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Investigation

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May 28, 2013

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Certain Frozen Warmwater
Shrimp from Malaysia

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain frozen warmwater shrimp (frozen shrimp) in Malaysia, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On December 28, 2012, the Coalition of Gulf Shrimp Industries (Petitioner)¹ filed a petition with the Department seeking the imposition of countervailing duties (CVDs) on frozen shrimp from, *inter alia*, Malaysia.² Supplements to the petition and our consultations with the Government of

¹ The members of the Coalition of Gulf Shrimp Industries (COGSI) are: Bayou Shrimp Processors, Inc.; Blue water Shrimp Company, Inc.; Carson & Co., Inc.; C.F. Gollott & Sons Seafood, Inc.; Dean Blanchard Seafood, Inc.; Dominick Seafood; Fisherman's Reef Packing Plant; Golden Gulf Coast Pkg. Co., Inc. (and Gollott's Oil Dock & Ice House); Graham Fisheries, Inc.; Graham Shrimp, Inc.; Gulf Crown Seafood Co., Inc.; Gulf Fish Inc.; Gulf Island Shrimp & Seafood, LLC; Gulf Pride Enterprises, Inc.; Hi-Seas of Dulca, Inc.; Indian Ridge Shrimp Co.; JBS Packing Co., Inc.; Lafitte Frozen Foods Corp.; M&M Shrimp (Biloxi Freezing and Processing); Ocean Springs Seafood Market, Inc.; Paul Piazza & Sons, Inc.; R.A. Lesso Brokerage Co., Inc.; Sea Pearl Seafood Co., Inc.; Smith and Sons Seafood; Tideland's Seafood Co., Inc.; Tommy's Seafood; Vincent Piazza & Sons Seafood, Inc.; Wood's Fisheries; Mariah Jade Shrimp Company LLC; David Chauvin's Seafood Company, LLC; and Rountree Enterprises, Inc. (dba Leonard & Sons Shrimp Co. and R&R Fisheries).

² See Letter from Petitioner, "Petitions for the Imposition of Countervailing Duties on Certain Frozen Warmwater Shrimp from the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam," (December 28, 2012).



Malaysia are described in the Initiation Checklist.³ On January 17, 2013, the Department initiated a CVD investigation on frozen shrimp from Malaysia.⁴

We stated in the *Initiation Notice*⁵ that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. On January 18, 2013, the Department released the CBP entry data under administrative protective order (APO).⁶

We received respondent selection comments from Petitioner and the Malaysia Frozen Foods Processors Association (MFFPA).⁷ On February 13, 2013, we selected Kian Huat Aquaculture Sdn. Bhd. (Kian Huat) and One-East Marketing Sdn. Bhd. (One-East) as mandatory respondents.⁸ We sent the CVD questionnaire seeking information regarding the alleged subsidies on February 14, 2013.⁹

For the reasons explained in the *Initiation Notice*, we determined to include in this investigation subsidies allegedly provided to producers of fresh shrimp as well as to producers of frozen shrimp. Thus, we also sent questionnaires to the mandatory respondents seeking information about their suppliers of fresh shrimp.¹⁰

On February 13, 2013, Petitioner filed its first set of new subsidy allegations.¹¹ The Department determined to investigate certain of the newly alleged subsidies¹² and sent new subsidy questionnaires on February 25, 2013.¹³

³ See “Countervailing Duty Initiation Checklist: Certain Frozen Warmwater Shrimp from Malaysia,” (January 17, 2013) (Initiation Checklist).

⁴ See *Certain Frozen Warmwater Shrimp From the People’s Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 78 FR 5416 (January 25, 2013) (*Initiation Notice*).

⁵ *Id.* at 5419.

⁶ See Department Memorandum, “Release of Customs and Border Protection (CBP) Data,” (January 18, 2013).

⁷ See Letter from the Coalition of Gulf Shrimp Industries, “Comments on Respondent Selection,” (February 1, 2013); and Letter from MFFPA, “Respondent Selection Comments,” (February 1, 2013).

⁸ See Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Malaysia: Respondent Selection Memorandum,” (February 13, 2013). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c)(2) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

⁹ See Letter from Department to Kian Huat, “Initial Questionnaire,” (February 14, 2013); Letter from Department to One-East, “Initial Questionnaire,” (February 14, 2013); and Letter from Department to the GOM, “Initial Questionnaire,” (February 14, 2013).

¹⁰ See Letter from Department to Kian Huat, “Questionnaire on Sources of Fresh and Frozen Shrimp,” (February 14, 2013); and Letter from Department to One-East, “Questionnaire on Sources of Fresh and Frozen Shrimp,” (February 14, 2013).

¹¹ See Letter from Petitioner, “New Subsidies Submission,” (February 13, 2013).

¹² See Department Memorandum, “Decision Memorandum on New Subsidy Allegations,” (February 25, 2013).

¹³ See Letter from Department to Kian Huat, “New Subsidy Allegations Questionnaire,” (February 25, 2013); Letter from Department to One-East, “New Subsidy Allegations Questionnaire,” (February 25, 2013); and Letter from Department to GOM, “New Subsidy Allegations Questionnaire,” (February 25, 2013).

