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Investigation
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DATE: October 30, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to a producer and exporter of melamine from Trinidad and Tobago, as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Since Publication of the *Preliminary Determination*

On April 20, 2015, we published the *Preliminary Determination*¹ in this investigation, preliminarily finding that Methanol Holdings (Trinidad) Ltd. (MHTL), the mandatory respondent, received countervailable subsidies from the Government of the Republic of Trinidad and Tobago (GOTT) (collectively MHTL and the GOTT are referred to as “respondents”). From June 24, 2015, through June 30, 2015, we conducted verification of the questionnaire responses submitted by the respondents and released verification reports on July 21, 2015.² On August 3, 2015, and August 11, 2015, we received case briefs and rebuttal briefs, respectively, from Petitioner, Cornerstone Chemical Company, and the respondents.³ On September 1, 2015, we

¹ See *Melamine from Trinidad and Tobago: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 80 FR 21708 (April 20, 2015) (*Preliminary Determination*).

² See Department Memorandum, “Verification of the Questionnaire Responses of the Government of the Republic of Trinidad and Tobago” (July 21, 2015) (GOTT Verification Report), and Department Memorandum, “Verification of the Questionnaire Responses of Methanol Holdings (Trinidad) Ltd.” (July 21, 2015) (MHTL Verification Report).

³ See Letter from Petitioner, “Melamine From Trinidad and Tobago / Petitioner’s Case Brief” (August 3, 2015) (Petitioner Case Brief); Letter from Respondents, “Case Brief on Behalf of the Government of the Republic of Trinidad and Tobago and Methanol Holdings (Trinidad) Limited” (August 3, 2015) (Respondent Case Brief); and



held a public hearing in this investigation at the Department pursuant to requests from both respondents and Petitioner.⁴

B. Comments

We analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s positions on the issues raised in the briefs. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each applicable program in the “Analysis of Programs” section below. The following issues have been raised in this investigation:

- Comment 1: Whether MHTL Was Cross-Owned with Colonial Life Insurance Company (Trinidad) Limited (CLICO)
- Comment 2: Whether the CLICO Bailout Should Be Attributed to MHTL
- Comment 3: Whether Any Bailout Subsidies Were Extinguished When CLICO Sold Its Shares in MHTL
- Comment 4: Whether the Provision of Natural Gas for Less Than Adequate Remuneration (LTAR) Is Countervailable
- Comment 5: Whether the Import Duties and Value Added Tax (VAT) Exemption Is Countervailable
- Comment 6: Whether the VAT Benefit Calculation Should Be Revised
- Comment 7: Whether MHTL’s Sales Denominator Should Be Revised

III. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (CAS) registry number 108-78-01, molecular formula $C_3H_6N_6$).⁵ 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.

Letter from Petitioner, “Melamine From Trinidad and Tobago / Petitioner’s Rebuttal Brief” (August 11, 2015) (Petitioner Rebuttal Brief). The Department rejected the rebuttal brief filed by respondents on August 11, 2015, because it contained affirmative arguments. *See* Department Letter, “Rejection of Rebuttal Brief” (August 25, 2015). The respondents resubmitted their rebuttal brief on August 26, 2015. *See* Letter from Respondents, “Melamine from Trinidad and Tobago; Resubmitted Rebuttal Brief on Behalf of the Government of the Republic of Trinidad and Tobago and Methanol Holdings (Trinidad) Limited” (August 26, 2015) (Respondents Rebuttal Brief).

⁴ The transcript of the hearing is available in ACCESS, which is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building.

⁵ 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.

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.

IV. SUBSIDIES VALUATION

A. Period of Investigation

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

B. 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.⁶ 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.⁷ However, in order to appropriately measure any allocable 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.⁸ No party in this proceeding disputes this allocation period.

Furthermore, for non-recurring subsidies, we 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.

C. 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.

⁶ See 19 CFR 351.524(b).

⁷ See U.S. Internal Revenue Service Publication 946 (2013), "Appendix B – Table of Class Lives and Recovery Periods," submitted in Letter from Petitioner, "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) at Volume V, Exhibit V-5.

⁸ See Letter from the Department to the GOTT, "Initial Questionnaire" (December 19, 2014) at "Section II – Program Specific Questions."

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 Department's cross-ownership standard.⁹ 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.¹⁰

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹¹

MHTL: Established in November 1997, MHTL produces and sells melamine, methanol, and urea ammonium nitrate (UAN) solution, and ammonia.¹² During the POI, MHTL was owned by the following entities: CLICO with 49 percent, Consolidated Energy Limited (CEL) with 43.47 percent, and CL Financial Limited (CLF) with the remaining 7.53 percent which was held in a trust for CLICO.¹³ CLICO is an insurance company, CLF is a holding company, and CEL is an investment company.¹⁴ In October 2014, after the POI, CLICO and CLF ceased to be

⁹ See *Countervailing Duties; Final Rule*, 63 FR 65347, 65401 (November 25, 1998) (*CVD Preamble*).

¹⁰ *Id.*, 63 FR at 65401.

¹¹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (*Fabrique*).

¹² See Letter from MHTL, "Melamine from Trinidad and Tobago; Company Response to Countervailing Duty Questionnaire" (February 9, 2015) (MHTL IQR) at 4.

¹³ See Letter from MHTL, "Melamine from Trinidad and Tobago; Response to Affiliated Companies Questions" (January 9, 2015) (MHTL Affiliation Response) at Exhibit 4. Over the prior years of the AUL (2004 through 2012), 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 Letter from GOTT, "Melamine from Trinidad and Tobago; GORTT Response to First Supplemental CVD Questionnaire" (March 17, 2015) (GOTT SQR) at 17.

¹⁴ See Letter from GOTT, "Melamine from Trinidad and Tobago; Government Response to Countervailing Duty Questionnaire" (February 9, 2015) (GOTT IQR) at CLICO Response, and Letter from MHTL, "Melamine from Trinidad and Tobago; MHTL Response to Second Supplemental CVD Questionnaire" (April 1, 2015) (MHTL 2nd SQR) at Exhibit Sup2-1.

shareholders of MHTL, and CEL became the sole owner of MHTL.¹⁵

In the *Preliminary Determination*, we found that MHTL was cross-owned by CLICO based on CLICO's majority ownership of MHTL and controlling interest in MHTL.¹⁶ Based on MHTL's ownership structure, we continue to find that MHTL was majority-owned by CLICO. However, on the basis of the record evidence, we determine that CLICO did not have a controlling interest in MHTL and, therefore, MHTL was not cross-owned with CLICO within the meaning of 19 CFR 351.525(b)(6)(vi).¹⁷ Because we find that CLICO and MHTL are not cross-owned, we are not examining the subsidies received by CLICO in the bailout, nor attributing such subsidies to the combined sales of CLICO and MHTL for the POI. Additionally, we are not considering Petitioner's allegations with respect to the equityworthiness and creditworthiness of CLF and its subsidiaries.

Based on its ownership structure, we continue to find that although MHTL was affiliated with hundreds of other companies over the AUL, based on record evidence, none of those companies met any of the conditions of 19 CFR 351.525(b)(6)(ii)-(v) and, therefore, are not included in our subsidy analysis.¹⁸

D. 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 this investigation, we examined only domestic subsidies and, thus, used MHTL's total sales denominator to calculate the countervailable subsidy rates pursuant to 19 CFR 351.525(b)(3).

In its case brief, Petitioner argued that a revised sales denominator for MHTL should be used in the final determination. After considering Petitioner's comment, we modified the sales denominator used in the final benefit calculations to reflect the verified f.o.b. sales value for 2013.¹⁹

E. Discount 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. For this investigation, we required U.S. Dollar (USD) discount rates to calculate the benefits received under the Import

¹⁵ See MHTL Affiliation Response at 2 and Exhibit 4.

