



C-570-989

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 (CVD) of Certain Frozen
Warmwater Shrimp from the People's Republic of China

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 the People's Republic of China (PRC), 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*, the PRC.² Supplements to the petition and our consultations with the Government of

¹ The members of the Coalition of Gulf Shrimp Industries are: Bayou Shrimp Processors, Inc.; Bluewater 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 Dulac, 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).



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

We stated in the *Initiation Notice* 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.⁵

We received respondent selection comments from Petitioners.⁶ On February 13, 2013, we selected one mandatory respondent company for this investigation: Zhanjiang Guolian Aquatic Products, Co., Ltd. (Guolian).⁷ On February 14, 2013, the Department issued the initial CVD questionnaire to Guolian and the Government of the PRC (GOC).⁸

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 a questionnaire to Guolian seeking information about its suppliers of fresh shrimp.⁹

On February 13, 2013, Petitioner filed its first set of new subsidy allegations, alleging four new subsidy programs.¹⁰ The Department determined to investigate the newly alleged subsidies¹¹ and sent the NSA questionnaire to Guolian and the GOC.¹² On February 28, 2013, Guolian submitted its response to the Shrimp Supplier QNR.¹³

On March 13, 2013, the Department provided additional instructions to Guolian and the GOC concerning how to respond with regard to alleged subsidies provided to fresh shrimp suppliers of Guolian. Specifically, we instructed Guolian and the GOC to respond to the Initial and NSA QNRs only as it applied to shrimp supplier(s) that were cross-owned with Guolian during the period of investigation (POI).¹⁴

³ See “Countervailing Duty Initiation Checklist: Certain Frozen Warmwater Shrimp from the People’s Republic of China,” (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 See Department Memorandum, “Release of Customs and Border Protection (CBP) Data,” (January 18, 2013).

⁶ See Petitioners’ February 1, 2013, submission.

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Respondent Selection” (February 13, 2013) (Respondent Selection Memorandum).

⁸ See the Department’s February 14, 2013, initial questionnaire (Initial QNR).

⁹ See the Department’s February 14, 2013, shrimp supplier questionnaire (Shrimp Supplier QNR).

¹⁰ See Petitioner’s February 13, 2013, submission (NSA Submission).

¹¹ See Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 8, “Decision Memorandum on New Subsidy Allegations,” (February 22, 2013) (NSA Memorandum).

¹² See the Department’s February 22, 2013, NSA questionnaires to Guolian and the GOC (Guolian NSA QNR and GOC NSA QNR, respectively).

¹³ See Gillian’s February 22, 2013, Shrimp Supplier QNR response (Supplier QNR Response).

¹⁴ See the Department’s March 13, 2013, letters to Guolian and the GOC.

On March 14 and 15, 2013, the GOC and Guolian, respectively, requested additional time to respond to the Initial and NSA QNRs, to which the Department extended the due dates of the QNRs to April 1, 2013.

On March 28, 2013, officials from the Department held an *ex parte* meeting with counsel to Petitioners.¹⁵ On March 29, 2013, Guolian requested additional time to respond to section I.A.2.e of the Initial QNR, to which the Department extended the due date to respond to this particular section of the Initial QNR to April 8, 2013. On April 1, 2013, the GOC and Guolian, as well as its cross-owned affiliates (herein after referred to as the Guolian Companies) submitted their respective responses to the Initial and NSA QNRs.¹⁶ In response to an April 8, 2013, request by the Guolian Companies, the Department issued an additional two-day extension of time to respond section I.A.2.e of the Initial QNR. On April 10, 2013, the Guolian Companies submitted its response to section I.A.2.e of the Initial QNR.¹⁷

On April 11, 2013, the Department issued supplemental questionnaires to the GOC and Guolian Companies. The GOC and the Guolian Companies submitted their supplemental responses on April 16, and April 25, 2013.¹⁸ The Guolian Companies reported the receipt of numerous grants from the GOC as well as provincial and local governments that they did not previously disclose to the Department.¹⁹ We find there is insufficient time to incorporate the Guolian Companies' receipt of these grants into the *Preliminary Determination*. The Department will examine the information the Guolian Companies' submitted regarding these additional grants at verification. We invite interested parties to submit comments regarding these grant programs, namely, the programs' countervailable status and the manner in which benefits, if any, should be calculated. Due to the limited time available to the Department between the *Preliminary Determination* and the *Final Determination*, the Department will limit its analysis of these additional grant programs to the *Final Determination*.

On April 18, Petitioners submitted an additional NSA submission.²⁰ On May 8, 2013, the Department determined that it lacked sufficient time and resources to examine the allegations made in the Second NSA Submission and, thus, it deferred its decision concerning the allegations until the first administrative review of the CVD order, if any.²¹

¹⁵ See Memorandum to the File, "Ex-Parte Meeting with Coalition of Gulf Shrimp Industries on March 28, 2013; Countervailing Duty Investigations of Certain Frozen Warmwater Shrimp," (April 1, 2013).

¹⁶ See April 1, 2013, responses to the Initial QNR and NSA QNRs by the GOC and the Guolian Companies (GOC Initial QNR Response, GOC NSA Response, Guolian Initial QNR Response, Guolian NSA QNR Response, respectively).

¹⁷ See Guolian Companies' April 10, 2013, addendum to the Initial QNR (Guolian Initial QNR Addendum).

¹⁸ See GOC's April 16 and April 25, 2013, first supplemental questionnaire responses (GOC 1st Supp QNR Response Part 1 and GOC 1st Supp QNR Part 2, respectively); see also Guolian Companies' April 16 and April 25, 2013, supplemental questionnaire responses (Guolian 1st Supp QNR Response Part 1 and Guolian 1st Supp QNR Response Part 2, respectively).

¹⁹ See Guolian 2nd Supp QNR Response Part 2 at 7-8 and at Exhibits S1-4a – S1-4d.

²⁰ See Petitioners' April 18, 2013, NSA submission (Second NSA Submission).

²¹ See Memorandum to Melissa G. Skinner, Director, Office 8, AD/CVD Operations, "Second Decision Memorandum on New Subsidy Allegations," (May 8, 2013).

On May 2, 2013, the Department issued a supplemental questionnaire to the GOC. The GOC submitted its response on May 7, 2013.²² On May 6, 2013, the Department issued a supplemental questionnaire to the Guolian Companies, to which they responded on May 8, 2013.²³ On May 8, 2013, the Department issued a supplemental questionnaire to the GOC concerning the additional grant programs used by the Guolian Companies. The GOC submitted its response on May 22, 2013.²⁴

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 the Department grant it access to proprietary information under APO.²⁵ Numerous submissions commenting on AHSTEC's applications followed.²⁶ The Department met with counsel for Petitioner and AHSTEC on March 28 and April 19, 2013, respectively.²⁷ 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.²⁸ Consequently, AHSTEC's APO applications were approved.²⁹

²² See GOC's May 7, 2013, second supplemental questionnaire response (GOC 2nd Supp QNR Response).

²³ See the Guolian Companies' May 8, 2013, second supplemental questionnaire response (Guolian 2nd Supp QNR Response).

²⁴ See GOC's May 22, 2013, third supplemental questionnaire response (GOC 3rd Supp QNR Response).

²⁵ See AHSTEC's March 12, 2013, submission.

