



C-552-815
Investigation
Public Document
AD/CVD 1: MR/DR

May 28, 2013

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

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

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

I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

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

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

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



Government of Vietnam (GOV) are described in the Initiation Checklist.³ On January 17, 2013, the Department initiated a CVD investigation on frozen shrimp from Vietnam.⁴

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

On February 13, 2013, we selected Minh Qui Seafoods Co. Ltd. (Minh Qui) and Nha Trang Seaproduct Company (Nha Trang) as the mandatory respondents.⁶ We sent our CVD investigation questionnaire seeking information regarding the alleged subsidies on February 14, 2013.⁷

For the reasons explained in the *Initiation Notice*, we determined to include in this investigation subsidies allegedly provided to producers of fresh shrimp as well as to producers of frozen shrimp. Thus, we also sent questionnaires to the mandatory respondents seeking information about their suppliers of fresh shrimp.⁸ On February 19, 2013, Minh Qui and Nha Trang submitted responses identifying their suppliers of fresh and frozen shrimp.⁹ Based on the responses we received, we identified Mr. Phong, a shrimp farmer supplying Nha Trang, as an additional mandatory respondent.¹⁰ We are also analyzing the alleged subsidies received by Minh Qui's cross-owned shrimp farming companies.

³ See "Countervailing Duty Investigation Initiation Checklist: Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," (January 17, 2013) (Initiation Checklist).

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

⁵ See Department Memorandum, "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Release of Customs and Border Protection ('CBP') Data," January 18, 2013.

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Respondent Selection Memorandum," (February 13, 2013). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

⁷ See letter from Department to the GOV, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," (February 14, 2013).

⁸ See letters from Department to Minh Qui and Nha Trang, "Countervailing Duty (CVD) Investigation on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Questionnaire on Sources of Fresh and Frozen Shrimp," (February 13, 2013).

⁹ See Minh Qui's letter to the Department, "Minh Qui Seafoods Co. Ltd.'s Response to the Department's Questionnaire on Sources of Fresh and Frozen Shrimp," (February 19, 2013) and Nha Trang's letter to the Department, "Response to the Department's Questionnaire on Sources of Fresh and Frozen Shrimp: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam" (February 19, 2013).

¹⁰ See Department Memorandum, "Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from Vietnam: Suppliers of Fresh and Frozen Shrimp*," (March 15, 2013); see also letter from Department to the GOV, "Directions Concerning Responding to the Questionnaire with Regard to Alleged Subsidies Provided to Fresh Shrimp Suppliers of Minh Qui Seafoods Co. Ltd (Minh Qui) and Nha Trang Seaproduct Company (Nha Trang),"

We received responses to our questionnaires from Nha Trang on April 2, 2013, and from the GOV and Minh Qui on April 4, 2013.¹¹ Mr. Phong submitted his response to the questionnaire on April 8, 2013.¹² We sent supplemental questionnaires to the GOV on April 15, 2013, May 2, 2013, May 6, 2013, and May 17, 2013.¹³ The GOV submitted responses to the supplemental questionnaires on April 25, 2013, May 13, 2013, May 14, 2013, and May 21, 2013.¹⁴ We sent supplemental questionnaires to Minh Qui on April 15, 2013, May 6, 2013, and May 17, 2013.¹⁵ Minh Qui submitted its responses to the supplemental questionnaires on April 25, 2013, May 13, 2013, and May 21, 2013.¹⁶ We sent supplemental questionnaires to Nha Trang on April 17, 2013, May 6, 2013, and May 16, 2013.¹⁷ Nha Trang submitted its responses to the supplemental questionnaires on April 29, 2013, May 13, 2013, and May 20, 2013.¹⁸ We sent a supplemental

(March 15, 2013); *see also* Memorandum to the file, “Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from Vietnam: Nha Trang Seaproduct Company’s Supplier of Fresh Shrimp*,” (March 28, 2013).

¹¹ *See* “Nha Trang Seaproduct Company’s Response to the Initial CVD Questionnaire,” (April 2, 2013) (NTSCQR), “Government of Vietnam’s Response to the Initial CVD Questionnaire,” (April 4, 2013) (GQR), and “Minh Qui Seafood Co., Ltd.’s Response to the Initial CVD Questionnaire” (April 4, 2013) (MQR).

¹² *See* “Mr. Phan Hoang Duy Phong’s Response to the New Subsidy Allegation Questionnaire: *Certain Frozen Warmwater Shrimp from Vietnam*,” (April 8, 2013).

¹³ *See* letters from the Department to the GOV, “Supplemental Questionnaire for the Government of the Socialist Republic of Vietnam in the Countervailing Duty Investigation of Frozen Warmwater Shrimp,” (April 15, 2013); “Supplemental Questionnaire for the Government of the Socialist Republic of Vietnam in the Countervailing Duty Investigation of Frozen Warmwater Shrimp,” (May 2, 2013); “New Subsidy and Supplemental Questionnaire for the Government of the Socialist Republic of Vietnam in the Countervailing Duty Investigation of Frozen Warmwater Shrimp,” (May 6, 2013) (GNSQ2); and “Supplemental Questionnaire for the Government of the Socialist Republic of Vietnam in the Countervailing Duty Investigation of Frozen Warmwater Shrimp,” (May 17, 2013), respectively.