¹⁶ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum (IDM) at 5-6 and "Bailout Program."

¹⁷ See Comment 1, below, for further discussion. See also Department Memorandum, "Cross-Ownership Analysis for the Final Affirmative Determination in the Countervailing Duty Investigation of Melamine from Trinidad and Tobago," (Cross-Ownership Memorandum) dated concurrently with this memorandum, which is hereby incorporated by reference, for a full discussion of the proprietary details of the cross-ownership issue.

¹⁸ See *Preliminary Determination*, and accompanying IDM at 6.

¹⁹ See Comment 7, below. See also Department Memorandum, "Final Calculations for MHTL" (MHTL Final Calculations), dated concurrently with this memorandum.

Duties and VAT Exemption program. Absent company-specific rates, we relied on the World Bank's World Development Indicators.²⁰

V. ANALYSIS OF PROGRAMS

Based upon our analysis of the record evidence, we determine the following:

A. Programs Determined to Be Countervailable

1. Fiscal Incentives Act: Tax Programs

In its initial questionnaire response, 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.²¹ 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, at section 10, 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.²² Additionally, section 9(2) of the law expressly limits eligibility for benefits to certain companies, *i.e.*, group I enterprises where local value added²³ 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 added 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 (*i.e.*, a highly capital intensive enterprise).²⁴

MHTL qualified for benefits under the *Fiscal Incentives Act* because it was approved and classified as a highly capital intensive enterprise.²⁵ MHTL was granted exemptions from corporate taxes, customs duties (*i.e.*, import duties and VAT), and income tax on dividends or other distributions.²⁶ We verified the exemptions that MHTL received for corporate taxes, import duties, and VAT and found no discrepancies.²⁷ We also verified that MHTL did not use the income tax exemption on dividends or other distributions (*a.k.a.*, Certain Income Taxes).²⁸

²⁰ See Comment 6, below. See also MHTL Final Calculations.

²¹ See GOTT IQR at Exhibit Appendix-8 (Standard Questions Appendix Corporate Tax), Exhibit Appendix-9 (*Fiscal Incentives Act*), Exhibit Tax-9 (*Fiscal Incentives Act*), and Exhibit Tax-10 (MHTL Fiscal Incentives Approval Letter). See also MHTL IQR at Exhibit Appendix-1 through 4, and Exhibit Tax-2 through 5.

²² See GOTT IQR at Exhibit Tax-9 (*Fiscal Incentives Act*).

²³ Local value added is defined at section 3(1) of the *Fiscal Incentives Act*. See GOTT IQR at Exhibit Tax-9 (*Fiscal Incentives Act*).

²⁴ *Id.*, at Exhibit Tax-9 (*Fiscal Incentives Act*) at section 2 (definitions) and section 9(2).

²⁵ *Id.*, at Exhibit Appendix-8 (Standard Questions Appendix Corporate Tax), and Exhibit Tax-9 (*Fiscal Incentives Act*); see also MHTL IQR at Exhibit Appendix-1 (Standard Questions Appendix-Corporate Tax).

²⁶ See MHTL IQR at Exhibit Tax-2 (Legal Notice MHTL AUM), and Exhibit Tax-3 (Legal Notice MHTL Methanol).

²⁷ See MHTL Verification Report at 8-9.

²⁸ *Id.*, at 10.

The respondents submitted comments arguing that the Import Duties and VAT Exemption program is not specific, but if the Department continues to countervail the exemptions, then it should apply a time value of money methodology and USD discount rate to calculate the benefit. As discussed below, we continue to find the program to be countervailable. *See* Comment 5. We also determine to not apply a time value of money methodology, but agree that a USD discount rate is appropriate. *See* Comment 6.

a. Corporate Tax Exemption

We 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 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, as discussed above, we determine that MHTL qualified for benefits under the *Fiscal Incentives Act* because it was approved and classified as a highly capital intensive enterprise. Thus, the *Fiscal Incentives Act* indicates that benefits are expressly limited to only certain enterprises and 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 (*i.e.*, tax savings) under the program by its total sales during the POI. On this basis, we determine a countervailable subsidy rate of 1.66 percent *ad valorem* for MHTL.²⁹

b. Customs Duties – Import Duties and VAT Exemption

We determine that the import duty and VAT exemption program is countervailable. We 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, as discussed above, we determine that the *Fiscal Incentives Act* indicates that benefits are expressly limited to certain enterprises and thus the import duty and VAT exemption programs which operate under the *Fiscal Incentives Act* are *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.³⁰ MHTL provided a list of the import duty and VAT exemptions that it received for imported capital equipment over the AUL.³¹ Based on that information, we 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.

²⁹ *See* MHTL Final Calculations.

³⁰ *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

³¹ *See* MHTL 2nd SQR at Exhibit Sup2-12.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.³² For certain years, the benefits received by MHTL exceeded 0.5 percent of relevant sales for each year.³³ 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 not exceed 0.5 percent of relevant sales for each year.³⁴ 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 “Subsidies Valuation” to calculate the amount of the benefit allocable to the POI. We then divided the benefit amount by MHTL’s total sales for the POI. On this basis, we determine a countervailable subsidy rate of 1.42 percent *ad valorem* for MHTL.³⁵

2. Provision of Natural Gas for LTAR

Petitioner alleged that the National Gas Company (NGC), a state-owned company, provides natural gas to large industrial consumers, including MHTL, for LTAR. We verified the contracts that MHTL had in place with NGC during the POI for its various facilities, the price-setting mechanism applied for the derivation of the natural gas price paid by each facility, and the volume/value of the natural gas that was purchased by each facility.³⁶ We verified that MHTL received a discount on the price of natural gas purchased for its Ammonia-Urea-Melamine (AUM) facility because the complex produces the downstream products melamine and UAN.³⁷ On the basis of the evidence verified and in light of interested party comments, we modified our preliminary analysis of this program as discussed below and find that the NGC’s provision of natural gas constitutes a countervailable subsidy under section 771(5) of the Act. *See* Comment 4.

According to the GOTT’s questionnaire responses, NGC was created by the GOTT in 1975 as “the designated agency of government for the purpose of purchasing and selling natural gas in the country to industrial and commercial users.”³⁸ The GOTT also reported that NGC – the sole supplier of natural gas in Trinidad and Tobago³⁹ – is owned 99.99 percent by the Ministry of Finance and Economy, which is also responsible for the appointment/removal of NGC board directors.⁴⁰ Based on the evidence provided by the GOTT, we determine that NGC is a government agency which provides a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act.

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

³² *See* 19 CFR 351.524(b).

³³ *See* MHTL Final Calculations.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See* GOTT Verification Report at 12, and MHTL Verification Report at 5-6.

³⁷ *See* GOTT Verification Report at 11.

³⁸ *See* GOTT IQR at 7, and GOTT SQR at 2 and Exhibit Sup-2 (Cabinet Minutes and Cabinet Note).

³⁹ *See* GOTT IQR at Exhibit Appendix-12 (Natural Gas), page 2.

⁴⁰ *Id.*, at Exhibit Appendix-13 (Natural Gas Input Producer).

(Tier 1); (ii) 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 2); 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 3).

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.⁴¹ 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 1 benchmark, as noted above, NGC is the sole provider of natural gas in Trinidad and Tobago. We thus determine that a Tier 1 benchmark (a price within the country) is not available.

The next alternative in the benchmark hierarchy is to use world market prices (Tier 2). The respondents submitted on the record U.S. natural gas prices for the POI.⁴² 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.⁴³ Because there are no pipelines from the United States for the transport of natural gas to Trinidad and Tobago, we determine that the U.S. natural gas prices are not useable for benchmark purposes under Tier 2 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).⁴⁴ 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 determine that the LNG prices are not a useable Tier 2 benchmark.

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.⁴⁵ Under a

⁴¹ 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 IDM at “Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark.”