²⁶ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from the PRC (C-570-989) – Response to Ad Hoc's Entry of Appearance and APO Application," (March 13, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from the PRC: 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 the PRC (C-570-989): 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 the PRC: 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 the PRC: 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 the PRC (C-570-989) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from the PRC: 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 China Response to AHSTEC's Comments from April 17, 2013," (April 23, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from China: Comments on COGSI's April 23, 2013, Filing," (April 30, 2013), Letter from Petitioner, "Supplemental Information Support Petitioner's Scope Clarification Request," (May 7, 2013), and Letter AHSTEC, "Comments on COGSI's Revised Scope Clarification Request," (May 14, 2013).

²⁷ 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 (AHSTEC) on April 19, 2013; Countervailing Duty Investigations of Frozen Warmwater Shrimp," (April 19, 2013).

²⁸ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Entries of Appearance and Administrative Protective Order Applications; Interested Party Status Determination," (April 23, 2013).

²⁹ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Administrative Protective Order Applications of AHSTEC," (April 23, 2013).

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).³⁰

B. Period of Investigation

The 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.³¹ On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.³² Further comments on this scope clarification were submitted by AHSTEC and Petitioner.³³

For the reasons explained in "Scope Clarification re Brine-Frozen Shrimp," we preliminarily determine that brine-frozen shrimp are not excluded from this investigation.³⁴

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,³⁵ 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

³⁰ 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).

³¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 78 FR at 5416.

³² See Letter from the Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from the PRC (C-570-989) – Request for Scope Clarification," (March 28, 2013).

³³ See Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from the PRC: 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 the PRC (C-570-989) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from the PRC: Comments On COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013); and Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from the PRC – Response to AHSTEC's Comments from April 17, 2013," (April 23, 2013).

³⁴ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Scope Clarification re Brine-Frozen Shrimp," dated concurrently with this memorandum (Scope Clarification re Brine-Frozen Shrimp).

³⁵ "Tails" in this context refer to the tail fan, which includes the telson and the uropods.

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 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 the PRC 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 the PRC 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*, the PRC.³⁶

VI. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.³⁷ In *CFS from the PRC*, the Department found that

. . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.³⁸

The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.³⁹ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies such as the PRC.⁴⁰ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.⁴¹

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.⁴²

VII. 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

³⁶ 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).

³⁷ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum).

³⁸ See CFS Decision Memorandum at Comment 6.

³⁹ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (*CWP Decision Memorandum*) at Comment 1.

⁴⁰ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

⁴¹ See Public Law 112-99, 126 Stat. 265§ 1(b).

⁴² See, e.g., CWP Decision Memorandum at Comment 2.

Range System.⁴³ The Department notified the respondents of the 12-year AUL in the initial questionnaire and requested data accordingly.⁴⁴ No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied 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. If the amount of the subsidies are greater than 0.5 percent of the relevant sales value, then the benefits received are allocated over a time period corresponding to the AUL pursuant to the methodology described under 19 CFR 351.524(d)(1).

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 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.⁴⁵

⁴³ See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

⁴⁴ See Initial QNR at 19.

⁴⁵ See *Countervailing Duties; Final Rule*, 65 FR 65348, 65348 (Nov. 25, 1998).

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.⁴⁶

As noted above, the Department selected Guolian as a mandatory respondent. In accordance with 19 CFR 351.525(b)(6)(vi), the Guolian Companies provided a response to the Initial QNR on behalf of the following companies:⁴⁷ 1) Guolian, a fully integrated farmer of fresh shrimp and producer/exporter of subject merchandise; 2) Zhanjiang Guolian Feed Co., Ltd. (Guolian Feed), a producer of shrimp feed sold to affiliated parties (such as Guolian) as well as unaffiliated entities; 3) Zhanjiang Guolian Aquatic Fry Technology Co., Ltd. (Guolian Fry), a producer of shrimp fry sold to affiliated parties (such as Guolian) as well as unaffiliated parties; and 4) Zhanjiang Guotong Aquatic Co., Ltd. (Guotong), the largest shareholder of Guolian.⁴⁸

The Guolian Companies reported that Guolian has sole ownership of Guolian Feed and Guolian Fry.⁴⁹ Therefore, we preliminarily determine that Guolian, Guolian Feed, and Guolian Fry are cross-owned with each other within the meaning of 19 CFR 351.525(b)(6)(iv).

Concerning Guotong, as noted above it is the largest shareholder of Guolian. The remainder of Guolian is owned by an investment company; its other shares are publicly traded.⁵⁰ Taken together, Guotong and the investment company own the majority of Guolian. Guotong and the investment company are, in turn, wholly-owned by three individuals from the PRC. Thus, these three individuals own, indirectly, the majority of Guolian. Further, the Guolian Companies responded to the Initial QNR with regard to Guotong.⁵¹ Thus, based on this information, we preliminarily determine that Guotong is cross-owned with Guolian, Guolian Feed, and Guolian Fry within the meaning of 19 CFR 351.525(b)(6)(vi).

In accordance with 19 CFR 351.525(b)(6)(i) and (ii), we have attributed subsidies received by Guolian to the sales of Guolian.

As noted above, Guolian Feed and Guolian Fry provide inputs to Guolian. We find the shrimp feed and shrimp fry Guolian received during the POI from Guolian Feed and Guolian Fry, respectively, constitute inputs that are primarily dedicated to the production of subject merchandise. Thus, in accordance with 19 CFR 351.525(b)(6)(iv), we have attributed subsidies received by Guolian Feed to the combined sales of Guolian Feed and Guolian (excluding intra-company sales) and subsidies received by Guolian Fry to the combined sales of Guolian Fry and Guolian (excluding intra-company sales).

⁴⁶ See *Fabrique de Fer de Carleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴⁷ See Guolian Initial QNR Response at 7-8.

⁴⁸ We refer to these four entities as the Guolian Companies.

⁴⁹ See Guolian Initial QNR Response at Exhibit 2.

⁵⁰ The name of the investment company is proprietary and cannot be disclosed in this memorandum. See Guolian Initial QNR Response at Exhibit 2 for the name of the investment company.

⁵¹ *Id.* at 7 – 8, in which the Guolian Companies state that they provided a questionnaire response with regard to Guotong “in accordance with the Department’s cross-ownership criteria under 19 351.525(b)(6)(vi).”

Concerning Guotong we have attributed subsidies received by Guotong to the consolidated sales of Guotong and its subsidiaries, as provided under 19 CFR 351.525(b)(6)(iii).

Subsidies to Fresh Shrimp Producers: 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, Petitioners 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.

The GOC and the Guolian Companies have disputed Petitioners' claim concerning the applicability of section 771B of the Act.⁵² Specifically, the GOC argues that demand for raw shrimp is not "substantially dependent" on demand for processed shrimp, as evidenced by the fact that the "vast majority" of farmed shrimp in the PRC is sold to wholesalers in the form of fresh and chilled shrimp, as opposed to being sold to entities that process and freeze the shrimp. On this basis, the GOC argues that the condition required under section 771B(1) of the Act is not met.⁵³ Further, the Guolian Companies argue that processing and freezing fresh shrimp adds more than "limited value to the raw commodity," thereby rendering section 771B(2) of the Act inapplicable.⁵⁴

In light of the GOC's statements, the Department instructed the GOC to provide documentation supporting its claim that the "vast majority" (approximately 75 percent) of fresh shrimp is sold to wholesalers in the form of fresh and chilled shrimp.⁵⁵ The Department further instructed the GOC to indicate whether the remaining fresh shrimp (approximately 25 percent) purportedly processed and frozen reflected an input or output ratio.⁵⁶ In response, the GOC provided pages from the PRC's 2012 China Statistical Yearbook for Fishing Industry in support of its claim that approximately 75 percent of the fresh shrimp harvested (by volume) is sold as fresh and chilled shrimp.⁵⁷ The GOC also indicated that the 25 percent ratio referenced in its initial response was an output ratio referring to the "processed quantity of processed shrimp rather than the quantity of products used for processing shrimp."⁵⁸ The Department also instructed the GOC to explain how such a large percentage of shrimp could be destined for sale as fresh or chilled shrimp given that fresh shrimp is a highly perishable product.⁵⁹ In response to this question, the GOC provided the following statement from the Guangdong Province Aquatic Products Processing and Marketing Association:

⁵² See GOC Initial QNR Response at 4 – 7; see also Guolian Initial QNR Addendum at 2.

