



C-274-807
Investigation
Public Document
POI: 01/01/2013 – 12/31/2013
OFIII: KJ/PT

DATE: April 13, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Countervailing Duty Determination in the Countervailing Duty
Investigation of Melamine from Trinidad and Tobago

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of melamine from Trinidad and Tobago, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On November 12, 2014, Cornerstone Chemical Company (Petitioner) filed petitions with the Department seeking the imposition of antidumping duties (AD) and countervailing duties (CVD) on melamine from, *inter alia*, Trinidad and Tobago.¹ Supplements to the CVD petition concerning melamine from Trinidad and Tobago are described in the Initiation Checklist.² On December 9, 2014, the Department published the initiation of the CVD investigation on melamine from Trinidad and Tobago.³ On December 17, 2014, the Department held consultations with the Government of the Republic of Trinidad and Tobago (GOTT) regarding the CVD investigation.⁴

¹ See Letter from Petitioner regarding “Petitions for the Imposition of Antidumping and Countervailing Duties Against Melamine from the People’s Republic of China and Trinidad and Tobago” (November 12, 2014) (Petition).

² See Department Memorandum regarding “Countervailing Duty Initiation Checklist: Melamine from Trinidad and Tobago” (December 2, 2014) (Initiation Checklist).

³ See *Melamine from the People’s Republic of China and Trinidad and Tobago: Initiation of Countervailing Duty Investigations*, 79 FR 73030 (December 9, 2014) (*Initiation Notice*).

⁴ See Department Memorandum regarding “Consultations with Official from the Government of Trinidad and Tobago regarding the Countervailing Duty Investigation on Melamine” (December 17, 2014).



As discussed in the *Initiation Notice*, Petitioner named only one known company in Trinidad and Tobago as a producer/exporter of melamine *i.e.*, Methanol Holdings (Trinidad) Ltd. (MHTL), and provided information from an independent third party source as support.⁵ Because there are no other known producers/exporters of melamine in Trinidad and Tobago, we are individually examining MHTL.⁶ No interested party submitted comments to the Department concerning the selection of MHTL as the only mandatory respondent in this investigation.

On December 19, 2014, we issued the initial questionnaire. On January 9, 2015, MHTL submitted its response to the company affiliation section of the initial questionnaire. Also on January 9, 2015, pursuant to 19 CFR 351.205(b)(2), Petitioner requested that the Department postpone the preliminary determination of this investigation. On January 22, 2015, the Department postponed the preliminary determination until April 13, 2015, in accordance with section 703(c)(1)(A) of the Act.⁷

We received responses to the initial questionnaire from MHTL and the GOTT on February 9, 2015. We issued a supplemental questionnaire to MHTL on February 18, 2015, and received the company's response on March 11, 2015. We issued a supplemental questionnaire to the GOTT on February 24, 2015, and received the GOTT's response on March 17, 2015. We issued a second supplemental questionnaire to MHTL on March 20, 2015, and received a response from MHTL and the GOTT on April 1, 2015.

On March 13, 2015, the GOTT and MHTL submitted new factual information regarding natural gas benchmark data. Petitioner filed a rebuttal submission on March 23, 2015; however, on April 3, 2015, the Department rejected Petitioner's submission as untimely filed new factual information.⁸ On March 24, 2015, the Petitioner filed pre-preliminary determination comments, and on April 3, 2015, MHTL and the GOTT submitted pre-preliminary determination comments.⁹

B. Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

III. ALIGNMENT

On the same day that the Department initiated this CVD investigation, the Department also initiated an AD investigation of melamine from Trinidad and Tobago.¹⁰ The AD and CVD investigations cover the same class or kind of merchandise from the same country. On April 1,

⁵ See Petition, at Volume I, Exhibit I-5.

⁶ See *Initiation Notice*, 79 FR at 73033.

⁷ See *Melamine from the People's Republic of China and Trinidad and Tobago: Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 80 FR 3219 (January 22, 2015).

⁸ See Letter from the Department to Petitioner regarding "Rejection of Factual Information Submission Filed by Cornerstone Chemical Company" (April 3, 2015).

⁹ The respondents' comments were not received in time for consideration in the preliminary determination. We, however, will address all comments received in case and rebuttal briefs for the final.

¹⁰ See *Melamine from the People's Republic of China and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 73037 (December 9, 2014).

2015, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), Petitioner requested alignment of the final CVD determination with the final AD determination of melamine from Trinidad and Tobago. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than August 24, 2015, unless postponed.

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations, we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.¹¹ The Department did not receive scope comments from any interested party.

V. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (CAS) registry number 108-78-01, molecular formula $C_3H_6N_6$).¹² Melamine is a crystalline powder or granule typically (but not exclusively) used to manufacture melamine formaldehyde resins. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

VI. INJURY TEST

Because Trinidad and Tobago 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 Trinidad and Tobago materially injure, or threaten material injury to, a U.S. industry. On January 6, 2015, the ITC determined that there is

¹¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); see also *Initiation Notice*.

¹² Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names.

a reasonable indication that an industry in the United States is materially injured by reason of imports of melamine from, *inter alia*, Trinidad and Tobago.¹³

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. Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Table of Class Lives and Recovery Periods, the AUL for production assets in the chemical industry is 9.5 years.¹⁴ However, in order to appropriately measure any allocated subsidies, and for the simplification of reporting, we notified MHTL and the GOTT, in the initial questionnaire, that the Department will use a 10-year AUL in this investigation.¹⁵ No party in this proceeding disputes 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.

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 *CVD Preamble* to the Department's regulations further clarifies the

¹³ See USITC Publication 4514 (January 2015), entitled *Melamine from China and Trinidad and Tobago: Investigation Nos. 701-TA-526-527 and 731-TA-1262-1263 (Preliminary)*; and *Melamine from China and Trinidad and Tobago*, 80 FR 518 (January 6, 2015).

¹⁴ See U.S. Internal Revenue Service Publication 946 (2013), "Appendix B – Table of Class Lives and Recovery Periods," submitted in the Petition at Volume V, Exhibit V-5.

¹⁵ See Letter from the Department to the GOTT regarding "Initial Questionnaire" (December 19, 2014) at "Section II – Program Specific Questions."