⁴² See Letter from the GOTT and MHTL, “Submission of Benchmarks” (March 13, 2015).

⁴³ See GOTT IQR at 6.

⁴⁴ See Letter from Petitioner, “Response to the Department’s Supplemental Questions” (November 18, 2014) at Exhibit V-S2.

⁴⁵ See *CVD Preamble*, 63 FR 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

Tier 3 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 methods, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. These factors are not in any hierarchy, and the Department may rely on one or more of the factors in a case.⁴⁶ A Tier 3 analysis 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.

In the *Preliminary Determination*, under a Tier 3 benchmark analysis, we determined that the natural gas prices set by NGC provided adequate remuneration and that NGC applied a market-based price-setting mechanism.⁴⁷ For purposes of this final determination, we continue to assess, under our Tier 3 benchmark analysis, whether the prices charged by NGC are set in accordance with market principles through an evaluation of NGC's price-setting methods.

The GOTT reported that there are no laws that regulate the price of natural gas.⁴⁸ 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.⁴⁹ We thus examined NGC's method for setting the price of natural gas in the negotiation process.

We verified that NGC applies "product-related pricing" to determine a large industrial consumer's natural gas price because NGC wants to align its financials with that of the consumer so that both are impacted similarly when market conditions change for such cyclical commodities as ammonia and methanol.⁵⁰ Thus, the price of natural gas sold to the producers of ammonia and methanol (such as, MHTL) is linked to the price of those commodities.⁵¹ As part of this process, NGC and the consumer negotiate the base gas price, product reference price, and price floor (which represent the minimum price for which natural gas can be sold) to reflect market conditions for the commodity to be produced.⁵² The price floor is set to ensure that NGC can cover its costs and earn a reasonable return.⁵³

At verification, we examined MHTL's contracts with NGC for its methanol facilities and the

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).

⁴⁶ *Id.*

⁴⁷ See *Preliminary Determination*, and accompanying IDM at "Provision of Natural Gas for LTAR."

⁴⁸ See GOTT SQR at 8.

⁴⁹ See GOTT IQR at 7.

⁵⁰ See GOTT Verification Report at 10-11.

⁵¹ *Id.* See also GOTT SQR at 6-7 and Exhibit Sup-4 (NGC 2013 Annual Report) at "47. Commitment Contracts."

⁵² See GOTT Verification Report at 10-11. See also GOTT SQR at Exhibit Sup-4 (NGC 2013 Annual Report) at "47. Commitment Contracts."

⁵³ See GOTT SQR at 7-8.

pricing method applied to compute the natural gas price paid monthly by the facilities. NGC applies a discount factor in the formula to derive a Caribbean f.o.b. methanol price (*i.e.*, the product reference price) which reflects the discounts that methanol sellers provide in the marketplace.⁵⁴ We examined contracts for other (non-MHTL) methanol facilities and verified that for those facilities the same pricing formula was used and that a similar discount factor was applied.⁵⁵ On the basis of this evidence, we find that the discount factor is part of NGC's price-setting method for natural gas sold to methanol facilities and that it was applied consistently to those facilities. Therefore, based on the record of this investigation, we determine that the prices, which NGC charged large industrial consumers with methanol facilities, reflect the prevailing market conditions and commercial environment for the purchase of natural gas.

Concerning the AUM facility (*i.e.*, the facility which produces subject merchandise), we examined the contract between NGC and MHTL for the supply of natural gas to this facility and the pricing formula applied. We noted that, similar to the methanol facilities, NGC applied its "product-related pricing" to derive a market-based gas price which was tied to an ammonia reference price based on international market prices.⁵⁶ NGC then applied a discount on that market-based gas price to arrive at the final gas price for melamine and UAN production.⁵⁷ NGC officials stated that the purpose of this discount was to encourage the petrochemical industry to diversify away from reliance on upstream products, such as methanol, and incentivize production of more value-added downstream products, such as melamine and UAN.⁵⁸ Additionally, because MHTL is the only company producing downstream petrochemical products, it is the sole company that is receiving this type of discount.⁵⁹ On the basis of this evidence, we find that the reduced natural gas price paid by the AUM facility was not market-based because the discount applied did not reflect prevailing market conditions, but was an incentive for the production of downstream petrochemical products. We, thus, determine that the natural gas price set by NGC for the AUM facility is inconsistent with market principles, within the meaning of 19 CFR 351.511(a)(2)(iii), and does not reflect the prevailing market conditions and commercial environment for the purchase of natural gas, but rather reflects reduced pricing for downstream activities.

Because the discount is limited to companies with facilities that produce downstream petrochemical products and MHTL was the only company that received the discount in the POI, we determine that the discount NGC provided to MHTL for the AUM facility is specific under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit from the discount, we compared the market-based natural gas price that MHTL should have paid, per the contract, to the reduced price that MHTL actually paid each month as indicated in the AUM facility's invoices for the POI.⁶⁰ We then summed those monthly benefits. Because the AUM facility produces ammonia, UAN, and melamine, to calculate the program rate, we divided the benefit amount by MHTL's sales of ammonia, UAN,

⁵⁴ See GOTT Verification Report at 11-12.

⁵⁵ *Id.*, at 11-13.

⁵⁶ *Id.*, at 11.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See MHTL IQR at Exhibit Gas-1 (Natural Gas Bills), and MHTL SQR at Exhibit Sup-11 (Natural Gas Contracts).

and melamine for the POI.⁶¹ On this basis, we determine a countervailable subsidy rate of 3.71 percent *ad valorem* for MHTL.⁶²

B. Program Determined Not to Be Countervailable

1. Provision of Electricity for LTAR

Petitioner alleged that the Trinidad and Tobago Electricity Commission (TTEC), wholly-owned by the GOTT, supplies electricity to MHTL and other large industrial users for LTAR. In the *Preliminary Determination*, we found this program to be not countervailable.⁶³

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.⁶⁴ During the POI, MHTL purchased electricity from TTEC.⁶⁵ TTEC classifies its customers into one of the following categories: residential, commercial, industrial, and street lighting.⁶⁶ Industrial customers are further classified into D and E categories based on their level of energy usage. We verified MHTL's electricity invoices for the POI and confirmed that the rates paid by the company for the D1, D3, and E1 rate categories reconciled to the published tariff rates for those categories.⁶⁷

We also verified that, while TTEC proposes tariff rates, the Regulated Industries Commission (RIC), a statutory body that oversees the pricing of electricity, sets the final tariff rates.⁶⁸ The pricing principles applied by RIC to set electricity rates involve forward looking estimates of required revenue, based on costs and demand.⁶⁹ In determining the annual revenue requirement for TTEC, costs are lumped into functional categories, such as generation, transmission, and distribution, and then using the cost of study approach, these costs are redistributed across the customer classes.⁷⁰ Forecasted revenue per user category is estimated as part of the cost of study.⁷¹ Based on that data, tariffs are derived for each customer class to ensure that the revenue requirement is recovered.⁷² Specifically, for the 2006-2011 regulatory period, RIC increased the 2006 tariff rates by the percentage necessary to achieve the required revenue for each user category.⁷³ Yearly, RIC conducts a tariff review and rates are not adjusted unless they are insufficient for realizing the annual revenue requirement.⁷⁴ The last rate adjustment was

⁶¹ Additional information on the sales denominator is proprietary. See MHTL Final Calculations.

⁶² *Id.*

⁶³ See *Preliminary Determination*, and accompanying IDM at "Provision of Electricity for LTAR."

⁶⁴ See GOTT IQR at 14 and Exhibit Electricity-4 (TTEC Act).

⁶⁵ See MHTL IQR at 12-14.

⁶⁶ See GOTT Verification Report at 6, and GOTT IQR at Exhibit Electricity-11 (Tariffs).

⁶⁷ See MHTL Verification Report at 7, and GOTT Verification Report at 7.

