</sup>

Accordingly, we determine the AFA countervailable subsidy rate for Great Champ to be 104.00 percent ad valorem, and for IK/TK to be 109.15 percent ad valorem.<sup>37</sup> For further discussion regarding the AFA rate for Great Champ, see Comment 1 below.

#### D. Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>38</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>39</sup> The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>40</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Moreover, as stated above, we are applying subsidy rates which were calculated in previous CVD investigations or reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a

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<sup>35</sup> See CFS Final, and CFS IDM, at “1. GOI Provision of Standing Timber for Less Than Adequate Remuneration.”

<sup>36</sup> Based on the APRIL companies’ and GOI submissions and our verification findings, we found that the APRIL companies did not use the special arrangements for depreciation for income tax purposes. See Post-Preliminary Analysis Memo.

<sup>37</sup> See attached Appendix. While we initiated an investigation of “Exemption from Import Duties for Capital Goods and Equipment for Companies in Bonded Zone Locations,” we are finding this program not countervailable and, therefore, we did not include it in the AFA rate calculation. For further discussion, see section “V. Analysis of Programs,” below.

<sup>38</sup> See SAA, at 870.

<sup>39</sup> Id.

<sup>40</sup> Id., at 869-870.

countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>41</sup>

In the absence of record evidence concerning the alleged programs, the Department reviewed for the preliminary determination the information concerning Indonesian subsidy programs in other cases. Where we have a program-type match, we found that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of these rates is that they are actual calculated CVD rates for Indonesia programs from which the non-cooperative respondents could actually receive a benefit. We affirm this analysis for the final determination. Thus, due to the lack of participation of Great Champ and IK/TK, and the resulting lack of record information from the GOI concerning these programs as they relate to these companies, the Department has corroborated the rates it selected to use as AFA to the extent practicable for the final determination.

#### **IV. SUBSIDIES VALUATION**

##### **A. Allocation Period**

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets of the industry under consideration. Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Table of Class Lives and Recovery Periods, the AUL for assets used to manufacture certain uncoated paper is 13 years.<sup>42</sup> No party in this proceeding disputes this allocation period.

Furthermore, for non-recurring subsidies, we apply the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

##### **B. Attribution of Subsidies**

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

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<sup>41</sup> See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

<sup>42</sup> See U.S. Internal Revenue Service Publication 946 (2013), "Appendix B – Table of Class Lives and Recovery Periods," submitted in the Petition, at Volume IV, Exhibit IV-1.

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.<sup>43</sup>

As we discussed in the PDM, AFPM notified the Department that it is a trading company located in Macao that exports, but does not produce, subject merchandise. It is part of a group of companies including forestry/logging companies, pulp producers, and paper producers linked by varying degrees of common ownership.

In this investigation, we are examining whether the producers/exporters of the subject merchandise are cross-owned with one another, and with their input suppliers, as outlined in 19 CFR 351.525(b)(6)(iv). The alleged subsidies pertaining to stumpage that we are investigating are conferred on the forestry/logging companies which harvest standing timber and sell pulpwood to the pulp producers that supply pulp to the paper producers/exporters. Therefore, we must examine whether cross-ownership exists among and across the suppliers of pulpwood, the pulp producers, and the paper producers/exporters. Accordingly, as we discussed in the PDM, the companies under examination are as follows:<sup>44</sup>

- **AFPM** – exporter of subject merchandise;
- **AKU** – producer of subject merchandise;
- **PT Riau Andalan Kertas (RAK)** - producer of subject merchandise;
- **PT Intiguna Primatama (IP)** - producer and supplier to AKU of pulp which AKU uses in the production of subject merchandise;
- **PT Riau Andalan Pulp & Paper (RAPP)** - harvester of standing timber and producer of woodchip and pulp; supplier of woodchip to IP and pulp to RAK; and
- **PT Esensindo Cipta Cemerlang (ECC)** – producer and supplier to AKU and RAK of filler, used in the production of subject merchandise.

Based on Asia Pacific Resources International Holdings Limited's (Bermuda's) ultimate majority ownership of the companies listed above (with the exception of ECC, as discussed below), we find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).

AKU and RAK are producers of the subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these companies received to the combined sales of these companies, net of intercompany sales.

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<sup>43</sup> See *Fabrique de Fer de Charleroi SA v. United States*, 66 F. Supp. 2d 593, 603 (CIT 2001).

<sup>44</sup> While PT Riau Prima Energi and PT Asia Prima Kimiaraya, suppliers of electricity and steam to the APRIL companies, respectively, provided responses to our Initial CVD Questionnaire, we determine not to attribute any of their subsidies to the paper producers under examination.

RAPP produced and supplied inputs to IP and RAK. IP used the input it received (i.e., woodchips) to produce an intermediate product (i.e., pulp), which in turn, AKU used to produce paper. RAK used the input it received (i.e., pulp) to produce paper. Hence, these inputs are dedicated to the production of higher value-added products (including paper) by IP, RAK, and AKU. As such, these inputs are “merely {links} in the overall production chain.”<sup>45</sup> Therefore, we find that the inputs RAPP supplied to IP and RAK, and that IP supplied to AKU, are primarily dedicated to the production of paper, pursuant to 19 CFR 351.525(b)(6)(iv).<sup>46</sup> Regarding attribution of the subsidies that RAPP and IP received, 19 CFR 351.525(b)(6)(iv) states the following:

If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

Therefore, pursuant to 19 CFR 351.525(b)(6)(iv), we attributed subsidies received by RAPP to the combined sales of RAPP, IP, and the subject merchandise producers (i.e., AKU and RAK), net of intercompany sales. We attributed subsidies received by IP to the combined sales of IP and the subject merchandise producers (AKU and RAK), net of intercompany sales.<sup>47</sup>

As we discussed in the PDM, the APRIL companies reported that ECC was 51 percent owned by a third party company Imerys Pigment Pte. Ltd. (now known as Imerys Asia Pacific Pte. Ltd. (Singapore)), while the APRIL company group controls 49 percent of ECC’s shares. In addition, ECC supplies virtually all of the filler used in the production of the subject merchandise by AKU and RAK. For the reasons explained in the PDM and the Preliminary Calculation Memorandum<sup>48</sup>, which includes business proprietary information regarding the relationship between ECC and the APRIL companies, we continue to find ECC to be cross-owned with the APRIL companies within the meaning of 19 CFR 351.525(b)(6)(vi). In addition, we continue to find that the input supplied by ECC to AKU and RAK can be used, in whole or in part, in the production of subject merchandise or in intermediate goods that are subsequently used to make subject merchandise. Thus, we find that filler provided by ECC is primarily dedicated to the production of paper, pursuant to 19 CFR 351.525(b)(6)(iv). Accordingly, we are attributing subsidies received by ECC to the combined sales of ECC and the subject merchandise producers (AKU and RAK), net of intercompany sales.

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<sup>45</sup> See Countervailing Duties; Final Rule, 63 FR 65347, 65401 (November 25, 1998) (CVD Preamble).

<sup>46</sup> See Certain Coated Paper from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 FR 10761 (March 9, 2010) (CCP Prelim), unchanged in Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination, 75 FR 59209 (September 27, 2010) (CCP Final).

<sup>47</sup> See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Coated Paper from the PRC), and accompanying Issues and Decision Memorandum, at 9-10, where we discuss the attribution methodology for cross-owned input suppliers under a similar corporate structure.

<sup>48</sup> See Memorandum to the File, “Preliminary Determination Benefit Calculations for the APRIL Companies,” dated June 22, 2015 (Preliminary Calculation Memorandum).

i. Entered Value Adjustment

The APRIL companies reported that AKU's affiliate, AFPM, issued invoices for AKU's sales of subject merchandise to the United States. In the preliminary determination, the Department made an adjustment to the calculated subsidy rate to account for the mark-up between the export value from Indonesia and the entered value of subject merchandise into the United States. We made this adjustment based on the following reasons asserted by the APRIL companies in their questionnaire responses: 1) the U.S. invoice is issued through AKU's affiliate, AFPM, and includes a mark-up from the invoice issued from AKU to AFPM; 2) the exporter, AKU, and the party that invoices the customer, AFPM, are affiliated; 3) the U.S. invoice establishes the customs value to which countervailing duties are applied; 4) there is a one-to-one correlation between the AKU invoice and the AFPM invoice; 5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.<sup>49</sup>

The Department has a practice of making an adjustment to the calculated subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, e.g., where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can provide data to demonstrate that the six criteria above are met.<sup>50</sup> In the instant case, the information submitted by the APRIL companies and our verification findings support their claim for an adjustment,<sup>51</sup> and the information also permits an accurate calculation of the adjustment. Therefore, we continued to make the adjustment in the final determination.<sup>52</sup>

C. Denominators

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

D. Loan Benchmarks and Interest Rates

19 CFR 351.509(a)(2) states that when a program provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Consistent with 19 CFR

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<sup>49</sup> See APRIL's May 26, 2015, initial CVD questionnaire response (APRIL IQR), at pages 3, 13-14, and Exhibit 28; and APRIL's June 15, 2015, supplemental questionnaire response (APRIL SQR), at pages 8-10.

<sup>50</sup> See Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 64313 (October 18, 2011), and accompanying Issues and Decision Memorandum, at 7-8.

<sup>51</sup> See APRIL Verification Report, at page 4.

<sup>52</sup> See Memorandum to the File "Final Determination Benefit Calculations for the APRIL Companies," dated concurrently with this memorandum (Final Calculation Memorandum).

351.505(a)(2)(iv), we used the Indonesian short-term monthly lending rates in foreign currency, as compiled by the International Monetary Fund (IMF) in its International Financial Statistics.<sup>53</sup>

## V. 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. Provision of Standing Timber for Less Than Adequate Remuneration

The petitioners contend that the GOI controls nearly all of Indonesia's harvestable forest land and leases logging rights to companies, charging a royalty (stumpage rate) for the right to harvest roundwood (i.e., logs). The petitioners claim that numerous studies and the Department's determinations in CCP Final and CFS Final demonstrate that the stumpage rates charged by the GOI are far less than the value of the stumpage.<sup>54</sup>

In both the CFS and CCP investigations, the GOI reported that virtually all harvestable forest land is owned by the GOI.<sup>55</sup> While the GOI reported that harvests from private forest land ownership in Indonesia have increased since the CFS and CCP investigations, the GOI reports that it still owned the vast majority of the forest land in Indonesia during the POI.<sup>56</sup> We found that the GOI allows timber to be harvested from government-owned land under two main types of concession licenses: (1) IUPHHK HPH licenses to harvest timber in the natural forest; and (2) IUPHHK HTI licenses to harvest timber from plantations. During the POI, the official fee of IUPHHK was regulated by Minister of Forestry Regulation No. 76/Menhut-II/2014. This fee depends on the size and location of the forest area. Each time a company harvests timber, pursuant to its IUPHHK, the company must issue a production report. Fees charged by the GOI for Provisi Sumber Daya Hutan (PSDH), Dana Reboisasi (DR), and Penggantian Nilai Tegakan (PNT) are calculated based on this production report.<sup>57</sup> HTI license holders pay PSDH fees ("cash stumpage" or royalty fees) based on the per unit of timber harvested. In addition to paying PSDH fees, HPH license holders pay DR fees (per-unit

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<sup>53</sup> While we requested a short-term loan interest rate benchmark from the respondent, the respondent provided a short-term interest rate associated with bank cash deposits, rather than a short-term loan. See APRIL SQR, at pages 19-20. Therefore, we did not consider this rate as a benchmark for this program.

<sup>54</sup> See CCP Final, and accompanying Issues and Decision Memorandum (CCP IDM); CFS Final and CFS IDM. This program was also found to provide a benefit in Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (August 16, 2006), and accompanying Issues and Decision Memorandum.

<sup>55</sup> See CFS Final and CFS IDM at page 18; and CCP Final and CCP IDM, at page 12.

<sup>56</sup> See GOI's May 26, 2015, Initial CVD Questionnaire Response (GOI IQR), at page 12 ("the proportion of forest areas on state-owned land and privately-owned land... is around 88% and 12% (respectively)"). The GOI derived these percentages using the harvests from private lands and state-owned forest areas. See GOI IQR, at page 8 and Exhibit 4.

<sup>57</sup> IUPHHK, previously known as "Iuran Hak Pengusahaan Hutan/Iuran Hasil Hutan," was established in 1967 based on Government Regulation No. 22 tahun 1967. Later, in 2007, based on Government Regulation No. 6 of 2007, Iuran Hasil Hutan became PSDH and DR. PNT was established in 2014 based on Minister of Forestry Regulation No. 52 of 2014. The calculation rates for PSDH, DR, and PNT were established pursuant to the Minister of Forestry Regulation No. 18 of 2007, which was replaced by the Minister of Forestry Regulation No. 52 of 2014. See GOI IQR, at page 14.

rehabilitation fees) and PNT fees (replacement of stumpage fees) for timber harvested from natural forests. According to the GOI, the purpose of the IUPHHK, PSDH, DR and PNT is to implement sustainable forestry management.<sup>58</sup>

Based on the foregoing facts, we determine that the GOI provides a financial contribution as described in section 771(5)(D)(iii) of the Act because it provides a good (standing timber) other than general infrastructure.

Information provided by the GOI recognizes 32 industry categories for goods in Indonesia. Of these 32 categories, standing timber was provided by the GOI to four industries during the POI, including the paper industry.<sup>59</sup> As such, we determine that the provision of stumpage is specific in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipient industries are limited in number. See also discussion below under Comment 2.

The provision of standing timber provides a benefit as described in section 771(5)(E)(iv) of the Act, to the extent that the GOI received less than adequate remuneration when measured against a market benchmark for stumpage. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying benchmarks to determine whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) prices consistent with market principles based on an assessment by the Department of the government-set price. This hierarchy reflects a logical preference for achieving the objectives of the statute. The most direct means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country or outside the country (the latter transaction would be in the form of an import). This preference is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.

In accordance with the first preference in the hierarchy, to determine the existence and extent of the benefit, we would need to identify an observed market stumpage price from a private supplier in Indonesia. As noted above, the GOI reported private forests accounted for only 12 percent of the total harvest in 2014 (5,320,695 m<sup>3</sup> out of a total of 45,034,394 m<sup>3</sup>).<sup>60</sup> Additionally, in CFS Final, the Department found that there were only 233,811 hectares of private forest land out of 57 million hectares of harvestable forest land in Indonesia.<sup>61</sup> The GOI did not provide any updated information on the percentage of government ownership of forest land other than the total harvest from publicly- and privately-owned forests. Thus, the GOI continues to play a predominant role in the market for standing timber. As such, we determine that there are no market-determined stumpage fees in Indonesia upon which to base a "first tier" benchmark. Furthermore, because the GOI dominates the

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<sup>58</sup> See GOI IQR, at pages 12-15 and Exhibit 8.

<sup>59</sup> See GOI's June 15, 2015, supplemental questionnaire (GOI SQR), at pages 3-4.

<sup>60</sup> See GOI IQR, at page 8 and Exhibit 4.

<sup>61</sup> See CFS Final and CFS IDM, at page 18.

Indonesian stumpage market and because stumpage and pulpwood markets are inextricably intertwined, it is inappropriate to use import prices into Indonesia for pulpwood as a starting point to determine whether Indonesian stumpage prices reflect market prices. This determination is consistent with our findings in CFS Final and CCP Final, and is undisputed by the parties in this investigation.

