



C-549-828

Investigation

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May 28, 2013

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

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

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

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain frozen warmwater shrimp (frozen shrimp) in Thailand, 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 (COGSI or Petitioner)¹ filed a petition with the Department seeking the imposition of countervailing duties (CVDs) on frozen shrimp from, *inter alia*, Thailand.² Supplements to the petition and our consultations with the

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 petition).



Royal Thai Government (RTG) are described in the Initiation Checklist.³ On January 17, 2013, the Department initiated a CVD investigation on frozen shrimp from Thailand.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 (APO).⁵

We received respondent selection comments from Petitioner;⁶ Marine Gold Products Ltd. (Marine Gold); Pakfood Public Company Limited (Pakfood); Thai Royal Frozen Food Co., Ltd. (Thai Royal); Thai Union Frozen Products Public Co, Ltd. (Thai Union);⁷ and Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Sea Wealth Frozen Food Co., Ltd., and Rubicon Resources (collectively, the Rubicon Group).⁸ On February 13, 2013, we selected Thai Union and Marine Gold as mandatory respondents.⁹ On March 25, 2013, in response to a request from Thai Royal,¹⁰ we stated that we would not examine Thai Royal or any other company as a voluntary respondent.¹¹

We sent our CVD questionnaire seeking information regarding the alleged subsidies on February 14, 2013.¹² Based on our review of the response to that questionnaire, on April 4, 2013, we requested that Thai Union provide responses to the full questionnaire with respect to five additional affiliated companies: Thai Union Graphic Co., Ltd. (Thai Union Graphic), Thai Union Feedmill Co., Ltd. (Thai Union Feedmill), Thai Quality Shrimp Co., Ltd. (Thai Quality Shrimp),

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

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 Letter from Petitioner, “Countervailing Duty Investigation Regarding Certain Warmwater Frozen Shrimp from Thailand (C-549-828) – COGSI’s Comments on Respondent Selection,” (February 1, 2013).

⁷ See Letter from Marine Gold, Pakfood, Thai Royal, and Thai Union, “Frozen Warmwater Shrimp CVD Investigation from Thailand: Respondent Selection Comments,” (February 1, 2013).

⁸ See Letter from the Rubicon Group “Certain Frozen Warmwater Shrimp from Thailand,” (February 1, 2013).

⁹ See Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: Respondent Selection Analysis,” (February 13, 2013). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

¹⁰ See Letter from Thai Royal, “Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to Questionnaire and Request for Voluntary Treatment,” (February 20, 2013). Prior to this preliminary determination, Thai Royal repeated its request to be treated as a voluntary respondent; see Letter from Thai Royal, “Frozen Warmwater Shrimp CVD Investigation from Thailand: Respondent Selection Comments,” (May 20, 2013).

¹¹ See Department Memorandum, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand: Voluntary Respondent Request,” (March 25, 2013).

¹² See Letter from Department to the RTG, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand,” (February 14, 2013).

Thai Union Hatchery Co., Ltd. (Thai Union Hatchery), and Ekawat Products Co., Ltd. (Ekawat Products).¹³

For the reasons explained in the *Initiation Notice*, we determined to include in this investigation subsidies allegedly provided to producers of fresh shrimp as well as to producers of frozen shrimp. Thus, we also sent questionnaires to the mandatory respondents seeking information about their suppliers of fresh shrimp.¹⁴ Based on the responses we received,¹⁵ we identified as an additional mandatory respondent Mr. Chao Kara, a shrimp farmer who supplied shrimp to Thai Union Seafood Co., Ltd. (Thai Union Seafood), a subsidiary of Thai Union; we also identified as an additional mandatory respondent Srisubanfarm Co., Ltd. (Srisubanfarm), a shrimp farming company that supplied shrimp to Marine Gold.¹⁶

On February 13, 2013, Petitioner filed its first set of new subsidy allegations (NSAs).¹⁷ The Department determined to investigate one of the newly alleged subsidies¹⁸ and sent new subsidy questionnaires on March 21, 2013.¹⁹ On March 26, 2013, Petitioner requested that the Department reconsider its determination not to investigate alleged value-added tax (VAT) exemptions (included among Petitioner's first set of NSAs);²⁰ Petitioner revised its allegation and provided additional information in support.

¹³ See Letter from Department to Thai Union, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: Request for Responses to the Full Questionnaire with Regard to Affiliates of Thai Union Frozen Products Public Co., Ltd. (Thai Union)," (April 4, 2013). We also requested information regarding these companies from the RTG. See Letter from Department to the RTG, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: Request for the Questionnaire for Affiliates of Thai Union Frozen Products Public Co., Ltd. (Thai Union)," (April 4, 2013).

¹⁴ See Letter from Department to Thai Union, "Countervailing (CVD) Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand: Questionnaire on Sources of Fresh and Frozen Shrimp," (February 13, 2013); Letter from Department to Marine Gold, "Countervailing (CVD) Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand: Questionnaire on Sources of Fresh and Frozen Shrimp," (February 13, 2013).

¹⁵ See Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to Questionnaire," (February 20, 2013) (Thai Union corrected some information in this submission on March 1, 2013; see Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Revised Response to Questionnaire; this revised information had no effect on the outcome of our analysis); Letter from Marine Gold, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to Questionnaire," (February 20, 2013).

¹⁶ See Letter from Department to Marine Gold and Thai Union, "Countervailing Duty Investigation of Certain Warmwater Frozen Shrimp from Thailand: Directions Concerning Responding to the Questionnaire with Regard to Alleged Subsidies Provided to Fresh Shrimp Suppliers of Marine Gold Ltd. (Marine Gold) and Thai Union Frozen Products Public Co., Ltd. (Thai Union)," (March 14, 2013).

¹⁷ See Letter from Petitioner, "Countervailing Duty Investigation Concerning Certain Frozen Warmwater Shrimp from Thailand (C-549-828): COSGI's New Subsidy Allegations" (February 13, 2013).

¹⁸ See Department Memorandum, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: New Subsidy Allegations Analysis" (March 20, 2013).

¹⁹ See Letter from Department to the RTG, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand," (March 21, 2013); Letter from Department to Thai Union, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand," (March 21, 2013); and Letter from Department to Marine Gold, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand," (March 21, 2013).

²⁰ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Request to Reconsider VAT Subsidy Allegation," (March 26, 2013).