On February 28, 2013, neither Kian Huat nor One-East submitted a shrimp supplier questionnaire response. The MFFPA, however, submitted a certification from the Director of One-East and a signed copy of a March 1, 2012, Board of Director's Resolution indicating that the company ceased operations on March 1, 2012, and had no intention to continue its business.¹⁴ The MFFPA further requested an extension of time until March 25, 2013, for MFFPA members, which includes Kian Huat, to respond to the shrimp supplier questionnaire.¹⁵ The Department granted an extension until March 1, 2013.¹⁶ Kian Huat, however, did not submit a response to the shrimp supplier questionnaire on that date.

On February 28, 2013, Asia Aquaculture (M) Sdn. Bhd. (Asia Aquaculture) submitted a shrimp supplier questionnaire response and requested treatment as a voluntary respondent pursuant to section 782(a) of the Act.¹⁷

On March 14, 2013, we issued the Analysis of Respondents Memorandum in which the Department de-selected One-East as a mandatory respondent, and accepted Asia Aquaculture as a voluntary respondent.¹⁸ Subsequently, on March 15, 2013, the Department issued letters to Asia Aquaculture, Kian Huat, and the GOM providing additional instruction to each party on how to respond to the questionnaires issued in this investigation with regard to shrimp suppliers.¹⁹ Based on the shrimp supplier response submitted by Asia Aquaculture, we determined to analyze the alleged subsidies received for the shrimp farming operations of Asia Aquaculture.

On April 1, 2013, Asia Aquaculture and the GOM submitted their responses to the initial and new subsidy allegations questionnaires.²⁰ On April 8, 2013, Petitioner filed comments on the questionnaire responses.²¹ The Department issued supplemental questionnaires to Asia Aquaculture and the GOM on April 10, 2013.²² Asia Aquaculture submitted its first supplemental questionnaire response on April 24, 2013.²³ The GOM submitted its first

¹⁴ See Letter from MFFPA, "Certain Frozen Warmwater Shrim from Malaysia," (February 28, 2013) at Attachment and Exhibit A.

¹⁵ *Id.*

¹⁶ See Letter from Department to MFFPA, "Second Extension of Time to Respond to Questionnaire on Sources of Fresh and Frozen Shrimp," (February 28, 2013).

¹⁷ See Letter from Asia Aquaculture, "Request to Participate as Voluntary Respondent," (February 28, 2013); and Letter from Asia Aquaculture, "Voluntary Submission of Response to Mini Questionnaire," (February 28, 2013).

¹⁸ See Department Memorandum, "Analysis of Respondents," (March 14, 2013).

¹⁹ See Letters from Department to Asia Aquaculture, Kian Huat, and GOM, "Questionnaire Responses to be Filed," (March 15, 2013).

²⁰ See Letter from Asia Aquaculture, "Initial CVD Questionnaire Response," (April 1, 2013) (Asia Aquaculture IQR (April 1, 2013)); and Letter from GOM, "Initial CVD Questionnaire Response," (April 1, 2013) (GOM IQR (April 1, 2013)).

²¹ See Letter from Petitioner, "Comments on Initial CVD Questionnaire Responses of the Government of Malaysia and Asia Aquaculture," (April 8, 2013).

²² See Letter from Department to Asia Aquaculture, "First Supplemental Questionnaire for Asia Aquaculture," (April 10, 2013); and Letter from Department to GOM, "First Supplemental Questionnaire for the GOM," (April 10, 2013).

²³ See Letter from Asia Aquaculture, "Supplemental CVD Questionnaire Response," (April 24, 2013) (Asia Aquaculture SQR (April 24, 2013)).

supplemental questionnaire response in two parts on April 24, 2013, and May 1, 2013, and its second supplemental response also on May 1, 2013.²⁴

On April 18, 2013, Petitioner filed a second set of new subsidy allegations.²⁵ On April 23, 2012, Petitioner filed an allegation claiming that Asia Aquaculture was uncreditworthy in 2011.²⁶ The Department determined to not investigate either the additional subsidy allegations or the creditworthiness allegation.²⁷

On April 25, 2013, the Department issued a second supplemental questionnaire to the GOM.²⁸ On April 30, 2013, the Department issued a third supplemental questionnaire to the GOM, and a second supplemental questionnaire to Asia Aquaculture.²⁹ On May 6, 2013, the Department issued a fourth supplemental questionnaire to the GOM and a third supplemental questionnaire to Asia Aquaculture.³⁰ On May 8 and 10, 2013, Asia Aquaculture submitted its responses to the second and third supplemental questionnaires.³¹ On May 10, 2013, the GOM submitted its responses to the third and fourth supplemental questionnaires.³²

Interested Party Status of the Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC): On March 12, 2013, AHSTEC asked that it be placed on the public service list for the seven ongoing CVD investigations of frozen shrimp and that it be granted access to proprietary information under an APO.³³ Numerous submissions commenting on AHSTEC's applications followed.³⁴

²⁴ See Letter from GOM, "Supplemental CVD Questionnaire Response," (April 24, 2013) (GOM SQR (April 24, 2013)); and Letter from GOM, "Supplemental CVD Questionnaire Response," (May 1, 2013) (GOM SQR (May 1, 2013)).