A “second tier” benchmark, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving the particular producer. In selecting a world market price under this second approach, the Department examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As discussed in the CVD Preamble, the Department will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government-provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.<sup>62</sup>

The APRIL companies suggested that the most accurate and preferred methodology for calculating the stumpage benchmark under the second tier would be to compare Indonesian stumpage fees with the stumpage fees in another country such as Malaysia. However, standing timber (and stumpage fees) in one country are not available to users in another country because standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded. Thus, there are no world market prices for stumpage, and, therefore, we cannot apply stumpage fees in another country as a “second tier” benchmark.<sup>63</sup> See also discussion below under Comment 5.

Because we are not able to conduct our analysis under the “second tier” of the regulations, consistent with the hierarchy, we are measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles (i.e., the “third tier” as described in the Department’s regulations). This approach is set forth in 19 CFR 351.511(a)(2)(iii) and is explained further in the CVD Preamble at 65378:

Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government’s price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. The regulations do not specify how the Department is to conduct such a market principles analysis. By its nature, the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis.

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<sup>62</sup> See CVD Preamble, at 65377.

<sup>63</sup> See CCP Final and CCP IDM, at page 8.

The GOI did not provide information or documentation to demonstrate that the stumpage fees it charges are established in accordance with market principles. Although the PSDH, DR and PNT fees are established as percentages of the reference price of forest products, we cannot conclude that the reference price is reflective of market principles or is a market-determined price. However, because a log export ban is in place (see further discussion below), the reference price is currently determined solely from domestic prices.<sup>64</sup> Through its ownership of a large majority of Indonesia's harvestable forests, the GOI has almost complete control over access to the timber supply. In addition, the ban on the export of logs affects the price for logs.<sup>65</sup> As such, the reference prices for logs cannot be considered to be market-based. Furthermore, the percentage that is applied to the reference price to calculate the PSDH, DR, and PNT fees is administratively set by the GOI. Thus, we determine that the stumpage fees, charged by the GOI as a percentage of a non-market-determined reference price, are not based on market principles.<sup>66</sup>

Because the government price is not set in accordance with market principles, we looked for an appropriate proxy to determine a market-based stumpage benchmark. It is generally accepted that the market value of timber is derivative of the value of the downstream products. The species, dimension, and growing condition of a tree largely determine the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is, in turn, derived from the demand for the products produced from those logs.<sup>67</sup>

Both the petitioners and the APRIL companies made recommendations for the appropriate basis for calculating benchmark prices. These proposals are discussed in detail below under Comments 5 and 7. Our analysis and selection of benchmark prices are discussed below in our response to Comment 7. As a result of the geographic proximity and the similarities of forest conditions, climate, and tree species between Indonesia and Malaysia, we continue to find Malaysian log prices to be the most appropriate source to use in our benchmark analysis, where available. Specifically, for the final determination, we used the species-specific prices from a price survey of acacia pulpwood as reported in an independent market study of the pulpwood and woodchip industry in Malaysia as the starting price for the acacia stumpage rate benchmark. For calculating the stumpage rate benchmarks for MHW and eucalyptus timber, we relied on GTA export statistics for Malaysia and Thailand, respectively. See Comment 7 below for further discussion.

In order to derive a stumpage benchmark value, we adjusted the benchmark log prices to remove the Indonesian costs of extraction (harvesting) of the standing timber. To determine the Indonesian harvesting costs (including a reasonable amount for profit associated with extraction), we used RAPP's reported harvesting costs as verified by the Department. We also used profit information contained in "Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia;

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<sup>64</sup> See GOI IQR, at Exhibit 8.4.

<sup>65</sup> See GOI SQR, at pages 5-6.

<sup>66</sup> See Coated Free Sheet Paper from Indonesia: Notice of Preliminary Affirmative Countervailing Determination, 71 FR 17498 (April 9, 2007), unchanged in CFS Final.

<sup>67</sup> See, e.g., Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada, 69 FR 75917 (December 20, 2004), and the accompanying Issues and Decision Memorandum, at 16-18.

Implications of Forest Sustainability and Government Policy.”<sup>68</sup> This study is an independent source on the record that provides information on profit in Indonesia.<sup>69</sup> See also Comments 7 and 9 below, and the Final Calculation Memorandum for further discussion of benchmark price adjustments.

The deduction of the harvesting costs, and profit associated with harvesting, from the unit values results in a derived benchmark stumpage price for each species. We compared these derived benchmark prices for each type or species of standing timber to the Indonesian stumpage fees, and found the GOI’s stumpage fees to be lower than the market benchmark prices. Accordingly, we determine that a benefit is provided in accordance with section 771(5)(E)(iv) of the Act because the GOI provides standing timber for less than adequate remuneration.

To calculate the benefit received under this program, we first multiplied the benchmark prices for each type of timber by the quantity harvested by APRIL during the POI. After multiplying each stumpage benchmark by the appropriate harvest quantity, we summed all the values to calculate the total amount of fees that should have been paid at the market-based benchmark stumpage rate. We then subtracted the total of the actual PSDH, DR and PNT fees paid by RAPP during the POI, from the total amount of stumpage fees that should have been paid.

In accordance with 19 CFR 351.525(a), we then divided the benefit by the total external sales of AKU, RAK, RAPP, and IP (i.e., the total FOB sales values of the pulp and paper producers minus any cross-owned inter-company sales) to calculate a net countervailable subsidy rate of 9.81 percent ad valorem for this program.<sup>70</sup>

## 2. Government Prohibition of Log Exports

The petitioners alleged that the GOI provides a countervailable subsidy to pulp and paper producers through the GOI’s ban on log exports. As support for their allegation, they relied on CFS Final and CCP Final in which the Department found that the GOI’s imposition of an export ban on logs and chipwood provided a countervailable subsidy to downstream wood processing industries, including the pulp and paper producing industries.<sup>71</sup>

In CFS Final and CCP Final, the Department determined that the Log Export Ban provided a financial contribution in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. Specifically, the Department found that the GOI, through the Log Export Ban, entrusted or directed forestry/harvesting companies to provide lower-priced inputs (logs and chipwood) to companies in the pulp and paper producing industries. The Department determined that the Log Export Ban provided a benefit in accordance with section 771(5)(E)(iv) of the Act. Specifically, the GOI’s Log Export Ban allowed the cross-owned forestry companies in the respondent’s corporate group to purchase inputs (logs and chipwood) from unaffiliated forestry companies below market prices.

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<sup>68</sup> See the petitioners’ June 3, 2015, Benchmark Submission, at Exhibit 18; and Preliminary Calculation Memorandum.

<sup>69</sup> This study was also used in CCP Final. See CCP Prelim, at 10767, unchanged in CCP Final.

<sup>70</sup> See Final Calculation Memorandum.

<sup>71</sup> See CFS Final and CFS IDM, at page 32; and CCP Final and CCP IDM, at page 12.

Finally, in the CFS Final, the Department determined that the Log Export Ban was specific under section 771(5A)(D)(i) of the Act. Specifically, the Department found the GOI's decree banning the exports of logs and chipwood to be de jure specific within the meaning of section 771(5A)(D)(i) of the Act, because it is restricted by law to only a limited group of industries and because it covers only a small number of products within those industries. Furthermore, in the CCP Final, the Department determined the Log Export Ban is de facto specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the industries receiving subsidies from the operation of the ban are limited in number.

In their questionnaire responses, the GOI and the APRIL companies state that the World Trade Organization (WTO) has ruled that this type of government action cannot constitute a subsidy program.<sup>72</sup> As an initial matter, our finding here and our CVD law are consistent with our WTO obligations. Moreover, it is the Act and the Department's regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports.<sup>73</sup> In this regard, WTO reports "do not have any power to change U.S. law or to order such a change."<sup>74</sup> Instead, Section 129 of the Uruguay Round Agreements Act addresses the implementation of WTO dispute settlement reports.<sup>75</sup> Therefore, the Department is obligated to follow U.S. law in reaching its CVD determinations, and, as discussed below, the GOI's Log Export Ban constitutes a countervailable subsidy under U.S. law. See also discussion below under Comment 6.

In CFS Final, we stated that the GOI had submitted that the stated intent of the log and chipwood export ban was to reduce environmental degradation and to manage the forest in a sustainable manner.<sup>76</sup> Nonetheless, based on the totality of the evidence on the record in the CFS Final, including independent studies on the impact of the Log Export Ban in Indonesia, we found that the record evidence refuted the GOI's claim that the Log Export Ban is used to protect forest resources, and instead showed that the GOI imposed or maintained the Log Export Ban in order to provide lower-priced inputs (i.e., logs and chipwood) to industries that consume those inputs.<sup>77</sup> Thus, in CFS Final, we concluded that one of the purposes of the GOI's ban was to develop the downstream industries, which was the basis on which the Department determined that the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a good to pulp and paper producers for less than adequate remuneration.<sup>78</sup> In CCP Final, we found that although the GOI may have begun the process of legalizing exports on certain forest products, the ban on exports on logs was still in effect.<sup>79</sup>

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<sup>72</sup> See WT/DS 194 United States -- Measures Treating Export Restraints As Subsidies (adopted by WTO DSB August 23, 2001).

<sup>73</sup> See, e.g., Corus Staal BV v. U.S. Dep't of Commerce, 395 F.3d 1343, 1347-1349 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006).

<sup>74</sup> See SAA, at 659. See also CFS Final and CFS IDM, at page 97; and CCP Final and CCP IDM, at Comment 4.

<sup>75</sup> See 19 U.S.C. 3538.

<sup>76</sup> See CFS IDM, at page 27.

<sup>77</sup> Id., at pages 29-31.

<sup>78</sup> See CFS Final and CFS IDM, at page 27; and CCP Final and CCP IDM, at page 13.

<sup>79</sup> See CCP Final, at pages 12-13.

In the instant case, the GOI confirmed that a ban on the exportation of logs was still in effect during the POI, although under a new Ministry of Trade decree.<sup>80</sup> It also noted that during the POI it was not illegal to export chipwood or pulpwood.<sup>81</sup> Neither the GOI nor the APRIL companies placed any additional information on the record to counter our preliminary determination that the ban on log exports continues to be in effect (only downstream log products (e.g., wood chips and wood pulp) are allowed to be exported). In addition, the petitioners and the GOI submitted information showing that the Log Export Ban's effect is to grow the wood processing industry, to encourage processing industries in Indonesia, and to suppress prices in Indonesia.<sup>82</sup> As such, we determine that the Log Export Ban continues to provide a countervailable subsidy to pulp and paper producers. The ban constitutes a financial contribution in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act through the GOI's entrustment or direction of forestry/harvesting companies to provide goods (i.e., logs). See also further discussion below under Comment 6. Furthermore, the Log Export Ban is de facto specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the industries receiving subsidies from the operation of the ban are limited in number.<sup>83</sup>

Moreover, the Log Export Ban provides a benefit in accordance with section 771(5)(E)(iv) of the Act to extent that the prices paid by the APRIL companies to unaffiliated forestry/harvesting companies for their purchases of logs are for less than adequate remuneration (i.e., for less than the benchmark price). To determine whether the Log Export Ban provided a benefit to the APRIL companies during the POI, the Department compared the price paid by the APRIL companies for the logs they purchased during the POI from unaffiliated forestry/harvesting companies to a benchmark priced based on the criteria stipulated in 19 CFR 351.511(a)(2).

We explain above what the Department's regulations at 19 CFR 351.511(a)(2) state regarding the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. In the instant case, there are no meaningful or usable private domestic prices for logs or actual import prices to evaluate for purposes of identifying a "first tier" benchmark (i.e., market prices from actual transactions within the country under investigation). As discussed above, the GOI reported that the harvest from privately-owned forest land is only 12 percent of the country's total harvest.<sup>84</sup> We also note that all logs, including logs harvested from private land, are subject to the export ban.<sup>85</sup> Therefore, because of the GOI's predominant role in the Indonesian market for logs, we find that it is not possible to determine a private domestic log benchmark price in Indonesia, pursuant to 19 CFR 351.511(a)(2)(i), for the GOI's Log Export Ban. Accordingly, Indonesian import prices likewise would not reflect market prices.

Because there are no market prices from actual transactions in the country to use as a benchmark, we next looked for a "second tier" benchmark which, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not

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<sup>80</sup> See GOI IQR, at page 33 and Exhibit 15, and GOI SQR, at pages 5-6

<sup>81</sup> See GOI SQR, at pages 5-6.

<sup>82</sup> Id., at Exhibit S-12; and Petition, at IV-21-22, and Exhibits IV-31 and IV-32.

<sup>83</sup> As noted above, information provided by the GOI recognizes 32 industry categories for goods. Of these 32 categories, logs were provided to four industries during the POI, including the paper industry. See GOI SQR, at pages 5-6.

<sup>84</sup> See GOI IQR, at page 12.

<sup>85</sup> Id., at page 33 and Exhibit 15.

necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, the Department examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As noted above, as well as in CFS Final and CCP Final, Indonesia and Malaysia are geographically proximate and have similar forest conditions, climate, and tree species. Both the petitioners and the APRIL companies made recommendations for the appropriate basis for calculating benchmark prices. These proposals are discussed in detail below under Comment 7. Our analysis and selection of benchmark prices are discussed below in our response to Comment 7. For calculating the benchmark prices for acacia and MHW logs, we relied on GTA export statistics for Malaysia. Under the Department's regulations, applicable delivery charges and import duties should be added to the benchmark price before determining whether the Indonesian price for pulpwood confers a benefit.<sup>86</sup> We made the applicable adjustments to the benchmark price, as discussed below under Comments 8 and 9, and in the Final Calculation Memorandum.

When we compare the benchmark prices to the prices that RAPP paid to the unaffiliated pulpwood suppliers on a per-unit basis, we find that there is a benefit conferred through the GOI's Log Export Ban and, thus, entrustment or direction to forestry/harvesting companies to provide logs to pulp and paper producers for less than adequate remuneration. To calculate the subsidy, we first calculated a per-cubic meter benefit for each species of logs. We then multiplied the volume of each species purchased by RAPP from unaffiliated forestry/harvesting companies in order to calculate the total benefit for each species.

We then summed the benefit for each species and divided this amount by the total FOB external sales values of the APRIL companies' pulp and paper producers (*i.e.*, RAPP, IP, RAK, and AKU). We did not include in this Log Export Ban calculation any of RAPP's harvested pulpwood because we captured any benefit it receives on that wood, from the Log Export Ban, in the stumpage benefit calculation. On this basis, we calculated a net countervailable subsidy rate of 11.41 percent ad valorem for the APRIL companies.<sup>87</sup>

## **B. Program Determined Not to Have Conferred a Measurable Benefit**

### Exemption from Import Income Tax Withholding for Companies in Bonded Zone Locations<sup>88</sup>

The GOI explained that the purpose of bonded zones is to facilitate processing goods for export under duty free conditions. The GOI stated that goods processed in a bonded zone may be sold for domestic consumption up to 50 percent (or more, based on Ministry of Industry's approval) of a company's prior year export value. The GOI indicated that any company from any industry can apply for a bonded zone facility provided it can fulfill all the requirements in the bonded zone

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<sup>86</sup> See 19 CFR 351.511(a)(2); see also U.S. Steel Corp. v. United States, No. 08-00239, Slip Op. 09-152, at 17-18 (CIT Dec. 30, 2009).