We received responses to our questionnaires from the RTG, Thai Union, and Marine Gold on April 1, 2013.²¹ These included responses for Mr. Chao Kara and Srisubanfarm. The full questionnaire responses regarding Thai Union Graphic, Thai Union Feedmill, Thai Quality Shrimp, Thai Union Hatchery, and Ekawat Products were received on April 25, 2013.²² We sent supplemental questionnaires to the RTG on April 16 and 22, 2013, and on May 2, 2013.²³ Responses to these supplemental questionnaires were received from the RTG on May 2, 8, and 9, 2013, respectively.²⁴ Supplemental questionnaires were issued to Thai Union on April 10 and 22,²⁵ 2013 and on May 1, 2013.²⁶ Responses to these supplemental questionnaires were received on April 26, 2013, and on May 7 and 14, 2013, respectively.²⁷ We issued supplemental questionnaires to Marine Gold on April 11 and 22, 2013.²⁸ The responses to these questionnaires were received on April 25, 2013 and May 6, 2013, respectively.²⁹

²¹ See Letter from the RTG, "Certain Frozen Warmwater Shrimp from Thailand: Response to the Department's Countervailing Duty Questionnaire," (April 1, 2013) (RTG IQR); Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to Questionnaire," (April 1, 2013) (Thai Union IQR); Letter from Marine Gold, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to Questionnaire," (April 1, 2013) (Marine Gold IQR).

²² See Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to April 4, 2013 Letter Issued to Thai Union – (TFM, TUH, & TQS)," (April 25, 2013) (TFM/TQS/TUHIQR); Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to April 4, 2013 Letter Issued to Thai Union – TUG," (April 25, 2013); and Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to April 4, 2013 Letter Issued to Thai Union – Ekawat," (April 25, 2013). See also Letter from the RTG, "Certain Frozen Warmwater Shrimp from Thailand: Questionnaire Response for Affiliates of Thai Union Frozen Products Public Co., Ltd.," (April 25, 2013).

²³ See Letter from Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand, Supplemental Questionnaire," (April 16, 2013); Letter from Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand, Supplemental Questionnaire," (April 22, 2013); Letter from Department, "Certain Frozen Warmwater Shrimp from Thailand Countervailing Duty Investigation: Supplemental Questionnaire," (May 2 2013).

²⁴ See Letter from the RTG, "Certain Frozen Warmwater Shrimp from Thailand: Response to the Department's Supplemental Questionnaire dated April 16, 2013," (May 2, 2013) (RTG SQR1); Letter from the RTG, "Certain Frozen Warmwater Shrimp from Thailand: Response to the Department's Supplemental Questionnaire," (May 8, 2013) (RTG SQR2); Letter from the RTG, "Certain Frozen Warmwater Shrimp from Thailand: Response to the Department's Supplemental Questionnaire," (May 9, 2013).

²⁵ At the request of Thai Union, the Department modified its requests for information in the April 22, 2013 supplemental questionnaire. See Department Memorandum, "Countervailing Duty Investigation of Certain Warmwater Frozen Shrimp from Thailand: Extension Requests for Responding to Questionnaires," (May 2, 2013).

²⁶ See Letter from Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand, Supplemental Questionnaire," (April 10, 2013); Letter from Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand, Supplemental Questionnaire," (April 22, 2013); Letter from Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand, Supplemental Questionnaire," (May 2, 2013).

²⁷ See Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: First Supplemental Response," (April 26, 2013); Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Second Supplemental Response," (May 7, 2013) (Thai Union SQR2); Letter from Thai Union, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Third Supplemental Response," (May 14, 2013).

²⁸ See Letter from Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand, Supplemental Questionnaire – Marine Gold Products Limited," (April 11, 2013); Letter from Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand, Second Supplemental Questionnaire – Marine Gold Products Limited," (April 22, 2013).

²⁹ See Letter from Marine Gold, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to Supplemental Questionnaire," (April 25, 2013); Letter from Marine Gold, "Frozen Warmwater Shrimp CVD Investigation from Thailand: Response to Second Supplemental Questionnaire," (May 6, 2013).

Questionnaires regarding the first NSA on which we initiated, the “Export Restrictions on Live Black Tiger Shrimp” program, were issued to the RTG, Thai Union, and Marine Gold on March 21, 2013.³⁰ The RTG submitted its response to this questionnaire on April 4, 2013.³¹ Thai Union and Marine Gold included their responses to the NSA questionnaire as part of their full April 1, 2013, responses.³² Thai Union Graphic, Thai Union Feedmill, Thai Quality Shrimp, Thai Union Hatchery, and Ekawat Products responded to the NSA questionnaire, as instructed, with their April 25, 2013, questionnaire responses.³³ The RTG responded to the NSA questionnaire with respect to these companies as part of its response to the full questionnaire regarding these companies, on April 25, 2013.³⁴

On April 18, 2013, Petitioner filed its second set of NSAs.³⁵ In addition, on April 24, 2013, Petitioner alleged that Marine Gold was uncreditworthy during the period of investigation (POI) and the preceding two years.³⁶ Marine Gold filed comments in response to the allegation that it was uncreditworthy.³⁷ The Department determined not to investigate one of these additional, newly alleged subsidies and, where the complexity of the alleged subsidy so warranted, deferred the investigation of the remaining newly alleged subsidies to the first administrative review (should this investigation result in a CVD order).³⁸ The Department also determined, in light of Petitioner’s request for reconsideration of our earlier determination not to investigate alleged VAT exemptions, that it was appropriate to initiate on this alleged subsidy.³⁹ We issued a questionnaire regarding the VAT program to the RTG, Thai Union, and Marine Gold on April

³⁰ See Letter from Department to the RTG, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand,” (March 21, 2013); Letter from Department to Thai Union, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand,” (March 21, 2013); Letter from Department to Marine Gold, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand,” (March 21, 2013).

³¹ See Letter from the RTG, “Certain Frozen Warmwater Shrimp from Thailand: Response to the Department’s New Subsidies Allegations Questionnaire” (April 4, 2013).

³² See *supra* note 21.

³³ See *supra* note 22.

³⁴ See *supra* note 22.

³⁵ See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – COGSI’s Additional New Subsidy Allegations,” (April 18, 2013).

³⁶ See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828), “Creditworthiness Allegation for MRG,” (April 24, 2013).

³⁷ See Letter from Marine Gold, “Frozen Warmwater Shrimp CVD Investigation from Thailand: Creditworthiness of Marine Gold Products Limited,” (May 1, 2013).

³⁸ See Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: New Subsidy Allegations dated April 18, 2013 and Creditworthiness Allegation for Marine Gold Products Limited dated April 24, 2013,” (May 15, 2013).

³⁹ See Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: Reconsideration of Petitioner’s February 13, 2013 New Subsidy Allegation Regarding the Exemption of Fishmeal and Feeds from Value-Added Tax Program,” (April 25, 2013) (VAT Initiation Memorandum).