²⁵ See Letter from Petitioner, "Additional New Subsidy Allegations," (April 18, 2013).

²⁶ See Letter from Petitioner, "Creditworthiness Allegation for Asia Aquaculture," (April 23, 2013).

²⁷ See Department Memorandum, "Decision Memorandum on Additional New Subsidy Allegations and Creditworthiness Allegation," (May 14, 2013).

²⁸ See Letter from Department to GOM, "Second Supplemental Questionnaire for GOM," (April 25, 2013).

²⁹ See Letter from Department to GOM, "Third Supplemental Questionnaire for GOM," (April 30, 2013); and Letter from Department to Asia Aquaculture, "Second Supplemental Questionnaire for Asia Aquaculture," (April 30, 2013).

³⁰ See Letter from Department to GOM, "Fourth Supplemental Questionnaire for GOM," (May 6, 2013); and Letter from Department to Asia Aquaculture, "Third Supplemental Questionnaire for Asia Aquaculture," (April 30, 2013).

³¹ See Letter from Asia Aquaculture, "Supplemental CVD Questionnaire Response," (May 8, 2013) (Asia Aquaculture SQR (May 8, 2013)); and Letter from Asia Aquaculture, "Supplemental CVD Questionnaire Response," (May 10, 2013) (Asia Aquaculture SQR (May 10, 2013)).

³² See Letter from GOM, "Supplemental CVD Questionnaire Response," (May 10, 2013) (GOM SQR (May 10, 2013)).

³³ See Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Malaysia: Entry of Appearance and Administrative Protective Order Application," (March 12, 2013).

³⁴ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia – Response to Ad Hoc's Entry of Appearance and APO Application," (March 13, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Malaysia: Response to Opposition of COGSI to AHSTEC's Entry of Appearance and Administrative Protective Order Application," (March 15, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia: Reply to AHSTEC's Response to Opposition of COGSI to AHSTEC's Entry of Appearance and APO Application," (March 19, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Malaysia: Response to Second Filing in Opposition of COGSI to AHSTEC's Entry of Appearance and Administrative Protective Order Application," (March 25, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Malaysia: Supplemental Filing in Support of AHSTEC's Entry of Appearance and Administrative Protective Order Application," (April 8, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia –

The Department met with counsel for Petitioner and AHSTEC on March 28 and April 19, 2013, respectively.³⁵ On April 23, 2013, the Department found that AHSTEC qualifies as an interested party under section 771(9)(F) of the Act because it is an association, a majority of whose members manufacture, produce, or wholesale frozen shrimp.³⁶ Consequently, AHSTEC's APO applications were approved.³⁷

Extension of Preliminary Deadline: On February 8, 2013, Petitioner requested that the deadline for the preliminary determination be extended until no later than 130 days after the initiation of the investigation. The Department granted Petitioner's request and on February 21, 2013, postponed the preliminary determination until May 28, 2013, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).³⁸

B. Period of Investigation

The period of investigation (POI) is January 1, 2011, through December 31, 2011.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.³⁹ On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.⁴⁰ Further comments on this scope clarification were submitted by AHSTEC and Petitioner.⁴¹

Response to AHSTEC's Supplemental Filing," (April 11, 2013); and Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Malaysia: Comments on COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013).

³⁵ See Department Memoranda, "Ex Parte Meeting with Coalition of Gulf Shrimp Industries on March 28, 2013; Countervailing Duty Investigations of Certain Frozen Warmwater Shrimp," (April 1, 2013), and "Meeting with Ad Hoc Shrimp Trade Enforcement Committee on April 19, 2013; Countervailing Duty Investigations of Frozen Warmwater Shrimp," (April 19, 2013).

³⁶ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Entries of Appearance and Administrative Protective Order Applications; Interested Party Status Determination," (April 23, 2013).

³⁷ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Administrative Protective Order Applications of AHSTEC," (April 23, 2013).

³⁸ See *Certain Frozen Warmwater Shrimp From the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 78 FR 13325 (February 27, 2013).

³⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 78 FR at 5416.

⁴⁰ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia – Request for Scope Clarification," (March 28, 2013).

⁴¹ See Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Malaysia: Supplemental Filing in Support of AHSTEC's Entry of Appearance and Administrative Protective Order Application," (April 8, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia – Response to AHSTEC's Supplemental Filing," (April 11, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Malaysia: Comments on COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia –

For the reasons explained in “Scope Clarification re Brine-Frozen Shrimp,” we preliminarily determine that brine-frozen shrimp are not excluded from this investigation.⁴²

IV. SCOPE OF THE INVESTIGATION

This investigation covers certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁴³ deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the HTSUS, are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (*see below*).

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting

Response to AHSTEC’s Comments from April 17, 2013,” (April 23, 2013); Letter from AHSTEC, “Certain Certain Frozen Warmwater Shrimp from Malaysia – Comments on COGSI’s April 23, 2013, Filing,” (April 30, 2013); Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia: Supplemental Information Supporting Petitioner’s Scope Clarification Request,” (May 7, 2013); and Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Malaysia: Comments on COGSI’s Revised Scope Clarification Request,” (May 14, 2013).