Department's cross-ownership standard. According to the *CVD 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.¹⁶

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 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.¹⁷

MHTL: Established in November 1997, MHTL produces and sells melamine, methanol, and urea ammonium nitrate solution.¹⁸ During the POI, MHTL was majority-owned by Colonial Life Insurance Company (Trinidad) Limited (CLICO), which owned 49 percent of MHTL.¹⁹ MHTL's other owners were Consolidated Energy Limited (CEL) with 43.47 percent of MHTL's shares and CL Financial Limited (CLF) with the remaining 7.53 percent, which was held in a trust for CLICO.²⁰ CLICO is an insurance company, CLF is a holding company, and CEL is an investment company.²¹

Based on MHTL's ownership structure, we find that MHTL was majority-owned by CLICO, and that CLICO had controlling interest in MHTL. Therefore, we preliminarily find that MHTL is cross-owned with CLICO within the meaning of 19 CFR 351.525(b)(6)(vi). During the POI, CLICO was owned by CLF (50.04 percent), the Minister of Finance (49.16 percent), and trustees of CLF (0.8 percent).²² As a result of the 2008 financial collapse, CLF ceased operations, and effectively fell under government control, and the Central Bank of Trinidad and Tobago (CBTT) assumed control of CLICO.²³ For more information about the financial collapse, *see* "Bailout

¹⁶ *See Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

¹⁷ *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

¹⁸ *See MHTL IQR* (February 9, 2015) at 4.

¹⁹ *See MHTL Affiliation Response* (January 9, 2015) at Exhibit 4.

²⁰ *Id.* Over the prior years of the AUL, MHTL was majority-owned by CLICO. From 2004 through 2013, CLICO owned 49 percent of MHTL's shares and CLF owned 7.53 percent. MHTL's other owners from 2004 through 2010, were Man Ferrostaal Aktiengesellschaft (MFA) with 8.17 percent and CEL with 35.30 percent. In 2011, MFA sold its shares in MHTL to CEL, increasing CEL's shares in MHTL to 43.37 percent. *Id.* *See also* GOTT SQR (March 17, 2015) at 17.

²¹ *See* GOTT IQR (February 9, 2015) at CLICO Responses; *see also* MHTL SQR (April 1, 2015) at Exhibit MHTL Sup2-1 (CEL IQR).

²² *See* GOTT IQR (February 9, 2015) at Exhibit 1.

²³ *Id.*, at CLICO Response (page 7), and Exhibit Bailout-27 (February 13, 2009 Notice: Central Bank Assumes Control of CLICO).

Program,” below. As of October 9, 2014, CLICO and CLF ceased to be shareholders of MHTL, and CEL became the sole owner of MHTL.²⁴

Because MHTL is no longer owned by CLICO/CLF and does not maintain its prior owners’ financial records, and CLICO and CLF are under government ownership and control,²⁵ the GOTT provided a questionnaire response on behalf of CLICO and CLF.²⁶ We preliminarily determine that countervailable subsidies were provided to CLICO. See “Bailout Program,” below.

Based on its ownership structure, MHTL was affiliated with hundreds of other companies over the AUL. However, on the basis of the record evidence, we preliminarily determine that none of those companies other than CLICO meet any of the conditions of 19 CFR 351.525(b)(6)(ii)-(v) and, therefore, are not included in our subsidy analysis.

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

Further, pursuant to 19 CFR 351.525(b)(6)(iii), we are attributing the subsidies received by CLICO to the combined sales of CLICO and MHTL for the POI.²⁷ And, in accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies received by MHTL to the sales of MHTL.

D. Benchmark Interest Rates

The Department’s regulations at 19 CFR 351.524(d)(3) provide for the use of the respondent’s cost of long-term, fixed rate loans as a discount rate, or, alternatively, other measures of the average cost of long-term, fixed-rate loans in the country in question. The same regulation calls for the use of a benchmark interest rate (*i.e.*, not the company’s own cost of debt) as a discount rate for an uncreditworthy company during the years in which the company is uncreditworthy.

The Department’s regulations state that a firm will be considered uncreditworthy if it could not have obtained “long-term loans from conventional commercial sources.” The term “commercial” is defined in 19 CFR 351.505(a)(2)(ii) as excluding loans provided under a government program or a loan provided by a government-owned special purpose bank. Further, 19 CFR 351.505(a)(4)(ii) notes that long-term commercial loans will normally be considered dispositive evidence of creditworthiness in the case of “firms not owned by the

²⁴ *Id.*, at 2 and Exhibit 1.

²⁵ See MHTL IQR (February 9, 2015) at 8.

²⁶ See GOTT IQR (February 9, 2015).

²⁷ The GOTT provided only CLICO’s unconsolidated financial statements for the years 2006 through 2012 (the 2013 financial statement is not yet finalized). Therefore, to conduct the 0.5 percent test for the bailout assistance provided to CLICO, we used, as the sales denominator, the sum of CLICO’s premium revenue and investment income reported in the unconsolidated financial statements. To calculate the POI bailout program rate for MHTL, we used, as the denominator, the combined sales of CLICO (unconsolidated) and MHTL.

government.” In addition to the creditworthiness factors discussed below at “Unequityworthiness and Uncreditworthiness,” we preliminarily find no evidence that CLICO was able to obtain long-term loans from commercial sources.

Thus, for the years in which we preliminarily determine that CLICO was uncreditworthy (2009 through 2013), we used the formula described in 19 CFR 351.505(a)(3)(iii) to determine the risk premium to be added to the benchmark. For the probability of default by an uncreditworthy company, we used the average default rates reported for the Caa- to C-rated companies as published in Moody’s Investors Service, “Corporate Default and Recovery Rates, 1920-2010” (February 2011) at Exhibit 33: Average Cumulative Issuer-Weighted Global Default Rates, 1920-2010. For the probability of default by a creditworthy company, we used the average default rates for Aaa through Baa-rated companies.²⁸

*Trinidad and Tobago Lending Rates*²⁹

The GOTT submitted the prime lending rate for the years 2008 through 2012 from Trinidad and Tobago’s Central Bank Economic Bulletin (July 2013). In order to complete our calculations, the Central Bank Economic Bulletin did not have the necessary information, therefore we sourced additional prime lending rates for the years 2004 through 2007, and for 2013 from the World Bank’s World Development Indicators.

VIII. UNEQUITYWORTHINESS AND UNCREDITWORTHINESS

Petitioner alleged that CLF and its subsidiaries (CLICO, British American Insurance Company (Trinidad) Limited (BAICO), CLICO Investment Bank Limited (CIB), and Caribbean Money Market Brokers Limited) were unequityworthy and uncreditworthy when the GOTT provided cash injections and assumption of liabilities to bail out the conglomerate beginning in 2009. Because CLICO was the majority-owner of MHTL, and no other CLF subsidiary had direct ownership of MHTL, and the CBTT took control of CLICO in the bailout, which severed CLICO’s ties with the other subsidiaries,³⁰ we preliminarily determine that our equityworthiness and creditworthiness analysis should focus on only CLICO.

A. Equityworthiness

Section 771(5)(E)(i) of the Act and 19 CFR 351.507 state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. Pursuant to 19 CFR 351.507(a)(2), an equity infusion is considered inconsistent with usual investment practice if the

²⁸ See Department Memorandum regarding “Corporate Default and Recovery Rates” dated concurrently with this memorandum.

²⁹ For the Trinidad and Tobago interest rates used in the preliminary calculations, see Department Memorandum regarding “Preliminary Calculations for MHTL” (MHTL Preliminary Calculations), dated concurrently with this memorandum.