25, 2013.⁴⁰ Thai Union and Marine Gold responded to this questionnaire on May 6, 2013; the RTG provided its response to the questionnaire on May 8, 2013.⁴¹

On April 23, 2013, Petitioner filed additional factual information related to the “Price Controls on Shrimp Feed” program.⁴² Petitioner filed further comments regarding this program in response to the RTG’s May 2, 2013 supplemental questionnaire on May 3, 2013,⁴³ and filed additional comments on the other supplemental questionnaire responses on May 7, 2013.⁴⁴ Comments on the upcoming preliminary determination and verification were filed by Petitioner on May 14, 17, and 23, 2013;⁴⁵ by Thai Union and Marine Gold on May 17 and 24, 2013;⁴⁶ and by the RTG on May 17, 2013.⁴⁷

Interested Party Status of the Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC): On March 12, 2013, AHSTEC asked that it be placed on the public service list for the seven ongoing CVD investigations of frozen shrimp and that it be granted access to proprietary information under APO.⁴⁸ Numerous submissions from Petitioner and AHSTEC commenting on AHSTEC’s applications followed.⁴⁹ The Department met with counsel for Petitioner and AHSTEC on

⁴⁰ See Letter from Department to the RTG, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand,” (April 25, 2013); Letter from Department to Thai Union, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand,” (April 25, 2013); Letter from Department to Marine Gold, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Thailand,” (April 25, 2013). We instructed each respondent to respond with respect to the fresh shrimp suppliers as well; Thai Union was also instructed to respond on behalf of Thai Union Graphic, Thai Union Feedmill, Thai Quality Shrimp, Thai Union Hatchery, and Ekawat Products.

⁴¹ See Letter from Thai Union, “Frozen Warmwater Shrimp CVD Investigation from Thailand: New Subsidies Allegations Questionnaire Response,” (May 6, 2013) (Thai Union VAT); Letter from Marine Gold, “Frozen Warmwater Shrimp CVD Investigation from Thailand: New Subsidies Allegations Questionnaire Response,” (May 6, 2013); Letter from the RTG, “Certain Frozen Warmwater Shrimp from Thailand: Response to the Department’s New Subsidies Allegations Questionnaire,” (May 8, 2013) (RTG VAT).

⁴² See “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Additional Factual Information Concerning the RTG’s Shrimp Feed Price Control Program,” (April 23, 2013).

⁴³ See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Comments on the Royal Thai Government’s May 2, 2013 Supplemental Questionnaire Response regarding Feed Price Controls,” (May 3, 2013).

⁴⁴ See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Comments on Supplemental Questionnaire Responses,” (May 7, 2013).

⁴⁵ See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – COGSI’s Pre-Preliminary Determination Comments,” (May 14, 2013); Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – COGSI’s Pre-Verification Comments,” (May 17, 2013); Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Reply to Respondents’ Pre-Preliminary Comments,” (May 23, 2013).

⁴⁶ See Letter from Thai Union and Marine Gold, “Frozen Warmwater Shrimp CVD Investigation from Thailand: Pre-Preliminary Determination Comments of Marine Gold and Thai Union,” (May 17, 2013); Letter from Thai Union and Marine Gold, “Frozen Warmwater Shrimp CVD Investigation from Thailand: Pre-Preliminary Determination Comments of Marine Gold and Thai Union,” (May 24, 2013).

⁴⁷ See Letter from the RTG, “Certain Frozen Warmwater Shrimp from Thailand: Response to Petitioner’s Pre-Preliminary Determination Comments,” (May 17, 2013).

⁴⁸ See Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Thailand: Entry of Appearance and Administrative Protective Order Application” (March 12, 2013).

⁴⁹ See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Response to Ad Hoc’s Entry of Appearance and APO Application,” (March 13, 2013);

March 28 and April 19, 2013, respectively.⁵⁰ 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.⁵¹ Consequently, AHSTEC's APO applications were approved.⁵²

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).⁵³

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.⁵⁴ On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.⁵⁵ Further comments on this scope clarification were submitted by AHSTEC and Petitioner.⁵⁶

Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Thailand: 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 Thailand (C-549-828): 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 Thailand: 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 Thailand: 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 Thailand (C-549-828) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); and Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Thailand: Comments on COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013).

⁵⁰ 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).

⁵¹ 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).

⁵² 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).

⁵³ 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).

⁵⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*.

⁵⁵ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from

For the reasons explained in “Scope Clarification re Brine-Frozen Shrimp,” we preliminarily determine that brine-frozen shrimp are not excluded from this investigation.⁵⁷

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,⁵⁸ deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

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

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

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

Thailand (C-549-828) – Request for Scope Clarification,” (March 28, 2013).

⁵⁶ See Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Thailand: 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 Thailand (C-549-828) – Response to AHSTEC’s Supplemental Filing,” (April 11, 2013); Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Thailand: 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 Thailand – Response to AHSTEC’s Comments from April 17, 2013,” (April 23, 2013); Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Response to AHSTEC’s April 17, 2013 Comments,” (April 23, 2013); and Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Thailand: Comments on COGSI’s April 23rd Filing,” (April 30, 2013); Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Supplemental Information Supporting Petitioner’s Scope Clarification Request,” (May 7, 2013); Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Thailand: Comments on COGSI’s Revised Scope Clarification Request,” (May 14, 2013); Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Thailand (C-549-828) – Response to AHSTEC’s Comments on Petitioner’s Scope Clarification Request,” May 23, 2013.

⁵⁷ 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).

⁵⁸ “Tails” in this context means the tail fan, which includes the telson and theuropods.

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.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

V. INJURY TEST

Because Thailand 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 Thailand materially injure, or threaten material injury to, a U.S. industry. On February 15, 2013, the ITC 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*, Thailand.⁵⁹

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset

⁵⁹ 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).

Depreciation Range System.⁶⁰ The Department notified the respondents of the 12-year AUL in the initial questionnaire and requested data accordingly. 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 year in which the assistance was approved. 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 over the AUL.

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.⁶¹

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

⁶⁰ See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

⁶¹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

(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.⁶²

THAI UNION FROZEN PRODUCTS PUBLIC CO., LTD.

Thai Union responded to the Department's questionnaire on behalf of itself and Thai Union Seafood, a subsidiary that produces and exports the subject merchandise. In response to the Department's April 4, 2013, letter,⁶³ Thai Union also submitted responses to the Department's full questionnaire with respect to Thai Union Graphic, Thai Union Feedmill, Thai Quality Shrimp, Thai Union Hatchery, and Ekawat Products.⁶⁴ Of the companies other than Thai Union from which we requested full questionnaires, only Thai Union Seafood and Thai Union Feedmill have reported the use of subsidies during the POI. Thai Union reported that it held a majority of the outstanding shares of Thai Union Seafood⁶⁵ and Thai Union Feedmill⁶⁶ during the POI. The annual report for 2011 submitted by Thai Union, as well as its 2011 consolidated financial statements, support Thai Union's claims, indicating that it held 51 percent of both Thai Union Seafood's and Thai Union Feedmill's outstanding shares during the POI. As noted in the *CVD Preamble*, above, and in 19 CFR 351.525(b)(6)(vi), the standard for cross-ownership is met where one company holds a majority voting interest in another. Because both Thai Union and Thai Union Seafood produce and export the subject merchandise, in accordance with 19 CFR 351.525(b)(6)(ii) we will attribute subsidies received by the two companies to the combined sales of both companies. As for Thai Union Feedmill, an input producer of shrimp feed, the Department is applying its primary dedication standard for cross-owned companies set forth in 19 CFR 351.525(b)(6)(iv). We preliminarily find that the production of shrimp feed is primarily dedicated to the downstream product, (*i.e.*, frozen shrimp), and that subsidies provided to Thai Union Feedmill are therefore attributable to the combined sales of the input produced by Thai Union Feedmill and the downstream product produced by Thai Union and Thai Union Seafood.