⁴² See Department Memorandum, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Scope Clarification re Brine-Frozen Shrimp,” dated concurrently with this memorandum (Scope Clarification re Brine-Frozen Shrimp).

⁴³ “Tails” in this context means the tail fan, which includes the telson and the uropods.

between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products included in the scope of this investigation are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30 and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

V. INJURY TEST

Because Malaysia is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Malaysia materially injure, or threaten material injury to, a U.S. industry. On February 15, 2013, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen shrimp from, *inter alia*, Malaysia.⁴⁴

VI. 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 used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.⁴⁵ The Department notified the respondent of the 12-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject

⁴⁴ See Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam: Inv. No. 701-TA-491-497 (Preliminary) (February 2013); *Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, 78 FR 11221 (February 15, 2013).

⁴⁵ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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 section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁴⁶

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. 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.⁴⁷

Asia Aquaculture

Asia Aquaculture responded to the Department's questionnaires on behalf of itself and its cross-owned affiliates Star Feedmills (M) Sdn. Bhd. (Star Feedmills), and Charoen Pokphand Foods (Malaysia) Sdn. Bhd. (CPFAM).

Asia Aquaculture, founded in 1992, grows and harvests fresh shrimp at its own hatcheries and farms, processes the shrimp at its own plants, and directly sells frozen shrimp.⁴⁸ Star Feedmills, founded in 1995, produces shrimp feed, which is an input in shrimp growing.⁴⁹ Both Asia Aquaculture and Star Feedmills are wholly-owned subsidiaries of CPFAM, an investment holding

⁴⁶ See *Countervailing Duties; Final Rule*, 65 FR 65348, 65348 (November 25, 1998).

⁴⁷ See *Fabrique de Fer de Carleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴⁸ See *Asia Aquaculture IQR* (April 1, 2013) at 8.

⁴⁹ *Id.* at 5 and 8.

company for aquaculture operations in Malaysia.⁵⁰ The accounts of Asia Aquaculture and Star Feedmills are consolidated into the accounts of CPFM, and all three companies share the same management and directors.⁵¹ As such, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that cross-ownership exists among Asia Aquaculture, Star Feedmills, and CPFM, because of common ownership.

Subsidies to Fresh Shrimp: Section 771B of the Act directs that subsidies provided to producers of a raw agricultural product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed form of the product when two conditions are met. First, the demand for the prior stage (raw agricultural) product is substantially dependent on the demand for the latter stage (processed) product. Second, the processing operation adds only limited value to the raw commodity. As explained above, Petitioner claimed that these conditions are met with respect to fresh and processed shrimp, and supported its claim such that the Department sought information that would permit inclusion of subsidies to fresh shrimp in the countervailing duty rates for the processed product.

Neither Asia Aquaculture nor the GOM argued against Petitioner's claim that the conditions of section 771B of the Act are met. Because, we do not preliminarily find any fresh shrimp subsidies to be countervailable, the issue of the application of section 771B of the Act is moot.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Preliminary Calculation Memorandum prepared for this investigation.⁵²

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if 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.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the

⁵⁰ *Id.* at 1-5. CPFM's immediate holding company is a company incorporated in the British Virgin Islands, and ultimate holding company is Charoen Pokphand Foods Public Co., Ltd. (CPF), a publicly traded company in Thailand. CPF owns another group of companies in Malaysia. However, Asia Aquaculture provided information to demonstrate that none of them was required to provide questionnaire responses under the Department's attribution and cross-ownership regulations.

⁵¹ *Id.* at 2-3.

⁵² See Department Memorandum, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Malaysia: Asia Aquaculture Preliminary Calculation Memorandum," dated concurrently with this memorandum.

best of its ability to comply with a request for information. As discussed below, for purposes of this preliminary determination, we find it necessary to apply adverse facts available (AFA).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁵³ 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."⁵⁴

A. Application of AFA: Kian Huat

We notified Kian Huat that if a response to the Department's questionnaires was not provided, then we may find that Kian Huat failed to cooperate by not acting to the best of its ability to comply with the requests for information, and that we may use an inference that is adverse to the company's interests in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.⁵⁵

As a result of Kian Huat's failure to submit a response to the questionnaires, we find the company to be non-cooperative. By not responding to the Department's questionnaires, Kian Huat withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act, we are assigning a CVD rate for Kian Huat based on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By Kian Huat's failure to submit a response to the Department's questionnaires, necessary information is not on the record. Kian Huat did not cooperate to the best of its ability in this investigation, and withheld information necessary for the Department to conduct fully its investigation. Accordingly, we preliminarily determine that AFA is warranted to ensure that Kian Huat does not obtain a more favorable result than had it fully complied with our requests for information.

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.

⁵³ See *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).

⁵⁴ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

⁵⁵ See Letter from Department to Kian Huat, "Initial Questionnaire," (February 14, 2013) at Section I, "Extension Requests;" Letter from Department to Kian Huat, "New Subsidy Allegations Questionnaire," (February 26, 2013); and Letter from Department to Kian Huat, "Questionnaire Response to be Filed," (March 15, 2013).