⁶⁸ See GOTT Verification Report at 7-10, and GOTT IQR at 13-14 and Exhibit Electricity-2 (RIC Act). The RIC Act governs the pricing of electricity in Trinidad and Tobago.

⁶⁹ See GOTT Verification Report at 7-8.

⁷⁰ *Id.*, at 8.

⁷¹ *Id.*, at 9.

⁷² *Id.*, at 7-9.

⁷³ *Id.*, at 9.

⁷⁴ *Id.*, at 7.

approved by RIC in July 2009, and implemented by TTEC in September 2009.⁷⁵ Those 2009 tariff rates remained in effect during the POI.⁷⁶

On the basis of this information, we find that the price-setting method applied by RIC is consistent with the meaning of 19 CFR 351.511(a)(2)(iii). We further determine 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 in September 2009.⁷⁷ In addition, we find that MHTL was not treated differently than other industrial users that purchase comparable amounts of electricity. As such, we determine that the provision of electricity is not a countervailable subsidy under section 771(5) of the Act. Since we 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.

C. Program Determined to Not Confer a Subsidy to MHTL

1. Bailout Program⁷⁸

In the *Preliminary Determination*, we preliminarily found that MHTL was cross-owned with CLICO, its former majority-owner, and, thus, attributed the bailout subsidies (*i.e.*, equity infusion and assumption of liabilities) that CLICO received from the GOTT to MHTL under 19 CFR 351.525(b)(6)(iii).⁷⁹ However, based on the record evidence and in light of interested party comments, we determine that MHTL and CLICO were not cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) for this final determination. *See* Comment 1 and Cross-Ownership Memorandum. We, therefore, determine that the bailout of CLICO did not confer subsidies to MHTL.

D. Programs Determined Not To Be Used⁸⁰

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

⁷⁵ *Id.*, at 9-10, and GOTT IQR at Exhibit Electricity-14 (Annual Tariff Adjustment- June 2009).

⁷⁶ *See* GOTT SQR at 13. *See also* GOTT IQR at Exhibit Electricity-19 for the 2009 tariff rates that were in effect during the POI.

⁷⁷ We verified that there is cross-subsidization where industrial users are subsidizing residential and commercial users and street-lighting. *See* GOTT Verification Report at 8-10.

⁷⁸ The Bailout Program includes (1) Equity Infusion and (2) Assumption of Liabilities. *See Preliminary Determination*, and accompanying IDM at “Bailout Program.”

⁷⁹ *See Preliminary Determination*, and accompanying IDM at “Bailout Program.”

⁸⁰ We verified non-use of these programs, *see* MHTL Verification Report at 9-10.

VI. ANALYSIS OF COMMENTS

Comment 1: Whether MHTL Was Cross-Owned with CLICO

GOTT/MHTL's Affirmative Arguments:

- Respondents argue the record shows that, while CLICO/CLF majority-owned MHTL, CLICO/CLF could not use or direct the assets of MHTL as they could their own assets. They state that, in the *CVD Preamble*, in order to be cross-owned, a significant level of control must exist.⁸¹ (Note: Because CLF's shares in MHTL were held in trust for CLICO, "CLICO" is the entity referred to below.)
- They discuss that CLICO and MHTL did not have a typical parent-subsidary relationship.⁸² CLICO was an investor in MHTL and not active in the company's management and operations.⁸³
- They further discuss that the owners of MHTL entered into a legally binding shareholders agreement that prevented CLICO from being able to unilaterally use or direct the assets of MHTL, as CEL (the minority-owner) had to agree with CLICO on all major decisions.⁸⁴ The Shareholders Agreement delineates the actions which required mutual agreement. (Note: These comments are summarized from their original proprietary form, which are included and addressed further in the Cross-Ownership Memorandum.⁸⁵)
- As demonstrated on the record, because CLICO could not use or direct MHTL's assets, many of the decisions of MHTL's board were deadlocked, and an International Chamber of Commerce (ICC) arbitral panel became involved.
- Respondents assert that, while a subsidy provided to a parent company typically benefits its subsidiaries, that is not the case in this investigation and the Department should find that CLICO was not MHTL's cross-owned parent company.

Petitioner's Rebuttal Arguments:

- Petitioner asserts that the Department's preliminary cross-ownership decision is supported by the record, and evidence contained in the respondents' questionnaire responses contradicts their argument. For example, MHTL stated that "MHTL was CLICO's cross-owned subsidiary,"⁸⁶ and the GOTT reported that "CLICO was the only cross-owned parent company to MHTL."⁸⁷
- Petitioner also argues that respondents' unsupported assertions that CLICO "was not active in MHTL's management and operations," and that "the only money that flowed between the companies was MHTL's quarterly dividend payments to CLICO" were

⁸¹ See *CVD Preamble*, at 65401. Respondents note that the CIT has upheld the Department's practice, citing to *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁸² See MHTL Verification Report at 3.

⁸³ *Id.*

⁸⁴ See MHTL Affiliation Response at Exhibit 3 (Shareholders Agreement), page 17-20.

⁸⁵ See Cross-Ownership Memorandum.

⁸⁶ See MHTL IQR at 3 and 8.

⁸⁷ See GOTT IQR at Exhibit Appendix-1, page 3.

raised for the first time at verification,⁸⁸ after the close of the factual record, and are contradicted by the respondents' earlier questionnaire responses.

- Petitioner further alleges that the record shows that CLICO had control over MHTL's assets because MHTL made some of CLICO's payments, and CLICO was involved in a MHTL business activity. (*Note:* These comments are summarized from their original proprietary form, which are included and addressed further in the Cross-Ownership Memorandum.)
- Additionally, Petitioner claims that CLICO, as a result of its majority-ownership in MHTL, "appointed members to MHTL's board," and therefore had a significant presence on MHTL's board of directors, which enabled CLICO to control MHTL's management and operations.⁸⁹

Department's Position: While MHTL was majority-owned by CLICO, we determine that CLICO did not have a controlling interest in MHTL. The record evidence demonstrates that CLICO could not use or direct the individual assets of MHTL in the same ways that it could its own assets. Therefore, we determine that MHTL and CLICO were not cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). The facts on which the Department's reasoning is based are proprietary and cannot be further discussed in this document. For the Department's analysis, *see* Cross-Ownership Memorandum.

Comment 2: Whether the CLICO Bailout Should Be Attributed to MHTL

GOTT/MHTL's Affirmative Arguments:

- Respondents argue that the bailout subsidies are subsidies tied to the financial sector that should not be attributed to MHTL because MHTL did not benefit from them.
- They discuss that, as stated in the *CVD Preamble*, the Department "recognize{s} that a government subsidy may not benefit all products or corporate entities equally,"⁹⁰ and 19 CFR 351.525(b)(5) states that, "if a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." The Department does so "when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy."⁹¹
- Respondents recognize that under the "parent company rule," the Department will consider a subsidy provided to a parent (or holding) company to be "untied" and to benefit the consolidated sales of the parent company including the sales of subsidiaries,⁹² and that the Department normally does not "tie" subsidies such as debt forgiveness and equity infusions. However, they note that the Department has acknowledged that "there may be certain scenarios where these attribution rules do not fit precisely the facts of a particular case."⁹³ The respondents assert that such is this case where the monies provided by the GOTT were to be used for a specific purpose, *i.e.*, to correct the financial

⁸⁸ See MHTL Verification Report at 3.

⁸⁹ *Id.*

⁹⁰ See *CVD Preamble*, 63 FR at 65403.

⁹¹ *Id.*, at 65402-03.

⁹² *Id.*

⁹³ *Id.*, at 65400.

condition of CLICO and two other financial entities to protect the interest of depositors, policyholders, and creditors.