With respect to the remaining affiliated companies for which we requested full questionnaire responses from Thai Union, each company reported that it received no subsidies, or that any subsidies received were tied to non-subject merchandise or to markets other than the United States. Therefore, we do not find it necessary to reach a preliminary determination on cross-ownership between Thai Union and Thai Union Graphic, Thai Union Hatchery, Thai Quality Shrimp, and Ekawat Products for purposes of attributing subsidies. Should we find for the final determination that these companies received subsidies under the investigated programs, we will determine whether they meet the standard for cross-ownership and attribute the subsidies if appropriate.

⁶² See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁶³ See *supra* footnote 13.

⁶⁴ See *supra* footnote 22.

⁶⁵ See Thai Union IQR at 3.

⁶⁶ See TFM/TQS/TUH IQR at 6.

MARINE GOLD PRODUCTS LTD.

Marine Gold responded to the Department's questionnaire on behalf of itself and several companies that it identified as cross-owned. Some of these companies provide services or inputs used in the production of subject merchandise. Marine Gold has reported that one of the companies it identified as cross-owned, Marine Bio Resources Co., Ltd. (Marine Bio), received assistance under the programs being investigated, but that that company does not provide any inputs or services to Marine Gold.⁶⁷ Therefore, we do not find it necessary to reach a preliminary determination on cross-ownership between Marine Gold and the companies it identified as subsidiaries for attribution purposes. Should we find for the final determination that Marine Bio provided services or inputs to Marine Gold, or that the other companies received subsidies under the investigated programs, we will determine whether they meet the standard for cross-ownership and attribute the subsidies if appropriate.

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

For purposes of this preliminary determination we have not identified any subsidies provided to the producers of the raw agricultural product (fresh shrimp); therefore, it is not necessary for us to address these issues or reach a preliminary determination on the applicability of section 771B of the Act for identifying and measuring such subsidies with respect to the manufacture, production, or exportation of the processed product (frozen shrimp).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Preliminary Calculation Memoranda" prepared for this investigation.⁶⁸

VII. ANALYSIS OF PROGRAMS

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

⁶⁷ See Marine Gold IQR.

⁶⁸ See Department Memoranda, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: Thai Union Frozen Products Public Co., Ltd. Preliminary Calculation Memorandum;" and "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Thailand: Marine Gold Products Ltd. Preliminary Calculation Memorandum," both dated concurrently with this memorandum (collectively, Preliminary Calculation Memoranda).

determine the following.

A. Programs Preliminarily Determined To Be Countervailable

1. Tax Coupons for Exported Goods

Petitioner claimed that the RTG provides tax coupons to exporters equal to a certain percentage of the FOB value of their exports, based on the raw materials and inputs typically used for the production of the exported good (according to government input/output tables) and average tariff rates on such inputs.⁶⁹ Exporters can then use these coupons to pay taxes and duties. The program is designed to “lower the production cost of goods for exportation to boost their worldwide competitiveness against foreign products both at international and domestic levels.”⁷⁰

The RTG provided details on this program, stating that the Ministry of Finance (MOF) and the Customs Department administer a tax coupon system for exporters, authorized under the 1981 Tax and Duty Compensation of Exported Good Produced in the Kingdom Act B.E. (2524).⁷¹ The RTG stated that Thailand-based manufacturers of locally-produced merchandise are eligible to apply for tax coupons upon export of the goods they produce. The value of the tax coupon is calculated by multiplying a product-specific coupon rate by the FOB value of a company’s exported goods.⁷² According to the RTG, the tax coupon system refunds the import duties paid for the raw materials and other inputs used in the production of exported goods. Exporting companies may then use these tax coupons as credits against corporate income taxes. With the exception of a small list of exported items specifically identified by the Customs Department, all goods exported from Thailand qualify for the tax coupon system.⁷³ In order to receive tax coupons, exporters must submit a standard application form together with supporting documents within one year of the date of exportation. The coupons are valid for three years from the date of issuance, and the validity can be further extended by three years at a time, with no more than a total of two extensions allowed.⁷⁴

The product-specific rates on these coupons are established by the MOF. According to the RTG, to derive the coupon rate for a particular exported good, the MOF examines the import duties and indirect taxes paid for the raw materials and other inputs used to produce the exported good. With regard to subject merchandise, the tax coupon rate is 0.13 percent for *vannemei* shrimp. According to the RTG, this percentage represents the amount of import duties paid for the raw materials and other inputs used to produce the frozen shrimp that Thailand-based shrimp processors export. To determine the tax coupon rate, the RTG explains that the Fiscal Policy Office (FPO) of the MOF relied on the input and production output table study for 2000 (I/O Tables), the Thai import tariffs in effect, Customs Department notifications of the reduction of import duty through July 2009, and import statistics from the Customs Department for 2008. The FPO also considered a production costs analysis of white shrimp farming in Thailand.⁷⁵

⁶⁹ See the petition at Volume VII (pages 41-42), Exhibit VII-8.

⁷⁰ See the petition at Volume VII (page 42), Exhibit VII-51.

⁷¹ See RTG IQR at Exhibit J.

⁷² See *id.* at Exhibit J at 6-7.

⁷³ See *id.* at Exhibit J at 1.

⁷⁴ See *id.* at Exhibit J-2.

⁷⁵ See RTG SQR1 at 20.

We preliminarily determine that tax coupons provide a financial contribution in the form of tax revenue foregone by the RTG (*i.e.*, the assessed duties on imported raw materials and other inputs that are returned to exporters) under section 771(5)(D)(ii) of the Act. Because tax coupons are contingent on export performance, they are specific under sections 771(5A)(A) and (B) of the Act. The tax coupons confer a benefit equal to the entire amount of the remission or drawback of import charges, in accordance with 19 CFR 351.519(a)(4). Based on the RTG's description of this program, we preliminarily determine that it functions like a duty drawback program. In accordance with 19 CFR 519(a)(1)(i), under such programs, a benefit exists to the extent that the amount of drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste. Under 19 CFR 351.519(a)(3)(i), if the drawback is excessive, the benefit will be the difference between the amount by which the import charges drawn back exceed the import charges paid on imported inputs consumed in the production of the exported product. However, 19 CFR 351.519(a)(4) provides that the benefit will be the entire amount of the import charges drawn back, unless the RTG has a reasonable and effective system in place to confirm which inputs are consumed in the production of goods for export and to confirm that the exemption only applies to duties paid on such inputs, or the RTG has otherwise carried out an examination of the actual inputs concerned to confirm which inputs are consumed in the production of the exported product, and in what amounts. In the instant investigation, record information does not demonstrate that the RTG has a system in place to confirm which inputs are consumed, and in what amounts, in the production of frozen shrimp for export. Rather, the RTG grants a rebate to exporters of subject merchandise in the form of a tax coupon, at a flat rate of 0.13 percent.⁷⁶ Further, although the RTG provided the I/O Tables as well as the production cost analysis that it used to establish in 2009 the 0.13 percent rate for shrimp exports, the RTG did not explain how this study and cost analysis identify the import charges on imported inputs consumed in the production of exports or would otherwise meet the requirements for non-countervailability outlined in 19 CFR 351.519(a)(4). Therefore, consistent with 19 CFR 351.519(a)(4), the benefit conferred is the entire amount of the drawback or remission.