It is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.⁵⁶ Thus, under this practice, the Department normally computes the total AFA rate for a non-cooperating company using program-specific rates calculated for the cooperating mandatory respondents in the investigation. However, in the instant investigation, the only cooperating firm, Asia Aquaculture, is a voluntary respondent and, therefore, we do not have the participation of a mandatory respondent.

Under 19 CFR 351.204(d)(3), in calculating an all others rate under section 705(c)(5) of the Act, the Department will exclude net subsidy rates calculated for voluntary respondents. We adopted this approach because the inclusion of self-selected respondents in the derivation of the all others rate could result in the distortion of that rate.⁵⁷ In light of that, we preliminarily determine that it is not appropriate to compute the AFA rate for Kian Huat using company-specific rates calculated in this investigation for Asia Aquaculture, because to do so would require the use of program rates calculated for a voluntary respondent. Therefore, we have derived the AFA rate for Kian Huat based on the CVD AFA methodology where there is no company participation in the investigation.⁵⁸

Under that methodology, and consistent with other CVD investigations,⁵⁹ for the alleged income tax programs pertaining to either the reduction or exemption of the income tax rates or payment of no income tax, we are applying an adverse inference that Kian Huat paid no income tax during the POI. The standard income tax rate for corporations in Malaysia is 25 percent.⁶⁰ Therefore, the highest possible benefit for the income tax rate programs is 25 percent. We are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

For programs other than those involving income tax exemptions and reductions, we are applying the highest non-*de minimis* rate. Specifically, we are sourcing program rates outside of the investigation, but staying within the country. When selecting rates, we first determine if there is an identical program and take the highest calculated rate for the identical program. If there is no identical program above *de minimis*, we then determine if there is a similar/comparable program

⁵⁶ See, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available;" *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum (Aluminum Extrusions from the PRC Decision Memorandum) at "Application of Adverse Inferences: Non-Cooperative Companies;" *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences;" and *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*Steel Pipe from India*), and accompanying Issues and Decision Memorandum (Steel Pipe from India Decision Memorandum) at "Selection of the Adverse Facts Available Rate."

⁵⁷ See *Preamble to Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27310 (May 19, 1997) (*Preamble to Procedural Regulations*).

⁵⁸ See, e.g., Aluminum Extrusions from the PRC Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."

⁵⁹ *Id.*, see also Steel Pipe from India Decision Memorandum at "Selection of Adverse Facts Available Rate."

⁶⁰ See GOM IQR (April 1, 2013) at 30 (for 25 percent income tax rate).

(based on treatment of the benefit) and apply the highest calculated rate for a similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program, but do not use a rate from a program if the industry in the proceeding cannot use that program.⁶¹

We preliminarily determine that there is an identical program match for Export Credit Refinancing. In *Extruded Rubber Thread from Malaysia*, we calculated a rate of 1.86 percent for Export Credit Refinancing.⁶² We preliminarily find that Export Credit Refinancing is the similar program match for all other loan programs in this investigation.

We also preliminarily find that Pioneer Status under *Promotion of Investment Act 1986*, for which the Department calculated a 4.12 percent rate in *Extruded Rubber Thread from Malaysia*, is the similar program match for tax programs other than income tax exemption and reduction programs.⁶³ For those programs for which there is no identical or similar program match,⁶⁴ we are applying the highest calculated rate from any non-company specific program, which we preliminarily determine to be the 4.12 percent calculated for Pioneer Status in *Extruded Rubber Thread from Malaysia*.

For the programs listed under “Programs Preliminarily Determined Not to Confer a Benefit During the POI,” we preliminarily determine that only Asia Aquaculture did not receive a benefit. Therefore, for Kian Huat, we have assigned the appropriate AFA subsidy rate for those programs.

On this basis, we preliminarily determine the AFA subsidy rate for Kian Huat to be 62.74 percent *ad valorem*. For more information on the AFA rate selected for each program under investigation, see AFA Memorandum.⁶⁵

B. 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.”⁶⁶

⁶¹ See, e.g., *Aluminum Extrusions from the PRC* and *Steel Wire from the PRC*.

⁶² See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia*, 57 FR 38472, 38474 (August 25, 1992) (*Extruded Rubber Thread from Malaysia*).

⁶³ *Id.* at 38476.

⁶⁴ These programs are: Provision of Grants under the Economic Transformation Program (ETP) – Replicating Integrated Aquaculture Model (IZAQs), Provision of Leases and Land at Less Than Adequate Remuneration (LTAR) under the ETP – IZAQs, and Provision of Seed and Fry for LTAR.

⁶⁵ See Department Memorandum, “AFA Rate for Kian Huat – Preliminary Determination,” dated concurrently with this memorandum (AFA Memorandum).

⁶⁶ See SAA at 870.