- Respondents also state that the tying rules are consistent with the concept of “benefit,”⁹⁴ and that the analysis of “benefit” focuses on what a firm received.⁹⁵ They assert that the record shows that MHTL received nothing in the bailout and, therefore, did not benefit from the subsidies provided to CLICO.⁹⁶
- On the basis of the evidence, the respondents argue that CLICO and its policyholders, to which CLICO owed funds, were the only beneficiaries of the bailout. Therefore, the bailout subsidies should be attributed to the financial sector and not MHTL’s operations.

Petitioner’s Rebuttal Arguments:

- Petitioner argues that the respondents misconstrue the Department’s practice and improperly conflate the parent/subsidiary attribution principles in 19 CFR 351.525(b)(6)(iii) with the tying principle in 19 CFR 351.525(b)(5), and that respondents have not cited any case precedent in support of their position.
- Petitioner asserts that the Department’s decision to attribute the subsidies received by CLICO over the combined sales of CLICO and MHTL, under 19 CFR 351.525(b)(6)(iii), was proper because the record shows that MHTL was cross-owned with CLICO. This is consistent with the Department’s practice to “attribute {the parent’s} subsidies to its consolidated sales because subsidies to a parent benefit the parent as well as its subsidiaries.”⁹⁷
- Petitioner argues that, where there is a question between the use of 19 CFR 351.525(b)(6)(iii) or 19 CFR 351.525(b)(5), the Department has concluded that when “section 351.525(b)(6)(iii) is directly applicable to the facts of {the} case ... {it} controls.”⁹⁸
- Petitioner asserts that the benefits from the bailout are not tied to the financial sector and that the Department’s practice of considering bailout subsidies to be “untied” reflects that

⁹⁴ The GOTT/MHTL cites to *Canada-Aircraft*, where the WTO Appellate Body stated that “[a] ‘benefit’ does not exist in the abstract but must be received and enjoyed by a beneficiary or a recipient.” Additionally, they note that the WTO Appellate Body explained that, “[l]ogically, a ‘benefit’ can be said to arise only if a person, natural or legal, or a group of persons, has in fact received something.” See *Appellate Body Report, Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS270/AB/R, para. 154 (August 2, 1999).

⁹⁵ See *CVD Preamble*, at 65360, where it is stated: “In analyzing whether a benefit exists, we are concerned with what goes into a company”

⁹⁶ See GOTT Verification Report at 3-4, 6; GOTT IQR at Exhibit Appendix-1 (Standard Questions Appendix Equity Infusion), page 2 and Exhibit Bailout-21 through 25; and MHTL Verification Report at 4.

⁹⁷ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) and accompanying IDM at 112.

⁹⁸ See *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at 95 (where one party argued for attribution under 19 CFR 351.525(b)(6)(iii) and another argued for attribution under 19 CFR 351.525(b)(5), the Department concluded that “section 351.525(b)(6)(iii) is directly applicable to the facts of this case and, thus, controls.”). See also *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at 101, where the Department states it “does not normally treat debt forgiveness or equity infusions as ‘tied’ subsidies. In accordance with 19 CFR 351.525(b)(6)(iii), we find that the countervailable subsidies received by Hynix should be attributed to Hynix’s consolidated sales, which include the sales of its majority-owned subsidiaries”

money is fungible. Thus, the benefit must be attributed across the consolidated entity to account for the fact that subsidies used for one purpose (*e.g.*, repaying debt) frees up money for other purposes.

- Petitioner claims the record shows that the bailout benefitted MHTL when methanol prices collapsed in 2008, and, therefore, the subsidies cannot be tied only to the financial sector. Petitioner also states MHTL benefitted from the bailout's fungible money because it was able to continue operating after CLF's bankruptcy.
- Petitioner further notes that the respondents failed to provide support for their argument that the Department should apply 19 CFR 351.525(b)(5) to a "sector of the economy." Petitioner asserts the regulation is clear that the Department's tying practice relates to products,⁹⁹ and that the respondents do not argue that the bailout subsidies were tied to a product that MHTL did not produce.
- On the basis of the record, Petitioner asserts that the bailout took into account many factors, including MHTL and, therefore, the bailout was not tied to the financial sector.

Department's Position: As stated in response to Comment 1, we determine that MHTL was not cross-owned with CLICO and, as a result, determine that the bailout of CLICO did not confer subsidies to MHTL. Therefore, because we find that the bailout did not confer subsidies to MHTL, the issue of whether the bailout subsidies for CLICO's policyholder liabilities should be attributed to MHTL is moot, and we need not address the aforementioned attribution arguments in this final determination.

Comment 3: Whether Any Bailout Subsidies Were Extinguished When CLICO Sold Its Shares in MHTL

GOTT/MHTL's Affirmative Arguments:

- Respondents assert that, even if the Department finds that MHTL benefitted from the bailout, those subsidies were extinguished when CLICO sold its shares in MHTL to CEL in October 2014.
- They assert that, if the Department determines that MHTL was cross-owned with CLICO, then that decision must be based on the notion that MHTL was a state-owned enterprise, which would require the Department to consider whether MHTL's privatization extinguished the bailout subsidies. They further argue the record demonstrates that the shares transaction was an arm's length purchase based on fair market value.¹⁰⁰
- Respondents further argue that, while the sale of MHTL's shares occurred after the POI, the facts should be considered. Pursuant to 19 CFR 351.526, the Department may take a program-wide change into account to establish the CVD cash deposit rate, and may do so

⁹⁹ See *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012), and accompanying IDM at 37 ("In this instance, there is no evidence that the RSTA Article 25(2) program was tied to certain merchandise at the time of bestowal. As such, there is no basis to find that the benefits are tied to non-subject merchandise as SEC claims.... In this investigation, SEC has provided no information that would allow the Department to determine that tax credits received by SEC under RSTA Article 26 are tied to the production or sale of any product.").

¹⁰⁰ See Letter from MHTL, "Melamine from Trinidad and Tobago; MHTL Response to First Supplemental CVD Questionnaire" (March 11, 2015) (MHTL SQR) at Exhibit Sup-6, page 331-335, and Exhibit Sup-7, page 116-119.

if a program-wide change occurred subsequent to the POI, but prior to the issuance of the preliminary determination.¹⁰¹ They add that the bailout program was terminated, no residual benefits exist, and no substitute program was created.¹⁰²

Petitioner's Rebuttal Arguments:

- Petitioner asserts that CLICO's sale of MHTL occurred after the POI and, thus, is not relevant to this investigation. Additionally, Petitioner notes that the respondents did not provide a response to the Department's change in ownership appendix and failed to prove that the bailout subsidies were extinguished.
- Regarding program-wide changes, Petitioner states that the Department's long-standing practice "{is} to impose (or not to impose) a CVD order based exclusively on the subsidy rate in effect during the period of investigation...."¹⁰³

Department's Position: As stated in response to Comment 1, we determine that MHTL was not cross-owned with CLICO and, as a result, determine that the bailout of CLICO did not confer subsidies to MHTL. Therefore, because we find that the bailout did not confer subsidies to MHTL, the issue of whether bailout subsidies were extinguished when CLICO sold its shares in MHTL after the POI is moot and, thus, the Department need not address parties' comments on this issue for the purposes of the final determination.

Comment 4: Whether the Provision of Natural Gas for LTAR Is Countervailable

Petitioner's Affirmative Arguments:

- At verification, NGC officials stated that MHTL's natural gas contract for its AUM facility included a discount on the natural gas price¹⁰⁴ and that the discount is provided "as an incentive to encourage the production of downstream products," such as melamine.¹⁰⁵ Petitioner notes that MHTL is the sole customer receiving this discount¹⁰⁶ and asserts that the discount was only applied to calculate the gas price for the melamine production facility.
- Petitioner argues that because NGC provided to MHTL (and only to MHTL) a discount below the market determined price for natural gas for its melamine facility, the Department should countervail the provision of natural gas for LTAR in the final determination.
- Petitioner asserts that NGC is a government authority that provides a financial contribution under section 771(5)(D)(iii) of the Act. Specifically, Petitioner notes that NGC is wholly-owned by the GOTT, has a government-granted monopoly on the distribution of gas,¹⁰⁷ and was created by the GOTT to, *inter alia* promote

¹⁰¹ See 19 CFR 351.526.