Both Thai Union and its cross-owned companies Thai Union Seafood and Thai Union Feedmill reported using this program during the POI. However, Thai Union Feedmill reported that its use of this program was tied to exports to countries other than the United States.⁷⁷ In addition, Marine Gold reported using this program during the POI. Because the benefit from tax coupons is calculated as a percentage of the FOB value of the exports, we preliminarily determine that the percentage rebated serves as the subsidy rate. Thus, we preliminarily determine that the RTG provided a countervailable subsidy of 0.13 percent *ad valorem* to both Thai Union and Marine Gold.

2. Tax Exemptions, Duty Exemptions, and Other Benefits under the Investment Promotion Act (IPA)

The IPA was first established in 1977, with subsequent revisions reflected in the publication of the amended law in 1991 and 2001. Under the IPA, the Board of Investment (BOI), a sub-agency of the Ministry of Industry, is authorized to grant incentives to facilitate investment in

⁷⁶ See RTG IQR at J-1 and J-13, and RTG SQR1 at 20.

⁷⁷ See TFM/TQS/TUH IQR at Exhibit 24. See also 19 CFR 351.525(b)(4).

Thailand with a view toward achieving long-term social and economic development goals for the country. In order to receive benefits under an IPA promotion certificate, a company must identify a specific investment project; in the application filed with the BOI, a company must specify the goods to be produced, the project's capital requirements, the machinery and imports to be used in the production of the goods, and the sections of the IPA under which it is seeking benefits. According to the RTG, as long as the application meets the BOI's criteria for approval,⁷⁸ the promotion certificate will be granted. The promotion certificates specify the particular sections of the IPA and the related rights and privileges for which an applicant is approved, and detail the general and specific conditions that the applicant is required to observe in order to maintain its eligibility for promoted status. Benefits can include permission for foreign investors and workers to enter Thailand (Sections 24-26), permits to own land (Section 27), exemptions or reductions of import duties on machinery (Sections 28-29), exemptions or reductions of import duties for raw and essential materials (Sections 30 and 36), tax exemptions on income and dividends (Sections 31, 34, and 35(1)), deductions for the costs of transportation, electricity, water, and facility construction (Sections 35(2) and 35(3)), and permits to remit foreign currencies abroad (Section 37).⁷⁹

The BOI is responsible for determining the activities that are eligible for investment promotion, and whether applicants are qualified to receive assistance. In addition, other RTG agencies, including the Customs Department and the Revenue Department, provide administrative assistance to implement and administer benefits related to duty and tax exemptions granted to promoted companies.

The RTG provided a list of activities eligible for promotion under the IPA.⁸⁰ Activities are segregated by economic sector: agriculture and agricultural products; mining, ceramics, and basis metals; light industry (*e.g.*, textiles and some manufacturing); metal products, machinery, and transport equipment; electronic and electrical appliances; chemicals, paper, and plastics; and services and public utilities. Frozen shrimp producers are eligible for benefits as part of the agricultural sector. Within the agricultural sector, all activities are classified as "priority activities," while some other activities are additionally designated as "priority activities of special importance and benefits to the country," which further differentiates the availability of benefits.⁸¹ These designations affect the duration and/or regional availability of benefits under certain sections of the IPA, as well as certain aspects of tax-exempt status (discussed in more detail below).

Thai Union reported that it operated under three BOI promotion certificates since 2000, the beginning of the AUL period. During that time, Thai Union Seafood operated under two promotion certificates; and Thai Union Feedmill, four. Marine Gold reported that it operated under two promotion certificates that were related to the production of subject merchandise since 2006. Neither of the selected fresh shrimp suppliers, Mr. Chao Kara or Srisubanfarm, applied for or received promoted company status during the AUL period.

⁷⁸ See RTG IQR at Exhibits L-2 and L-3.

⁷⁹ See *id.* at Exhibits L-1 and L-3 at 6.

⁸⁰ See *id.* at Exhibit L-2.

⁸¹ Other conditions may apply to specific eligible activities.

Before revisions were made to the IPA in 2000 (as reflected in the amended law published in 2001, *Decree B.E. 2544*), certain sections of the law contained eligibility provisions based on explicit export performance and local-content requirements. That version of the IPA, published in 1991 as *Decree B.E. 2534*, was previously investigated by the Department in its 2001 *Thai Hot-Rolled* determination.⁸² In assessing the specificity of the IPA in that proceeding, the Department noted the presence of export performance provisions in parts of the law. Nonetheless, the Department found that the program in question did not constitute an export subsidy because the respondent, SSI, “was not approved for receipt of any assistance under those discrete sections of the IPA that contained an export requirement or condition.”⁸³ Rather, based upon the facts in that case, the Department found that SSI had instead been approved for benefits under the IPA because its investment project would fulfill the BOI’s stated desire at that time to promote the development of a domestic sheet steel industry.⁸⁴ Therefore, the Department found in that investigation that the IPA benefits received by SSI were instead specific to an enterprise or industry within the meaning of section 771(5A)(D)(iii)(I) of the Act. In the Department’s practice under the CVD regulations, when export performance is one of a number of conditions for benefits under a program, we would normally find the program to be an export subsidy, unless it is demonstrated that the conferral of benefits in a particular case was instead granted pursuant to the other, non-export-related, conditions.⁸⁵ This appeared to have been the case with SSI in *Thai Hot-Rolled*.

In the instant investigation, we are examining the later, current version of the IPA published in 2001 (*Decree B.E. 2544*). As noted, this version has reportedly been stripped of the explicit export performance provisions examined by the Department in *Thai Hot-Rolled*. We note, however, that, notwithstanding the 2000 revisions to the law, under Chapter 2 (“Applying for and Granting of Promotion”), Section 20, of *Decree B.E. 2544*, the 20 items spelled out as conditions that the BOI may stipulate for granting promoted status to an applicant includes, at item (18), “export of products or commodities produced or assembled.”⁸⁶ According to the RTG’s questionnaire responses, the relevant BOI criteria are more specifically set forth in BOI Announcement 1/2543 (August 2000) and Announcement 10/2552 (October 2009).⁸⁷ Item 1.3 of Announcement 1/2543 states that “previous conditions on exports and use of local material are repealed so that the criteria for promotion will be in line with international trade and investment agreements.” However, it is unclear how this could pertain to Section 20 of the current IPA, since Announcement 1/2543 was published the year prior to the publication of *Decree B.E. 2544*, and there is no indication that Section 20 has been amended by a subsequent announcement. Thus, we must assume that item (18) of Section 20 remains operational; this indicates that exporting is still among the conditions that the BOI may consider in granting promoted status under the IPA.