³⁰ See MHTL Affiliation Response (January 9, 2015) at Exhibit 4 (MHTL Organization Chart 2004-2014), and GOTT IQR (February 9, 2015) at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions) and Exhibit Bailout-27 (February 13, 2009 Notice: Central Bank Assumes Control of CLICO).

price paid by the government for newly issued shares is greater than the price paid by private investors for the same newly issued shares.

If private investor prices are not available, then pursuant to 19 CFR 351.507(a)(3), the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. Under 19 CFR 351.507(a)(4)(i), the Department will consider a firm to be equityworthy if it determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. In making this determination, the Department will examine the following factors, among others: (1) objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question; (2) current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles; (3) rates of return on equity in the three years prior to the government infusion; and (4) equity investments in the firm by private investors.

Section 351.507(a)(4)(ii) of the Department's regulations further stipulates that the Department will "normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion." Absent an analysis containing information typically examined by potential private investors considering an equity investment, the Department will normally determine that the equity infusion provides a countervailable benefit. The Department will not necessarily make such a determination if the absence of an objective analysis is consistent with actions of a reasonable private investor in the country in question.

As further discussed below at "Bailout Program," the GOTT was notified of CLICO's financial distress in January 2009.³¹ In response, the GOTT injected TT\$5 billion in cash and government bonds into CLICO in exchange for ordinary and preference shares in CLICO.³²

To conduct our analysis of CLICO's equityworthiness, we inquired whether the GOTT conducted any pre-investment analysis to determine whether the company's equity would earn a reasonable rate of return.³³ The GOTT reported that it "did not conduct any feasibility studies, market reports, economic forecasts, loan appraisals, or similar documents when it intervened in Trinidad and Tobago's financial markets in order to prevent an economic collapse."³⁴ In response to the question asking the GOTT to describe any attempts made to obtain equity investment from private sources, the GOTT replied that "CLICO did not attempt to obtain private financing."³⁵

³¹ See GOTT IQR (February 9, 2015) at Exhibit Bailout-7 (January 13, 2009 CL Financial Chairman's Letter to CB Governor).

³² *Id.*, at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions).

³³ *Id.*, at Exhibit Appendix-2 (Equity Appendix Equity Infusion).

³⁴ *Id.*

³⁵ *Id.*

The record demonstrates that the GOTT injected capital into CLICO because, as stated in the January 30, 2009, Memorandum of Understanding (2009 MOU), “the financial condition of {the CLF conglomerate} threaten the interest of depositors, policy holders and creditors of these institutions and pose danger of disruption or damage to the financial system of Trinidad and Tobago.”³⁶ The GOTT explained that it had to take prompt action in order to stabilize the country’s financial system.³⁷

Prime Minister Kamla Persad-Bissessar, who took office in 2010, noted the lack of objective analysis prior to the government’s equity infusion, stating:

“In this current economic environment, given the extent of the significant debts owed by the CL group, the problem was obviously not a temporary one. There was a much deeper and wider problem of solvency in the group’s financial institutions. ...

... they {the prior government administration} pumped billions of dollars in what appears to be a blind manner, into a situation in which they had not the slightest clue of how to handle it.”³⁸

Petitioner provided a study on the collapse of CLICO that was conducted by Wilmington University in December 2013.³⁹ The CLICO Study, which examined the company’s financial activity between 2003 and 2008, found “investments in unproductive asset expansion, declining income, bleeding cash positions over the period and a business structure unlike a typical insurance company.”⁴⁰

The GOTT submitted CLICO’s unconsolidated financial statements for the years 2006 through 2012 (the statement for 2013 is not yet finalized).⁴¹ We analyzed CLICO’s financial condition for those years and noted that CLICO’s financial situation was poor and deteriorating.⁴² For 2006 and 2007, CLICO had debt to equity ratios of 2.82 percent and 3.16 percent, respectively, indicating that CLICO was borrowing heavily to finance its operations.⁴³ For 2008 and 2009, CLICO’s shareholder’s equity was negative, results of operating activities and income before tax were negative, and return on assets was negative.⁴⁴

On the basis of the record evidence, we preliminarily determine that CLICO was insolvent and not equityworthy at the time the GOTT injected TT\$5 billion into the company in 2009, within

³⁶ *Id.*, at Exhibit Bailout-21.

³⁷ *Id.*, Exhibit Appendix-1 through Appendix-7.

³⁸ See Petition, at Exhibit V-14 for article “Trinidad and Tobago Prime Minister: CLICO a scheme like Ponzi, a house of cards,” *Barbados Free Press* (October 4, 2010).

³⁹ See Petition, at Exhibit V-8 for “Colonial Life Insurance Company Limited – From Growth the Failure: An Analysis of Reported Financial Activity 2003-2008” authored by Leo-Rey Gordon, College of Business, Wilmington University (December 2013) (CLICO Study).

⁴⁰ See CLICO Study, at 1.

⁴¹ See GOTT IQR (February 9, 2015) at CLICO Response (page 7), and Exhibit Bailout-34 through Exhibit Bailout-41.

⁴² See Department Memorandum regarding “CLICO Financial Data,” dated concurrently with this memorandum (CLICO Financial Data Memorandum).

⁴³ *Id.*

⁴⁴ *Id.*

the meaning of 19 CFR 351.507(a)(4). Accordingly, we preliminarily determine that the GOTT's rationale for the equity infusion into CLICO was inconsistent with the usual investment practice of private investors.

B. Uncreditworthiness

The examination of creditworthiness under 19 CFR 351.505(a)(4) is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, "based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources." Pursuant to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department normally examines: (1) the receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health, as reflected in various financial indicators calculated from the firm's financial statements and accounts; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

Information on the record indicates that CLICO could not have obtained long-term financing from commercial sources. First, as discussed above in "Equityworthiness," the GOTT reported that CLICO did not attempt to obtain private financing to meet its liabilities. Further, the CLICO Study found that, for 2007, all of CLICO's liabilities were held only with its affiliated firms CIB and Republic Bank Limited (RBL) and not from any unrelated, third party.⁴⁵ We examined CLICO's unconsolidated financial statements and found that financing was provided by related parties and state-owned banks.⁴⁶ On the basis of this evidence, we preliminarily find that CLICO did not receive any loans from unaffiliated commercial banks before or at the point of the financial collapse in 2009.

We next examined CLICO's indicators of financial health, ability to meet financial obligations with cash flow, and future financial position. The CLICO Study makes clear that despite significant asset growth, CLICO experienced declining profitability such that the company demonstrated no free cash available to security holders and relied predominately on cash from debt issuance with affiliated firms over the period 2003 – 2008.⁴⁷ One of the CLICO Study's conclusions is that the poor income and cash performance of CLICO should have been a signal to security holders, potential investors, and management of the failing business strategy used by the company.⁴⁸ An analysis of CLICO's financial ratios for the years 2007 through 2009, indicates that the company's financial position was deteriorating.⁴⁹ Specifically, CLICO's current ratios were 0.74 percent, 0.14 percent, and 0.07 percent in 2007, 2008, and 2009, respectively, indicating that the company had negative working capital and was in a liquidity

⁴⁵ See CLICO Study, at 15-16 and 20.