<sup>87</sup> See Final Calculation Memorandum.

<sup>88</sup> We initiated this program as "Preferential Treatment for Bonded Zone Locations-Income Tax Reductions on Imported Capital Goods, Equipment, and Raw Materials for the Portion of the Production Destined for Export." We revised the title of the program based on the description provided by the GOI.

regulations. The GOI explained that the bonded zone facilities are outside the Indonesian customs territory. The GOI noted that companies in bonded zones are required to file reports every four months, and are obligated to keep accurate records related to the movement of equipment, goods, and inventory in and out of their bonded zones. These requirements are subject to audit by the Directorate General of Customs and Excise.<sup>89</sup>

Income tax in Indonesia is administered based on a combination of self-assessment and withholding tax systems. According to the system, certain types of income and transactions are subject to withholding taxes which are collected by its payer or withholder. At the end of the respective fiscal year, the withholding tax paid will be credited against total income tax payable. Under Article 22 of Indonesia's Income Tax Law, imports into Indonesia are subject to an income tax withholding equal to either 2.5 percent or 7.5 percent of the total import value, depending on whether the importer owns an Import Identification Number.<sup>90</sup>

Specifically, when a company that is not located in a bonded zone imports merchandise, that company is required to pay a "withholding" amount for "import income tax" upon importation of capital goods, equipment, or raw materials. Any import income tax collected (or prepaid) through this withholding is credited towards the company's total income tax payable at the end of the tax year. However, when a company imports into a bonded zone, that company is not required to pay any import income tax withholding upon entry. The GOI claims that, as a result, there is no withholding or prepaid import income tax to be credited towards the bonded zone company's end-of-year income tax payable. Thus, according to the GOI, whether a company is subject to withholding import income tax or not, the ultimate net effect on its overall income tax liability for the year stays the same. As a result, the GOI contends that there is no revenue forgone by the government as a result of this program.<sup>91</sup>

The APRIL companies reported, and we verified, that they were exempted from the tax withholding requirement because of their bonded zone location.<sup>92</sup> We find that such withholding exemption for companies in bonded zones constitutes a deferral of direct taxes within the meaning of 19 CFR 351.509(a)(2), according to which a benefit exists to the extent that appropriate interest charges are not collected.

As a result, we determine that this import income tax program provides a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act. The GOI stated that activities in a bonded zone must primarily be for export, and record information ties this program to exportation.<sup>93</sup> Therefore, the import income tax withholding exemptions are contingent upon export performance and, thus, specific pursuant to section 771(5A)(B) of the Act. Consistent with 19 CFR 351.509(a)(2), we are treating the import income tax otherwise subject to withholding, *i.e.*, the tax amount deferred, as a government-provided loan that provides a benefit in the form of uncollected interest charges.

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<sup>89</sup> See GOI IQR, at pages 59-67.

<sup>90</sup> *Id.*, at page 63.

<sup>91</sup> *Id.*, at pages 63-64.

<sup>92</sup> See APRIL IQR, at page 35.

<sup>93</sup> See GOI IQR, at pages 59-60.

To calculate the benefit from this program, we summed the import income tax withholding exempted for each of the cross-owned APRIL companies during the POI, applied the monthly short-term interest benchmark discussed above in the “Subsidies Valuation” section, and summed the uncollected interest for the entire POI. We divided the summed amount for each company by its respective external sales value, and then added the resulting company-specific percentages to obtain the overall subsidy rate. However, the calculation of the benefit results in a rate that is less than 0.005 percent and, as such, does not have an impact on the APRIL companies’ overall subsidy rate.<sup>94</sup> This calculation is unchanged from our preliminary determination. Consistent with our past practice, we did not include this program in our net subsidy rate calculations for the APRIL companies.

### C. **Program Determined Not to Be Countervailable**

#### Exemption from Import Duties for Capital Goods and Equipment for Companies in Bonded Zone Locations

As noted above, the GOI asserted that bonded zones are outside the customs territory of Indonesia and are subject to audits by the Indonesian customs authority. The GOI explained that imports into bonded zones are exempt from import duties based on their location outside the Indonesian customs territory. The GOI noted that import duties are still payable if the capital goods or equipment that had been imported into a bonded zone are subsequently sold in the domestic market within four years after the initial importation into the bonded zone.

The APRIL companies’ location in a bonded zone places them outside of the customs territory of Indonesia.<sup>95</sup> Consequently, imports of capital goods and equipment by the APRIL companies that stay within the bonded zone are not subject to import duties in Indonesia. The APRIL companies explained that they did not sell capital goods in Indonesia during the POI or throughout the AUL. They claimed that because imports of capital goods and equipment by the APRIL companies are not subject to duties in Indonesia, the GOI has not foregone revenue by not collecting duties on the companies’ imports.

In CWP from Vietnam, we found a similar type of program not countervailable, reasoning that goods imported from foreign countries into non-tariff zones outside the customs territory of Vietnam for use only in non-tariff zones are not liable for import duties and, as such, there is no financial contribution by the government because the government has not foregone revenue by not collecting taxes. Furthermore, we noted that such free trade areas must be subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country’s customs territory and, in the latter case, appropriate duties are collected.<sup>96</sup> In this case, the GOI explained that bonded zones are subject to customs reports and

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<sup>94</sup> See Final Calculation Memorandum.

<sup>95</sup> See APRIL IQR, at page 34, and AKU SQR, at pages 15-16.

<sup>96</sup> See Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination, 77 FR 64471 (October 22, 2012) (CWP from Vietnam), and accompanying Issues and Decision Memorandum, at pages 4 and 13-15.

audits.<sup>97</sup> The Department verified that the GOI's customs enforcement system is extensive; it includes physical inspection of goods entering and exiting the bonded zones by customs officials assigned to each zone, routine reporting requirements, and periodic audits.<sup>98</sup> Therefore, because the APRIL companies are located in a bonded zone that is subject to rigorous customs enforcement measures, and their imports within the bonded zone are not subject to Indonesian customs duties, we determine there is no financial contribution within the meaning of section 771(5)(D)(ii) of the Act, and accordingly find this program not to be countervailable. This finding is unchanged from the preliminary determination.

#### **D. Programs Determined To Be Not Used**

1. Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value
2. Debt Forgiveness through APP/SMG's Buyback of Its Own Debt from the GOI
3. Export Financing from Export-Import Bank of Indonesia
4. Export Credit Insurance
5. Export Credit Guarantees
6. Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia's Investment Coordinating Board (BKPM) – Corporate Income Tax Deduction
7. Tax Incentives for Investment in Specified Business Lines and or in Specified Regions by the BKPM – Accelerated Depreciation and Amortization
8. Tax Incentives for Investment in Specified Business Lines and or in Specified Regions by the BKPM – Extension of Loss Carry-Forwards
9. Preferential Treatment for Bonded Zone Locations
  - a. Waiver of License and Fee Requirements
  - b. Exemption from Sales Taxes for Capital Goods and Equipment Used to Produce Exports
10. Debt Forgiveness to the RGM Group and Asia Pacific Resources International Limited Companies
11. Special Arrangements for the Depreciation of Tangible Assets Used by the Hardwood Plantations and Forestry Sectors for Income Tax Purposes

#### **VI. ANALYSIS OF COMMENTS**

##### **Comment 1: Adverse Facts Available for Great Champ**

In the Preliminary Determination, because Great Champ failed to cooperate by not acting to the best of its ability to respond to the Department's requests for information, pursuant to section 776(b) of the Act, in selecting from among the facts otherwise available, we drew an adverse inference that the programs upon which we initiated were used by Great Champ and conferred a benefit. Therefore,

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<sup>97</sup> See GOI IQR, at pages 59-67, and GOI SQR, at pages 10-11.

<sup>98</sup> See GOI Verification Report, at pages 7-9, and APRIL Verification Report, at pages 14-15, see also Frozen Warmwater Shrimp from the Republic of Indonesia: Final Negative Countervailing Duty Determination, 78 FR 50383 (August 19, 2013), and accompanying Issues and Decision Memorandum, at Comment 17.

the Department applied an adverse inference in its calculation of the ad valorem estimated countervailable subsidy rate for Great Champ.<sup>99</sup>

The petitioners argue that, because Great Champ refused to respond to the Department's questionnaire, the Department should conclude, as AFA, that Great Champ is a non-producing trading company<sup>100</sup> that exported subject merchandise produced only by the APP/SMG companies. Accordingly, the petitioners urge the Department to apply a total AFA rate to Great Champ equal to the total AFA rate for the APP/SMG companies, including the subsidy margins for the two APP/SMG debt forgiveness programs (i.e., Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value and Debt Forgiveness through APP/SMG's Buyback of its Own Debt from the GOI). The petitioners maintain that, under the Department's regulations and practice, if Great Champ as a trading company had exported subject merchandise produced by APP/SMG, then Great Champ's CVD rate would account for APP/SMG's total company-specific rate, including the two debt forgiveness programs.<sup>101</sup> According to the petitioners, the fact that Great Champ's preliminary AFA rate was lower than the total AFA rate for APP/SMG means that Great Champ may obtain a more favorable result by failing to cooperate than if it had cooperated fully, contrary to the Department's stated intentions.<sup>102</sup> In addition, the petitioners argue that, regardless of whether the Department applies these adverse inferences to Great Champ, the APP/SMG rate should be assessed prospectively for all entries of the subject merchandise produced by APP/SMG, even if the subject merchandise is exported by Great Champ.

No other party commented on this issue.

#### Department's Position:

We disagree with the petitioners. As we stated in the PDM and as discussed under III.B. Selection of the AFA Rate above, consistent with our normal AFA methodology in CVD proceedings, we did not include the two debt forgiveness programs, i.e., Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value and Debt Forgiveness through APP/SMG's Buyback of Its Own Debt from the GOI, in our AFA rate analysis for Great Champ, because these programs were specific to the APP/SMG companies.<sup>103</sup> We see no reason in this investigation to deviate from our normal practice of calculating company-specific AFA rates in

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<sup>99</sup> See PDM at pages 6-11.

<sup>100</sup> According to the petitioners, Great Champ's name indicates that it is a trading company and a nonproducing exporter of subject merchandise. In addition, the petitioners point out that the CBP data placed on the record for respondent-selection purposes indicates that Great Champ may have exported subject merchandise originating from a location in Indonesia where one of the APP/SMG companies' mills are located. See, e.g., Memorandum entitled "Respondent Selection for the Countervailing Duty Investigation of Uncoated Paper from Indonesia," dated March 5, 2015, at Attachment I.

<sup>101</sup> See, e.g., 19 CFR 351.525(c); Countervailing Duty Investigation of 1, 1, 1, 2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 62594 (October 20, 2014), and accompanying Issues and Decision Memorandum at 7-8; Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62128 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Trading Companies."

<sup>102</sup> See PDM at page 7.

<sup>103</sup> Id., at page 9, and Department Memorandum regarding "Countervailing Duty Initiation Checklist: Certain Uncoated Paper from Indonesia" (February 10, 2015) at pages 10-12.

CVD cases.<sup>104</sup> There is no evidence on the record of this investigation that would lead us to conclude that Great Champ actually sold merchandise only produced by the APP/SMG companies, or that Great Champ and the APP/SMG companies are cross-owned. We find insufficient the facts, such as Great Champ's use of a port near one APP/SMG mill or the presence of "trading" in Great Champ's corporate name, upon which the petitioners rely in support of their conclusion that Great Champ is a trading company that exported subject merchandise produced only by the APP/SMG companies. These facts are an insufficient evidentiary basis on which to assign Great Champ a total AFA rate that is equal to the total AFA rate for the APP/SMG companies. Similarly, we have no basis upon which to apply the APP/SMG cash deposit rate on all entries of the subject merchandise produced by APP/SMG, if the subject merchandise is exported by Great Champ, as requested by the petitioners.

#### Comment 2: Whether the Stumpage Program Meets the Specificity Requirement

APRIL contends that the Department should find the Provision of Standing Timber for Less Than Adequate Remuneration (Stumpage Program) is not a countervailable subsidy because the Stumpage Program does not meet the specificity requirement under section 771(5A)(D)(iii) of the Act. APRIL disputes the Department's assessment in the PDM that, because standing timber was provided by the GOI to four industries during the POI, including the paper industry, the program is specific because it is limited to a group of industries. According to APRIL, that only a certain group of industries availed themselves of the program does not provide a sufficient record basis to conclude that the program was de jure or de facto limited to any group of companies.

The petitioners counter that the Department has found the Indonesian Stumpage Program to be de facto specific in previous proceedings under section 771(5A)(D)(iii) because five industries, including the paper industry, actually used the program and thus constituted a limited group of industries within the universe of 23 industries identified by the GOI.<sup>105</sup> In this investigation, the petitioners contend that the Department's preliminary determination that the Stumpage Program is specific because the GOI reported that it provided standing timber during the POI only to four industries within the universe of 32 industry categories was correct. Therefore, the petitioners assert that the Department should continue to find the Stumpage Program to be specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number to a group of industries, and under section 771(5A)(D)(iii)(II) of the Act because a group of industries is the predominant user of the subsidy.

#### Department's Position:

As discussed above, the GOI reported that it recognizes 32 industry categories for goods in Indonesia. Within these 32 categories, standing timber was provided by the GOI to only four

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<sup>104</sup> See, e.g., Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 79 FR 38490 (July 8, 2014), and accompanying Preliminary Decision Memorandum, at pages 15-18, unchanged in Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 79 FR 68858 (November 19, 2014).

<sup>105</sup> See CFS IDM, at pages 18-19, 65-66; and CCP IDM, at page 7.

categories of industries during the POI, including the paper industry.<sup>106</sup> APRIL argues that the fact that only a certain group of industries availed themselves of the Stumpage Program does not mean that the program was de jure or de facto limited to a certain group of industries, and thereby specific under section 771(5A)(D)(iii)(I) of the Act because, for example, there are numerous other industries in Indonesia relying on timber as an upstream input. We note that section 771(5A)(D)(iii)(I) of the Act is not governed by what industries “avail themselves of a subsidy.” Rather, under section 771(5A)(D)(iii)(I) of the Act, a subsidy is specific when the “actual recipients of the subsidy,” whether considered on an enterprise or industry basis, are limited in number. In this case, the GOI stated that standing timber was only provided to four out of the 32 industry categories of goods recognized in Indonesia,<sup>107</sup> which demonstrates that the “actual recipients” of standing timber was limited in number, and that the Stumpage Program meets the specificity criterion under section 771(5A)(D)(iii)(I) of the Act. In this regard, the reliance of other industries on upstream inputs made from the standing timber would not detract from this specificity determination because the specificity analysis is focused on whether the recipients of the subsidy, itself, were limited in number, not on whether the recipients of an upstream product were limited in number. APRIL also argues that multiple industries fall under each industry category and, as such, the standing timber subsidy is not specific. We find that even assuming for argument’s sake that this is correct, it would not rebut the basic premise that, even under the GOI’s own classification system, only a limited segment of goods industries within Indonesia receives the subsidy. Moreover, subsidies are de facto specific if they are limited to specific industries or a specific group of industries.<sup>108</sup> Finally we note that in the previous investigations of paper from Indonesia, we determined that the actual use of this program by this limited number of industries met the statutory definition of a de facto subsidy.<sup>109</sup> For all these reasons, we continue to find that the Stumpage Program is de facto specific under section 771(5A)(D)(iii)(I) of the Act.