¹⁰² See 19 CFR 351.526(d)(1) and (2).

¹⁰³ See *CVD Preamble*, at 65404.

¹⁰⁴ See GOTT Verification Report at 10.

¹⁰⁵ *Id.*, at 11.

¹⁰⁶ *Id.*

¹⁰⁷ See GOTT IQR at Exhibit Gas-2.

industrialization and its mandate is “developing the gas-based industry.”¹⁰⁸ Petitioner also notes that the GOTT is responsible for appointing NGC’s board of directors.¹⁰⁹

- Concerning benefit, Petitioner argues that, because MHTL received a natural gas price at a discount from prices set by the “prevailing market conditions and commercial environment,” MHTL was provided natural gas for LTAR pursuant to section 771(5)(E)(iv) of the Act. Petitioner claims that MHTL should have paid the natural gas price pursuant to the calculations identified in the contract, but MHTL was afforded a discount off the price that it otherwise would pay in the absence of the GOTT’s program to incentivize the production of melamine, citing to 19 CFR 351.503(b)(1).
- Petitioner asserts that the provision of natural gas at a discounted price to MHTL is *de jure* specific under section 771(5A)(D)(i) of the Act, because the discount is limited to natural gas downstream industries, which include melamine, pursuant to the GOTT’s policy to incentivize the production of downstream products.¹¹⁰ Petitioner states that the program is also *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, because the discount is limited to MHTL¹¹¹ and because only large industrial users negotiate company specific rates and discounts. Additionally, Petitioner contends that this program is *de facto* specific pursuant to section 771(5A)(D)(iii)(II) of the Act, because MHTL is the predominant (and only) user of this subsidy.
- Lastly, Petitioner argues that the natural gas discount is tied to MHTL’s melamine production and, therefore, the Department should attribute the benefits only to MHTL’s sales of melamine, pursuant to 19 CFR 351.525(b)(5)(i). Petitioner asserts that though MHTL’s production of UAN also benefited from the provision of the discount, record evidence shows that the discount was provided to support the production of melamine.¹¹²

GOTT/MHTL’s Rebuttal Arguments:

- Petitioner’s reliance on the discount contained in MHTL’s gas contract is misplaced.
- Respondents assert that MHTL’s melamine production is not subsidized, specifically when compared to the prices paid by other industrial users.
- They assert that the discounts contained in MHTL’s gas contract do not provide a benefit because: (1) prices paid by MHTL compared to other industrial users for both methanol and melamine in Trinidad and Tobago and prices paid by natural gas users in the U.S. market show that MHTL was not treated better;¹¹³ (2) NGC routinely provided discounts

¹⁰⁸ See Letter from Petitioner, “Melamine From Trinidad and Tobago: Petitioner’s Comments in Anticipation of the Preliminary Determination” (March 24, 2015) at Exhibit 2.

¹⁰⁹ See GOTT SQR at Exhibit Sup-2.

¹¹⁰ See GOTT Verification Report at 11.

¹¹¹ Petitioner states that the Department has found programs in which discounts are distributed to a limited number of customers to be specific under section 771(5A)(D)(iii)(I) of the Act. See, e.g., *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30646 (June 8, 1999); *Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 68 FR 53116, 53123 (September 9, 2003), and *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 40445, 40454 (July 26, 1999).

¹¹² See MHTL SQR at Exhibit Sup-12, and GOTT Verification Report at 11.

¹¹³ See GOTT SQR at 8-9, and MHTL IQR at Exhibit Gas-3.

for methanol, which, in effect, tracked the discount provided for melamine; and (3) gas curtailments which limited MHTL's supply during the POI are not indicative of a state-run entity intent on providing natural gas for LTAR.

- They assert that, as in the case of any profit-making firm, MHTL, in its negotiations with NGC, argued for the lowest possible price for gas. Reference to “downstream products” and “downstream energy sector” in those documents is not surprising given that the downstream energy sector is the largest economic sector.¹¹⁴ Moreover, those references do not change the fact that NGC's prices are market-based. Consistent with this, when explaining why natural gas prices are tied to downstream products, *i.e.*, ammonia and methanol, the verification report explains: “[NGC officials] added that the goal of the negotiation process is to align the financials of NGC and the consumers so that both are impacted similarly when market conditions change. As part of this process, the officials stated that NGC and the customer negotiate the base prices and price floor to reflect market conditions for the commodity to be produced.”¹¹⁵
- Respondents note that, as verified, other NGC contracts contain similar discounts, reflecting NGC's attempt to account for widespread discounts by sellers in the market for specific products. This pricing mechanism is based on NGC's “product-related pricing to reflect the fact that ammonia and methanol are cyclical commodities.”¹¹⁶ The discount is provided “to reflect discounts that methanol sellers provide.”¹¹⁷
- They add that while such discounts are based on market realities in the methanol sector, MHTL's gas price for its melamine production is not tied to downstream melamine prices but ammonia prices,¹¹⁸ and thus MHTL thus pays a higher price for the gas.
- They add that the presence of discount terms in the AUM contract does not suggest the presence of a subsidy, as various discounts are prevalent in NGC's agreements with its customers.
- NGC's pricing is clearly market-based, as evidenced by profit rates of 22 percent, 21 percent, and 25 percent for 2011, 2012, and 2013, respectively.¹¹⁹
- Respondents note that in *Steel Wire Rod I*, the Department found that NGC negotiated contracts with each individual user based on market-oriented decisions.¹²⁰ The Department found that no government laws regulate the pricing of natural gas.¹²¹ Further, they note that the Department compared the prices paid by the respondent to the average prices for natural gas for industrial users and found that the prices the respondent paid were “in line with the average price paid by industrial users overall.”¹²² Finally, the Department found that NGC was profitable, operating on a commercial basis.¹²³ The respondents assert that the same facts are present in the instant case.

¹¹⁴ See GOTT IQR at Exhibit Gas-1.

¹¹⁵ See GOTT Verification Report at 11.

¹¹⁶ *Id.*, at 10.

¹¹⁷ *Id.*, at 12.

¹¹⁸ *Id.*

¹¹⁹ See GOTT IQR at Exhibit Gas-2, page 14, and Exhibit Gas-10, page 23; GOTT SQR at Exhibit Sup-4, page 16; and GOTT Verification Report, at 12.

¹²⁰ See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003, 55009 (October 22, 1997) (*Steel Wire Rod I*).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

- Lastly, they argue that the provision of natural gas is not specific because melamine production is a miniscule portion of the total use of natural gas. They assert that the “predominant” or “disproportionate” user of natural gas is the LNG conversion industry, accounting for 57.45 percent of natural gas use.¹²⁴ In contrast, ammonia derivatives, which include melamine, account only for 0.54 percent of natural gas use.¹²⁵ As such, they assert that the Department should find that natural gas is specific to the LNG conversion industry, not melamine.¹²⁶

Department’s Position: As fully discussed above in “Provision of Natural Gas for LTAR,” we find that, based on the record of this investigation, NGC’s “product-related pricing” method for natural gas sold to methanol facilities reflects prevailing market conditions, within the meaning of 19 CFR 351.511(a)(2)(iii), and that it was applied consistently to methanol producing facilities. Concerning the AUM facility (*i.e.*, the facility which produced subject merchandise) we find that, similar to the methanol facilities, NGC applied its “product-related pricing” to derive a market-based gas price which was tied to an ammonia reference price based on international market prices.¹²⁷ NGC then applied a discount on that market-based gas price to arrive at the final gas price for melamine and UAN production.¹²⁸ The discount was applied as an incentive to encourage the production of downstream products because melamine and UAN are downstream petrochemical products.¹²⁹ Additionally, because MHTL is the only company producing downstream petrochemical products, it is the sole company that is receiving this type of discount.¹³⁰ On the basis of this evidence, we find that the reduced natural gas price paid by the AUM facility was not market-based because the discount applied did not reflect prevailing market conditions, but was an incentive for the production of downstream petrochemical products. In this respect, based on the record of this investigation, the discount for the production of downstream petrochemical products is different than the discounts contained in other NGC contracts, which are based on market realities, *i.e.*, the market discounts that methanol sellers provide. We, thus, determine that the natural gas price set by NGC for the AUM facility is inconsistent with market principles, within the meaning of 19 CFR 351.511(a)(2)(iii), and does not reflect the prevailing market conditions and commercial environment for the purchase of natural gas, but rather reflects reduced pricing for downstream activities.