⁴⁶ See CLICO Financial Data Memorandum.

⁴⁷ See CLICO Study, at 2-3.

⁴⁸ *Id.*, at 25.

⁴⁹ See CLICO Financial Data Memorandum.

crisis.⁵⁰ Given CLICO's financial position, the CBTT took control of CLICO in February 2009.⁵¹ CLICO's negative working capital position continued into 2010, 2011, and 2012.⁵² Based on this record evidence, we preliminarily find that CLICO: (1) did not receive long-term commercial loans (from parties other than (a) related companies prior to the bailout, and (b) state-owned banks upon being taken over by the CBTT); (2) was not in good financial health; (3) did not have sufficient cash flow to meet the company's costs; and (4) did not have sound future financial prospects. As such, we preliminarily determine that CLICO was uncreditworthy during the years in which it received bailout assistance from the government (*i.e.*, 2009-2013).

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Bailout Program⁵³

The Department is investigating whether the GOTT provided countervailable subsidies to CLICO, MHTL's parent, which experienced a liquidity crisis in 2008, and subsequently received a government bailout of its liabilities.

CLICO, established in 1936, expanded its business beyond insurance in the 1980s to span several industries, including petrochemical production.⁵⁴ During this time, CLICO was owned by CLF, a privately-owned investment holding company, with investments in a number of sectors including the "financial sector (banking and insurance), energy, drinks, and land development."⁵⁵ In 2008, a global financial crisis commenced that impacted the liquidity of the CLF group which relied heavily on the investment products sold by the financial subsidiaries, including CLICO.⁵⁶ A drop in public confidence resulted in a number of policyholders making withdrawals of their investments, which had higher than average rates of return that were guaranteed by CLICO.⁵⁷ The liquidity crisis was exacerbated by new regulations that effectively cut-off CLICO from its primary lender, RBL, an affiliated company.⁵⁸

In addition to the liquidity crisis, CLICO was required by law to maintain assets in a trust,

⁵⁰ *Id.*

⁵¹ See GOTT IQR (February 9, 2015) at Exhibit Bailout-27 (February 13, 2009 Notice: Central Bank Assumes Control of CLICO).

⁵² See CLICO Financial Data Memorandum.

⁵³ The Bailout Program includes the following assistance on which the Department initiated: (1) Equity Infusion; (2) Assumption of Obligations: Short-Term Investment Products; (3) Assumption of Obligations: Executive Flexible Premium Annuities; and (4) Assumption of Obligations: CLICO Investment Bank. See *Initiation Notice*, and accompanying Initiation Checklist.

⁵⁴ See Petition, at 4 and Exhibit V-6 for the article "CLICO – Why Was Nothing Done Sooner?," *Business Barbados* (May 6, 2010).

⁵⁵ See GOTT IQR (February 9, 2015) at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

known as the Statutory Fund, that were of sufficient value to cover a percentage of its liabilities to policyholders.⁵⁹ The 2008 financial crisis resulted in a sizeable gap in CLICO's Statutory Fund, in addition to new regulations that impacted qualifying assets that could be placed in the fund.⁶⁰ The CBTT's meeting notes of January 16, 2009, indicated that CLICO's Statutory Fund deficit was TT\$2.5 billion as of December 31, 2008.⁶¹ CLICO's liabilities to policyholders were reported to be approximately TT\$16.2 billion.⁶²

As such, in January 2009, CLF approached the CBTT initially to request forbearance with regard to the regulations that governed the Statutory Fund. CLF then sought the assistance of the CBTT to provide liquidity support.⁶³ The GOTT explained that it had no choice but to intervene as it appeared insolvency would have triggered a run on the banks and insurance companies. The assets owned by the CLF group accounted for a significant portion of Trinidad and Tobago's gross domestic product.⁶⁴ The GOTT reported that CLICO accounted for half of the insurance market.⁶⁵

In assessing the situation, the Central Bank Governor noted that CLICO's and CIB's financial problems had to do with (1) excessive related party transactions; (2) use of deposits and insurance premiums to finance a wide range of high risk ventures; (3) bad investment decisions; and (4) serious management shortcomings.⁶⁶ Consequently, on January 30, 2009, the GOTT entered into the 2009 MOU with CLF, acting for itself as well as CLICO, CIB, and BAICO, to correct the financial condition of CLICO, BAICO, and CIB and to protect the interests of depositors, policyholders, and creditors of these institutions.⁶⁷ The 2009 MOU stated that CLF would first sell assets and apply the proceeds of the sales to satisfy the Statutory Fund requirements of BAICO and CLICO, and to balance the third party liabilities of CIB.⁶⁸ The 2009 MOU also stated that, in consideration of its significant financial exposure to CLICO, BAICO, and CIB, the GOTT would receive appropriate shareholdings in CLICO and BAICO.⁶⁹

Subsequently in February 2009, the GOTT exercised its statutory powers and assumed control of CIB.⁷⁰ The GOTT also amended the law to give the CBTT the right to exercise its statutory powers over insurance companies and CBTT took control of CLICO and BAICO under section 44D of the Central Bank Act.⁷¹ As a result of these actions, the GOTT stated that CLF effectively collapsed, BAICO ceased operations, and CLICO continued to operate under government control through the Ministry of Finance.⁷² In total, press reports indicate that, from

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*, at Exhibit Bailout-8 (January 16, 2009 CB Meeting Minutes).

⁶² *Id.*

⁶³ *Id.*, at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*, at Exhibit Bailout-9 (January 22, 2009 Proposal from CB Governor to Minister of Finance).

⁶⁷ *Id.*, at Exhibit Bailout-21 (January 30, 2009 Memorandum of Understanding).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*, at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions). CIB's assets and liabilities were transferred to a state-owned financial institution.

⁷¹ *Id.*, at Exhibit Bailout-27 (February 13, 2009 Notice: Central Bank Assumes Control of CLICO).

⁷² *Id.*, at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions).

2009 to 2013, the GOTT spent approximately TT\$25 billion (equivalent to US\$4 billion) to bail out CLF and its subsidiaries.⁷³

GOTT Assistance to CLICO

Because CLICO was the majority-owner of MHTL, and no other CLF subsidiary had direct ownership of MHTL, and the CBTT took control of CLICO in the bailout, severing ties with CLF and its other subsidiaries,⁷⁴ we preliminarily determine that the subsidy analysis should focus only on the benefits that CLICO received. Under 19 CFR 351.525(b)(6)(iii), subsidies provided to parent companies are attributed to the consolidated sales of the holding company and its subsidiaries. Thus, we preliminarily determine that the bailout of CLICO conferred subsidies on MHTL.