The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.⁶⁷

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.⁶⁸

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. 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 countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.⁶⁹

Concerning Pioneer Status under the *Investment Incentives Act of 1968*, for which a rate of 17.22 percent was calculated in *Wire Rod from Malaysia*,⁷⁰ we preliminarily determine that use of that rate is not appropriate as AFA. This calculated rate was based upon a program that was created in the 1960’s, was terminated over 25 years ago, and was replaced by the current investigated program, Pioneer Status under the *Promotion of Investment Act of 1986*. Moreover, the program in *Wire Rod from Malaysia* was initially found countervailable as AFA, and was subsequently found not countervailable in the administrative review.⁷¹ For these reasons, we preliminarily determine that this rate is not corroborated.

In the instant investigation, no evidence has been presented or obtained that contradicts the relevance of the information relied upon in *Extruded Rubber Thread from Malaysia*. Therefore, in the instant case, we preliminarily determine that the information used in this preliminary determination has been corroborated to the extent practicable.

⁶⁷ *Id.*

⁶⁸ *Id.* at 869-870.

⁶⁹ See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁷⁰ See *Wire Rod from Malaysia*, 53 FR at 18305.

⁷¹ See *Carbon Steel Wire Rod From Malaysia; Preliminary Results of Countervailing Duty Administrative Reviews*, 56 FR 14927, 14928-29 (April 12, 1991) (unchanged in *Carbon Steel Wire Rod From Malaysia; Final Results of Countervailing Duty Administrative Reviews*, 56 FR 41649 (August 22, 1991)).

VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

A. Program Preliminarily Determined To Be Countervailable

1. Pioneer Status

Pioneer Status is a tax incentive granted to companies that participate in a promoted activity or produce a promoted product, pursuant to the *Promotion of Investments Act 1986*.⁷² Promoted activities and products, which include activities/products that are of national and strategic importance to Malaysia, are determined by the Minister of Finance and Minister of International Trade and Industry.⁷³ The GOM grants a company with Pioneer Status a 70 percent exemption on corporate income taxes for five years.⁷⁴

The GOM granted Pioneer Status to Star Feedmills, the cross-owned affiliate of Asia Aquaculture, from May 1, 2006, to April 30, 2011. Specifically, Star Feedmills received a 70 percent exemption of income taxes for five years for the production of aquaculture feed, which the GOM designated as a promoted product in 2001.⁷⁵ Star Feedmills applied the tax exemption in its income tax return for tax assessment year 2010, which was filed with tax authorities during the POI.⁷⁶

The GOM provided a copy of the *Promotion of Investments Act 1986*, in effect when Star Feedmills' application for Pioneer Status was approved.⁷⁷ Contrary to claims made by the GOM and Asia Aquaculture that exports are not a consideration for Pioneer Status,⁷⁸ the *Promotion of Investments Act 1986* states:

“An act to make provision for promoting by way of relief from income tax the establishment and development in Malaysia of industrial, agricultural and other commercial enterprises, *for the promotions of exports* and for incidental and related purposes.”⁷⁹ (*emphasis added*)

We preliminarily determine that this program confers a countervailable subsidy. The income tax exemption is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section

⁷² See GOM IQR (April 1, 2013) at 22, 24.

⁷³ *Id.* at 22.

⁷⁴ *Id.* at 23; and Asia Aquaculture IQR (April 1, 2013) at 20.

⁷⁵ See GOM IQR (April 1, 2013) at 23; GOM SQR (May 1, 2013) at 9; and Asia Aquaculture IQR (April 1, 2013) at 19-20.

⁷⁶ See GOM IQR (April 1, 2013) at 24.

⁷⁷ See GOM SQR (May 1, 2013) at Exhibit SQR-12; and Asia Aquaculture IQR (April 1, 2013) at 19 (Star Feedmill's application for Pioneer Status was approved in October 2006).

⁷⁸ See GOM IQR (April 1, 2013) at 26; GOM SQR (May 1, 2013) at 9; and Asia Aquaculture SQR (April 24, 2013) at 9.

⁷⁹ See GOM SQR (May 1, 2013) at Exhibit SQR-12 (page 9).

771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Section 771(5A)(A) deems an export subsidy to be specific. Based upon the language of the *Promotion of Investments Act 1986*, we preliminarily determine that the tax exemption provided to Star Feedmills under the Pioneer Status program is contingent on export performance. As such, we preliminarily determine that the Pioneer Status program is specific under section 771(5A)(A) and (B) of the Act.

To calculate the benefit from this program, we treated the income tax exemption claimed by Star Feedmills as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax that Star Feedmills would have paid absent the tax exemption at the 25 percent tax rate.⁸⁰ The difference between the amount of tax that Star Feedmills should have paid and the amount of tax actually paid by the company is the tax savings. We then divided the tax savings by the 2011 consolidated total export sales for Asia Aquaculture and Star Feedmills, net of any inter-company sales. On this basis, we preliminarily determine a countervailable subsidy rate of 10.80 percent *ad valorem* for Asia Aquaculture.