### Comment 3: Whether the Stumpage Program Applies to Purchases of Felled Trees

If the Department continues to countervail the Stumpage Program, APRIL asserts that its purchases of felled trees from long-term suppliers are not countervailable because there is no involvement of any government authority in these transactions and thus no financial contribution. APRIL notes that, unlike trees harvested from its own plantations where it pays stumpage fees directly to the GOI, APRIL does not interact with the GOI with respect to these transactions. While APRIL may reimburse the supplier for the stumpage fees, it is the supplier, not APRIL, who pays stumpage fees to the GOI, and thus it would be the supplier, not APRIL, who would receive any alleged benefit under the Stumpage Program.

The petitioners dispute APRIL’s contention that the GOI does not confer a benefit through the Stumpage Program on APRIL’s purchases from long-term suppliers. The petitioners note that APRIL’s reimbursement of stumpage fees to the suppliers is simply one step removed from paying the GOI directly, as APRIL reimburses the suppliers the exact amount of government-levied stumpage fees it would have paid directly if APRIL had harvested the felled trees from its own

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<sup>106</sup> See GOI SQR at pages 3-4.

<sup>107</sup> Id.

<sup>108</sup> See, e.g., SAA at 931 (explaining that specificity analyses focus on “enterprises, industries or groups thereof”).

<sup>109</sup> See CFS IDM at pages 18-19, 65-66; and CCP IDM at page 7.

concessions. Moreover, the petitioners claim that APRIL's argument is untimely because APRIL did not report that it reimbursed the suppliers for the stumpage fees, rather than paid the fees directly, until verification.<sup>110</sup>

#### Department's Position:

We agree with the petitioners that the record is unambiguous that APRIL reimburses its long-term suppliers for the total amount of stumpage fees paid to the GOI for the felled trees that APRIL harvested.<sup>111</sup> Whether APRIL pays the fees directly to the GOI, or indirectly through reimbursement of its suppliers' stumpage, the APRIL companies receive the benefit offered by the GOI through the Stumpage Program. Section 771(5)(B) of the Act does not require that the Department find that a single entity received both the financial contribution and the benefit to determine that a subsidy exists. Rather, the Department must find that an authority provides a financial contribution and that a benefit is thereby conferred.<sup>112</sup> Thus, where a government makes an initial financial contribution, there is no requirement that the Department also find that the government was involved in the ensuing transaction involving the proceeds of the financial contribution.<sup>113</sup> Here, we must determine whether the GOI provided a financial contribution and it is undisputed that the GOI provides a financial contribution, standing timber, to the APRIL companies' long-term suppliers.<sup>114</sup> Thus, the Act's requirement that an authority provides a financial contribution has been met. As discussed above, supra at Section A.1 Provision of Standing Timber for Less Than Adequate Remuneration, the Department has constructed a market-based benchmark to separately determine whether a benefit was conferred. Accordingly, we continue to include the timber APRIL harvested from its long-term suppliers in the benefit calculation for the Stumpage Program.

#### Comment 4: Whether to Include APRIL's Harvest of Mixed Hardwood Timber in Calculating Countervailable Benefits

APRIL contends that the Department should not countervail APRIL's harvests and purchases of mixed hardwood (MHW) timber because APRIL does not consume MHW to produce the subject merchandise. According to APRIL, its questionnaire responses and the APRIL Verification Report provide sufficient record evidence to demonstrate that all wood pulp consumed to produce uncoated paper was made from acacia timber and not MHW.<sup>115</sup> APRIL concludes that any benefits granted with respect to MHW apply to non-subject merchandise and therefore are not countervailable in accordance with 19 CFR 351.525(b)(5), which instructs the Department to tie subsidies to the production or sale of a particular product.

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<sup>110</sup> In addition, the petitioners argue that the Department should countervail APRIL's purchases of felled trees from long-term suppliers under the Log Export Ban even if the provision of this timber is determined not to be countervailable under the Stumpage Program.

<sup>111</sup> See, e.g., APRIL Verification Report at VE-10, page 2.

<sup>112</sup> See Section 771(5)(B) of the Act.

<sup>113</sup> See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum, at Comment 6.

<sup>114</sup> In this regard, as indicated above, we note that APRIL reimburses its long-term suppliers for the exact amount of government-levied stumpage fees. See APRIL Verification Report, at VE-10, page 2.

<sup>115</sup> In support of its statement, APRIL cites to the APRIL IQR, at page 15, and the APRIL Verification Report, at page 11 and VE-33.

According to the petitioners, the Department’s regulations require the attribution of domestic subsidies to “all products sold by a firm,” and the Department may depart from this rule and attribute a subsidy only to certain products sold by a firm only where that subsidy is “tied to the production or sale of a particular product.”<sup>116</sup> While the petitioners acknowledge that the regulations do not define “tied” in this context, the petitioners note that, with respect to analyzing whether a benefit exists, the CVD Preamble provides that the Department is “concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy.”<sup>117</sup> The petitioners point to a number of cases to support their position that the Department has consistently included a subsidy in the benefit calculation despite the fact that the subsidy was only ultimately used in the production or sale of non-subject merchandise, where a respondent fails to demonstrate that the subsidy, at the time of its bestowal, was explicitly tied solely to non-subject merchandise and acknowledged as such by the granting authority prior to, or at the time of, bestowal.<sup>118</sup>

The petitioners contend that in this investigation that neither APRIL nor the GOI have demonstrated that the GOI restricted APRIL’s use of MHW to the production of non-subject merchandise at the time APRIL procured MHW, nor that the GOI was aware at the time of the subsidy bestowal that APRIL intended to use the MHW solely for the production of non-subject merchandise. Moreover, the petitioners assert that the record indicates that MHW can be used to produce the subject merchandise.<sup>119</sup> The petitioners conclude that, as APRIL and the GOI have failed to tie the provision of MHW to non-subject merchandise within the meaning of the Department’s attribution regulations, the Department should continue to include MHW in its benefit calculations for the Stumpage Program and the Log Export Ban.

#### Department’s Position:

While we recognize that the information on the record supports APRIL’s contention that it did not use MHW timber in the production of subject merchandise, the Department’s consistent practice requires that the respondent must demonstrate that the subsidy is tied to the subject merchandise in order to exclude goods or services attributable to non-subject merchandise from the benefit calculation.

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<sup>116</sup> See 19 CFR 351.525(b)(3) and 351.525(b)(5)(i).

<sup>117</sup> See CVD Preamble, 63 FR, at 65361.

<sup>118</sup> See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012, 80 FR 11163 (March 2, 2015), and accompanying Issues and Decision Memorandum, at Comment 2. The petitioners also cite other cases, including Circular Welded Austenitic Stainless Pressure Pipe From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 FR 39657, 39663 (July 10, 2008); and Drill Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR. 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum, at Comment 6. Similarly, the petitioners cite court proceedings such as Essar Steel Ltd. v. United States, 721 F. Supp. 2d 1285, 1296 (CIT Trade 2010), that affirm the Department’s practice of attributing subsidies without regard to how they are used.

<sup>119</sup> The petitioners cite APRIL’s statement at page 20 of the APRIL SQR1 that “MHW can be used in the production of the merchandise under investigation ....”

The Department's practice is to identify the purpose of the subsidy at the time the subsidy is bestowed, and not to examine the use or effect of subsidies, *i.e.*, to trace how the benefits are used by companies.<sup>120</sup> A subsidy is determined to be tied to a particular product when the intended use is known to the subsidy provider (in this case the GOI) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.<sup>121</sup> For instance, to determine whether a loan is tied to a particular product, the Department examines the loan approval documents. Similarly, to determine if a grant is tied to a particular product, the Department examines the grant approval documents. The Department's tying analysis has been upheld in various cases at the Court of International Trade (CIT).<sup>122</sup> As previously mentioned, the primary focus of the Department's attribution regulations is "the stated purpose of the subsidy. . . at the time of bestowal."<sup>123</sup>

In this case, there is no evidence on the record that the GOI was aware of APRIL's intended use of MHW timber or restricted APRIL's usage of MHW timber to the production of non-subject merchandise. Moreover, while APRIL asserts that MHW timber was not used to produce subject merchandise during the POI, APRIL never claimed that MHW timber could not be used to produce subject merchandise. The CIT has held that "[a]s long as the subject merchandise could be produced, it is immaterial whether and how such subject merchandise is actually produced."<sup>124</sup> Accordingly, for the final determination, we continue to include MHW timber in APRIL's benefit calculations for the Stumpage Program and Log Export Ban.

#### Comment 5: Whether to Use Malaysian Stumpage Fees as A Benchmark

In the preliminary determination, we calculated a stumpage program benefit using Malaysian pulp log export prices of acacia mangium and MHW, and Australian export prices of eucalyptus hardwood chips as benchmarks. We then deducted harvesting costs, and profit associated with harvesting, from the benchmark data to derive benchmark stumpage prices on a species-specific basis. We applied this methodology under the "third tier" of the benchmark hierarchy outlined at 19 CFR 351.511(a)(2) (assessing whether the government price is consistent with market principles). We rejected APRIL's proposal to compare Indonesian stumpage fees with the Malaysian stumpage fees as standing timber (and stumpage fees) in one country are not available to users in another country because standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded. As a result, there are no world market prices for stumpage that can be considered as a benchmark under the "second tier" of the benchmark hierarchy outlined at 19 CFR

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<sup>120</sup> See, *e.g.*, Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 2012, 80 FR 11163 (March 2, 2015), and accompanying issues and Decision Memorandum at Comment 2; and Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012), and accompanying Issues and Decision Memorandum, at Comment 7.

<sup>121</sup> See CVD Preamble, 63 FR, at 65393.

<sup>122</sup> See, *e.g.*, Essar Steel, 721 F. Supp. 2d at 1296 *aff'd*, Essar Steel Ltd. v. United States, 678 F.3d 1268, 1274 (Fed. Cir. 2012); MTZ Polyfilms, Ltd. v. United States, 659 F. Supp. 2d 1303, 1314-15 (CIT 2009); Royal Thai Government v. United States, 441 F. Supp. 2d 1350, 1363-64 (CIT 2006); Samsung Electronics Co. v. United States, 973 F. Supp. 2d 1321, 1329-30 (CIT 2014).

<sup>123</sup> See Countervailing Duties: Final Rule, 63 FR 65348, 65403; Royal Thai Government v. United States, 441 F. Supp. 2d 1350, 1363-64 (CIT 2006).

<sup>124</sup> See MTZ Polyfilms, Ltd., 659 F. Supp. 2d at 1314 (citing Fabrique de Fer de Charleroi v. United States, 166 F. Supp. 2d 593, 601-04 (CIT 2001)).

351.511(a)(2) (world market prices that would be available to purchasers in the country under investigation).

APRIL contests the Department's preliminary determination to reject the Malaysian stumpage fee information as a benchmark, asserting that the Malaysian government stumpage fee (or levy) information<sup>125</sup> should be used because it satisfies the requirements for a second tier benchmark under 19 CFR 351.525(b)(5). Alternatively, APRIL proposes that the Malaysian stumpage fee information constitutes a better third tier benchmark specific to the Indonesian fees at issue, as compared to the indirect, derivative benchmark methodology applied in the preliminary determination.

While APRIL notes that the CVD Preamble indicates that a world market price is generally not available to purchasers in other countries if the good is not traded on an international basis,<sup>126</sup> APRIL also points out that the Department already has relied on Malaysia as the primary benchmark source for Indonesian timber products for reasons including geographical proximity and similar wood species. APRIL continues that, for those reasons, the level of Malaysian government levies for forest products should be comparable for the purpose of benchmarks for Indonesian stumpage fees. APRIL adds that Malaysian levies may even result in the overstatement of benefits when compared to Indonesian fees, because Malaysian timber concession holders are provided with infrastructure that Indonesian concession holders do not receive, and thus the Malaysian levies likely include the value of the infrastructure improvements.

If the Department were to find that a third tier benchmark is more appropriate, APRIL contends that the Malaysian fees are a better benchmark than an indirect benchmark derived from log values, as the price at issue is for the right to harvest timber on public land, rather than for wood logs. APRIL cites Department practice in CWCQ Steel Line Pipe from China, where the Department applied Thai land values as a benchmark for Chinese land values, rather than a derivative value, such as one based on land leasing costs.<sup>127</sup> For the final determination, APRIL proposes that the Department should use the Malaysian state of Sabah Royalty Schedule<sup>128</sup> as the source for benchmarks to compare to the Indonesian stumpage fees.

The petitioners contend that the Department should continue to reject Malaysian stumpage rates as a second tier benchmark, as it has in the preliminary determination and in past cases, because, as noted above, standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded.<sup>129</sup> The petitioners also object to the use of Malaysian stumpage rates because, according to the petitioners, unlike Indonesian stumpage rates, the Malaysian stumpage rates are not

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<sup>125</sup> APRIL placed Malaysian stumpage fees, also referred to as royalty fees, on the record in its June 3, 2015, submission on benchmarks (June 3 Submission), at Exhibit 1, and in its August 3, 2015, submission on benchmarks (August 3 Submission), at Exhibit 18.

<sup>126</sup> See CVD Preamble, at 65377.

<sup>127</sup> See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (CWCQ Steel Line Pipe from China), and accompanying Issues and Decision Memorandum, at pages 16-17.

<sup>128</sup> See August 3 Submission, at Exhibit 18.

<sup>129</sup> See Preliminary Decision Memorandum, at page 19; see also CFS IDM, at page 20, and CCP IDM, at page 8. The petitioners' support of the derivative benchmark for stumpage based on log prices is further discussed under Comment 7.

species-specific. Further, the petitioners assert that APRIL has failed to demonstrate that the Malaysian stumpage rates are market-based, as required by statute and regulations.<sup>130</sup> Finally, the petitioners contend that the Malaysian stumpage royalty charge information is incomplete because Malaysia or its constituent states may assess other charges or fees upon harvesting, and because APRIL has not asked the Department to examine stumpage rates from Peninsular Malaysia.<sup>131</sup> As a result, the petitioners state that there is insufficient evidence on the record to determine what the total stumpage costs in Malaysia might be, and therefore, the stumpage fees in Malaysia, which APRIL supports as a benchmark, are not an appropriate benchmark for this investigation.

#### Department's Position:

We agree with the petitioners that there is inadequate information on the record to establish that the royalty fees in the Malaysian states of Sabah and Sarawak are market-based, as required under section 771(5)(E) of the Act and 19 CFR 351.511(a)(2). Therefore, we continue our practice set forth in the CFS Final and the CCP Final of determining a third tier benchmark for stumpage according to a species-specific market-based price for logs.