The GOTT provided assistance to CLICO in two phases: In Phase 1 “Equity Infusion,” the GOTT provided to CLICO TT\$5 billion in cash and government bonds, in exchange for ordinary and preference shares in the company, for payment of policyholder liabilities. In Phase 2 “Assumption of Liabilities,” the GOTT decided to directly make payments to policyholders and purchase their rights to CLICO’s Short-Term Investment Products (STIPs).⁷⁵ Below we address each phase of assistance.

a. Equity Infusion

As noted above, in January 2009, the GOTT injected TT\$5 billion, in cash and bonds, into CLICO in return for shares and a 49 percent share of equity in the company.⁷⁶ With the cash and bonds, which were to be disposed of on the open market to realize funds, CLICO was required to settle maturity obligations and other policyholder payments.⁷⁷ The GOTT ratified the infusion of TT\$5 billion into CLICO in the *Purchase of Certain Rights and Validation Act, 2011 (Purchase Rights Act)*.⁷⁸

Based on our examination, we preliminarily determine that CLICO was unequityworthy in 2009, within the meaning of 19 CFR 351.507(a)(4). Regarding this bailout event,⁷⁹ we preliminarily determine that the equity infusion constitutes a financial contribution made to CLICO within the meaning of section 771(5)(D)(i) of the Act. The equity infusion was specific to CLICO within the meaning of section 771(5A)(D)(i) of the Act, and provided a benefit pursuant to 19 CFR 351.507(a)(1) and (6).

⁷³ See Petition, at 3 and Exhibit V-4 for the article “\$25b and Counting,” *Trinidad Express Newspaper* (May 4, 2013).

⁷⁴ See MHTL Affiliation Response (January 9, 2015) at Exhibit 4 (MHTL Organization Chart 2004-2014), and GOTT IQR (February 9, 2015) at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions) and Exhibit Bailout-27 (February 13, 2009 Notice: Central Bank Assumes Control of CLICO).

⁷⁵ STIP means an Executive Flexible Premium Annuity (EFPA), Executive Single Premium Annuity, Group Advanced Protection or Guaranteed Annuity Advanced Protection Policy issued by CLICO. See GOTT IQR (February 9, 2015) at Exhibit Bailout-1 (Purchase of Certain Rights Act).

⁷⁶ See GOTT IQR (February 9, 2015) at Exhibit Bailout-30 (Central Bank Economic Bulletin, January 2013) at 23, and Exhibit Appendix-1 (Standard Questions Appendix Equity Infusions).

⁷⁷ See GOTT SQR (March 17, 2015) at 13-14.

⁷⁸ See GOTT IQR (February 9, 2015) at Exhibit Bailout-1 (Purchase of Certain Rights Act) at section 8(1).

⁷⁹ The bailout event includes interest income that CLICO received. The facts regarding the interest income are business proprietary and, therefore, are discussed in the preliminary calculation memorandum. See MHTL Preliminary Calculations.

An equity infusion is a non-recurring benefit under 19 CFR 351.524(c). Thus, we first performed the “0.5 percent test” of 19 CFR 351.524(b), and determined that the equity infusion is allocable. We then allocated the equity infusion according to the formula detailed in 19 CFR 351.507(c) over the 10-year AUL. Because CLICO was unequityworthy in 2009, we added a risk premium to the discount rate as specified under 19 CFR 351.524(d)(3)(ii).

The benefit for the equity infusion, allocated to the POI, was divided by the denominator described above in “Subsidies Valuation.” On this basis, we preliminarily determine a countervailable subsidy of 7.19 percent *ad valorem* for MHTL.

b. Assumption of Liabilities

Between Phase 1 of the bailout (the equity infusion) and Phase 2 of the bailout (assumption of STIP liabilities), a new government was elected in Trinidad and Tobago, which determined that, rather than have CLICO pay policyholders, the government would pay the policyholders directly through the Ministry of Finance.⁸⁰ As such, the *Purchase Rights Act* empowered the GOTT to make payments and issue bonds for the purchase of certain rights belonging to holders of STIPs issued by CLICO.⁸¹ Specifically, the *Purchase Rights Act* validated the GOTT’s actions, which commenced in March 2011, of purchasing the rights of CLICO policyholders.

From March 2011, through May 2013, the GOTT paid directly to CLICO policyholders TT\$10.827 billion for the purchase of their rights in respect of their STIPs.⁸² Specifically, STIP holders with principal balances⁸³ of up to \$75,999 received full cash payments.⁸⁴ STIP holders with principal balances greater than \$75,999 received a mix of cash and 20 zero coupon GOTT bonds with maturities ranging from years 1-10 and 11-20.⁸⁵ The GOTT submitted on the record the yearly STIPs payouts for 2011, 2012, and 2013.⁸⁶

We preliminarily determine that the GOTT’s assumption of CLICO’s policyholder liabilities constitutes a financial contribution under section 771(5)(D)(i) of the Act. The debt assumption was specific to CLICO under section 771(5A)(D)(i) of the Act, and provided a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.504.

We preliminary find that the GOTT’s assumption of CLICO’s policyholder liabilities represented grants to CLICO and, therefore, is a non-recurring benefit under 19 CFR 351.524(c).

⁸⁰ See GOTT IQR (February 9, 2015) at Exhibit Appendix-4 (Standard Questions Appendix STIPs).

⁸¹ *Id.*, at Exhibit Bailout-1 (Purchase of Certain Rights Act). This Act provides for the GOTT’s purchase of STIPs issued by both CLICO and BAICO.

⁸² *Id.*, at Exhibit Appendix-4 (Standard Questions Appendix STIPs). See also GOTT SQR (March 17, 2015) at 15 (footnote 2) and 16.

⁸³ Principal balances means the capital sum payable to holders of STIPs as of the issue date or last renewal date, where applicable, minus any capital withdrawals made by, or loans made to, the STIPs holder. See GOTT IQR (February 9, 2015) at Exhibit Bailout-1 (Purchase of Certain Rights Act) at section 8(3).

⁸⁴ See GOTT IQR (February 9, 2015) at Exhibit Appendix-4 (Standard Questions Appendix STIPs).

⁸⁵ *Id.* Instead of taking the GOTT’s offered pay-out, certain claimants sought judicial review of the decision by the GOTT to pay STIP holders with principal balances greater than \$75,999 a mix of cash and bonds. The outcome of this matter remains pending. *Id.*, at Exhibit Appendix-6 (Standard Questions Appendix EFPAs).

⁸⁶ *Id.*, at Exhibit Bailout-4 (CLICO STIPs and EFPA Balances). See also GOTT SQR (March 17, 2015) at Exhibit Sup-10 (Phase 2 Balances).