B. Program Preliminarily Determined To Be Not Countervailable

1. Human Resource Development Fund (HRDF)

Pursuant to the *Pembangunan Sumber Manusia Berhad Act of 2001*, companies with 10 or more employees must contribute one percent of the gross basic salary of all employees into the HRDF.⁸¹ The Pembangunan Sumber Manusia Berhad (PSMB), an agency under the Ministry of Human Resources, maintains an account for the levies collected from each company.⁸² The purpose of the HRDF is to provide grants to employers from the levies collected from them to encourage them to retrain and upgrade workers' skills.⁸³ To utilize the funds, a company submits an application to PSMB for a grant to cover training expenditures, up to the amount of funds maintained in its account.⁸⁴ A company can access funds in its HRDF account on an ongoing basis, subject to application and approval of the training program by PSMB.⁸⁵ Upon approval, PSMB disburses a company's funds.⁸⁶

The GOM explained that only funds collected from the company are disbursed back to the company to cover training costs.⁸⁷ The government does not provide any funding to a company's account.⁸⁸ During the POI, Asia Aquaculture and Star Feedmills made contributions to the HRDF, and Asia Aquaculture claimed funds from its HRDF account.⁸⁹

⁸⁰ See GOM IQR (April 1, 2013) at 30 (for 25 percent income tax rate).

⁸¹ See GOM SQR (May 10, 2013) at 2-3, and Exhibit SQR-1.

⁸² *Id.* at 2.

⁸³ *Id.* at 3.

⁸⁴ *Id.* at 2,6.

⁸⁵ See Asia Aquaculture SQR (May 10, 2013) at 4.

⁸⁶ *Id.* at 3.

⁸⁷ See GOM SQR (May 10, 2013) at 3.

⁸⁸ *Id.*

⁸⁹ See Asia Aquaculture SQR (May 10, 2013) at 2, 4.

Given that the grant disbursed by PSMB consists only of a company's own funds from its HRDF account, we preliminarily determine that there is no financial contribution provided by the GOM under this program within the meaning of section 771(5)(D) of the Act. This determination is consistent with the Department's practice of finding a program funded by companies themselves to be not countervailable.⁹⁰ Because there is no financial contribution, we need not determine whether the program is specific or if a benefit is conferred.

C. Programs Preliminarily Determined Not To Confer a Benefit During the POI

1. Provision of Grants under the ETP – Replicating Integrated Aquaculture Model

The GOM reported that this program, known as Entry Point Project #6 (EPP #6), aims to increase export quality shrimp production through the establishment of Integrated Zones for Aquaculture (IZAQs).⁹¹ Asia Aquaculture reported that it qualified for a grant under this program because its project – a training facility in Johor for students from the National Agriculture Training Program – involved aquaculture.⁹²

Under the EPP #6, a company can request reimbursement of qualifying expenditures upon completion of the project.⁹³ Asia Aquaculture reported that it did not submit a claim for reimbursement of expenses during the POI and, therefore, did not receive any benefit under this program during the POI.⁹⁴ We, therefore, preliminarily determine that this program did not confer a benefit to Asia Aquaculture during the POI. Because a benefit was not provided to Asia Aquaculture, we need not address either financial contribution or specificity of the program.

2. Reinvestment Allowance

Under Schedule 7A of Income Tax Act 1967, a company with a qualifying project is granted a Reinvestment Allowance, which is a tax deduction equal to 60 percent of the capital expenditures incurred in relation to a qualifying project.⁹⁵ Schedule 7A states that a qualifying project is a manufacturing or processing project undertaken to expand, modernize, automate, or diversify its existing business/product, or an agricultural project undertaken to expand, modernize, or diversify its cultivation and farming business.⁹⁶

With regard to manufacturing and processing operations, the GOM explained that prior to the 2009 assessment year, all such firms were eligible for a Reinvestment Allowance; subsequently,

⁹⁰ See, e.g., *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy*, 59 FR 18357, 18364 (April 18, 1994), where, for the program "ECSC Article 56 Redeployment Aid," the Department stated "because payments from the ECSC under Article 56 are sourced from producer levies, we find them to be not countervailable."

⁹¹ See GOM IQR (April 1, 2013) at 4.

⁹² See Asia Aquaculture IQR (April 1, 2013) at 15; Asia Aquaculture SQR (April 24, 2013) at 7; and GOM SQR (May 1, 2013) at 4.

⁹³ See GOM IQR (April 1, 2013) at 13; GOM SQR (May 1, 2013) at 1, 4; and Asia Aquaculture IQR (April 1, 2013) at 15.

⁹⁴ See Asia Aquaculture IQR (April 1, 2013) at 15; Asia Aquaculture SQR (April 24, 2013) at 5; and GOM SQR (May 1, 2013) at 1, 6.

⁹⁵ See GOM IQR (April 1, 2013) at 54; and GOM SQR (April 24, 2013) at Exhibit SQR-3 (paragraphs 1, 1A, and 8).

⁹⁶ See GOM SQR (April 24, 2013) at Exhibit SQR-3 (paragraphs 1, 1A, and 8).

the allowance was provided to only companies engaged in manufacturing.⁹⁷ However, companies which had qualified processing operations before 2009, could continue to use the Reinvestment Allowance.⁹⁸ Any allowance not utilized in the basis period in which the capital expenditures were incurred can be carried forward to the next 15 years of assessment until fully absorbed.⁹⁹

The GOM further explained that the amount of deduction is restricted to 70 percent of statutory income.¹⁰⁰ However, for a qualifying project located within the states of Sabah, Sarawak, and the Eastern Corridor of Peninsula Malaysia, the allowance is authorized to be deducted against 100 percent of statutory income.¹⁰¹ Thus under this program, companies in Malaysia are eligible to claim the reinvestment allowance as a deduction of 70 percent of statutory income, while companies located within designated geographical regions of the country may be authorized to use the reinvestment allowance to deduct against 100 percent of their income.