We find no basis to consider the Malaysian stumpage fees as benchmarks under the Department's second tier benchmark, as suggested by the APRIL companies. As we explained in the preliminary determination, and consistent with our findings in past cases, standing timber, and its associated stumpage fees, in one country are not available to users in another country because standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded. Thus, there are no world market prices for stumpage. In the absence of such world market prices, we cannot apply stumpage fees in another country as a "second tier" benchmark.<sup>132</sup>

For consideration of a benchmark under the third tier, we are not limited to identifying world market prices that would be available to purchasers in Indonesia. Thus, it is possible to consider the Malaysian royalty fees on this record as benchmarks for the Indonesian stumpage rates if it can be demonstrated that these Malaysian government prices are based on market principles. The available information indicates that, as in Indonesia, the Malaysian government plays the predominant role in the market for standing timber through the issuance and administration of concession licenses by state forestry departments.<sup>133</sup> While APRIL submitted information on the royalty fee schedules in effect during the POI for the Malaysian states of Sarawak and Sabah, there is no information on the record with respect to how these fees were established and whether they are consistent with market principles. Without this necessary information on the record to determine how the Malaysian royalty fees are developed and whether they are consistent with market principles, we cannot consider if it would be appropriate (or not) to use these fees as benchmarks for the Indonesian stumpage rates under 19 CFR 351.511(a)(2)(iii). As discussed in detail below under Comment 7,

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<sup>130</sup> The petitioners cite section 771(5)(E) of the Act and 19 CFR 351.511(a)(2) in support of this position.

<sup>131</sup> The petitioners refer to the APRIL June 3 submission, at Exhibit 1, and the petitioners' June 15, 2015, submission, at pages 4-9, and Exhibits 1, 2, 3, 5, and 7, for additional information regarding Malaysian stumpage fees and charges.

<sup>132</sup> See CCP Final and CCP IDM, at 8.

<sup>133</sup> See APRIL August 3 submission, at Exhibit 6, which consists of excerpts from "Hardwood Pulpwood and Woodchip Industry and Trade," published by Pöyry Management Consulting (Pöyry Report), at page 20 of the report. See also the discussion of the Malaysian forestry management in the APRIL June 3 submission, at Exhibit 1, and the Malaysian logging industry study excerpts in the petitioners' June 3, 2015, submission, at Exhibit 23.

we selected species-specific log or wood chip prices based on market principles as the starting point for determining stumpage rate benchmarks, consistent with our methodology applied in CFS Final and CCP Final.

Comment 6: Whether the Log Export Ban Constitutes a Countervailable Subsidy

In the Preliminary Determination the Department found that the GOI provided a financial contribution that benefited APRIL through the Log Export Ban program by directing and entrusting private forestry/harvesting companies to provide goods (i.e., logs) to domestic purchasers.

APRIL/GOI<sup>134</sup> argue that the Department should find that the Log Export Ban is not a countervailable subsidy because there is no evidence that the export ban has created an artificial market for low-value pulpwood. APRIL/GOI maintain that, because the export ban is clearly directed at the protection of high-value wood from natural forests, not pulpwood grown in plantations, it does not impact the prices for the low-value/residual pulpwood and chipwood used by APRIL.<sup>135</sup> APRIL/GOI add that the fact that a primitive downstream product (e.g., wood chips) can be exported from Indonesia demonstrates that the Log Export Ban is intended to protect Indonesia's natural hardwood forests.

Furthermore, APRIL/GOI assert that the record of this investigation is meaningfully different from those in the previous cases. First, according to APRIL/GOI, the GOI listed 26 other countries that impose limitations on the exportation of logs, and specified the particular form of limitation adopted by each country, thus corroborating the GOI's response that export bans in effect during the POI also extended to products in other sectors.<sup>136</sup> Second, the GOI submitted a 2014 study regarding the social and economic impact of the Log Export Ban in support of the GOI's belief that, in the absence of the Log Export Ban, irrational overcutting and illegal logging would, in the long term, cause domestic prices to drop below the current level.<sup>137</sup> More importantly, according to APRIL/GOI, the study defines the term "wood processing industry" in a manner consistent with GOI information that the furniture industry alone is responsible for 75 percent of the impact of the Log Export Ban. Finally, APRIL/GOI submit that, unlike the previous two Indonesia cases, the GOI allowed the exportation of woodchips, chipwood, and pulpwood during the POI in this proceeding. According to APRIL/GOI, the ability to export these products during the POI refutes the petitioners' argument because, given the low value-added nature of the chipping process and the prevalence of international trade in woodchips, any protectionist intent regarding the pulp and paper industry would be rendered ineffective due to such a large loophole.

In addition, APRIL/GOI argue that, if the Department countervails the Log Export Ban program, it should not countervail APRIL's/RAPP's purchases from long-term suppliers because such purchases are not subject to the Log Export Ban. APRIL/GOI maintain that no authority is involved in such

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<sup>134</sup> Elsewhere in this memorandum, we refer to "APRIL" or "the APRIL companies" for the respondents, although the case and rebuttal briefs were filed on behalf of the GOI as well. For this issue, however, we refer to the respondents as "APRIL/GOI" as the arguments are reflective of the GOI's position in particular.

<sup>135</sup> APRIL/GOI cite the Pöyry Report, which they claim provides reliable evidence that the Indonesia hardwood pulpwood prices are not distorted.

<sup>136</sup> See GOI IQR, at pages 31-32.

<sup>137</sup> See GOI SQR1, at Exhibit 12.

transactions – they are purely arrangements between private parties. Moreover, APRIL/GOI contend that there is no factual basis to analyze the long-term supplier purchases under the Log Export Ban because the scope of that program is limited to logs purchased by the mandatory respondents, while RAPP’s long-term purchases are for unprocessed trees, which the Department recognizes are different than logs. APRIL/GOI continue that what RAPP purchases from its long-term suppliers is the right to felled trees, which must also include the granting of a right to access the land. APRIL/GOI argue that the right to felled trees obtained by RAPP is neither tradable nor subject to any GOI restrictions as to private transfers, adding that this right cannot simply be exported and then exercised in a foreign country. In addition, APRIL/GOI maintain that the Log Export Ban fails the government-provided financial contribution element because the requirements for government-entrusted or directed subsidy are not met. Because there are no GOI restrictions on the private transfer of cut trees, APRIL/GOI claim that one cannot argue that the same requirements have been met with respect to the right freely transferred by the long-term suppliers.

Finally, APRIL/GOI argue that the Department should find that the Log Export Ban is not a countervailable subsidy because there is no financial contribution by an authority, and no entrustment or direction of a private entity by an authority to make a financial contribution. APRIL/GOI reason that for this new element of a countervailable subsidy to have any meaning, the entrustment and direction prong of the “authority” analysis must entail express government delegation and require one of the prescribed forms of financial contributions (e.g., provision of goods or services to certain selected beneficiaries, to be an intended result of the government action complained about). According to APRIL/GOI, if mere effects on private parties are sufficient, that would open the door to the countervailing of benefits from any sort of formal government measures, regardless of whether it is in a specified form that constitutes a financial contribution. In addition, APRIL/GOI contend that government direction or entrustment must be intentional - it cannot be based on transfers of financial resources that are an inadvertent result or a mere by-product of certain government action.<sup>138</sup>

The petitioners protest that, despite APRIL’s repeated acknowledgement that it purchased logs from unaffiliated suppliers, all of those suppliers are presumed to be covered by the Log Export Ban, and that there are no exceptions to the Log Export Ban, APRIL now claims the opposite. In its pre-preliminary comments APRIL argued that the ban did not distort the market for plantation logs because the GOI permits the exportation of a further processed product made from such plantation logs, which APRIL interchangeably referred to as “wood chips” and “chipwood.”<sup>139</sup> The GOI stated that it is not illegal to export “woodchips,” “chipwood,” or “pulpwood” from Indonesia but, according to the petitioners, offered no evidence to support these statements and no definitions of these terms.<sup>140</sup> The petitioners maintain, however, that the list of downstream wood products that can be exported, which was provided in response to a supplemental questionnaire, does not include wood used to make pulp, as the GOI’s use of the term pulpwood originally implied.<sup>141</sup> The petitioners contend that, while the translation of the schedule of permitted export products submitted

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<sup>138</sup> See Issues and Decision Memorandum CFS IDM, at page 32 (“the benefits of the log export ban to the downstream consumers, as noted in the studies, cannot reasonably be considered inadvertent or a mere by-product of the ban”).

<sup>139</sup> See APRIL June 16, 2015, submission, at pages 19-20 and n. 32; APRIL June 3 submission, at Exhibit 6.

<sup>140</sup> See GOI SQR1, at pages 5-6.

<sup>141</sup> See GOI July 30, 2015, supplemental questionnaire response, at page 3 and Exhibit S2-7 at Attachment I, Group B.

by the GOI contains the word “pulpwood,” the totality of the evidence demonstrates that this refers to pulp made from wood, as opposed to wood used to make pulp. Thus, the petitioners believe that any references to pulpwood in the translations of this measure should be understood to refer to pulp, not wood. Moreover, the petitioners cite other record evidence which they claim confirms that all three of the items – wood chips, chipwood, and wood pulp – are downstream wood products processed from logs, and do not include the types of logs that APRIL purchases from its unaffiliated suppliers. The petitioners argue that, regardless of the nature of the wood purchased by APRIL, it is clearly covered by the Log Export Ban.

With respect to whether the Log Export Ban provides a countervailable financial contribution, the petitioners claim that although APRIL/GOI argue that entrustment and direction can only occur through explicit delegation of government authority, they cite no provision of the statute, regulations, or prior cases to support their proposition. The petitioners note that APRIL/GOI claim that the purpose of the export ban is to protect forests, as opposed to subsidizing downstream producers; however, the petitioners also note that the policy instituting the ban directly states that one of the reasons exports are prohibited is to develop downstream industries in Indonesia.<sup>142</sup> In addition, although APRIL/GOI claim that the ban does not suppress log prices, or prices are only suppressed to benefit wood processing industries other than the pulp and paper industry, the petitioners argue that the record shows that the Log Export Ban significantly suppresses log prices in Indonesia, thus benefitting all log purchasers regardless of the downstream use of the log. Finally, the petitioners refute APRIL/GOI’s claim that the fact that downstream products such as wood chips are permitted to be exported shows that the log ban does not confer a benefit to downstream products, arguing that the fact that upstream logs are not allowed to be exported while downstream products can be exported only confirms that the ban provides a financial contribution.

#### Department’s Position:

For the reasons stated above under V. Analysis of Programs, we continue to find the Log Export Ban to be a countervailable subsidy. As we stated in the PDM, the GOI confirmed that a ban on the exportation of logs was still in effect during the POI of this investigation, although under a new Ministry of Trade decree.<sup>143</sup> While the petitioners and APRIL differ regarding the proper translation of the items exempted from the GOI’s Log Export Ban, the list of downstream wood products permitted to be exported does not include logs or wood used to make pulp. Thus, while it was not illegal to export certain downstream wood products during the POI,<sup>144</sup> the ban on log exports remained in effect, and the record is clear that the APRIL companies purchased logs, not wood chips, during the POI,<sup>145</sup> which are covered under the Log Export Ban. In addition, as discussed above, the record shows that the Log Export Ban’s effect is to grow the wood processing industry, to encourage processing industries in Indonesia, and to suppress prices in Indonesia.<sup>146</sup> As such, the financial

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<sup>142</sup> See Regulation No. 44/M-DAG/PER/7/2012, attached to GOI IQR, at Exhibit 15.

<sup>143</sup> See GOI IQR, at page 33 and Exhibit 15, and GOI SQR at pages 5-6

<sup>144</sup> See GOI SQR, at pages 5-6.

<sup>145</sup> See, e.g., APRIL IQR, at pages 21 and 27; and APRIL Verification Report, at VE-12.

<sup>146</sup> See GOI SQR, at Exhibit S-12; and Petition, at IV-21-22, and Exhibits IV-31 and IV-32.

contribution by the GOI through entrustment or direction of log suppliers cannot reasonably be considered inadvertent or unintentional.<sup>147</sup>

With respect to APRIL/GOI's argument that, because the export ban is directed at the protection of high-value wood from natural forests, not pulpwood grown in plantations, it does not impact the prices for the low-value/residual pulpwood and chipwood used by APRIL, we note that: 1) APRIL purchased wood from natural forests as well as wood from plantations during the POI;<sup>148</sup> and 2) APRIL's pricing argument relates to the downstream wood products, not logs covered under the Log Export Ban.

With respect to APRIL/GOI's claim that the Log Export Ban does not suppress log prices, as allegedly supported by studies that APRIL/GOI placed on the record,<sup>149</sup> the petitioners point to other information on the record that contradicts APRIL/GOI's assertions and indicates that log prices in Indonesia are far below regional and international prices.<sup>150</sup> In particular, the GOI's own commissioned study concludes that "{t}he Indonesian government should consider taking measures to increase domestic log price, which is currently much cheaper than the price in the international market. Repeal ban {sic} on log exports will increase domestic log price"<sup>151</sup> (emphasis added). APRIL's argument to the contrary relies on a statement in another GOI study that long term log prices would decrease in the absence of the export ban, possibly because higher prices could spur illegal logging and irrational "overcutting."<sup>152</sup> However, the same paragraph of that study concedes that "high international prices {are} prevailing at this time," and therefore, at least "in the short term," Indonesian firms would "enjoy the revenue from the high price of logs" if the ban were lifted. Thus, this June 2014 study concedes the price-suppressing effects of the Log Export Ban during the POI. The study's further proposition that "in the long term the price will go towards a new equilibrium {and} can even be smaller than the original domestic prices"<sup>153</sup> is not relevant to the POI, and in any event is not further explained. Accordingly, we continue to find that the Log Export Ban distorted prices in the Indonesian market during the POI.

Finally, with respect to APRIL/GOI's argument that, if the Department countervails the Log Export Ban program, it should not countervail APRIL's purchases from long-term suppliers because such purchases are not subject to the Log Export Ban, we determine that these purchases are properly considered under the Stumpage Program. See Comment 3 above.

#### Comment 7: Selection of Timber Benchmark Values

In the preliminary determination, we based benchmark prices for purposes of determining benefits under the Stumpage and Log Export Ban programs on Malaysian pulp log export prices of acacia

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<sup>147</sup> See CFS IDM, at page 32.

<sup>148</sup> See, e.g., APRIL Verification Report, at VE-26 and VE-34.

<sup>149</sup> See APRIL Case Brief, at page 16.

<sup>150</sup> See Petitioners Case Brief, at pages 18-19, citing the Petition at IV-22; and GOI June 22, 2015, 2<sup>nd</sup> Supplemental Questionnaire Response (GOI SQR2), at Exhibit S2-6 and S2-8.

<sup>151</sup> See "Assessment On The Revocation Of Export Ban And Export Tax Imposition On Logs In Plantation Forests In Indonesia," Paper prepared for Directorate General of Forestry Management Ministry of Forestry of Republic of Indonesia, at page 27, submitted in GOI SQR2, at Exhibit S2-8.

<sup>152</sup> See GOI SQR, at Exhibit S-12, pages 7-8.