Thus, we first performed the “0.5 percent test” of 19 CFR 351.524(b), and determined that the grants received in 2011, 2012, and 2013 are allocable over the 10-year AUL. Because we preliminarily determine that CLICO was uncreditworthy in 2011, 2012, and 2013, within the meaning of 19 CFR 351.505(a)(4), we added a risk premium to the discount rates as specified under 19 CFR 351.524(d)(3)(ii). The benefit for each grant, allocated to the POI, was divided by the denominator described above in “Subsidies Valuation.” On this basis, we preliminarily determine a countervailable subsidy of 17.41 percent *ad valorem* for MHTL.

2. Fiscal Incentives Act: Tax Programs

In its IQR, the GOTT reported that the *Fiscal Incentives Act* applies to all three of the tax programs under investigation: Corporate Tax, Customs Duties, and Certain Income Taxes.⁸⁷ In 1979, the *Fiscal Incentives Act* was established to harmonize fiscal incentives to industries with other member states of the Caribbean Community and Common Market in accordance with the *Agreement on Harmonization of Fiscal Incentives to Industry*. The law provides for the product manufactured to be declared an approved product by an approved enterprise and to which certain benefits are granted for total or partial relief from corporation taxes, customs duties, and income tax on dividends.⁸⁸ Additionally, section 9(2) of the law expressly limits eligibility for benefits to certain companies, *i.e.*, group I enterprises where local value added⁸⁹ is at least 50 percent; group II enterprises where local value added is at least 25 percent but less than 50 percent; group III enterprises where local value add is at least 10 percent but less than 25 percent; enclave enterprises where the product is produced exclusively for export; and capital intensive enterprises where the capital investment for the product to be produced is not less than TT\$50 million.⁹⁰

MHTL qualified for benefits under the *Fiscal Incentives Act* because it was approved and classified as a highly capital intensive enterprise.⁹¹ MHTL was granted exemptions from corporate taxes, customs duties and value added taxes (VAT), and income tax on dividends or other distributions.⁹² MHTL reported that it did not use the income tax exemption on dividends or other distributions (aka, Certain Income Taxes).⁹³

⁸⁷ See GOTT IQR (February 9, 2015) at Exhibit Appendix-8 (Standard Questions Appendix Corporate Tax), and Exhibit Tax-10 (MHTL Fiscal Incentives Approval Letter). See also MHTL IQR (February 9, 2015) at Exhibit Appendix-1 through 4, and Exhibit Tax-2 through 5.

⁸⁸ *Id.*

⁸⁹ Local value added is defined at section 3(1) of the *Fiscal Incentives Act*. See GOTT IQR (February 9, 2015) at Exhibit Tax-9 (Fiscal Incentives Act).

⁹⁰ *Id.*, at Exhibit Tax-9 (Fiscal Incentives Act) at section 2 (definitions) and section 9(2).

⁹¹ *Id.*, at Exhibit Appendix-8 (Standard Questions Appendix Corporate Tax), and Exhibit Tax-9 (Fiscal Incentives Act); see also MHTL IQR (February 9, 2015) at Exhibit Appendix-1 (Standard Questions Appendix-Corporate Tax).

⁹² See MHTL IQR (February 9, 2015) at Exhibit Tax-2 (Legal Notice MHTL AUM), and Exhibit Tax-3 (Legal Notice MHTL Methanol).

⁹³ See MHTL SQR (March 11, 2015) at 5.

a. Corporate Tax

We preliminarily determine that this program confers a countervailable subsidy. The income tax exemption is a financial contribution in the form of revenue foregone by the government, as described under section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Regarding specificity, we preliminarily determine that this legislation indicates that benefits are expressly limited to only certain enterprises and thus is *de jure* specific under section 771(5A)(D)(i) of the Act. To calculate the benefit from this program, we treated the income tax exemption claimed by MHTL as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

We divided MHTL's total benefits under the program by its total sales during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 1.47 percent *ad valorem* for MHTL.

b. Customs Duties – Import Duty and Value Added Tax Exemption

We preliminarily determine that the import duty and VAT exemption program is countervailable. We preliminarily find that this program provides a financial contribution in the form of forgone revenue within the meaning of section 771(5)(D)(ii) of the Act, and confers a benefit in the amount of import duties and VAT savings in accordance with section 771(5)(E) of the Act and 19 CFR 351.510(a). Regarding specificity, we preliminarily determine that *Fiscal Incentives Act* indicates that benefits are expressly limited to certain enterprises and thus is *de jure* specific under section 771(5A)(D)(i) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as import duty and VAT exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which 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 normally treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL.⁹⁴ MHTL provided a list of the import duty and VAT exemptions that it received for imported capital equipment, over the AUL, with regards to its ammonia-urea-melamine (AUM) and methanol facilities.⁹⁵ Based on that information, we preliminarily determine that the import duty and VAT exemptions are tied to the capital structure or capital assets of the company, and, as such, should be allocated over time.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.⁹⁶ For certain years, the benefits received by MHTL exceeded 0.5 percent of relevant sales for each year.⁹⁷ We, thus, allocated the benefits received in those years over the 10-year AUL, pursuant to 19 CFR 351.524(b)(1). For other years, the benefits received by MHTL did

⁹⁴ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

⁹⁵ See MHTL SQR (April 1, 2015) at Exhibit MHTL Sup2-12.

⁹⁶ See 19 CFR 351.524(b).

⁹⁷ See MHTL Preliminary Calculations.

not exceed 0.5 percent of relevant sales for each year.⁹⁸ As such, we expensed those benefits to the year in which they were received, pursuant to 19 CFR 351.524(b)(2).

To allocate the benefits not expensed, we used the discount rates described above in the section “Subsidies Valuation Information” to calculate the amount of the benefit allocable to the POI. We then divided the benefit by MHTL’s total sales for the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 1.41 percent *ad valorem* for MHTL.

B. Programs Preliminarily Determined Not to Be Countervailable

1. Provision of Natural Gas for Less Than Adequate Remuneration (LTAR)

Petitioner alleged that the National Gas Company (NGC), a state-owned company, provides natural gas to large industrial consumers, including MHTL, for LTAR. NGC was created by the GOTT in August 1975,⁹⁹ and is the sole supplier of natural gas in Trinidad and Tobago.¹⁰⁰ MHTL reported that it purchased natural gas from NGC in the POI.¹⁰¹

We first analyzed whether the provision of natural gas confers a benefit. Under 19 CFR 351.511(a)(2), the Department determines whether natural gas is provided for LTAR by comparing, in order of preference: (i) the government price to a market determined price for actual transactions within the country such as natural gas prices from private parties (tier one); (ii) comparing the government price to a world market price where it would be reasonable to conclude that such a world market price is available to natural gas consumers in the country in question (tier two); or (iii) if no world market price is available then the Department will measure the adequacy of remuneration by assessing whether the government price for natural gas is consistent with market principles (tier three).