⁵³ See GOC Initial QNR Response at 6 – 7.

⁵⁴ See Guolian's Initial QNR Addendum at 2, in which proprietary cost of production data are discussed.

⁵⁵ See the Department's April 11, 2013, supplemental questionnaire at 4.

⁵⁶ *Id.*

⁵⁷ See GOC 1st Supp QNR Response Part 2 at 1 and Exhibit S1-B-1.

⁵⁸ *Id.* at 1.

⁵⁹ See the Department's April 11, 2013, supplemental questionnaire at 4.

Large amount of fresh shrimps are transferred to all kinds of wholesale market or farmers market to sell after purchased by agencies or dealers. Oxygen and low temperature of water shall make fresh shrimps live longer. Chilled Shrimps can retain freshness one or two days by placed in foam boxes, covered with crushed ice. The main consumer sites of fresh shrimps are restaurants, hotels, guesthouses and farmers markets.⁶⁰

For purposes of this preliminary determination, we disagree with the GOC's claim that the criterion under section 771B(1) of the Act is not met and, therefore, we find that the GOC has failed to sufficiently substantiate its claims that raw shrimp is not substantially dependent upon the demand for processed shrimp. The 25 percent ratio referenced by the GOC refers to an output ratio (*i.e.*, the volume of shrimp that remains after processing, which, according to the GOC, typically involves the removal of the head, shell, and/or tail, as well as the cleaning and deveining of the shrimp) whereas the 75 percent ratio cited by the GOC refers to the volume of unprocessed fresh/chilled shrimp.⁶¹ As such, we preliminarily determine the 25 percent figure understates the actual proportion, by volume, of raw shrimp that was processed and frozen in China. Further, we find that the general statement from the Guangdong Province Aquatic Products Processing and Marketing Association lacks any supporting documentation and thus, fails to adequately substantiate the GOC's claim that the "vast majority" of fresh shrimp is sold as fresh and chilled shrimp in the PRC despite the product's perishable nature.

Furthermore, in previous proceedings the Department has found that section 771B(1) of the Act applies when a substantial amount of the raw product is produced for further processing.⁶² Concerning subject merchandise, the ITC has previously determined that fresh shrimp is "overwhelmingly" used as an input in the production of frozen shrimp and is "overwhelmingly" sold in processed form.⁶³ The ITC has also previously determined that there is only a minimal market for fresh shrimp given its high degree of perishability, and over 90 percent of fresh warmwater shrimp are processed into frozen shrimp.⁶⁴ Therefore, for purposes of the preliminary determination we find that the criterion under section 771B(1) of the Act has been met.

Further, even if the Department were to accept the GOC's claim that 25 percent of fresh shrimp is ultimately used for processing into frozen shrimp, the Department would, nonetheless, preliminarily determine that the criterion under section 771B(1) of the Act is met on the grounds that a ratio of 25 percent constitutes a demand that is substantially dependent upon the demand for the latter stage (processed) product.

For purposes of this preliminary determination, we also disagree with the Guolian Companies'

⁶⁰ See GOC 1st Supp QNR Response Part 2 at S1-B-2.

⁶¹ *Id.* at 1 – 2.

⁶² See *Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada*, 54 FR 30774, 30775 (July 24, 1989) (*Pork from Canada*).

⁶³ See U.S. International Trade Commission, *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam*, Inv. Nos. 73I-TA-I063, I064, I066-I068 (Review), USITC Pub. 422I (March 2011) (*ITC Shrimp AD Sunset*) at 6.

⁶⁴ See U.S. International Trade Commission, *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 73I-TA-I063-I068 (Preliminary), USITC Pub. 3672 (February 2004) (*Shrimp AD Investigation Prelim*) at I-3.

arguments concerning the applicability of section 771B(2) of the Act. In previous CVD cases, the Department has found the criterion under section 771B(2) of the Act to be satisfied where processing operations did not change the essential character of the raw product and where such operations added limited value to the product, such as 20 to 30 percent of the final product value.⁶⁵ The proprietary cost of production data supplied by the Guolian Companies fall within the percentages examined by the Department in *Rice from Thailand* and *Pork from Canada*.⁶⁶ Furthermore, the ITC has previously found that frozen shrimp at its least processed stage (e.g., cleaned, frozen, and deheaded) “is not substantially different in any physical sense from the fresh product.”⁶⁷ The ITC has also stated that “the initial stages of processing did not significantly change the physical characteristics and uses of the product and appeared to add at most moderate value to the product.”⁶⁸ Therefore, based on this information, we preliminarily determine that the criterion described under section 771B(2) of the Act has been met.

Calculation of Subsidies to Fresh Shrimp Producers: As discussed below in the “Analysis of Programs” section, we are examining subsidies received by Guolian Fry and Guolian Feed. In the instant investigation, we preliminarily determine that section 771B of the Act does not apply to subsidies received by Guolian Fry and Guolian Feed, the cross-owned affiliates of the Guolian Companies that engages in shrimp fry and feed production, respectively. We find that the structural separation of Guolian Fry from the “in-house” farming operation of Guolian suggests that subsidies to fry producers/hatcheries should be treated as upstream subsidies, as described under 19 CFR 351.523, as opposed to being examined under section 771B of the Act.⁶⁹ In this preliminary determination, we have reached the same conclusion as it applies to Guolian Feed. Thus, in applying the methodology described under section 771B of the Act, we have limited our analysis to those subsidies received by Guolian, the arm of the Guolian Companies that engages in farming operations.

The questionnaire response of the Guolian Companies indicates that Guolian obtains a portion of its fresh shrimp from an “in-house” farming operation and, thus, in terms of Gillian’s corporate structure, does not distinguish its processing activities from its farming activities. As a result, the Guolian Companies submitted a single questionnaire response with regard to Guolian.⁷⁰ Thus, in determining the extent to which section 771B of the Act applies with regard to subsidies received by Guolian, we first examined the applicable governing laws as well as any application and approval documents issued to Guolian under each subsidy program at issue.

Under this approach, we did not apply the methodology described under section 771B of the Act for those programs in which Gillian’s receipt of the subsidy was solely contingent upon its shrimp processing operations. Rather, for such programs, in accordance with 19 CFR 351.525(b)(6)(i) and (ii), we attributed subsidies received by Guolian to the sales of Guolian.

⁶⁵ See *Rice From Thailand; Final Results of Countervailing Duty Administrative Review*, 56 FR 68, 69 (January 2, 1991) (*Rice from Thailand*); see also *Pork from Canada*, 54 FR at 30774, 30775.