<sup>153</sup> Id., at page 7.

mangium and MHW derived from the Global Trade Atlas (GTA), and Australian export prices of eucalyptus hardwood chips. APRIL argues that, for benchmark prices based on log values, the Department should apply a different set of benchmarks. APRIL stresses the importance of identifying a benchmark that corresponds to the type of wood consumed by APRIL, asserting that pulpwood consumed to produce the subject merchandise is fundamentally different than wood logs used for high-value applications such as furniture and flooring manufacture.<sup>154</sup>

APRIL contends that the Malaysian export prices used in the preliminary determination are distortive because roundwood-based export values are aberrational and unrepresentative. According to APRIL, pulpwood is a thinly traded product and, due to a supply shortage, export prices arise from a very different context than the prevailing price in the domestic market, so that the transactions giving rise to the export values are not comparable to the government provision of a good or service in the domestic context. Furthermore, APRIL asserts that the Malaysian export statistics include various HTS-code misclassifications. In addition, APRIL maintains that pulpwood is rarely traded internationally and it has largely been replaced by trade in woodchips.<sup>155</sup>

For the final determination, APRIL proposes new benchmark values for acacia mangium based on a) the value of Malaysian export price statistics for woodchips; b) the average value of Indian imports of woodchips from Malaysia and of Japanese woodchip imports from Vietnam; or c) market survey prices for Malaysian pulpwood, corroborated by the unit value of Malaysian exports of pulpwood to India.<sup>156</sup> If the Department relies on a woodchip benchmark value, APRIL adds that chipping costs and a reasonable profit should be deducted from that value, based on RAPP's own chipping costs, or average Australian chipping cost and profit data.<sup>157</sup> For eucalyptus, APRIL proposes new benchmark values based on Thai export price statistics for woodchips, South African woodchip prices, or Australian export price statistics, adjusted for chipping costs and profit.<sup>158</sup>

With respect to MHW, APRIL asserts that the Malaysian export statistics value used as the MWH benchmark in the preliminary determination should not be used because the underlying statistics relate to high-value sawlogs and veneer logs. APRIL notes that there is little available information for valuing MHW products appropriate for pulp making due to significantly reduced world demand for this pulp input. Instead, APRIL proposes a benchmark value for MHW based on the average of the acacia and eucalyptus benchmark values, adjusted by either the discount percentage observed for

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<sup>154</sup> APRIL includes a detailed discussion of the relevant wood types at pages 25-32 of the APRIL Case Brief.

<sup>155</sup> APRIL discusses wood trade and HTS classification issues in detail at pages 32-46 of the APRIL Case Brief. To support its argument, APRIL cites the 2015 RISI "International Pulpwood Trade Review" (RISI Report), submitted in the June 3 Submission, at Exhibit 6, and excerpts from the Pöyry Report,

<sup>156</sup> See APRIL Case Brief, at pages 46-53. APRIL submitted the Malaysian woodchip export price data at Exhibit 7 of the August 3 Submission; the Indian and Japan import values at Exhibit 5 of the August 3 Submission and page 28 of the RISI Report, respectively; and the Malaysian pulpwood pricing data at page 23 of the Pöyry Report.

<sup>157</sup> See APRIL Case Brief, at pages 45-46. RAPP's chipping cost data was reported at Exhibit 17 of the August 3 Submission. Australian chipping cost information was included in the record at Attachment 5 of the Preliminary Calculation Memorandum. APRIL cites to page 16 of the Pöyry Report for the estimated chipping profit percentage.

<sup>158</sup> See APRIL Case Brief, at pages 53 – 60. APRIL submitted the Thai export price data at Exhibit 10 of the August 3 Submission, the South African price at page 28 of the RISI Report, and the Australian export statistics at Exhibit 13 of the August 3 Submission.

MHW in the Malaysian wood trade, or the Sabah state royalty fee difference between natural forest pulpwood and plantation forest pulpwood.<sup>159</sup>

The petitioners support the Department's selection of timber benchmarks in the preliminary determination, citing the Department's finding in previous Indonesian paper cases that available Malaysian pulpwood log export prices are a reliable proxy for establishing a third tier, market-based benchmark for stumpage and log purchase prices. These prices, the petitioners continue, represent market-determined pulp log prices based on prices from private transactions between Malaysian pulp log sellers and pulp log buyers in the international market.<sup>160</sup> However, the petitioners state that, with respect to the benchmark for the acacia sub-species, *acacia crassicarpa*, for which the Department was unable to identify a specific benchmark in the preliminary determination and used the average of the acacia mangium and eucalyptus benchmarks, the Department should use the acacia mangium benchmark as APRIL reports that the two species are comparable and that APRIL does not differentiate between them in the pulpmaking process.<sup>161</sup> For this reason, the petitioners also assert that the acacia mangium benchmark alone, rather than the average of the acacia mangium and eucalyptus benchmarks used in the preliminary determination, should be applied to the benefit calculations for APRIL's purchases of unspecified acacia timber.

The petitioners dispute APRIL's assertions regarding the HTS-code misclassifications that APRIL contends make the GTA data for acacia mangium prices unreliable.<sup>162</sup> The petitioners also contend that the 2014 GTA export prices for acacia mangium and MHW are not aberrational, as APRIL claims, when compared to pricing based on the relevant HTS codes in recent years.<sup>163</sup>

With respect to APRIL's proposals to use benchmarks based on woodchip prices, the petitioners object, stating that logs, not wood chips, are the products affected by the Log Export Ban, and logs are the closest things to standing timber that can be sold in the world market. While the petitioners concede that the woodchip trade may be more prolific than the pulpwood log trade, as APRIL and the GOI suggest, the petitioners emphasize that it does not mean that the woodchip and pulpwood log markets are interchangeable. Moreover, the petitioners assert there is still an international market for pulpwood logs. Should the Department nevertheless decide to use woodchip prices as benchmarks, the petitioners contend that the Department should not introduce further distortions into the analysis by deducting chipping costs and profit from the woodchip prices, as APRIL advocates, or if such adjustments were to be made, the Department should rely instead on APRIL's stated chipping costs. As further detailed in its rebuttal brief, the petitioners raise additional objections to APRIL's proposed alternative benchmarks for acacia mangium and MHW, based on factors such as the "hodgepodge" nature of the data selection and the lack of species specificity.<sup>164</sup>

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<sup>159</sup> See APRIL Case Brief, at pages 61 – 66. APRIL cites to page 16 of the Pöyry Report for information on the MHW market and at page 25 for the MHW discount percentage. The Sabah Royalty Schedule with the different fees charged for natural forest pulpwood and plantation pulpwood was submitted at Exhibit 18 of the August 3 Submission. At pages 22-23 of the APRIL IQR, APRIL explains that MHW is sourced only from natural forests before plantations are developed, and subsequently acacia trees are harvested on those plantations.

<sup>160</sup> See CFS IDM, at page 20; and CCP IDM, at page 10.

<sup>161</sup> See APRIL July 30, 2015, supplemental questionnaire response (APRIL SQR2ptII), at page 4.

<sup>162</sup> See Petitioners Rebuttal Brief, at pages 34-37 for a more detailed discussion of the petitioners' rebuttal analysis concerning APRIL's objections to the GTA acacia export price data.

<sup>163</sup> *Id.*, at pages 37-39.

<sup>164</sup> *Id.*, at pages 45-47 and 49-50.

With respect to the eucalyptus benchmark value, the petitioners do not object to the Australian woodchip price benchmark used in the preliminary determination, but they assert that the Department should revise its conversion of this benchmark value from a “bone dry metric ton” (BDMT) to cubic meters by using either the conversion factor for “Dense Hardwood Residues,” rather than that for “Wood Residues” from the Global Wood “Timber and Technology Center,” or the series of conversions from BMDT to “bone dry unit” (BDU) and BDU to cubic meters from the RISI Report.<sup>165</sup> In addition, the petitioners state that the 2012 Australian eucalyptus benchmark value should be adjusted for inflation to a 2014 level using Indonesian inflation rates published by the IMF.<sup>166</sup> The petitioners dismiss the alternative eucalyptus woodchip benchmark values offered by APRIL because they claim none of them are species-specific to plantation eucalyptus; the reported unit of measurement for the Thai export price data is unclear; the source for one of them, South Africa, is not geographically close to Indonesia; and the record does not establish that South Africa’s forest conditions, climate, and tree species are similar to those of Indonesia.

In rebuttal to the petitioners’ case brief arguments, APRIL disagrees with the petitioners regarding the application of the acacia mangium benchmark to unspecified acacia purchases, stating that it does not distinguish its purchases of pulpwood at the subspecies level,<sup>167</sup> and there is no evidence on the record that its purchases of unspecified acacia logs are more comparable to acacia mangium than to eucalyptus. APRIL also contests the petitioners’ proposed adjustments to the Australian eucalyptus benchmark value used in the preliminary determination, if the Department were to rely on that benchmark for the final determination. APRIL contends that the BDMT-to-cubic-meters conversion factor used in the preliminary determination is more appropriate than the petitioners’ alternative, based on information on the record.<sup>168</sup> In addition, APRIL opposes the petitioners’ suggestion to inflate the 2012 Australian eucalyptus woodchip benchmark using Indonesian inflation rates, stating that the Department should elect to use one of the more contemporaneous benchmarks advocated by APRIL, or if relying on the 2012 Australian price, the Department should consider the fact that the information on the record indicates that world eucalyptus wood chip prices have declined since 2012.<sup>169</sup>

#### Department’s Position:

Based on our analysis of the record information, and the separate criteria for determining the benchmark prices for calculating the standing timber benchmark price under the Stumpage Program,

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<sup>165</sup> See Preliminary Calculation Memorandum, at pages 3-4 for an explanation of our conversion from BDMT to cubic meters. The Global Wood “Timber and Technology Center” conversion factors discussed by the petitioners are included as Attachment 3 to the Preliminary Calculation Memorandum. The BMDT-BDU and BDU-cubic meters conversion factors are at pages xix and xxi of the RISI Report and explained in more detail at page 6 of the Petitioners Case Brief.

<sup>166</sup> The petitioners placed IMF inflation rate data on the record at Exhibit IV-29 of the Petition, and Exhibit 27 of the Petitioners’ June 3, 2015, submission.

<sup>167</sup> See APRIL SQR2ptII, at pages 5-6.

<sup>168</sup> APRIL provides a more detailed analysis of the BDMT conversion factor at pages 3 – 9 of the APRIL Rebuttal Brief.

<sup>169</sup> See RISI Report, at pages 267 – 271, APRIL June 3 submission, at Exhibit 1, and the petitioners’ June 15, 2015, submission, at pages 4-9, and Exhibits 1, 2, 3, 5, and 7, for additional information regarding Malaysian stumpage fees and charges.

and the log purchase price benchmark under the Log Export Ban, we revised our selection of benchmark prices for acacia mangium standing timber and log purchases, and eucalyptus standing timber for the final determination. Specifically, for the acacia log benchmark price under the Log Export Ban, we continued to rely on the GTA export statistics for Malaysia but with additional HTS categories. For calculating the benchmark for acacia timber under the Stumpage Program, we used the acacia price survey information from the Pöyry Report. For calculating the benchmark for eucalyptus timber under the Stumpage Program, we relied on the GTA export statistics for Thailand. Due to the lack of reliable, alternative world- or market-based prices for MHW, we continue to base the benchmark prices for MHW under both the Stumpage and Log Export Ban programs on the GTA export statistics for Malaysia. The bases for these determinations are detailed below. In addition, we made certain revisions to our adjustments of the benchmark prices, as discussed further below in response to this comment and Comment 8.

In the preliminary determination, as in the CCP Final, although we based our benchmark price selection under different criteria for the Stumpage Program and the Log Export Ban (i.e., third tier benchmark and second tier benchmark, respectively), we used the same benchmark price for each log species to calculate the respective countervailable benefit. For the final determination, our analysis results in the selection of a different price for acacia magnium logs to derive the stumpage rate benchmark than the price for benchmarking APRIL's purchases of acacia logs from short-term suppliers.

#### A. Selection of Benchmark Prices Under Tier 2 for Log Export Ban Benefit Calculations

As explained above, we identified the appropriate benchmark log prices for benefit analysis under the Log Export Ban in accordance with 19 CFR 511(a)(2)(ii), where we “seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question.” For world market prices, our practice is generally to rely on export prices, such as the average unit prices derived from Malaysian export statistics reported in the GTA, which we used in the preliminary determination and in the CCP Final. The Department noted in CFS Final and CCP Final that Indonesia and Malaysia share a geographic proximity and the similarities of forest conditions, climate, and tree species. In those proceedings, as well as in the preliminary determination, the Department found that the public export statistics of Malaysian pulpwood reported in the GTA are reliable for establishing a benchmark under the “second tier” as a world market price that would be available to a purchaser in Indonesia.

The APRIL companies offer prices based on exports of acacia woodchips as their preferred source for a benchmark log price, due to reports of limited international trade in pulpwood and inclusion of higher-value acacia products within the HTS categories for logs in the GTA data for Malaysia. However, APRIL provided information for the record identifying shipments of Malaysian acacia mangium pulpwood logs to India that demonstrates pulpwood is, in fact, traded across international borders, and moreover the GTA data include exports of acacia mangium pulpwood (although these exports were reported under an HTS number not included in the Malaysian GTA-based export value

used in the preliminary determination).<sup>170</sup> As this information demonstrates that the available record information includes world market prices for acacia pulpwood, we find no basis to reject the acacia log pricing data in favor of acacia woodchip pricing.

At the same time, APRIL has identified discrepancies in the HTS categories relied upon in the CCP Final and the preliminary determination for acacia logs, based in part on changes in Malaysia's application of HTS categories since 2007.<sup>171</sup> APRIL provided an alternative calculation for an acacia benchmark price derived from GTA data for Malaysia that includes exports under additional HTS categories.<sup>172</sup> These data include the Malaysian exports of acacia mangium pulpwood to India specifically identified by APRIL and described above. Because this calculation represents a broader, more robust average unit price, we find this value from the GTA export statistics for Malaysia to be a more representative price than the preliminary determination value for acacia mangium logs that would be available to purchasers in Indonesia, consistent with the benchmark selection criterion under 19 CFR 511(a)(2)(ii). Accordingly, for the final determination, we are relying on this value from APRIL's June 3 submission as the benchmark price for acacia to determine the benefit APRIL received under the Log Export Ban. In addition, we agree with the petitioners that this benchmark value for acacia mangium logs should also be applied to APRIL's purchases of acacia logs not identified by subspecies, based on APRIL's explanation that the acacia subspecies in question are similar and comparable.<sup>173</sup> Furthermore, we note that, while APRIL did not specify the acacia subspecies in its questionnaire responses, the actual invoices and accounting records indicate that these purchases were mostly or entirely of acacia mangium.<sup>174</sup>

For a MHW benchmark price to compare APRIL's purchases of MHW logs, the only world market price for MHW logs on this record is the Malaysian GTA export statistics-based price used in the preliminary determination. As we noted above, the Department has found this source to be reliable in past Indonesia paper cases for establishing a "second tier" benchmark price for MHW. While noting APRIL's objections to using this price information, we do not believe that they provide a sufficient basis to reject this MHW benchmark price given our past acceptance of the Malaysian GTA export statistics and the absence of any other appropriate alternative under Tier 2. Thus, for the final determination, we continue to rely on the Malaysian GTA data for the MHW benchmark price for purposes of calculating APRIL's benefit under the Log Export Ban.

#### B. Selection of Benchmark Prices Under Tier 3 for Stumpage Benefit Calculations

Our selection of benchmark prices to measure APRIL's benefit under the provision of standing timber for less than adequate remuneration is based on a different criterion than that for the benchmarks to measure benefits under the Log Export Ban. We explained above under V. Analysis of Programs that, because there were no market-determined prices for stumpage in Indonesia during the POI and there is no evidence on the record of world market prices for standing timber that would

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<sup>170</sup> See APRIL Case Brief at pages 41 and 51-52, citing APRIL's August 3 submission at Exhibit 5, and the RISI Report at page 55.