Based on the hierarchy, we must first determine whether there are market prices from actual sales transactions that can be used to determine whether NGC sold natural gas to MHTL for LTAR. As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country under investigation.¹⁰² This is because such prices generally would be expected to reflect most closely the prevailing market conditions and commercial environment for the purchaser under investigation.

With respect to a tier one benchmark, NGC is the sole provider of natural gas in Trinidad and Tobago.¹⁰³ We, therefore, preliminarily determine that a tier one benchmark (a price within the

⁹⁸ *Id.*

⁹⁹ See GOTT IQR (February 9, 2015) at 7. The Minister of Finance and Economy holds 99.99 percent of NGC’s shares. *Id.*, at 10, and Exhibit Appendix -13 (Natural Gas Input Producer Appendix).

¹⁰⁰ *Id.*, at Exhibit Appendix-12 (Standard Questions Appendix Natural Gas).

¹⁰¹ See MHTL IQR (February 9, 2015) at 10-11.

¹⁰² 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 at “Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark.”

¹⁰³ See GOTT IQR (February 9, 2015) at 6.

country) is not available. The next alternative in the benchmark hierarchy is to use world market prices (a tier two benchmark). The respondents submitted on the record U.S. natural gas prices for the POI.¹⁰⁴ However, under 19 CFR 351.511(a)(2)(ii), the Department will only use world market prices if the good or service is actually available to the purchaser in the country under investigation. The GOTT reported that natural gas is not imported into Trinidad and Tobago.¹⁰⁵ Because there are no pipelines from the United States for the transport of natural gas to Trinidad and Tobago, we preliminarily determine that the U.S. natural gas prices are not useable for benchmark purposes under tier two of the hierarchy as they represent prices for natural gas that would not be available to purchasers in Trinidad and Tobago.

In a supplement to the Petition, Petitioner provided world export prices for liquefied natural gas (LNG).¹⁰⁶ Petitioner however did not provide any information that would inform the Department on the factors to be considered for the conversion of LNG prices to a delivered world price for natural gas. As such, we preliminarily determine that the LNG prices are not useable tier two benchmarks.

The final alternative in the benchmark hierarchy set forth under 19 CFR 351.511(a)(2)(iii) is to determine whether the government price is consistent with market principles.¹⁰⁷ Therefore, we preliminarily determine to use a tier three benchmark to determine whether NGC's natural gas prices are set for LTAR. Under a tier three analysis, the Department will assess whether the prices charged by NGC are set in accordance with market principles through an analysis of such factors as NGC's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. A tier three benchmark is the most complicated under the benchmark hierarchy because the Department is no longer solely examining prices, but assessing how the government sets its prices and whether the mechanism by which it determines its prices is consistent with market principles.

We first examined NGC's financial performance and noted that NGC was profitable in 2012 and 2013, indicating that the company was earning a reasonable rate of return on the sale of natural gas.¹⁰⁸ We next analyzed NGC's price-setting process. The GOTT reported that there are no

¹⁰⁴ See Letter from the GOTT and MHTL regarding "Submission of Benchmarks" (March 13, 2015).

¹⁰⁵ See GOTT IQR (February 9, 2015) at 6

¹⁰⁶ See Letter from Petitioner regarding "Response to the Department's Supplemental Questions" (November 18, 2014) at Exhibit V-S2.

¹⁰⁷ See *CVD Preamble*, at 65378: Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. See, e.g., *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992); and *Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997).

¹⁰⁸ See GOTT SQR (March 17, 2015) at Exhibit GOTT Sup-4 (NGC 2013 Annual Report).

laws that regulate the price of natural gas.¹⁰⁹ The GOTT also reported that there are no pricing guidelines or rate schedules for large industrial consumers of natural gas as the pricing of natural gas is determined through direct negotiation between the large consumer and NGC.¹¹⁰ We thus examined how the pricing for natural gas is set in the negotiation process.

In addition to melamine, MHTL produces ammonia and methanol.¹¹¹ The record demonstrates that NGC links the price of natural gas sold to the producers of ammonia and methanol to the relevant commodity price of ammonia and methanol.¹¹² The natural gas prices under these contracts are not capped, but the contracts include floor prices which represent the minimum prices for which natural gas can be sold to the respective customers.¹¹³ The price floor is set to ensure that NGC can cover its costs and earn a reasonable return.¹¹⁴ In doing so, the GOTT stated that NGC takes the capital expenditure involved and the particular use to which the gas will be used (*i.e.*, for fuel or feedstock) into account.¹¹⁵

During the POI, MHTL had contracts with NGC in place for its various facilities. We examined those contracts and MHTL's natural gas bills for the POI.¹¹⁶ The contracts indicate that, in setting its prices, NGC takes into consideration its expected acquisition cost for natural gas over the contract term as well as prevailing and forecasted international market pricing trends for natural gas and the linked commodity price over the period.¹¹⁷

On the basis of the record evidence, we preliminarily find that NGC applied a market-based price-setting mechanism. Further, we preliminarily find that the prices negotiated between NGC and its large industrial consumers reflect the prevailing market conditions and commercial environment for the purchase of natural gas.

As such, we preliminarily determine that the natural gas prices set by NGC provide adequate remuneration and that NGC's pricing is consistent with market principles. We, therefore, preliminarily determine that NGC's provision of natural gas is not a countervailable subsidy under section 771(5) of the Act. Since we preliminarily determine that the provision of natural gas does not provide a benefit, we need not address financial contribution and specificity. Even if the provision of natural gas constituted a financial contribution and was specific, the Department would not find the program to be countervailable on the basis that there is no benefit.

¹⁰⁹ *Id.*, at 8.

¹¹⁰ See GOTT IQR (February 9, 2015) at 7.

¹¹¹ See MHTL IQR (February 9, 2015) at 4.

¹¹² See GOTT SQR (March 17, 2015) at 6-7, and GOTT Sup-4 (NGC 2013 Annual Report) at "47. Commitment Contracts."

¹¹³ *Id.*, at Sup-4 (NGC 2013 Annual Report) at "47. Commitment Contracts."

¹¹⁴ *Id.*, at 6-7; see also MHTL IQR (February 9, 2015) at Exhibit Appendix-5 (Standard Questions Appendix – Natural Gas).

¹¹⁵ See GOTT SQR (March 17, 2015) at 7-8.

¹¹⁶ See MHTL IQR (February 9, 2015) at Exhibit Gas-1 (Natural Gas Bills), and MHTL SQR (March 11, 2015) at Exhibit MHTL Sup-11 (Gas Contracts).

¹¹⁷ See MHTL IQR (February 9, 2015) at 11.