⁶⁶ See Guolian’s Initial QNR Addendum at 2.

⁶⁷ See *ITC Shrimp Preliminary AD Investigation* at I3.

⁶⁸ See *ITC Shrimp AD Sunset* at 6.

⁶⁹ See Guolian Initial QNR Response at Exhibit 1 and 2, which indicates that Guolian Fry, the entity engaged in hatchery operations, and Guolian, the entity engaged in farming operations and processing operations, exist as separate, corporate entities.

⁷⁰ See Guolian Initial QNR Response at 8.

In those instances in which the relevant law and application forms of the subsidy program at issue do not appear to distinguish between processing and farming activities, we first derived the value of subject merchandise attributable to the volume of fresh shrimp Guolian raised “in-house.” We next divided this derived value by Gillian’s total sales of subject merchandise. We then utilized the resulting ratio as a means of apportioning the benefit attributable to Gillian’s farming and processing operations. Next, we divided the portion of the benefit attributed to Gillian’s farming operations by the volume of fresh shrimp Guolian farmed “in-house” during the POI to arrive at a rate of fresh shrimp subsidization measured in RMB/kilogram. We then multiplied this unit subsidy by the volume of fresh shrimp Guolian obtained from unaffiliated farmers during the POI. In this manner, we derived the subsidy amount attributable to Gillian’s unaffiliated farmers as described under section 771B of the Act. To arrive at the total benefit, we summed the portion of the benefit attributable to Guolian (based on its processing operation), the benefit attributable to Guolian (based on its “in-house” farming operations), and the benefit attributable to Gillian’s unaffiliated fresh shrimp suppliers. Next, we attributed the total subsidy amount to the sales of Guolian, as described under 19 CFR 351.525(b)(6)(i) and (ii).

Under the approach described above, it follows that for those subsidy programs in which Gillian’s receipt of the subsidy was solely contingent upon its status as a shrimp farmer, we would attribute the entire amount of the subsidy to Gillian’s farming operations. In such a situation, we would then calculate a unit subsidy rate by dividing the subsidy amount received by the volume of fresh shrimp produced by Gillian’s “in-house” operation during the POI and then multiply the unit subsidy rate by the volume of fresh shrimp Guolian obtained from unaffiliated farmers during the POI. However, as discussed below in the “Analysis of Programs Section,” we preliminarily determine that Guolian did not receive any subsidies that were solely contingent upon its farming operations. As a result, it was not necessary for us to employ this aspect of our methodology.

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 Preliminarily 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 (or the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient’s total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, see the preliminary calculation memoranda.⁷¹

D. Benchmarks and Discount Rates

The Department is investigating loans received by the Guolian Companies from PRC policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value

⁷¹ *See* Memorandum to the File from John Conniff, “Preliminary Determination Calculation Memorandum ,” (May 28, 2013).

these subsidies is discussed below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.⁷² If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁷³ Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons first explained in *CFS from the PRC*,⁷⁴ the Department finds that loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondent from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate.⁷⁵

We first developed in *CFS from the PRC*⁷⁶ and more recently updated in *Thermal Paper from the PRC*,⁷⁷ the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank’s classification of countries as: low income, lower-middle income, upper-middle income, and high income. As explained in *CFS from the PRC*, the pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.⁷⁸ Beginning with 2010, however, the

⁷² See 19 CFR 351.505(a)(3)(i).

⁷³ See 19 CFR 351.505(a)(3)(ii).

⁷⁴ See CFS Decision Memorandum at Comment 10; see also Memorandum to the File from John Conniff, International Trade Compliance Analyst, AD/CVD Operations, Office 3, regarding “Placement of Banking Memorandum on Record of the Instant Investigation” (May 28, 2013) (Banking Memorandum).

⁷⁵ The use of an external benchmark is consistent with the Department’s practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁷⁶ See CFS Decision Memorandum at Comment 10.

⁷⁷ See *Lightweight Thermal Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum (Thermal Paper Decision Memorandum) at 8-10.

⁷⁸ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to All Interested Parties from John Conniff, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations 8, regarding “Interest Rate Benchmark Memorandum (2001 – 2011)” (Interest Rate Benchmark Memorandum) (May 28, 2013).

PRC is in the upper-middle income category.⁷⁹ This methodology relies on data published by the World Bank and International Monetary Fund.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries’ institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each year from 2001-2009, and 2011, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁸⁰ For 2010, however, the regression does not yield that outcome for the PRC’s income group.⁸¹ We find this contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.⁸²

Many of the countries in the World Bank’s upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency’s international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as “upper middle income” by the World Bank for 2010 and 2011, and “lower middle income” for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.⁸³ Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.⁸⁴ Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

⁷⁹ *Id.*

⁸⁰ *Id.*, and Memorandum to the File from John Conniff, International Trade Compliance Analyst, AD/CVD Operations, Office 3, regarding “Additional Documents for Preliminary Determination” (Additional Documents Memorandum) (May 29, 2012) at Attachment I for Federal Reserve Consultation Memorandum.

⁸¹ See Interest Rate Benchmark Memorandum.

⁸² The Department approach in this regard is consistent with its practice. See, e.g., *See Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*) and accompanying Issues and Decision Memorandum (*Wind Towers Decision Memorandum*) at “Short-Term RMB-Denominated Loans.”

⁸³ For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L’Este reported dollar-denominated rates; therefore, such rates have been excluded.

⁸⁴ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country’s real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁸⁵

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.⁸⁶ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency-Denominated Loans

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

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

Discount Rate Benchmarks

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

⁸⁵ See, e.g., *Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*Rectangular Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Rectangular Pipe Decision Memorandum) at 8.

⁸⁶ See *Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

VIII. Analysis of Programs

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

A. Programs Determined To Be Countervailable

1. Preferential Lending to Shrimp Producers by the Central Government and Province of Guangdong

The Department has examined whether producers of frozen shrimp receive preferential lending through state-owned or controlled banks (SOCBs) or policy banks. According to the allegation, preferential lending to frozen shrimp producers is supported by the GOC and the Provincial Government of Guangdong (PGOG) through the issuance of national and provincial five-year plans, industrial plans for the aquaculture sector, and catalogues in which encouraged industries are identified. Based on our review of the responses and documents provided by the GOC, we determine that loans received by producers of frozen shrimp from SOCBs and policy banks were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the shrimp industry. At the national level, the GOC has identified specific products selected for development. For example, the *2005 Directory Catalogue on Readjustment of Industrial Structure (Encouraged Industries Catalogue for 2005)*, identifies “aquatic animals” as an “encouraged” product category.⁸⁷ The GOC once again identified “aquatic animals” as well as the “intensive processing of aquatic products” as “encouraged” product categories in the *2011 Directory Catalogue on Readjustment of Industrial Structure (Encouraged Industries Catalogue for 2011)*.⁸⁸

Further, the GOC implemented the *Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation* (No. 40 (2005)) (*Decision 40*) to assist “encouraged” industries that are listed in the *Encouraged Industries Catalogues for 2005 and 2011*.⁸⁹ For example, Article 12 of *Decision 40* states:

The “Catalogue for the Guidance of Industrial Structure Adjustment” is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.⁹⁰

Further, Article 17 of *Decision 40* states:

⁸⁷ See GOC Initial QNR Response at Exhibit O-I.A.2.a.

⁸⁸ *Id.* at Exhibit O-I.A.2.b.

⁸⁹ See GOC Supp QNR Response Part 2 at Exhibit S1-B-9, which contains *Decision 40*.