<sup>171</sup> Id., at pages 33, 36, and 42.

<sup>172</sup> See APRIL's June 3 Submission, at Exhibit 3. The average unit value for acacia logs derived from the GTA data for Malaysia using the additional HTS categories is shown at page 1 of the exhibit.

<sup>173</sup> See APRIL's SQR2ptII, at page 4.

<sup>174</sup> See APRIL Verification Report, at VE-12 and VE-34.

be available to purchasers in Indonesia, we are measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles (i.e., the “third tier” as described in the Department’s regulations). Consistent with our practice in CFS Final and CCP Final, we determined a market-based stumpage benchmark on the principle that the market value of timber is derivative of the value of the downstream products. Accordingly, the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is, in turn, derived from the demand for the products produced from those logs. Consistent as well with our practice in CFS Final and CCP Final, we determined a benchmark for stumpage derived from a market-based species-specific price for logs or, in the case of eucalyptus timber, wood chips.

For determining a stumpage benchmark for acacia timber, in addition to the Malaysian GTA export price data, the other appropriate option on the record is the pricing for acacia pulpwood obtained as part of an independent market study of the pulpwood and woodchip industry in Malaysia. The firm conducting the study explained that it “undertakes routine research and survey of Acacia prices in Malaysia. It’s {sic} most recent market survey was undertaken in Malaysia in March 2014. Surveyed at mill gate prices for Acacia pulpwood ranged between USD38-54/m<sup>3</sup> with an average of USD46/m<sup>3</sup>.”<sup>175</sup> Our analysis of the Pöyry Report, as well as other record information concerning the Malaysian timber industry,<sup>176</sup> supports a finding that these observed prices reflect private party transactions based on market prices. There is no information on the record to challenge the accuracy or reliability of this market study, nor do the petitioners provide any basis to challenge the accuracy or reliability of it. Furthermore, there is no information on the record to indicate that log market in Malaysia is distorted.

Moreover, the Pöyry acacia pulpwood pricing reflects the specific type of acacia timber harvested by the APRIL companies,<sup>177</sup> and does not include prices for acacia logs to be consumed outside of the paper industry. The data also represents acacia log prices at the mill gate, thus we do not need to make adjustments for freight expenses, as we would need to do with respect to the GTA export price data from Malaysia. Accordingly, in this instance, we find that the Pöyry Report prices are more appropriate than the Malaysian GTA export prices as starting prices for calculating the acacia stumpage rate benchmark. Therefore, for the final determination, we used the average observed price in the Pöyry Report as the acacia log benchmark price. For the reasons stated above regarding the similarity among acacia subspecies, we used this benchmark price to calculate the stumpage rate benchmark for both acacia mangium and acacia cressicarpa.

For MHW, APRIL proposed using the information in the Pöyry Report to estimate a MHW pulpwood price according to a discount applied to the acacia price.<sup>178</sup> In contrast to the acacia prices from this study, which reflect actual prices observed for acacia logs, the MHW price levels are based on estimates. Such estimated prices are not necessarily grounded in market experience sufficient to

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<sup>175</sup> See Pöyry Report, at page 23.

<sup>176</sup> See RISI Report, at pages 186-189; APRIL’s August 3 Submission, at Exhibit 18; Petitioners’ June 15, 2015, submission, at Exhibits 1, 2, 3, 5, and 7; and APRIL June 3 submission, at Exhibit 1.

<sup>177</sup> See, e.g., APRIL IQR, at pages 22-23, and Pöyry Report, at pages 6, 7, and 19..

<sup>178</sup> See Pöyry Report, at page 25 (“Based on the limited markets and evidence available Pöyry believe a fair market price for MHW chipwood if it was to be traded from Malaysia it would be at around 15-25% discount to Acacia plantation pulpwood. This would indicate a price in the range of USD30-35/m at mill/port gate for MHW chipwood in Malaysia.”).

satisfy the Tier 3 regulatory requirement of a market-based benchmark price. As a result, the most appropriate source for the MHW stumpage benefit benchmark is the same Malaysian GTA export price used in the preliminary determination and for the Log Export Ban price benchmark in the final determination, as discussed above. This benchmark price is an export FOB price. Accordingly, for the final determination, we adjusted this price to deduct inland freight expenses (as discussed below under Comment 8) that would be incurred to deliver the MHW logs from port to mill.<sup>179</sup>

For eucalyptus, we relied on 2012 Australian export prices of wood chips as the best available information for this stumpage rate benchmark in the preliminary determination. We have additional, more contemporaneous, information on the record for the final determination. Rather than inflate the 2012 Australian export prices to POI levels, as the petitioners propose, we consider the 2014 Thai and Australian export price data to be superior for benchmark price purposes as they are contemporaneous with the POI. However, the Australian export price data is based on an HTS category that may include other species besides eucalyptus, as noted by the petitioners, while the Thai export statistics are based on a specific eucalyptus HTS category.<sup>180</sup> Given both their contemporaneity and their specificity, we selected the 2014 Thai GTA eucalyptus woodchip export price data as the starting price for determining the eucalyptus stumpage rate benchmark in the final determination.

The unit of measurement reported for the eucalyptus woodchip exports in the GTA statistical data is kilograms.<sup>181</sup> The petitioners' objection to the selection of this price information for the eucalyptus benchmark is that it is unclear whether this weight measurement reflects a "Bone Dry" weight or other type of weight measurement.<sup>182</sup> APRIL refers to other information on the record to support its assumption that the GTA data are on a Bone Dry basis, citing in particular the RISI Report BDMT figure for Thai eucalyptus woodchip exports in 2014 as "generally consistent" with the GTA data.<sup>183</sup> The source of the Thai export statistics is the Thai Customs Department; the RISI Report cites pulpwood resource owners, wood fiber export companies, trading companies and end-users as the source for their export trade data.<sup>184</sup> This difference in sources for the export data may account, at least in part, for the different quantity totals reported in the two sets of data. According to the RISI Report, "{t}he primary international pricing unit used by exporters and importers has traditionally been ...US dollars per BDMT (for the hardwood trade)."<sup>185</sup> The only other metric weight measurement applicable to wood chips discussed in the RISI Report is Green Metric Tons (GMT).

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<sup>179</sup> See Final Calculation Memorandum. In the absence of information on the record regarding Malaysian inland freight costs between port and mill, we used APRIL's reported inland freight expenses between an Indonesian port and its mill. See APRIL SQR2ptII, at page 7.

<sup>180</sup> The Australian export price data are reported under "Non-Coniferous Wood, In Chips Or Particles." See APRIL August 3 Submission, at Exhibit 13. The Thai export data are reported under a specific category for eucalyptus. See APRIL August 3 Submission, at Exhibit 10.

<sup>181</sup> *Id.*, at Exhibit 10.

<sup>182</sup> See Petitioners Rebuttal Brief, at page 48.

<sup>183</sup> See APRIL Case Brief, at pages 54-55, and RISI Report, at page 191. According to the Thai GTA data, 2.55 million MT of eucalyptus wood chips were exported in 2014. The RISI Report states that woodchip exports to Asian countries totaled 2.1 million BDMT in 2014. At page 192 of the RISI Report, a graph clarifies that the total refers to Thai exports to India, Taiwan, Korea, China, and Japan. The total of exports to those five countries according to the GTA data in the APRIL August 3 submission is 2.5 million MT.

<sup>184</sup> See APRIL August 3 submission, at Exhibit 10, and RISI Report, at page xviii, respectively.

<sup>185</sup> See RISI Report, at page xviii.

Using the information in the RISI Report to test whether the GTA export quantity total was reported in GMT (versus BDMT) and comparing that figure against the comparable RISI Report total quantity in BDMT demonstrates that it is unlikely the Thai GTA quantity data are on a GMT basis.<sup>186</sup> Considering the totality of the record information concerning the Thai export data, we agree with APRIL that it is reasonable to assume that the Thai GTA export data for eucalyptus woodchips was reported on a Bone Dry basis.

With respect to converting the eucalyptus price from a BDMT basis to a cubic-meter basis in order to calculate the stumpage benefit, we revised our calculation from the preliminary determination methodology and used information in the RISI Report. According to this market study, “[m]ost eucalyptus producers would assume that around 2.3 m<sup>3</sup> of roundwood over bark per BDMT of marketable chips is a reasonable average figure...”<sup>187</sup> Considering the available information on the record, we believe this conversion factor provides the most reasonable basis for our calculation. In calculating the stumpage rate benchmark from the eucalyptus woodchip price, we deducted wood chipping costs based on APRIL’s chipping costs,<sup>188</sup> in addition to APRIL’s reported timber harvesting costs. Finally, as this benchmark price is an export FOB price, we also adjusted the price to deduct inland freight expenses representing the cost between port and mill, as discussed above with respect to the MHW benchmark price.

#### Comment 8: Adjustments to Log Benchmark Values

In the preliminary determination, we added applicable ocean and inland freight costs, as well as brokerage and handling expenses, to the log benchmark prices before determining whether the Indonesian price for pulpwood confers a benefit. For ocean freight, we used a Malaysian barge shipment value of \$19.50/MT, based on information submitted by APRIL.<sup>189</sup>

According to APRIL, if the Department identifies a benchmark under the second tier of 19 CFR 351.511(a)(2), no additional freight costs or import duties should be added because, with respect to the Log Export Ban, the point of the benchmark exercise is to determine what APRIL should have paid for logs in Indonesia if their prices were not suppressed by the export ban. In that light, APRIL contends that the benchmark should be the export price alone, with nothing more added. Nevertheless, if the Department adjusts the benchmark, APRIL asserts that pulpwood is not heavily-traded merchandise, and even when it is exported, it is only within the nearby region due to the high ocean freight which would make it otherwise uneconomical to export. Accordingly, to avoid distortions generated by unrepresentative freight costs, APRIL states that the international freight adjustment should either be the Malaysian barge shipment value, or the alternative value should be capped at \$19.50/MT.

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<sup>186</sup> GMT to BDMT conversion information is discussed in the RISI report at page xix. According to the RISI Report, converting from GMT to BDMT is dependent on the moisture content of the wood. If we were to assume that the Thai GTA were reported on a GMT basis, and using a typical example of a 50 percent moisture content, applying the GMT-to-BDMT conversion factor of .5 to the Thai GTA export total results in a BDMT equivalent of about 1.275 million BDMT, compared to the RISI Report export quantity of 2.1 million BDMT.

<sup>187</sup> See RISI Report, at page xx.

<sup>188</sup> See August 3 submission, at Exhibit 17.

<sup>189</sup> See Preliminary Calculation Memorandum, at page 6.

The petitioners counter that the Department's regulations require that a second tier benchmark be adjusted to reflect the price a firm paid, or would pay, for the product at issue, inclusive of delivery charges, and the Department's practice in the previous paper cases and other proceedings is to make such adjustments.<sup>190</sup> The petitioners do not object to the use of the Malaysian barge shipment value as an adjustment to the log benchmark price, if the Department relies on the same log benchmarks as in the preliminary determination, but they claim that the Department should apply the Indonesian value-added tax (VAT) rate to this amount.<sup>191</sup> Should the Department select alternative log benchmark prices based on non-Malaysian sources, the petitioners contend that an alternative ocean freight rate should be used, such as the average of the Malaysia-to-Japan freight rates the petitioners placed on the record.<sup>192</sup> However, the petitioners do not agree with APRIL that an alternative international freight adjustment should be capped by the Malaysian barge cost, as such a cap would not capture the additional amount for VAT. In addition, the petitioners contend that the Department should replace the inland freight adjustment value used in the preliminary determination, based on information in the publication "Doing Business in Indonesia," with inland freight expense data reported by APRIL.<sup>193</sup>

With respect to the petitioners' argument to apply an adjustment to the barge freight for Indonesian VAT, APRIL responds that it did not actually pay VAT on its barge freight expenses because, in Indonesia, VAT is not a tax ultimately paid by a manufacturer of a good or provider of a service, but rather is paid by the end-user.<sup>194</sup>

#### Department's Position:

When relying on a second tier benchmark price under 19 CFR 351.511(a)(2)(ii), 19 CFR 351.511(a)(2)(iv) instructs the Department to "adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties." As discussed above under Comment 7, we are relying on Malaysian export prices of acacia and MHW as benchmark prices to measure the benefit received under the Log Export Ban. Accordingly, we find it proper to continue to adjust the FOB benchmark price for ocean freight according to the barge freight expense reported by APRIL. In addition, we agree with the petitioners that the adjustment for inland freight, representing the expense to transport the logs from the Indonesian port to APRIL's factory, should be based on APRIL's reported inland freight expense. These adjustments are discussed in the Final Calculation Memorandum.

With respect to VAT assessed on the barge freight expense, APRIL states that it does not ultimately pay such tax, and we have no information on the record to dispute this claim. We note that we did not add VAT to either the log price benchmark or the barge freight expense in CCP Final.<sup>195</sup>

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<sup>190</sup> See 19 CFR 351.511(a)(2)(iv). For precedent, the petitioners also cite, *inter alia*, CCP IDM, at pages 13 and Comment 12, and CWCQ Steel Line Pipe from China, at Comment 7.

<sup>191</sup> The petitioners cite business proprietary information on the record, including the APRIL Verification Report, at VE-28, in support of their position. See Petitioners Brief, at pages 10-12.

<sup>192</sup> See the petitioners June 3, 2015, benchmark submission, at Exhibit 24.

<sup>193</sup> The petitioners submitted the publication "Doing Business in Indonesia" at Exhibit 26 of their June 3, 2015, submission. The petitioners cite to inland freight expense data reported by APRIL at page 7 of the APRIL SQR2ptII.

<sup>194</sup> APRIL cites to its August 3 submission at Exhibit 19 to arrive at this interpretation.

<sup>195</sup> See CCP IDM, at Comment 12.

Accordingly, we did not add an amount for Indonesian VAT to the barge freight adjustment made to the benchmark price in the final determination in this investigation.

Comment 9: Corrections and Revisions to APRIL’s Log Harvesting and Purchase Data

In the July 20, 2015, memorandum entitled “Ministerial Error Allegations in the Preliminary Determination” (Ministerial Error Memo), we acknowledged two errors in our preliminary determination benefit calculation: a) we failed to adjust certain log purchase prices paid by APRIL for delivery charges identified as “loading and lancing” and “transportation” costs; and b) we used incorrect data for calculating certain portions of the stumpage fee benefits. We did not issue an amended preliminary determination to account for these errors because correcting them did not result in a change in APRIL’s calculated subsidy rate that would meet the definition of a “significant” ministerial error under 19 CFR 351.224(g).

For the final determination, APRIL contends that the Department should include these corrections in its benefit calculation, as well as the minor corrections to its data reported at the commencement of verification, and the additional revisions identified during verification.<sup>196</sup> In addition, APRIL argues that the Department should adjust the reported price for its purchased logs for depreciation and road maintenance expenses.<sup>197</sup>

The petitioners caution that the only adjustments to the prices that should be made for purposes of the Log Export Ban benefit calculation should be those expenses where the record clearly demonstrates that the adjustment accounts for actual log or delivery prices.