⁸² See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Thai Hot-Rolled*) and the accompanying Issues and Decision Memorandum (IDM) at 5.

⁸³ See *id.* and the accompanying IDM under section titled “Incentives Under the Investment Promotion Act.”

⁸⁴ See *id.* Indeed, SSI’s application for promoted status under the IPA was made directly in response to a BOI announcement soliciting investors interested in developing a steel facility in Thailand.

⁸⁵ See *CVD Preamble*, 63 FR at 65381.

⁸⁶ See RTG IQR, at Exhibit L-1. For that matter, the conditions appear to include a local-content requirement as well, at item (4), “amount of local raw materials to be used.”

⁸⁷ See *id.* at Exhibit L-2.

Additionally, we also examined the application form provided by the RTG for applicants to complete to apply for promoted status certification and for benefits under the various sections of the IPA that define the rights and benefits of the successful applicant.⁸⁸ This application form requires applicants to provide information regarding many aspects of the planned investment for which the applicant is seeking promoted status, including, among other things, the anticipated markets for their products, identifying the percentages of the company's production that will be exported and sold domestically, as well as the particular countries to which the products will be exported. Moreover, in the *Guide to the Board of Investment 2011*, Chapter 1, under "Criteria for Project Approval,"⁸⁹ item 1.5 states that for "projects with investment capital exceeding 80 million baht (excluding cost of land and working capital)," ⁹⁰ a feasibility study is to be submitted for consideration of the BOI. Chapter 4 of the *Guide to the Board of Investment 2011* spells out the areas to be covered in such a feasibility study, which include "Demand of the Product(s) Applying for Promotion," under which one of three items specified for discussion is "Major export markets and future trends of these markets."⁹¹ It is unclear how strictly such a feasibility study is required for projects that reach the specified threshold level of investment capital. Nevertheless, the fact that such a study calls for information regarding the future prospects of export markets is another indication that export performance is among the factors the BOI may consider when assessing an application for promoted status under the IPA.

Given the above, we preliminarily find that export performance is among a number of conditions that the BOI considers in granting promoted status and its attendant benefits under the IPA. As noted, where it can be demonstrated that IPA benefits were granted expressly pursuant to non-export-related criteria, as was the case in *Thai Hot-Rolled*, we would not consider the benefits to constitute an export subsidy within the meaning of section 771(5A)(B) of the Act, as spelled out in the *CVD Preamble*:

[U]nder the new standard contained in Sec. 351.514, if exportation or anticipated exportation was either the sole condition or one of several conditions for granting [promoted] status to a firm, we would consider any benefits provided under the program to the firm to be export subsidies *unless the firm in question can clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria.* In such situations, we would not treat the subsidy to that firm as an export subsidy.⁹²

Unlike the situation in *Thai Hot-Rolled*, record information in the instant investigation provides no indication that IPA promoted status and benefits were provided to the respondents *solely* pursuant to non-export-related criteria. Accordingly, consistent with the Department's regulation and practice, we preliminarily determine that benefits provided by the IPA constitute an export subsidy. Further, this is also consistent with recent determinations in which the Department

⁸⁸ See *id.* at Exhibit L-5.

⁸⁹ See *id.* at Exhibit L-3.

⁹⁰ 80 million baht is approximately 2.7 million USD under current exchange rates.

⁹¹ See *id.*

⁹² See *CVD Preamble*, 63 FR at 65381 (emphasis added).

found programs to be export subsidies on a similar basis,⁹³ *i.e.*, based on an examination of sections in the application form soliciting information regarding projected or anticipated exports and a finding that the inclusion of such information met the requirements under 19 CFR 351.514(a): export performance as one of two or more conditions considered when approving assistance under the program. Therefore, we preliminarily determine that the IPA program meets the specificity criteria under sections 771(5A)(A) and (B) of the Act.

a. Section 28 of the IPA – Exemption of Import Duties on Imported Machinery

Under Section 28 of the IPA, companies with promotion certificates may claim exemptions from import duties applicable to imported machinery. For imported machinery to be eligible for an import duty exemption, the machinery must not be available for purchase domestically, and must be consistent with the machinery types and functions outlined in the company's promotion certificate, or any modified machinery lists provided to and approved by the BOI. Promoted companies must first submit a master list of equipment for which the company is seeking to claim the import duty exemption through the BOI's electronic Machine Tracking (e-MT) system. An application is then submitted through the e-MT system that includes the BOI certificate number, a description of the machinery to be imported, the invoice number applicable to the imported equipment, the applicable packing list number, the date of importation, import quantity, estimated value on a CIF basis, and the import duty amount. Upon receipt of the application and supporting documentation, the BOI must determine if the imported machinery falls within the terms of the company's approval certificate and the master list of equipment. Once the BOI confirms that the imported machinery is eligible for the import duty exemption, it notifies the Customs Department to grant the exemption from applicable import duties.

Thai Union and its cross-owned companies, Thai Union Seafood and Thai Union Feedmill, reported receiving benefits under Section 28 of the IPA during the POI and over the AUL period. Marine Gold also reported receiving benefits under Section 28.

As noted above, benefits under the IPA are specific under sections 771(5A)(A) and (B) of the Act. Import duty exemptions provide a financial contribution by the RTG under section 771(5)(D)(iii) of the Act in the form of revenue foregone that is otherwise due. A benefit is provided in the amount of the total exemptions allocated to the POI, under 19 CFR 351.510(a).

In addition, we preliminarily determine that benefits provided under this program are non-recurring within the meaning of 19 CFR 351.524(b). Although import duty exemptions are identified as recurring in the illustrative list of recurring benefits in 19 CFR 351.524(c)(1), it is the Department's long-standing practice to treat import duty exemptions tied to the purchase of

⁹³ See *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) and the accompanying IDM at 21 and Comment 24; see also *Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) and the accompanying IDM at 72 ("Section 771(5A)(B) of the Act and 19 CFR 351.514(a) state that an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as one or two or more conditions. Given that the program's application forms solicit information on export activity (e.g., applicants' total export sales and the share of export sale to total sales in the three prior years), we find that the program is contingent upon export performance and, thus, constitutes a specific export subsidy within the meaning of section 771(5A)(B) of the Act.").