⁹⁰ *Id.*

The encouraged investment projects shall be examined, approved, ratified or archived in accordance with the relevant provisions of the state on investment administration. *All financial institutions shall provide credit supports in compliance with credit principles.* The equipment shall be imported within the total amount of investments for the importer's own use. Except for the commodities listed in the “Catalogue of Non-tax Free Imported Commodities for Domestic Investment Projects (Amended in 2000)” promulgated by the Ministry of Finance, the abovementioned equipment shall still be exempted from customs duties and import value-added tax, and shall, after the new provisions such as the catalogue of investment projects exempted from no tax have been promulgated, be governed by such new provisions. As for other preferential policies on encouraged industry projects, the relevant provisions of the state shall apply.⁹¹

In addition, the 11th and 12th Five Year Development Plans for the National Fishery, issued by the GOC in 2006 and 2011, discuss financial support that is to be provided to aquaculture producers.⁹² For example, the 11th Five Year Fishery Plan under the heading “Establishing a diversified investment mechanism and improving the fishery development foundation,” states the following:

Actively seek special inputs: Emphasize on the implementation of “Action Plan for Cultivation and Conservation of Aquatic Biological Species Resources of China,” and *actively seek national financial support* in the exploratory fishing, monitoring, ranching and resource enhancement of fishery resources, the protection of aquatic wild creatures, the monitoring of ecological environment of fishing waters, the ecological disaster prevention of fishing waters, the ecological restoration and other public goods, to providing a financial support in the fishery development.

Encourage multi-channel financing: *Fully play the demonstration role, instruction role and controlling role of the national investment, insist in both guiding by the government investment and pushing forward by marketplace, fully use market economic means to guide bank loans, corporate funds, individual donors, national aids and other social funds to join in the fishery development and resources and environment protection, form a new diversified and benefit shared investment system, and expand the total funds of fishery development.*⁹³

Concerning the 12th Five Year Fishery Plan, under the heading “Improving Industrial Supporting Policies,” it states:

The state will increase the financial support to the construction of modern fishery; try to ensure that financial investment growth in fishery is not less than that of agriculture; motivate all social parts to provide investment to fishery and enhance the support to offer microfinance to fishery; explore the mortgage, pledge and circulation of certificate of culture rights and fishing rights; increase the support to offer credit to fishing operator

⁹¹ *Id.* (emphasis added).

⁹² See GOC Initial QNR Response at Exhibit at O-I.A.3.a and O-I.A.3.b, which contain the 11th Five Year Fishery Plan and 12th Five Year Fishery Plan, respectively.

⁹³ See GOC 2nd Supp QNR Response at Exhibit S2-1 at 9 (emphasis added).

and promote the formation of pluralistic, multi-channel investment and financing pattern for fishery; broaden categories of fishery machinery products which are eligible for subsidies and intensify such subsidies; promote the inclusion of fishery insurance in the scope of national agricultural policy insurance; establish a stable security system against fishery risk as quickly as possible; promote fishery to enjoy comprehensive agricultural preferential policies, inter alia, in terms of taxation, water, electricity and land, etc.; to include fisheries infrastructure construction is included in the overall planning of agricultural and rural development as well as quality and efficient agricultural production bases land improvement, irrigation and water conservancy facilities renovation project. Actively promote the fishermen using boat for home to make ashore settle and help to make allowance to the fishermen for their difficulties during the fishing moratorium and fishing ban period, and to promote the development of social undertakings in the field of fisheries.⁹⁴

As noted in *Citric Acid from the PRC*, in general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals.⁹⁵ Where such plans or policy directives exist, then it is the Department's practice to determine that a policy lending program exists that is specific to the named industry (or producers that fall under that industry).⁹⁶ Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC* to further conclude that national and local government control over the SOCBs result in the loans being a financial contribution by the GOC.⁹⁷ Therefore, on the basis of the record information described above, we determine that the GOC has a policy in place to encourage the development of the production of frozen shrimp through policy lending.

The Guolian Companies reported that Guolian, Guotong, and Guolian Feed had outstanding loans from PRC-based banks during the POI. Consistent with our determinations in prior proceedings, we find these PRC-based banks to be SOCBs. We determine that the loans to aquaculture producers, such as shrimp producers, from SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act). We further preliminarily determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the aquatic industry.

To determine whether a benefit is conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest Guolian, Guotong, and Guolian Feed paid on their outstanding loans to the

⁹⁴ See GOC Initial QNR Response at Exhibit O-I.A.3.b, Item VII.2.

⁹⁵ See *Citric Acid D Decision Memorandum* at Comment 5.

⁹⁶ See *CFS Decision Memorandum* at Comment 8; see also *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (*LWTP Decision Memorandum*) at "Government Policy Lending Program."

⁹⁷ See *CFS from the PRC Decision Memorandum* at Comment 8.

amount they would have paid on comparable commercial loans.⁹⁸ In conducting this comparison, we used the interest rates described in the “Benchmarks and Discount Rates” section above.

Based on our preliminary review of the industrial plans discussed above, we find that benefits provided under this program are not solely contingent upon aquatic processing or farming activities.⁹⁹ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Attribution” section of this memorandum.

To calculate the net subsidy rate, we then divided the benefit by total sales, as described in the “Attribution of Subsidies” section. On this basis, we determine a countervailable subsidy of 2.92 percent *ad valorem* for the Guolian Companies under this program.

2. Central Government, Provincial, and Municipal Grants Under the Famous Brands Program

The Famous Brand program is administered at the central, provincial, and municipal government level. During the POI, Guolian, Guolian Feed, and Guotong reported receiving grants under the Famous Brand program from the municipal government of Zhanjiang.¹⁰⁰

We preliminarily determine that the grants received under the famous brand program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

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. In *Extrusions from the PRC*, the Department determined that though the program is operated at the local level, the *Measures for the Administration of Chinese Top-Brand Products*, as issued by the GOC, state that firms applying for grants under the Famous Brands program are required to provide information concerning their export ratio as well as the extent to which their product quality meets international standards.¹⁰¹ Further, Article 10.4 of the *Measures for the Administration of Chinese Top-Brand Products* lists circumstances that will disqualify firms from receiving the famous brands designation. Among the circumstances is the following: “exported commodities failed in the inspection, or their exported products were subject to

⁹⁸ See 19 CFR 351.505(a).

⁹⁹ See, e.g., GOC Initial QNR Response at Exhibit O-I.A.2.b containing the *Encouraged Industries Catalogue for 2011*, which identifies “aquatic animals” as well as the “intensive processing of aquatic products” as “encouraged” product categories; see also GOC 2nd Supp QNR Response at Exhibit S2-1 at 9, containing the *11th Five Year Fishery Plan*, and GOC Initial QNR Response at Exhibit O-I.A.3.b, Item VII.2, containing the *12th Five Year Fishery Plan*, both of which to financial support to be provided for fishery development.

¹⁰⁰ See Guolian Initial QNR Response at 25.