Because the discount is limited to only companies with facilities that produce downstream products and MHTL was the only company that received the discount in the POI, we determine

¹²⁴ See GOTT IQR at Exhibit Gas-1, Table 3B.

¹²⁵ *Id.*

¹²⁶ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014), and accompanying IDM at 9 (“Because BOTAS’ imports account for such a large percentage of overall natural gas consumption in Turkey and power producers purchased a large proportion of the natural gas sold by BOTAS, we determine that the provision of natural gas by BOTAS is predominantly used by, and specific to, the power production sector under section 771 (5A)(D)(iii)(II) of the Act. We also determine that pursuant to section 771(5A)(D)(iii)(III) of the Act that power producers receive a disproportionately large amount of the subsidy and the subsidy is therefore specific on that basis as well.”).

¹²⁷ See GOTT Verification Report at 11.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

that the discount NGC provided to MHTL is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. Because we find that the program is *de facto* specific under this provision, we are not addressing Petitioner's alternative arguments regarding specificity. Further, we determine that NGC, a designated agency of the government, which is wholly-owned by the Ministry of Finance and Economy, provided a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act.

We disagree with Petitioner that the benefits should be attributed only to MHTL's sales of melamine. As noted above, because the AUM facility produces ammonia and UAN, in addition to melamine, we disagree with Petitioner that the denominator to be applied should only be MHTL's melamine sales. Therefore, we attributed the benefits to MHTL's sales of ammonia, UAN, and melamine for the POI.¹³¹

Concerning arguments made by the respondents, we disagree that a comparison of prices paid by MHTL and other industrial users, or prices paid in the U.S. market, is relevant to our Tier 3 analysis. As noted, MHTL was the only company with a facility producing downstream products and thus the only company that received a reduced natural gas price. There are no other companies similarly situated for a comparison. Additionally, the respondents' statement that the provision of natural gas is not specific because ammonia derivatives (which include melamine) account only for 0.54 percent of natural gas used in Trinidad and Tobago is not relevant given that MHTL was the only company that received the discount which is at issue. As stated above, we also disagree that the discount for downstream production is similar to other discounts offered by NGC, which are based on sales practices in the methanol world market. Additionally, respondents' argument that gas curtailments which limited MHTL's supply during the POI are not indicative of a state-run entity intent on providing natural gas for LTAR are irrelevant in light of our findings that a discount was provided as an incentive for downstream production.

We also disagree with the respondents that the facts of this investigation are similar to the facts in *Steel Wire Rod I*, where the Department found that NGC's provision of natural gas to be not countervailable.¹³² Unlike in *Steel Wire Rod I*, the instant case involves NGC charging a discounted gas price, not based on market principles, to only those consumers that produce downstream petrochemical products, which during the POI was solely MHTL. We recognize that, similar to *Steel Wire Rod I*, NGC was profitable; however, under 19 CFR 351.511(a)(2)(iii), the Department may rely on one or more factors, such as price-setting methods, costs (including rates of return sufficient to ensure future operations), or possible price discrimination in a case. For purposes of this final determination, under our Tier 3 analysis, we assessed whether the prices charged by NGC are set in accordance with market principles through an evaluation of NGC's price-setting methods and not NGC's profitability. For all the reasons discussed above, we determine that the natural gas prices charged by NGC for MHTL's AUM facility are not set in accordance with market principles.

¹³¹ Additional information on the sales denominator is proprietary. See MHTL Final Calculations.

¹³² See *Steel Wire Rod I*, 62 FR at 55009.

Comment 5: Whether the Import Duties and VAT Exemption Is Countervailable

GOTT/MHTL's Affirmative Arguments:

- Respondents argue that the VAT and import duty exemptions are not countervailable because the *Fiscal Incentives Act* is not specific. They claim that the industries which use the program are diverse, e.g., iron and steel, chemical, paper and packaging, and dairy.¹³³

Petitioner's Rebuttal Arguments:

- Petitioner notes that section 9(2) of the *Fiscal Incentives Act* identifies five categories of enterprises that are eligible to receive benefits and that “highly capital intensive enterprises,” which MHTL was deemed, is one of the categories. As such, the Department was correct to preliminarily find this program to be *de jure* specific.
- Petitioner adds that the Department could also find the program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, based on recipient data submitted by the GOTT.¹³⁴

Department's Position: We continue to find this program to be *de jure* specific under section 771(5A)(D)(i) of the Act because, by law, only a limited list of enterprises qualify for the status of an “approved enterprise.”¹³⁵ The respondents argue that a wide variety of industries used the program; however section 9(2) of the *Fiscal Incentives Act* sets the eligibility criteria and identities just five categories of eligible enterprises (see “*Fiscal Incentives Act: Tax Programs*,” above for a description of the categories). Further, section 10 of the *Fiscal Incentives Act* states that the following shall be taken into account for the purposes of determining whether an “approved enterprise” is declared by Order: “(a) the number of enterprises manufacturing or about to manufacture the product; (b) the benefits already enjoyed by the enterprise and the manufacturing process undertaken or about to be undertaken by it; (c) the output or anticipated output of the enterprise; (d) such other matters as he may consider relevant.”¹³⁶ MHTL was determined to be an “approved enterprise” and “melamine and methanol” are “approved products” because the company qualified as a “highly capital intensive” enterprise.¹³⁷ The *Fiscal Incentives Act* defines “highly capital intensive enterprise” as an enterprise with, “the capital investment therein is not less than fifty million dollars in the currency of Trinidad and Tobago.”¹³⁸ The Order, “{m}ade by the President under Section 10 of the *Fiscal Incentives Act*,” for methanol is referenced as, “The Fiscal Incentives {Methanol Holdings (Trinidad) Limited} Order, 2003,” dated December 4, 2003, and for melamine is referenced as, “The Fiscal Incentives {Methanol Holdings (Trinidad) Limited} Order, 2007,” dated December 31, 2007.¹³⁹ Although any enterprise could, theoretically, apply for benefits under the *Fiscal Incentives Act*,

¹³³ See GOTT IQR at Exhibit Appendix-8, page 5.

¹³⁴ *Id.*, at Exhibit Tax-6.

¹³⁵ *Id.*, at Exhibit Appendix-8, page 5 and Exhibit Tax-9 (limiting the eligibility to different levels of creating domestic value added and highly capital intensive enterprises).

¹³⁶ *Id.*, at Exhibit Tax-9 at section 10(3) of the *Fiscal Incentives Act*.

¹³⁷ *Id.*, at Exhibit Appendix-8, page 5 and 6, and MHTL IQR at Exhibit Tax-3, page 3 and Exhibit Tax-4, page 1.

¹³⁸ See GOTT IQR at Exhibit Tax-9 at section 2(1) of the *Fiscal Incentives Act*.