capital assets as non-recurring in accordance with 19 CFR 351.524(c)(2)(iii).⁹⁴ Accordingly, for each respondent company, we examined the import duty exemptions reported for each year of the AUL period to determine whether they exceeded 0.5 percent of the company's sales in the year of approval to determine whether the benefits should be allocated over time or to the year of receipt.⁹⁵ Since the exemptions received by each company did not meet the 0.5 percent test, the exemptions received in each year are appropriately expensed in the year of receipt. Consequently, the benefit under this program for each of the respondents (Thai Union and its cross-owned companies, as well as Marine Gold), is the total amount of the exemptions received in 2011, the POI. To measure the benefit under this program to Thai Union and Thai Union Seafood, we divided the companies' total import duty exemptions for BOI-promoted activities during the POI by the sales related to the companies' combined BOI-promoted export activity. To attribute to Thai Union the benefit received by Thai Union Feedmill, we are dividing the tax exemption received by Thai Union Feedmill by the combined sales of the input and downstream products produced by Thai Union and Thai Union Seafood, exclusive of any sales between the two corporations, in accordance with 19 CFR 351.525(b)(6)(iv). We combined the two resulting rates of Thai Union and Thai Union Feedmill to determine a countervailable subsidy of 0.01 percent *ad valorem* for Thai Union. For Marine Gold, in calculating the benefit based on its FOB BOI-promoted export sales during the POI, we preliminarily determine the countervailable subsidy rate for Marine Gold under this program to be 0.01 percent *ad valorem*.

b. Section 31 of the IPA – Exemption of Corporate Income Tax for BOI-Promoted Activities

The RTG has explained that under Section 31 of the IPA, promoted companies may be granted an exemption from corporate income tax due on the net profits earned from BOI-approved investment projects for a period of three or eight years (depending upon the location of the promoted activity,⁹⁶ or its status as a “priority activity” or “activity of special importance and benefit to the country”).⁹⁷ The tax amount exempted under Section 31 of the IPA is calculated by applying the corporate income tax rate of 25 percent, for profits up to 300 million THB, or 30 percent for profits exceeding 300 million THB.⁹⁸ If a promoted company incurs a tax loss, it may be permitted to carry forward the loss to offset the net profit earned in one or more years after the tax-exemption period has expired (subject to a five-year limit). According to the RTG, the BOI caps income tax exemptions under Section 31 of the IPA at the amount of the promoted investment approved by the BOI, unless the activity qualifies as a “priority activity of special importance and benefit to the country.”

To apply for an income tax exemption under Section 31 of the IPA, promoted companies must submit a written request to utilize the privilege to the BOI, as well as a financial statement or audited annual report, within 120 days of the company's normal accounting period. Companies operating under more than one promotion certificate need only submit one form for all

⁹⁴ See *Thai Hot-Rolled* and the accompanying IDM at 6 (“There can be no question that machinery is a capital asset.”).

⁹⁵ See 19 CFR 351.524(b)(2).

⁹⁶ See RTG IQR at Exhibit L-3, at 11.

⁹⁷ See *id.* at 14.

⁹⁸ See *id.* at 17.

promotion certificates in order to exercise the income tax privileges.⁹⁹ After examining and approving the request, the BOI issues a written confirmation of the company's eligibility for an income tax exemption, which must be submitted with the company's annual tax return to the Revenue Department. Companies with promotion certificates for assistance under Section 31 of the IPA maintain income and expense accounts for the promoted business area separately from other business accounts in order to calculate the net profit exempted from corporate income tax, thus ensuring that the income tax exemption only applies to revenue generated from the production lines and equipment for which the BOI issued the promotion certificate. For non-BOI promoted revenue sources, companies pay the normal income tax amount. This dual-accounting procedure is reflected in the standard corporate income tax form, which reflects tax-related activity for BOI- and non-BOI promoted activities separately.¹⁰⁰

Thai Union reported that, along with its cross-owned company Thai Union Feedmill, it utilized income tax exemptions under Section 31 of the IPA during the POI. However, Thai Union also reported that the BOI-promoted activities of its shrimp division operated at a loss during the POI.¹⁰¹ Therefore, Thai Union claims, it was not exempt from any income taxes on the net profits from sales of subject merchandise during the POI. The Department identifies the type and value of a subsidy at the time the subsidy is bestowed; it is not required to examine the use or effect of subsidies, *i.e.*, to trace how benefits are used by companies.¹⁰² The Department's regulations at 19 CFR 351.525(b)(5)(i) state that generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." However, in making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal.¹⁰³ A subsidy is tied only when the intended use is known to the subsidy giver (*i.e.*, the RTG) and so acknowledged prior to or concurrent with the bestowal of the subsidy.¹⁰⁴ As noted above, prior to recording on their tax filings the income tax exemption under Section 31 of the IPA, promoted companies are required to request approval from the BOI to use the program. The BOI then offers an authorizing document that the company files with its annual tax return. Companies must identify in the authorization request the promotion certificates under which the Section 31 exemption was granted and the BOI's authorizing document references the relevant certificates under which promotion is sought. Thai Union provided these documents, which are proprietary. In examining these documents, we find that they do not support the respondent's claim that benefits under this program are tied to the net profits of a specific division or to profits generated by Thai

⁹⁹ See RTG IQR at Exhibit L-3, at 94.

¹⁰⁰ See RTG SQR2 at Exhibit S-19.

¹⁰¹ See Thai Union IQR at Exhibit 35.

¹⁰² See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*) and the accompanying IDM at Comment 7.

¹⁰³ See *CVD Preamble*, 63 FR at 65403.

¹⁰⁴ See, e.g., *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004) and the accompanying IDM at Comment 2; see also *Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13631 (March 20, 1998) citing *Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Belgium*, 47 FR 39304 (September 7, 1982).

Union's non-frozen shrimp producing activities.¹⁰⁵ As such, there is no basis to find that, at the point of bestowal, the benefits are tied to non-subject merchandise. Furthermore, income tax benefits generally are not tied to a product or market as they benefit the entire operation of a firm.¹⁰⁶ Therefore, the Department preliminarily finds that the income tax exemptions under Section 31 of the IPA conferred a benefit that is attributable to Thai Union's total BOI-promoted export sales. In addition, Marine Gold also utilized the income tax exemption during the POI.

To measure the benefit under this program to Thai Union, we divided the company's total exemption for BOI-promoted activities during the POI by the sales related to the company's BOI-promoted export activity. To attribute to Thai Union the benefit received by Thai Union Feedmill, we are dividing the tax exemption received by Thai Union Feedmill by the combined sales of the input and downstream products produced by Thai Union and Thai Union Seafood, exclusive of any sales between the two corporations, in accordance with 19 CFR 351.525(b)(6)(iv). We combined the two resulting rates of Thai Union and Thai Union Feedmill to determine a countervailable subsidy of 1.95 percent *ad valorem* for Thai Union. For Marine Gold, we divided the total exemption amount received during the POI by the sales related to the company's BOI-promoted activity. On this basis, we preliminarily determine the countervailable subsidy provided to Marine Gold under this program to be 1.61 percent *ad valorem*.

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

1. RTG Price Guarantee Program for Shrimp

The Department included the "RTG Price Guarantee Program for Shrimp" program in its investigation based on an allegation that the RTG implemented a price guarantee program for shrimp under which the RTG makes up the difference between market prices shrimp farmers receive and a government-set reference price for shrimp by making direct payments to shrimp farmers in the amount of the difference. According to the RTG, this program only operated from May 2012 through October 2012, and thus it provided no assistance during the POI.