¹⁰¹ See *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2013) (*Extrusions from the PRC*) and accompanying Issues and Decision Memorandum (Extrusions Decision Memorandum) at 18, citing to Chapter 3 of the “Measures for the Administration of Chinese Top-Brand Products.” The GOC included Chapter 3 of the “Measures for the Administration of Chinese Top-Brand Products” in its supplemental questionnaire response. See GOC 1st Supp QNR Part 2 at S1-B-10A.

foreign claim for compensation in the last three year.”¹⁰² Therefore, we preliminarily determine that grants provided to Guolian, Guolian Feed, and Guotong under the famous brands program are contingent on export activity because export activities are among the conditions examined by Chinese central, provincial, and municipal governments when determining eligibility under the program. Accordingly, we find that the program is specific under section 771(5A)(A) and (B) of the Act. Our approach in this regard is consistent with the Department’s findings in prior CVD proceedings involving the PRC.¹⁰³

To calculate the benefit from the grants, we first applied the “0.5 percent expense test” as described in the “Allocation Period” section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. For grant amounts that exceeded the 0.5 percent threshold, we allocated the benefits over the 12-year AUL using the methodology described under 19 CFR 351.524(d)(1).

Based on our preliminary review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹⁰⁴ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Attribution” section of this memorandum.

We then divided the benefit, allocated to the POI, by total export sales, as described in the “Attribution of Subsidies” section. On this basis, we determine a countervailable subsidy of 0.05 percent *ad valorem* for the Guolian Companies under this program.

3. Value-Added (VAT) Exemptions on Imports of Shrimp Fry

Pursuant to the Circular of Ministry, General Administration of Customs and State Administration of Taxation on Printing Measures for the Tax Exemption Policy on the Importation of Seed Sources During the “Twelfth Five-Year Plan” Period (Cai Guan Shui (2011) No. 76), the GOC provides VAT exemptions for imports of certain agricultural and forestry products.¹⁰⁵ The GOC states that the program is designed to support and develop agricultural and forestry products.¹⁰⁶ According to the GOC, only enterprises that import qualified seeds (seedlings), breeding stock (poultry), and fingerlings (fry) may receive the VAT exemptions provided under the program.¹⁰⁷ During the POI, Guolian and Guolian Fry used the program to import shrimp broodstock (*i.e.*, male and female adult shrimp used for breeding) that were exempt from VAT.¹⁰⁸

¹⁰² See GOC 1st Supp QNR Part 2 at S1-B-10A.

¹⁰³ See *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

¹⁰⁴ See Guolian Initial QNR Response at Exhibit 14, containing its application for grants under the program, *see also* Guolian 1st Supp QNR Response at Exhibit S1-2, containing Gillian’s application for designation as a famous brand.

¹⁰⁵ See GOC Initial QNR Response at 48.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 53.

¹⁰⁸ See Guolian Initial QNR Response at 34.

The GOC argues that this program does not result in any revenue forgone because VAT collected on items at the time of importation will be returned to firms in the form of export tax rebates when the items are incorporated into exported products. Thus, according to the GOC, the tax burden for firms is the same with respect to exported goods regardless of whether firms use the VAT exemption program.¹⁰⁹

We disagree with the GOC's characterization of this program. Under this program, certain enterprises, as described above, are afforded VAT exemptions on imported items regardless of whether the items are ultimately incorporated into an exported product.¹¹⁰ Thus, it cannot be said that the program results in the same tax burden with regard to all firms because firms in the PRC who receive the VAT exemption may not necessarily re-export all inputs imported into the country. Thus, we preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and confers a benefit under section 771(5)(E). We further preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act because the VAT exemptions are limited to firms that import qualified seeds (seedlings), breeding stock (poultry), and fingerlings (fry).

Pursuant to 19 CFR 351.510(a) and (b)(1), we find that the benefit is equal to the amount VAT exemptions received by Guolian and Guolian Fry during the POI.

Based on our preliminary review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹¹¹ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the "Attribution" section of this memorandum.

Next, we divided the benefit by total sales, as described in the "Attribution of Subsidies" section. On this basis, we determine a countervailable subsidy of 0.08 percent *ad valorem* for the Guolian Companies under this program.

¹⁰⁹ See GOC Initial QNR Response at 47.

¹¹⁰ See GOC Initial QNR Response at 48 and Exhibit O-IV.A.1.a.

¹¹¹ See Guolian Initial QNR Response at Exhibit 17, containing Gillian's application under the program.

4. VAT Refunds for Foreign Invested Enterprises (FIEs) on Purchases of Chinese-Made Equipment

Under this program, the GOC refunds VAT paid by FIEs for the purchase of domestically produced equipment provided that the equipment does not fall into the non-duty-exemptible catalogue and the value of the equipment does not exceed the total investment limit of an FIE, as provided under the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs (GOUSHUIFA (1999) No. 171).¹¹² According to the GOC, the program is designed to promote the use of domestically produced equipment by FIEs.¹¹³ The GOC states that the program was discontinued effective January 1, 1999, pursuant to the Circular of Ministry of Finance and the State Administration of Taxation on the Discontinuation of the Rebate Policy on the Purchase of Domestically Manufactured Equipment by Foreign Invested Enterprises (CAISHUI (2008) No. 176). The Guolian Companies reported receiving VAT exemptions under this program in years between the December 11, 2001, “cut-off” date and December 31, 2010.¹¹⁴

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(i) of the Act and confers a benefit under section 771(5)(E) of the Act. We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is consistent with the Department’s practice.¹¹⁵

Normally, we treat exemptions from VAT as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when a VAT exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.¹¹⁶ Since the VAT exemptions under this program are tied to production equipment, we find that they are tied to the Guolian Companies’ capital assets. Therefore, we are examining the import tariff exemptions that the Guolian Companies received under the program from December 11, 2001 (the “cut-off” period) through the end of the POI.

To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment by the VAT rate that would have been levied absent the program. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. Next we performed the “0.5 percent test” on the sum of the VAT exemptions received in each year. Exemption amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. For exemption amounts that exceeded the 0.5 percent threshold, we allocated the benefits over the 12-year AUL using the methodology described under 19 CFR 351.524(d)(1).

Based on our preliminary review of the application forms Guolian submitted to the GOC under

¹¹² See GOC Initial QNR Response at 56.

¹¹³ *Id.*

¹¹⁴ See Guolian Initial QNR Response at 37.

¹¹⁵ See CFS Decision Memorandum at Comment 14.

¹¹⁶ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹¹⁷ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Attribution” section of this memorandum.

We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section. On this basis, we determine a countervailable subsidy of 0.33 percent *ad valorem* for the Guolian Companies under this program.

5. VAT and Import Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. Guolian, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment prior to and during the POI.¹¹⁸

We determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and confer a benefit in the amount of the VAT and tariff savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program; therefore, we further determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. Our findings in this regard are consistent with the Department’s prior decisions.¹¹⁹

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the

¹¹⁷ See Guolian Initial QNR Response at Exhibit 20, containing Gillian’s application under the program.

¹¹⁸ See Guolian Initial QNR Response at 40.

¹¹⁹ See e.g., CFS Decision Memorandum at Comment 16; see also *Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (*Citric Acid Decision Memorandum*) at “VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.”

AUL.¹²⁰ Therefore, because these exemptions are for capital equipment, we have examined the VAT and tariff exemptions that Guolian received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases.¹²¹ Next, we summed the amount of duty and VAT exemptions received in each year. We then divided the total amount of annual VAT and tariff exemptions by the corresponding total sales for year in which the exemptions were received. Those exemptions that were less than 0.5 percent of total sales were expensed to the year of receipt. Those exemptions that were greater than 0.5 percent of total sales were allocated over the AUL using the methodology described under 19 CFR 351.524(d)(2).

Based on our preliminary review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹²² Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the "Attribution" section of this memorandum.