2. Provision of Electricity for LTAR

Petitioner alleged that Trinidad and Tobago Electricity Commission (TTEC or the Commission), wholly-owned by the GOTT, supplies electricity to MHTL and other large industrial users for LTAR.¹¹⁸ TTEC, which was established via a government act of 1945, is solely responsible for the transmission, distribution, and sale of electricity in Trinidad and Tobago.¹¹⁹ During the POI, MHTL purchased electricity from TTEC.¹²⁰

TTEC classifies its customers into one of the following categories: residential, commercial, industrial, and street lighting.¹²¹ Industrial customers are further classified into D and E categories based on their level of energy usage.¹²² Users in the D1 and D2 sub-categories are considered small and medium industrial customers; while users in the D3 to D5 and E1 to E5 sub-categories are considered large to very large heavy industrial customers.¹²³

Customers with similar service characteristics such as load factor, usage patterns, peak demand, metering, and predominate use (*e.g.*, industrial) are placed in the same user category.¹²⁴ By classifying customers according to this criteria, TTEC ensures that (1) the per-customer costs for customers within a class are similar enough for them to be subject to a standardized per customer charge; (2) the per kW (or KVA) costs for customers within a class are similar enough for them to be subject to a standardized demand or capacity charge; and (3) the per kWh costs for customers within a class are similar enough for them to be subject to a standardized energy charge.¹²⁵

TTEC proposes tariff rates for each category that are approved or rejected by the Regulated Industries Commission (RIC), a statutory body that oversees the pricing of electricity.¹²⁶ The RIC Act describes the framework for regulation and delineates the approach to tariff setting and review process to ensure that the electricity rates for each tariff classification are consistent with the appropriate regulations, allows for recovery of TTEC's operating costs, and provides a sufficient return.¹²⁷

The pricing principles and methodologies used by TTEC in proposing electricity rates to RIC involve the development of forward looking estimates of required revenue (*i.e.*, the Revenue Requirement) to deliver proposed outcomes and meet prescribed service standards.¹²⁸ In determining the revenue requirement, costs are lumped into functional categories, such as

¹¹⁸ TTEC purchases electricity inputs, sells the inputs to power producers, and then purchases and resells the electricity to end consumers. *See* GOTT IQR (February 9, 2015) at 12; *see also* the TTEC Commission Act at Exhibit Electricity-4 (TTEC Act), and Exhibit Electricity-10 (Amended TTEC Act 2013).

¹¹⁹ *See* GOTT IQR (February 9, 2015) at 14, and Exhibit Electricity-4 (TTEC Act).

¹²⁰ *See* MHTL IQR (February 9, 2015) at 12-14.

¹²¹ *See* GOTT IQR (February 9, 2015) at Exhibit Electricity-11 (Tariffs).

¹²² *Id.*, and at 15.

¹²³ *Id.*

¹²⁴ *Id.*, at 22-23.

¹²⁵ *Id.*, at 23.

¹²⁶ The RIC Act governs the pricing of electricity in Trinidad and Tobago. *See* GOTT IQR (February 9, 2015) at 13-14, and Exhibit Electricity-2 (RIC Act).

¹²⁷ *Id.*, at 13-14, 20-30, and Exhibit Electricity-2 (RIC Act).

¹²⁸ *Id.*, at 27.

generation, transmission, distribution, *etc.*, and then using the cost of study approach, these costs are redistributed across the customer classes. The tariffs are then developed across these customer classes to ensure that the revenue requirement is recovered. Items such as load factor, consumption, demand, *etc.* are taken into account when developing the electricity tariffs.¹²⁹

Yearly there is an “Annual Tariff Approval Process,” whereby TTEC can propose new tariffs based on actual and forecasted cost and revenue performance. The GOTT submitted the relevant documents with regard to the last adjustment of tariff rates, which were set in RIC Determination No. 1 of 2006, covering the 5-year regulatory control period June 1, 2006, to May 31, 2011.¹³⁰ The RIC’s rate setting, during a regulatory control period, is subject only to annual adjustments to allow for the impact of inflation.¹³¹ The last rate adjustment was approved by RIC in July 2009, for implementation by TTEC from September 1, 2009,¹³² and resulted in an increase of tariff rates across all categories.¹³³ Those rates remained in effect during the POI.¹³⁴

MHTL reported that the electricity consumption of the AUM facility is categorized as E1, the electricity consumption of the methanol plants are categorized as D3, and the electricity consumption of its administrative offices is categorized D1; as such, the company paid the D1, D3, and E1 tariff rates in 2013.¹³⁵ We examined MHTL’s electricity invoices for the POI and confirmed that the rates paid by the company for the D1, D3, and E1 rate categories matched the published tariff rates for those categories.¹³⁶

Based upon our examination of the record information, we preliminarily find that TTEC and RIC applied the same price-setting philosophy or standard pricing mechanism to determine the electricity tariffs for each classification of customer. We, thus, preliminarily find that industrial consumers, including MHTL, were treated in a manner consistent or even less favorable than other consumers with respect to the electricity tariff schedule that was implemented on September 1, 2009. As such, we preliminarily determine that the provision of electricity is not a countervailable subsidy under section 771(5) of the Act. Since we preliminarily determine that the provision of electricity is not specific, we need not address financial contribution and benefit. Even if the provision of electricity constituted a financial contribution and provided a benefit, the Department would not find the program to be countervailable on the basis that there is no specificity.

¹²⁹ *Id.*, at 29.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*, at Exhibit Electricity-3 (RIC Final Determination), Exhibit Electricity-8 (TTEC Business Plan 2004-2008), and Exhibit Electricity-11. *See also* GOTT SQR (March 17, 2015) at 10 and 12.

¹³³ *See* GOTT IQR (February 9, 2015) at Exhibit Electricity-19 (Tariff Increases 2006-2010).

¹³⁴ *See* GOTT SQR (March 17, 2015) at 13. *See also* GOTT IQR (February 9, 2015) at Exhibit Electricity-19 for the 2009 tariff rates that were in effect during the POI.

¹³⁵ *See* MHTL IQR (February 9, 2015) at 13-14, and Exhibit Electricity 2-4; *see also* MHTL SQR (April 1, 2015) at Exhibit MHTL Sup2-14 and Sup2-15.

¹³⁶ *See* MHTL IQR (February 9, 2015) at Exhibit Electricity-5, MHTL SQR (April 1, 2015) at Exhibit MHTL Sup2-15, and GOTT IQR (February 9, 2015) at Exhibit Electricity-11 (Tariffs).

C. Programs Preliminarily Determined Not To Be Used

1. Certain Income Taxes under the Fiscal Incentives Order
2. Land and Building Taxes

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 pertaining to this case, 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 Enforcement and Compliance.

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.¹³⁷ Case briefs or other written comments may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) 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.¹³⁸

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.¹³⁹ 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*.¹⁴⁰ 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 and time to be determined. Parties will be notified of the date and time of any hearing.

¹³⁷ See 19 CFR 351.224(b).

¹³⁸ See 19 CFR 351.309.

¹³⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴⁰ See 19 CFR 351.310(c).