2. Export Restriction on Live Black Tiger Shrimp

Petitioner alleged that the RTG imposes licensing controls on the export of live black tiger shrimp, which result in suppressing the price for the shrimp in the domestic market, thus benefiting the respondents. However, record information indicates that the restriction applies more specifically to a particular subset of black tiger shrimp of a certain size and stage of development classified as breedstock. Such breedstock black tiger shrimp is marketed not for consumption but for breeding. Thus, it is purchased by hatcheries, rather than shrimp processors or farmers. Thai Union Hatchery, an affiliate of Thai Union, did not purchase live black tiger shrimp during the POI. Therefore, we preliminarily find that this program did not give rise to any benefit attributable to the respondents.

¹⁰⁵ See Thai Union SQR2 at Exhibits 3L and 3N; See also Department Memorandum, "Proprietary Information Relating to Thai Union's Approval for Benefits under Section 31 of the Investment and Promotion Act," (May 28, 2013).

¹⁰⁶ See *Washers from Korea* and the accompanying IDM at Comment 7.

3. Exemption of Fishmeal and Feeds from VAT

In our decision to initiate an investigation into this program, we stated that we would be examining this program to the extent that it provides a benefit on a “time-value-of-money” basis. A time-value-of-money benefit is provided when companies who would otherwise be due a refund of VAT in the absence of the VAT exemption, are unable to receive VAT refunds from the government on a timely basis. The RTG stated its Revenue Department will make VAT refunds no later than 90 days after the date of receipt of a refund application and the required supporting documents;¹⁰⁷ otherwise the Revenue Department is required to pay interest on refunds not made within that time period.¹⁰⁸ Furthermore, Thai Union and Thai Union Seafood reported that in instances when they were due a refund, they received it in significantly less than one year.¹⁰⁹

As noted in the “VAT Initiation Memorandum,” we initiated on this investigation based on an allegation that companies that purchase inputs receive a time-value-of-money benefit when those inputs are exempt from VAT, allowing the companies to retain the money in hand instead of forfeiting the amount for the duration of time it would take to wait for a refund if VAT is not exempted. In the past, the Department has found that when the amount of time required to receive a refund is not significant, there is no time-value-of-money benefit.¹¹⁰ As noted, the information on the record indicates that companies in Thailand receive VAT refunds in considerably less than one year or they receive interest payments, indicating that no time-value-of-money benefit exists for the investigated companies as a result of their VAT exemptions. Therefore, we preliminarily find that there is no time-value-of-money benefit.

4. Loans under the Bank of Thailand (BOT) Refinancing Programs
5. Short-Term Export Financing from Thailand ExIm Bank
6. Long- and Medium-Term Financing from Thailand ExIm Bank
7. Industrial Estate Tax Incentives
8. Export Restriction on Live Black Tiger Shrimp
9. Section 36(1) of the IPA – Exemption of Import Duties on Raw or Essential Materials for Use in Production for Export

C. Programs Preliminarily Determined Not To Exist

1. Subsidized Loans to the Shrimp Industry

The Department initiated on an allegation that the RTG offers subsidized or interest-free loans to processors, cold storage operators and shrimp exporters to buy shrimp from farmers at prices set by the government. In its April 1, 2013 response, the RTG explained that no such program was implemented. Although the RTG considered offering this type of assistance as part of its plan to assist the shrimp industry, it chose not to include it.¹¹¹

¹⁰⁷ See RTG VAT at 1.

¹⁰⁸ See *id.*

¹⁰⁹ See Thai Union VAT at Exhibit 5.

¹¹⁰ See *Thai Hot-Rolled* and the accompanying IDM at 21, in which we found that a waiting period of “well less than one year” is not significant as to give rise to a time-value-of-money benefit.

¹¹¹ See RTG IQR at C-1 and footnote 2.

2. Purchase of Shrimp for More Than Adequate Remuneration (MTAR)

The Department initiated on an allegation that the RTG entrusted and directed seafood processors, cold-storage operators, and exporters to purchase raw shrimp from shrimp farmers at above-market prices by offering low-cost loans to the processors and cold storage operators to encourage such purchases. The RTG has stated on the record that the only attempts to support shrimp prices occurred with the 2009 “RTG Pledging Program for Shrimp” and the 2012 “RTG Price Guarantee Program for Shrimp.”¹¹² The RTG has stated that it did not offer low-cost loans to parties that purchased shrimp from farmers during the POI or over the AUL period, and thus the “Purchase of Shrimp for MTAR” program does not exist.¹¹³

3. Price Controls on Shrimp Feed

The Central Commission of Goods and Services (CCP), a part of the Ministry of Commerce, monitors services and products with varying degrees of scrutiny, including shrimp feed. The CCP has the authority to monitor prices on designated goods and services and may impose price controls by publishing a notification in the Official Gazette. Petitioner has provided information that it believes indicates that sellers of shrimp feed in Thailand are compelled to lower prices through “voluntary” requests to do so by the CCP, as well as the threat of mandatory price controls. The RTG has reported that no such notification was in effect during the POI.

D. Programs Preliminarily Determined To Be Terminated

1. Discounted Financing for Machinery Upgrades

Based on an allegation that the BOT and the Thailand ExIm Bank offered discounted loans to certain industries to finance the upgrading of outdated machinery, the Department included this program in its investigation. The RTG explained that loans under this program ceased in January of 2005 and that there were no loans outstanding under the program at the time of its termination.¹¹⁴ Because no loans under this program were outstanding during the POI, 2011, there are no residual benefits within the meaning of 19 CFR 351.526(d)(1), and we preliminarily determine that this program is terminated.

2. RTG Pledging Program for Shrimp

Petitioner alleged that the RTG purchases shrimp from farmers at fixed, above-market prices and holds the quantities in storage to reduce supply and raise prices for farmers. According to the RTG, the shrimp purchasing aspect of this program only operated from July 2009 through November 2009.¹¹⁵ Thus, the program ended prior to the POI. Because this type of program provides benefits that are recurring with the meaning of 19 CFR 351.524(c)(1), benefits provided during 2009 would have been allocated to that year. Thus, there is no possibility of residual benefits during the POI, there are no residual benefits within the meaning of 19 CFR

¹¹² See RTG SQR1 at 10.

¹¹³ See *id.* at 11.

¹¹⁴ See *id.* at 6-7.

¹¹⁵ See RTG IQR at G-3.

351.526(d)(1) and we preliminarily determine that this program is terminated.

VIII. 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 APO, 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.

IX. 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.¹¹⁶ 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.¹¹⁷ 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 CVD 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.¹¹⁸ 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.¹¹⁹ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

¹¹⁶ See 19 CFR 351.224(b).

¹¹⁷ See 19 CFR 351.309.

¹¹⁸ See 19 CFR 351.309(c)(2) and (d)(2).

¹¹⁹ See 19 CFR 351.310(c).

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the Department's electronic records system, IA ACCESS.¹²⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹²¹ on the due dates established above.

X. 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.

XI. 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)

¹²⁰ See 19 CFR 351.303(b)(2)(i).
¹²¹ See 19 CFR 351.03(b)(1).