We then divided the benefit, allocated to the POI, by total sales, as described in the "Attribution of Subsidies" section. On this basis, we determine the countervailable subsidy to be 0.15 percent *ad valorem* for the Guolian Companies.

6. Enterprise Income Tax Reduction for High and New Technology Enterprises (HNTEs)

Under Article 28.2 of the Enterprise Income Tax Law (EITL) (Decree No. 63), the income tax a firm pays is reduced to 15 percent if an enterprise is recognized as a High and New Technology Enterprise (HNTE).¹²³ The *Administrative Measures for Certification of New and High Technology Enterprises (New and High-Technology Administrative Measures)*, in turn, specify the new and high technology products that are eligible to receive the tax benefit provided under Article 28.2 of the EITL.¹²⁴ Specifically, article 10, item 2 of the *New and High-Technology Administrative Measures* indicate that only firms whose products are designated as being in "hi-tech fields with state support" are eligible to receive the tax benefit.¹²⁵

The Guolian Companies state that Guolian paid a reduced income tax rate on the tax return it

¹²⁰ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1).

¹²¹ See, e.g., *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) (*Lined Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Line Pipe Decision Memorandum) at Comment 8 ("... we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties").

¹²² See Guolian Initial QNR Response at Exhibit 23, containing Gillian's application under the program.

¹²³ See GOC NSA QNR Response at 2.

¹²⁴ *Id.* at Exhibit N-B.1.a.

¹²⁵ *Id.*

filed during the POI, in accordance with Article 28.2 of the EITL. Specifically, Guolian paid an income tax rate of 15 percent on the tax return it filed during the POI rather than the standard rate of 25 percent.¹²⁶

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone by the GOC and confers a benefit in the amount of the tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, firms whose products are designated as being in “high-tech fields with state support,” and, hence, is specific under section 771(5A)(D)(i) of the Act.¹²⁷ Our findings in this regard are consistent with the Department’s practice.¹²⁸

We calculated the benefit as the difference between the taxes Guolian would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return it filed during the POI, as provided under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

Based on our preliminary review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹²⁹ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Attribution” section of this memorandum.

We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section. On this basis, we calculated a net subsidy rate of 0.84 percent *ad valorem* for the Guolian Companies.

7. Tax Incentives for Enterprises Engaged in Aquaculture and Processing

Under Article 27.1 of the EITL, “income from engaging in projects of agriculture, forestry, animal husbandry, and fisheries may be subject to exempted or reduced income tax.”¹³⁰ There is a companion regulation issued by the GOC that implements the policies in Article 27.1 of the EITL.¹³¹ The Guolian Companies state that Guolian and Guolian Fry paid a reduced income tax

¹²⁶ See Guolian NSA QNR Response at 5-6.

¹²⁷ See GOC NSA QNR Response at Exhibit N-B.1.a.

¹²⁸ See *Certain Steel Wheels From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (Steel Wheels Decision Memorandum) at “Income Tax Reductions under Article 28 of the Enterprise Income Tax Law.”

¹²⁹ See GOC NSA QNR Response at Exhibit N-B.1.a, containing *New and High-Technology Administrative Measures*, see also Guolian NSA QNR Response at Exhibit N2, containing the application form Guolian submitted under the program.

¹³⁰ See GOC Initial QNR Response at 32.

¹³¹ See GOC’s 1st Supp QNR Response Part 2 at 3 and Exhibit S1-B-8, which contains the *Notice on the Scope of the Agricultural Products Preliminary Processing Eligible for Enterprise Income Tax Preferential Policies* (Cai Shui (2008) No. 149) (November 20, 2008) (*Implementing Regulations of Article 27.1*).

rate on the tax return it filed during the POI, in accordance with Article 27.1 of the EITL.¹³² We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone by the GOC and confers a benefit in the amount of the tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. Concerning specificity, we note that the *Implementing Regulations of Article 27.1* indicate that only certain subsets of various “processed” agricultural products are eligible to receive benefits under the program. For example, concerning the aquaculture industry, the *Implementing Regulations of Article 27.1* state that only the following are eligible for benefits:

The primary products of aquatic made through such simple processing of aquatic (fish, shrimp, crab, turtle, shellfish, echinoderm, mollusk, coelenterate, amphibian, marine animal, etc.) of the whole or parts (after removing the head, scale, skin, shell, viscera, bone or fishbone, kneading or cutting into blocks or slices) as preserving and embalming (e.g., chilling, freezing, refrigerating), and packaging.¹³³

The *Implementing Regulations of Article 27.1* further indicate that “Cooked aquatic products, various canned aquatic products and the aquatic food after being flavored and roasted” are “not included the scope of primary processing,” and, thus, not eligible for benefits under the program.¹³⁴ Therefore, based on the information in the *Implementing Regulations of Article 27.1*, we preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., a subset of firms engaged in certain agricultural processing activities, and, hence, is specific under section 771(5A)(D)(i) of the Act.

We calculated the benefit as the difference between the taxes Guolian and Guolian Fry would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the program, as reflected on the tax return it filed during the POI, as provided under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

Based on our preliminary review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are solely contingent upon processing of aquatic products.¹³⁵ Therefore, we preliminarily determine that the methodology described under section 771B of the Act does not apply with regard to this program.

We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section. On this basis, we calculated a net subsidy rate of 1.21 percent *ad valorem* for the Guolian Companies.

¹³² See GOC Initial QNR Response at 33-34; see also Guolian Supp QNR Response Part 1 at 2.

¹³³ See GOC 1st Supp QNR Response Part 2 at Exhibit S1-B-8, Category III.1 of the *Implementing Regulations of Article 27.1*.

¹³⁴ *Id.*

¹³⁵ See GOC 1st Supp QNR Response Part 2 at Exhibit S1-B-8, Category III.1 of the *Implementing Regulations of Article 27.1*.

8. Central Government Grants in Connection With the Zhanjiang Gillian's Penaeus Vannamei Boone (aka White Shrimp) Processing Project

The GOC states that it provides funds under this program to develop agricultural resources and support agricultural development. At the national level the program is administered by the National Agricultural Development Office while the Agricultural Development Office of Zhanjiang Bureau of Finance administers the program at the local level.¹³⁶ The two measures that govern the program are the Interim Measure for the Administration of National Agricultural Comprehensive Development Projects and Funds (Interim Measures for Agricultural Development) and the Measures for the Administration of National Agricultural Comprehensive Development Funds and Projects (Measures for Agricultural Development).¹³⁷ The Guolian Companies report that Guolian received funds under this program in years prior to the POI.¹³⁸

We preliminarily determine that the grants Guolian received under the program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

Concerning specificity, in its initial questionnaire response, the GOC did not provide data concerning the manner in which grants under the program were provided, stating that it “does not maintain such statistics.”¹³⁹ In our supplemental questionnaire, we asked the GOC explain why it was able to provide usage data for the Guolian Companies but unable to provide aggregated benefit disbursement data for all other grant recipients under the program.¹⁴⁰ In its response, the GOC stated that it was unable to provide the requested *de facto* specificity data because the program is administered and the records are maintained by local offices of the Ministry of Finance (MOF), of which there are more than 1000 such offices in the PRC, and the MOF does not maintain such information in the ordinary course of business.¹⁴¹

We find that the GOC has failed to adequately explain why it is unable to provide aggregated benefit disbursement data for grant recipients under the program, data that are in the GOC's possession, as evidenced by the fact that the GOC “maintained the relevant application and approval documents” of the Guolian Companies and was able to determine the amount of grants provided to the Guolian Companies over the course of several years.¹⁴² As a result, we preliminarily determine that the GOC has failed to act to the best of its ability and, therefore, pursuant to section 776(b) of the Act we are assuming as adverse facts available (AFA) that the grants provided to Guolian Companies are *de facto* specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit from the grants, we first applied the “0.5 percent expense test” as described in the “Allocation Period” section above. Grants amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. For grants amounts that exceeded

¹³⁶ See GOC NSA QNR Response at 23-24.