Asia Aquaculture made its first claim of Reinvestment Allowance in 2006,¹⁰² for an agricultural project that involved aquaculture,¹⁰³ and continued to claim the allowance in its income tax return for assessment year 2010, which was filed during the POI.¹⁰⁴ Asia Aquaculture reported that it was not approved to apply its deduction against 100 percent statutory income, but only against the 70 percent statutory income.¹⁰⁵ Thus, Asia Aquaculture did not use the portion of the program that was limited to designated geographical regions of the country; therefore, we reviewed the reinvestment allowance program with respect to the authorized 70 percent deduction.

We preliminarily determine that the the Reinvestment Allowance is not specific pursuant to section 771(5A)(D)(i) of the Act, as the law does not appear to limit access to the 70 percent allowance to an enterprise, industry, group of industries, or region. Further, the GOM reported that receipt of the allowance is automatic on a company's tax return, although the amount claimed may be subject to audit.¹⁰⁶ Furthermore, all companies, which incurred capital expenditures for qualifying projects, are eligible to deduct their allowances against 70 percent of statutory income. In the last Malaysian case in which this program was investigated, the Department found that all kinds of companies involved in every industrial sector received benefits from the Reinvestment Allowance.¹⁰⁷ For these reasons, we, therefore, preliminarily determine that the 70 percent level of deduction under this program is not specific under section 771(5A)(D) of the Act.

⁹⁷ See GOM IQR (April 1, 2013) at 52.

⁹⁸ *Id.* at 52.

⁹⁹ *Id.* at 47, 54.

¹⁰⁰ *Id.* at 54; and GOM SQR (April 24, 2013) at Exhibit SQR-3.

¹⁰¹ See GOM IQR (April 1, 2013) at 54; and GOM SQR (May 10, 2013) at 14. Also, subsequent to the POI, with effect from year of assessment 2012, the promoted area incentive was deleted (*see* GOM IQR (April 1, 2013) at 54).

¹⁰² See GOM IQR (April 1, 2013) at 52.

¹⁰³ See Asia Aquaculture IQR (April 1, 2013) at 22-23.

¹⁰⁴ *Id.* and Exhibit 25.

¹⁰⁵ See Asia Aquaculture SQR (May 10, 2013) at 7.

¹⁰⁶ See GOM SQR (May 10, 2013) at 12.

¹⁰⁷ See *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Malaysia*, 50 FR 9852, 9857 (March 12, 1985).

D. Programs Preliminarily Determined To Be Not Used

1. Provision of Leases and Land at LTAR under the ETP – IZAQs
2. Investment Tax Allowance
3. Infrastructure Allowance
4. Accelerated Capital Allowance
5. 100% Allowance on Capital Expenditure for Approved Agricultural Projects
6. Tax Incentives for Approved Food Production Activities
7. Double Deduction for the Promotion of Exports
8. Export Credit Refinancing Program
9. Supplier Credit Facility
10. Buyer Credit Facility
11. Double Deductions for Export Credit Insurance Premiums
12. Tax Exemptions for Exporters in Free Trade Zones
13. Duty Exemptions for Exporters in Free Trade Zones
14. Provision of Seed and Fry for LTAR
15. Loans Under the Fund for Food Program
16. Loans Under the Agriculture Entrepreneurs Scheme for Graduates
17. Loans Under the Fund for Small and Medium Size Industries
18. Loans Under the Food Production Credit Scheme
19. Provision of Infrastructure under EPP #6

IX. CALCULATION OF THE ALL OTHERS RATE

Under 19 CFR 351.204(d)(3), in calculating an all others rate under section 705(c)(5) of the Act, we exclude net subsidy rates calculated for voluntary respondents because the inclusion of self-selected respondents in the derivation of the all others rate could result in the distortion of that rate.¹⁰⁸ Thus, in accordance with section 705(c)(5)(A)(ii) of the Act and 19 CFR 351.204(d)(3), we are applying as the all others rate the AFA rate calculated for Kian Huat, the non-cooperative mandatory respondent.

X. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

¹⁰⁸ See *Preamble to Procedural Regulations*, at 27310.

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁰⁹ Case briefs or other written comments for all non-scope issues may be submitted to Import Administration's APO/Dockets Unit no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹¹⁰ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of the preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the seven concurrent countervailing duty investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹¹¹ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹¹² Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the Department's electronic records system, IA ACCESS.¹¹³ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹¹⁴ on the due dates established above.

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

¹⁰⁹ See 19 CFR 351.224(b).

¹¹⁰ See 19 CFR 351.309.

¹¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹¹² See 19 CFR 351.310(c).

¹¹³ See 19 CFR 351.303(b)(2)(i).

¹¹⁴ See 19 CFR 351.303(b)(1).

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓
Agree Disagree

Ronald K Lorentzen
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

May 28, 2013
(Date)