Department’s Position:

For the calculation of benefits in the final determination, we made the corrections identified in the Ministerial Error Memo, and the revisions to RAPP’s harvesting and logistics costs identified prior to, or during, verification. However, for purposes of calculating the benefit under the Log Export Ban, we did not deduct depreciation and road maintenance expenses from RAPP’s log purchase price. These expenses are part of RAPP’s harvesting costs used to adjust the benchmark price for calculating the stumpage benefit, but not part of the RAPP logistics expenses that are added to RAPP’s log purchase price in order to bring the purchase price to the same delivered price level as the benchmark price.<sup>198</sup>

Comment 10: Whether APRIL Received a Countervailable Debt Forgiveness Benefit

In the Department’s Post-Preliminary Analysis Memo, we found that, with respect to the petitioners’ allegation that the APRIL companies benefitted from countervailable debt forgiveness from the GOI,

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<sup>196</sup> See April’s submission of October 13, 2015, APRIL Verification Report, at VE-1 and VE-25, and APRIL’s letter of November 12, 2015, transmitting the Excel file of data included in VE-25.

<sup>197</sup> See APRIL Rebuttal Brief, at page 71.

<sup>198</sup> See APRIL IQR, at page 17 and Exhibit 35 (later revised in APRIL Verification Report at VE-25); and APRIL Verification Report, at VE-27.

our analysis of APRIL's questionnaire responses and our verification results showed no evidence of such debt forgiveness for RAPP or RAK between 2002 and 2014.<sup>199</sup>

The petitioners dispute this finding, claiming that the 2002 debt restructuring agreements (collectively, 2002 RA)<sup>200</sup> resulted in an effective debt forgiveness by the GOI. According to the petitioners, the APRIL companies (RAPP and RAK, in this specific instance) were in default of their existing obligations at the time of the 2002 RA. The 2002 RA, they continue, included changes to the principal and interest due from RAPP's and RAK's previous obligations that resulted in a net reduction in the companies' obligations to the state-owned banks, Bank Mandiri (BM) and Bank Negara Indonesia (BNI).<sup>201</sup> The petitioners conclude that this reduction amounts to a countervailable debt forgiveness benefit. In addition, the petitioners assert that the record evidence demonstrates that BM and BNI are public bodies and government authorities capable of conferring a financial contribution.<sup>202</sup> To calculate this benefit, the petitioners propose considering the amount forgiven to be a non-recurring subsidy, and allocating the benefit over the AUL using an interest rate that reflects a discount rate for an uncreditworthy company.<sup>203</sup>

APRIL responds that the record, including the GOI Verification Report and the APRIL Verification report, fully support the Department's Post-Preliminary Analysis Memo determination that the APRIL companies did not use the alleged debt forgiveness program. In particular, APRIL asserts that it is not true that its debt was due in full at the time of the 2002 RA, nor that BM wrote off any part of the APRIL companies' debt, as the petitioners claim. With respect to the petitioners' claim that the 2002 RA reduced the total amount of principal and interest RAPP and RAK owed prior to that point, APRIL responds that this claim is false, as no interest or principal due was forgiven or reduced, and that the impact of restructured interest rates was prospective to the 2002 RA. Moreover, while APRIL states that, in the absence of any debt forgiveness, the status of BM and BNI as public bodies is moot, APRIL and the GOI contend that these state-owned banks were not public bodies at the time of the 2002 RA and the 2006 debt restructuring agreements for RAPP and RAK (collectively, 2006 RA).<sup>204</sup>

#### Department's Position:

In the Post-Preliminary Memo at page 3, we stated:

Our verification revealed no evidence of debt forgiveness for RAPP or RAK based on the 2002 and 2006 restructuring agreements through the end of 2014. Both of these

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<sup>199</sup> See Post-Preliminary Analysis Memo, at pages 2-3; and APRIL Verification Report, at pages 12-14.

<sup>200</sup> The 2002 RAs were submitted at Exhibit 13 (RAPP) and Exhibit 14 (RAK) of the SQR2ptII.

<sup>201</sup> See discussion at Petitioners Case Brief, at pages 37-40, which includes business information reported in, or derived from, APRIL's questionnaire responses. The petitioners base the amount of the alleged benefit that the APRIL companies received from the state-owned banks BM and BNI on the information summarized at Exhibit 1 of APRIL's September 8, 2015, supplemental questionnaire response (APRIL SQR3ptI).

<sup>202</sup> See Petitioners Case Brief, at pages 45 – 49 for further discussion of this assertion.

<sup>203</sup> The petitioners provide a proposed benefit calculation, including interest rate to be applied, at Exhibit 1 of the Petitioners Case Brief.

<sup>204</sup> See APRIL Rebuttal Brief, at pages 20 – 22 for further discussion of APRIL's and GOI's rebuttal of the petitioners' assertion.

APRIL companies made principal and interest payments according to the schedules in the restructuring agreements. We observed no evidence of missed or forgiven payments between 2002 and 2014.

While the petitioners dispute that claim and assert that the reduced amount of obligations owed to state-owned banks as a result of the 2002 RA was debt forgiven, the evidence on the record does not support this conclusion. Therefore, we find that the APRIL companies did not benefit from debt forgiveness as alleged by the petitioners.

The Department analyzed in detail the supplemental questionnaire responses APRIL submitted in response to the petitioners' debt forgiveness subsidy allegation. The Department conducted a thorough review of this information at verification.<sup>205</sup> Our analysis revealed no evidence that any of RAPP's or RAK's debt principal was forgiven as part of the 2002 RA. Our analysis also revealed no evidence that any of the accrued interest incurred by RAPP or RAK was forgiven as part of the RA.

The petitioners' claim that an amount of principal and interest was forgiven derives from summary charts in APRIL's supplemental questionnaire responses, which show amounts under the column "Benefits" in summarizing the terms of the RAs.<sup>206</sup> The alleged benefit amounts, however, do not represent any reduction of the principal or of the accrued interest owed as of the 2002 RA. A more detailed examination of the alleged amounts, as presented elsewhere on the record,<sup>207</sup> confirms this assessment. With respect to the 2002 RA and the alleged benefit amount, APRIL notes that "{w}hile interest rates were restructured, they were always done so prospectively, and never retroactively."<sup>208</sup> The benefit alleged by the petitioners relates to prospective interest payments, and not to any interest amount that accrued prior to the 2002 RA.

Based on the foregoing, in this final determination, we continue to find that the debt forgiveness program at issue was not used by the APRIL companies.

#### Comment 11: Whether APRIL Received a Countervailable Benefit for Preferential Loans

The petitioners claim that the 2006 RA confers a countervailable benefit on the APRIL companies through the granting of an interest rate on government-provided loans that was lower than the interest rate for a comparable commercial loan, consistent with 19 CFR 351.505(a)(1). According to the petitioners, the 2006 RA should be treated as new long-term loans, consistent with the Department's practice.<sup>209</sup> The petitioners assert that the new loans arising out of the 2006 RA are not comparable to commercial loans that RAPP and RAK could actually obtain on the market because RAPP and RAK did not obtain those loans on the market. Furthermore, even though private

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<sup>205</sup> See APRIL Verification Report, at pages 12 – 14 and VE-13.

<sup>206</sup> See APRIL SQR2ptII, at Exhibit 20; resubmitted at SQR3pt1, at Exhibit 1. See also APRIL SQR2ptII, at pages 15 – 17. As noted above, the specific information related to the petitioners' claim is business proprietary.

<sup>207</sup> See APRIL SQR2ptII, at Exhibits 21-22; APRIL SQR3pt1, at pages 1-3; APRIL SQR3ptII, at pages 8-11; and APRIL Verification Report, at VE-13.

<sup>208</sup> See APRIL Rebuttal Brief, at page 18.

<sup>209</sup> See, e.g., Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007) (CFSP from Korea), and accompanying Issues and Decision Memorandum, at Comment 5 ("It is the Department's practice to treat the extension of maturities as new loans.").

banks as well as state-owned banks participated in the 2006 RA, the petitioners contend that the loan rates under the 2006 RA do not represent the considerations of a commercial lender evaluating a borrower seeking new financing. When compared to the 15.22 percent benchmark interest rate calculated by the petitioners, which includes a premium for the alleged uncreditworthiness of the APRIL companies,<sup>210</sup> the petitioners allege that the level of the 2006 RA interest rates indicate that the APRIL companies received a benefit from preferential loans from the state-owned banks. Therefore, the petitioners argue that the Department should calculate a benefit to the APRIL companies for the restructured loan benefit they obtained under the 2006 RA.<sup>211</sup>

APRIL responds that the petitioners' claim amounts to an untimely new subsidy allegation.

#### Department's Position:

On June 18, 2015, the Department initiated an investigation to determine whether the APRIL companies benefitted from debt forgiveness from the GOI, pursuant to the petitioners' allegation in their letter of May 13, 2015.<sup>212</sup> The Department issued supplemental questionnaires and received responses to those questionnaires, as identified above, in order to determine whether the APRIL companies received a countervailable benefit from debt forgiveness according to the allegation made by the petitioners. Our investigation focused on this debt forgiveness allegation, and as a result, we did not develop sufficient information on the record to analyze and determine whether the APRIL companies received preferential loan benefits from state-owned banks. For example, we do not have sufficient information on the record to determine how the interest rates in the 2006 RA were established, and the role commercial banks played in setting those rates.<sup>213</sup>

The petitioners raised the matter of a preferential loan benefit for the first time on November 17, 2015, in the Petitioners Case Brief, after the issuance of the supplemental questionnaire responses and the completion of the Department's verification, and less than two months before the final determination of this investigation is due. There was insufficient time left in this investigation to obtain and analyze the information necessary to make a determination regarding whether terms of the 2006 RA result in a countervailable benefit from preferential loans. Therefore, we are unable to make a finding on this matter in our final determination. If a CVD order is issued as a result of this investigation, the Department intends to look into this issue in the context of an administrative review.

#### Comment 12: Uncreditworthiness

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<sup>210</sup> See Petitioners Case Brief, at Exhibit 1.

<sup>211</sup> The specific details of the petitioners' claim that the APRIL companies received a preferential loan benefit is derived from business proprietary information obtained from APRIL's supplemental questionnaire responses. See Petitioners Case Brief, at pages 40 – 42.

<sup>212</sup> See Letter from the petitioners, "Certain Uncoated Paper from Indonesia - Petitioners' New Subsidy Allegations and Uncreditworthiness Allegation for the Raja Garuda Mas Group and APRIL Companies for 2002-2006," dated May 13, 2015; and memorandum entitled "New Subsidy Allegations," dated June 18, 2015.

<sup>213</sup> In addition to BM and BNI, commercial banks were also involved in the 2002 RA and the 2006 RA. See, in particular, APRIL SQR2ptII, at Exhibits 13 – 15, and APRIL SQR3ptII, at pages 8 and 16.

The petitioners maintain that the Department should find that RAPP, RAK, and ECC were uncreditworthy from 2002 to 2006; AKU was uncreditworthy in 2006; and IP was uncreditworthy in 2004 and 2006. In support of this argument, the petitioners assert that none of the above-mentioned APRIL companies received short-term or long-term commercial loans, except for IP in 2005.<sup>214</sup> The petitioners also argue that the evidence on record indicates that the APRIL companies were financially unhealthy and unable to meet their fixed financial obligations with their cash flow during the 2002-2006 period.<sup>215</sup> Additionally, the petitioners argue that the Department should conclude, based on AFA, that RAPP was uncreditworthy from 2002 to 2006 because APRIL failed to cooperate by not acting to the best of its ability to provide certain RAPP financial statements requested by the Department. The petitioners assert that the requested financial statements contained essential information that the Department needed to analyze RAPP's creditworthiness during the 2002 to 2006 period. Accordingly, the petitioners claim that the Department should use an interest rate for uncreditworthy companies in calculating the benefit of the APRIL Companies' debt forgiveness program.

APRIL responds that the Department was correct in declining to analyze the APRIL companies' creditworthiness in the Post-Preliminary Analysis Memo given that the Department did not find any countervailable long-term loans or non-recurring subsidies that are allocable under 19 CFR 351.524(b)(2) and require the use of long-term loan benchmarks or discount rates. APRIL argues that the APRIL companies' financial ratios, which were fully examined by the Department at verification, support the conclusion that the APRIL companies are creditworthy.<sup>216</sup> APRIL concedes that the APRIL companies had debt restructuring during the AUL, but argues that banks would not have restructured the APRIL companies' debt had they not been creditworthy. Additionally, APRIL maintains that the fact that IP, a member of the APRIL companies, received a long-term loan in 2005, demonstrates that the APRIL companies, as a group, are creditworthy. Furthermore, APRIL argues that finding RAPP uncreditworthy based on AFA, as the petitioners advocate, is not warranted because before applying AFA to a company for not cooperating to the best of its ability, the Department must identify the deficiency and provide an opportunity for the company to correct the deficiency, especially when the deficiency is due to an oversight by the company. APRIL asserts that the Department never requested RAPP's omitted financial statements, and was able to fully verify the financial ratios of each of the APRIL companies using the financial statements that were requested at verification.

#### Department's Position:

As discussed above under Comment 10, we determined that the APRIL companies did not use the alleged debt forgiveness program. Further, we did not review any long-term loan programs involving the APRIL companies in this investigation. Accordingly, for the final determination, we find that no analysis of whether the APRIL companies were uncreditworthy during the period 2002 to 2006 is warranted because we are not countervailing any long-term loans or any non-recurring subsidies that are allocable under 19 CFR 351.524(b)(2).

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<sup>214</sup> See APRIL SQR2ptII, at page 27.

<sup>215</sup> The petitioners refer to business proprietary information derived from the financial ratios and financial statements of the APRIL Companies, included in APRIL SQR2ptII at Exhibits 27, 32, 34, and APRIL SQR3ptI at Exhibits 1-3.

<sup>216</sup> APRIL cites to the APRIL Verification Report at page 16 in support of its statement.



## APPENDIX

AFA Rates Determined for Programs Used by Great Champ and IK/TK

<b>Program</b>	<b>Subsidy Rate (%)</b>
Provision of Standing Timber for Less Than Adequate Remuneration	9.81
Government Prohibition of Log Exports	11.41
Exemptions from Import Income Tax Withholding for Companies in Bonded Zone Locations	5.05
Export Financing from Export-Import Bank of Indonesia	5.05
Export Credit Insurance	14.21
Export Credit Guarantees	5.05
Income Tax Programs: <ul style="list-style-type: none"> <li>• Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia’s Investment Coordinating Board (BKPM) – Corporate Income Tax Deduction</li> <li>• Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Accelerated Depreciation and Amortization</li> <li>• Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Extension of Loss Carry-Forwards</li> </ul>	25.00
Preferential Treatment for Bonded Zone Locations – Waiver of License and Fee Requirements	14.21
Exemptions From Sales Taxes for Capital Goods and Equipment Used to Produce Exports	14.21
<b>Total AFA Rate Before Adding Company-Specific Subsidy Programs</b>	<b>104.00</b>

<b>Great Champ (No Company-Specific Subsidy Programs)</b>	<b>Rate %</b>
<b>Total AFA Rate</b>	<b>104.00</b>

<b>IK/TK (Including Company-Specific Subsidy Programs)</b>	<b>Rate %</b>
Debt Forgiveness through the Indonesian Government’s Acceptance of Financial Instruments with No Market Value	0.75
Debt Forgiveness through APP/SMG’s Buyback of Its Own Debt from the GOI	4.40
<b>Total AFA Rate for APP Companies</b>	<b>109.15</b>