¹³⁷ *Id.* at Exhibit ND.1.a and Exhibit ND.1.b, respectively.

¹³⁸ See Guolian NSA QNR Response at 12.

¹³⁹ See GOC NSA QNR Response at 30 – 31.

¹⁴⁰ See the Department's April 11, 2013, supplemental QNR issued to the GOC at 5.

¹⁴¹ See GOC 1st Supp QNR Response Part 2 at 6.

¹⁴² See GOC NSA QNR Response at 25 and 33.

the 0.5 percent threshold, we allocated the benefits over the 12-year AUL using the methodology described under 19 CFR 351.524(d)(1). We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section.

Based on our preliminary review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹⁴³ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Attribution” section of this memorandum.

On this basis, we determine a countervailable subsidy of 0.18 percent *ad valorem* for the Guolian Companies under this program.

B. Program Preliminarily Determined Not to Confer a Benefit During the POI

1. Grants Under the Guangdong Province Coastal Region Fishermen’s Job Transferring Bill Fishery Industry Development Project Fund

The GOC states that it established this program after agreement between the PRC and Vietnam in 2000 regarding the delimitation of the territorial seas between the two countries in the Beibu Gulf area. The GOC states that under this agreement, 32 thousand square kilometers of fishing area, formerly within the PRC’s territory, were eliminated, which in turn, displaced several thousand Chinese fisherman that traditionally operated in the Beibu Gulf area. Thus, in November 2003, the GOC enacted a program that would provide financing incentives for fishing enterprises to employ fishermen whose livelihoods were affected by the 2000 agreement reached between the PRC and Vietnam.¹⁴⁴ The program is administered by the Administration of Ocean and Fisheries of Guangdong Province, Administration of Ocean and Fisheries of Zhanjiang City, and Zhanjiang Bureau of Finance.¹⁴⁵ The GOC provided the relevant legislation in its NSA QNR Response.¹⁴⁶ The Guolian Companies reported that Guolian received grants under this program in years prior to the POI.¹⁴⁷

We applied the “0.5 percent expense test,” as described in the “Allocation Period” section above, to the grants that Guolian received under this program. In conducting the “0.5 percent” test, we used Gillian’s total sales. Further, we conducted the “0.5 percent” test based on our preliminary

¹⁴³ See Guolian NSA QNR Response at Exhibit N5, containing the application form Guolian submitted under the program.

¹⁴⁴ See GOC NSA QNR Response at 13-14.

¹⁴⁵ *Id.*

¹⁴⁶ See GOC NSA QNR Response at Exhibit NC.1.a, which contains the *Circulation for Forwarding the Resolution of the Standing Committee of Guangdong Provincial People’s Congress Concerning the Proposal on Supporting Fisherman Fishing Job and Industrial Production Transfer of Coastal Areas and Maintaining Fishing Area Stability* (YeuFu (2003) No. 97) (*Circulation for Fishing Job and Industrial Production Transfer*); see also Exhibit NC.1.b, containing the *Notification of the General Office of Guangdong Provincial People’s Government on Forwarding the Methods of Implementation of the Proposal of the Provincial Administration of Ocean and Fisheries Concerning Supporting Fishing Job and Industrial Production Transfer of Fishermen Along the Coastal Areas and Maintaining Fishing Zone Stability* (Yeu Fu Ban (2004) No. 85) (*Notification for Fishing Job and Industrial Production Transfer*).

¹⁴⁷ See Guolian NSA QNR Response at 8.

finding that benefits under the program are solely contingent upon processing of aquatic products. Our preliminary finding in this regard is based on our review of the legislation for the program.¹⁴⁸ Therefore, we preliminarily determine that the methodology described under section 771B of the Act does not apply with regard to this program.

The Grants amounts approved under the program did not exceed the 0.5 percent threshold and, thus, we expensed the grant amounts received in the years of receipt, all of which were prior to the POI. As a result, we preliminarily determine that grants under this program did not confer a benefit during the POI.

C. Programs Preliminarily Determined to be Not Used

1. Central Government Provision of Loan Guarantees at the Zhanjiang City Seafood Center
2. Export Sellers Credits from China Export-Import Bank (China ExIm)
3. Export Buyers Credits from China Export-Import Bank (China ExIm)
4. Guangdong Province Funds for Enterprise Outward Expansion
5. State Key Renovation Project Fund Program
6. Grants Under the Healthy Development of the Aquaculture Industry Program
7. Grants by the Central Government and the Zuzhou District Government in Connection with Construction of Fishery Industry Zones and Farms
8. Grants from the Huanhua City Government for Fry Breeding
9. Central Government Grants Under the 2010 Aquatic Products Quality and Safety Supervision Program
10. Government Grants for Fishery Machinery and Equipment Purchases
11. Grants from Banfu County Government for Development of Breeding Stock
12. Two Free, Three Half Program
13. Export Oriented FIEs
14. Tax Refund for Profit Reinvestment in Export-Oriented Enterprises
15. Tax Incentives for FIEs in Special Economic Zones
16. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment
17. Central Government Provision of Rent for Less than Adequate Remuneration (LTAR) and Waiver of Management Fees at the Zhanjiang City Seafood Center
18. Central Government Provision of Cold Storage Services at the Zhanjiang City Seafood Center for LTAR
19. Export Credit Insurance from Sinasure

IX. CALCULATION OF THE ALL OTHERS RATE

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a countervailable subsidy rate for the producer/exporter of the subject merchandise individually investigated. With respect to the all-others rate, section 705(c)(5)(A)(i) of the Act provides that the all others rate shall be an amount equal to the weighted average countervailable subsidy rate established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable

¹⁴⁸ See GOC NSA QNR Response at Exhibit NC.1.a, containing the *Circulation for Fishing Job and Industrial Production Transfer*; see also Exhibit NC.1.b, containing the *Notification for Fishing Job and Industrial Production Transfer*.

subsidy rates, and any rates determined entirely under section 776 of the Act. Thus, in accordance with section 705(c)(5)(A)(i) of the Act, the all others rate is 5.76 percent *ad valorem*, which is the net subsidy rate calculated for the Guolian Companies. Our approach in this regard is consistent with the Department's practice.¹⁴⁹

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.

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.¹⁵⁰ 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.¹⁵¹ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, maybe 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.¹⁵² 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*.¹⁵³ 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,

¹⁴⁹ See *Ni-Resist Piston Inserts from Argentina: Final Affirmative Countervailing Duty Determination*, 74 FR 47922, 47923 (September 18, 2009).

¹⁵⁰ See 19 CFR 351.224(b).

¹⁵¹ See 19 CFR 351.309.

¹⁵² See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵³ See 19 CFR 351.310(c).

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.¹⁵⁴ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁵⁵ 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.

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)

¹⁵⁴ See 19 CFR 351.303(b)(2)(i).
¹⁵⁵ See 19 CFR 351.303(b)(1).