¹³⁹ See MHTL IQR at Exhibit Tax-3 and Exhibit Tax-4.

this does not overcome the fact that the law expressly limits access to the subsidy to certain enterprises with the requisite investments and the program is, thus, *de jure* specific.

Because we find the program to be *de jure* specific under section 771(5A)(D)(i) of the Act, we need not address Petitioner's argument that the program is also *de facto* specific.

Comment 6: Whether the VAT Benefit Calculation Should Be Revised

GOTT/MHTL's Affirmative Arguments:

- Respondents argue that, if the Department continues to countervail the Import Duties and VAT Exemption program, then it should measure the benefit for the VAT exemptions using the time value between the date that MHTL would have had to pay VAT, had it not been exempted under the *Fiscal Incentives Act*, and the date it would have received a VAT rebate for the amount paid.
- They state that, under the VAT system, if MHTL had to pay VAT upon importation of the equipment in the absence of the *Fiscal Incentives Act*, MHTL would have received a VAT rebate for the imported equipment upon the exportation of its finished product.¹⁴⁰ They explain that the benefit is akin to the deferral of an indirect tax – the time value between when MHTL would have paid the VAT and when it would have received the rebate.
- They claim that this methodology is consistent with the Department's practice, citing to 19 CFR 351.510(a)(2), and state that MHTL provided all the necessary data for the Department to calculate this time value of money.¹⁴¹
- Additionally, the respondents assert that, instead of using a Trinidad and Tobago dollar (TTD) interest rate, the Department should use the average interest rate on MHTL's USD long-term loans, in accordance with 19 CFR 351.505(a)(2)(i), to calculate the benefit because MHTL's VAT and import duty exemptions were reported in USD.

Petitioner's Rebuttal Arguments:

- Petitioner asserts that, contrary to the respondents' argument, the governing regulation for the calculation of benefits from the exemption or remission of indirect taxes is 19 CFR 351.510(a)(1) – not 19 CFR 351.510(a)(2) – and the Department should continue to calculate the benefits of the exemptions under 19 CFR 351.510(a)(1).
- Petitioner contends that the respondents' argument mischaracterizes the exemptions in a manner not contemplated in the regulations, *i.e.*, incorporating export contingent rebates into the consideration of the VAT exemption which converts the program into an export program, but 19 CFR 351.510(a)(2) cannot apply because it expressly applies to “a program, other than an export program.”
- Moreover, Petitioner argues that 19 CFR 351.510(a)(2) does not apply because the VAT exemption is not a “deferral” of tax, because the taxes otherwise due are not paid in the future.

¹⁴⁰ See GOTT SQR at Exhibit Sup-6, and MHTL 2nd SQR at 2-4.

¹⁴¹ See MHTL 2nd SQR at Exhibit Sup2-12; MHTL Verification Report at VE-1; and GOTT SQR at Exhibit Sup-6.

- Petitioner adds that such an offset for a domestic indirect tax program, *i.e.*, the VAT that would have been paid in the absence of the program should be offset by the VAT rebates that would have been earned, is not an allowable offset as specified in section 771(6) of the Act.
- Additionally, Petitioner argues that the respondents' argument for the use of a USD discount rate should be rejected because, though MHTL reported its exemptions in USD, it received the benefit in TTD. Petitioner claims that VAT and import duties are paid in TTD and that the program's application requires a company to report the amount of its investment, for which the equipment is imported, and source of financing in TTD.
- To calculate the benefit, Petitioner states that the Department should state the exemption amount in TTD, applying the exchange rate in effect on the entry date to ensure that the exemption amount, equal to benefit amount, is correctly stated in TTD, and then allocate using a TTD interest rate.

Department's Position: We find that the respondents have not sufficiently demonstrated that MHTL would have received a VAT rebate for imported equipment upon the exportation of finished products. They cite to the *Value Added Tax Act (VAT Act)* in their argument; however, they did not indicate the specific section of the *VAT Act* that demonstrates a VAT rebate would have been issued.¹⁴² Instead, section 11 of the *VAT Act* is clear that, "tax on the entry of imported goods becomes due and payable at the time when the goods are entered."¹⁴³ The respondents also cite to their questionnaire response which states that "a vast majority of the equipment imported was designated duty free....{i}n other words, the imported equipment would have had no duty assessed regardless of the *Fiscal Incentives Act*."¹⁴⁴ Additionally, the respondents stated in their questionnaire response that "pursuant to Trinidad and Tobago's VAT system, if MHTL had to pay VAT upon importation of the equipment in the absence of the *Fiscal Incentives Act*, MHTL would have received a VAT rebate for the imported equipment upon the exportation of its finished product."¹⁴⁵ However, respondents have not provided any supporting documentation, and, as noted above, have not specified which section of the *VAT Act* would support their argument. We, therefore, determine that the respondents' assertions are not supported by the law to which they cite. Further, absent supporting evidence, we continue to find that the benefit for this program is the VAT and import duties exempted at the time of importation. Because we find that the record evidence does not support respondents' request, the parties' remaining arguments regarding a revised VAT benefit are rendered moot.

We agree with the respondents, however, that a USD interest rate, and not a TTD interest rate, should be used as the discount rate to calculate the benefits from the import duties and VAT exemptions that are allocated. The items imported were valued in USD and the import duties and VAT exemptions were reported in USD.¹⁴⁶ However, we disagree that the discount rate should be the average interest rate on MHTL's USD long-term loans. We examined MHTL's financing and found that, for years in which we require a discount rate, MHTL either did not

¹⁴² See Respondents Case Brief at 14 (citing GOTT SQR at Exhibit Sup-6 (*VAT Act*)).

¹⁴³ See GOTT SQR at Exhibit Sup-6 at section 6, 7, 9, and 11 of the *VAT Act*.

¹⁴⁴ See MHTL 2nd SQR at 2-4.

¹⁴⁵ *Id.*

¹⁴⁶ See MHTL Final Calculations.

have loans, or did not report the actual interest rate that was paid against the loan.¹⁴⁷ We therefore relied on USD lending rates obtained from the World Bank’s World Development Indicators for the necessary discounts rates, as discussed above in “Discount Rates,” for the final calculations.¹⁴⁸

Regarding Petitioner’s arguments against the use of a USD discount rate, we note that Petitioner did not cite to any information on the record to support the statement that VAT and import duties are paid in TTD. We note that the *VAT Act* does not contain any instruction that VAT is to be paid in TTD.¹⁴⁹

Comment 7: Whether MHTL’s Sales Denominator Should Be Revised

Petitioner’s Affirmative Arguments:

- Petitioner states that, pursuant to 19 CFR 351.525(a), the Department will determine the sales value of a product on an f.o.b. (port) basis.
- Petitioner argues that MHTL’s 2013 sales value, which was used in the *Preliminary Determination* and sourced from the 2013 financial statement, is not a net sales value.
- For the final determination, the Department should use a revised sales denominator, less international freight-related revenue, in the benefit calculations for the bailout assistance and *Fiscal Incentive Act* programs.

GOTT/MHTL’s Rebuttal Arguments:

- Respondents argue that, because the bailout program should not be attributed to MHTL’s sales, the Department should reject the Petitioner’s argument.

Department’s Position: We agree that the sales value used as the denominator in the preliminary calculations was not a net sales value. At verification, we conducted a sales reconciliation and verified MHTL’s f.o.b. sales value for 2013. For this final determination, we used, as the denominator in MHTL’s calculations, the verified f.o.b. sales value for 2013.¹⁵⁰

¹⁴⁷ See MHTL IQR at Exhibit Tax-7.

¹⁴⁸ See MHTL Final Calculations.

¹⁴⁹ See GOTT SQR at Exhibit Sup-6 (*VAT Act*).

¹⁵⁰ See MHTL Final Calculations.

VII. RECOMMENDATION

We recommend that you approve the final findings described above.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

30 OCT 2015
(Date)