¹⁴ *See* letters from the GOV to the Department, “Government of Vietnam’s Response to the Supplemental CVD Questionnaire,” (April 25, 2013) (GSR); “Government of Vietnam’s Response to the Second Supplemental Questionnaire,” (May 13, 2013) (G2SR); “Government of Vietnam’s Response to the Second New Subsidy Allegations Questionnaire and Supplemental Questionnaire,” (May 13, 2013) (G2NSQR); “Government of Vietnam’s Response to Question 11 of the Second Supplemental Questionnaire,” (May 14, 2013); and “Government of Vietnam’s Response to the Third Supplemental Questionnaire,” (May 21, 2013) (G3SR).

¹⁵ *See* letters from the Department to Minh Qui, “Supplemental Questionnaire for Minh Phu Group Companies in the Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam;” (April 15, 2013); “Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*,” (May 6, 2013) (MS2QE); and “Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*,” (May 17, 2013).

¹⁶ *See* letters from Minh Qui to the Department, “Minh Qui Seafood Co., Ltd.’s Response to the Supplemental CVD Questionnaire,” (April 25, 2013) (MSR); “Minh Qui Seafood Co., Ltd.’s Response to the Second Supplemental CVD Questionnaire,” (May 13, 2013) (M2SQR); and “Minh Qui Seafood Co., Ltd.’s Response to the Third Supplemental CVD Questionnaire,” (May 21, 2013).

¹⁷ *See* letters from the Department to Nha Trang, “Supplemental Questionnaire for Nha Trang Seafood Group Companies in the Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,” (April 17, 2013); “Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*,” (May 6, 2013) (NTSC2QE); and “Third Supplemental Questionnaire for Nha Trang Seafood Group Companies in the Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,” (May 16, 2013).

¹⁸ *See* letters from Nha Trang to the Department, “Nha Trang Seaproduct Company’s Response to the Supplemental CVD Questionnaire,” (April 29, 2013) (NTSCSQR), “Nha Trang Seaproduct Company’s Response to the Second New Subsidy Allegations Questionnaire and Second Supplemental Questionnaire,” (May 13, 2013) (NTSC2QR); and “Nha Trang Seaproduct Company’s Response to the Third Supplemental CVD Questionnaire,” (May 20, 2013).

questionnaire to Mr. Phong on April 17, 2013.¹⁹ We received Mr. Phong's response on April 29, 2013.²⁰

On February 13, 2013, the petitioner filed its first set of new subsidy allegations.²¹ The Department determined to investigate certain of the newly alleged subsidies²² and sent new subsidy questionnaires on March 13, 2013.²³ The respondents submitted their responses on April 8, 2013.²⁴

On April 18, 2013, the petitioner filed its second set of new subsidy allegations.²⁵ The Department determined to investigate one of the newly alleged subsidies²⁶ and sought information regarding this alleged subsidy in GNSQ2, MS2QE, and NTSC2QE. The Department received responses in G2NSQR, M2SQR, and NTSC2QR.

Interested Party Status of the Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC): On March 12, 2013, AHSTEC asked that it be placed on the public service list for the seven ongoing CVD investigations of frozen shrimp and that it be granted access to proprietary information under APO.²⁷ Numerous submissions commenting on AHSTEC's applications followed.²⁸ At

¹⁹ See letter from the Department, "Supplemental Questionnaire for Mr. Phan Hong Duy Phong in the Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," (April 17, 2013).

²⁰ See letter to the Department, "Mr. Phan Hoang Duy Phong's Response to the Supplemental CVD Questionnaire," (April 29, 2013).

²¹ See letter from the petitioner, "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (C-552-815) – Petitioner's New Subsidy Allegations on Behalf of the Coalition of Gulf Shrimp Industries ('COGSI')" (February 13, 2013) (NSA).

²² See Department Memorandum, "Countervailing Duty Investigation: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis of Petitioner's New Subsidy Allegations*," (March 13, 2013).

²³ See letter from the Department to the GOV, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," (March 13, 2013) (GNSQE) and letter from the Department to the mandatory respondents, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," (March 13, 2013).

²⁴ See letter from the GOV to the Department, "Government of Vietnam's Response to the New Subsidy Allegation Questionnaire," (April 8, 2013) (GNSAR); letter from Minh Qui to the Department, "Minh Qui Seafood Company, Ltd.'s Response to the New Subsidy Allegation Questionnaire," (April 8, 2013), and letter from Nha Trang to the Department, "Nha Trang Seaproduct Company's Response to the New Subsidy Allegation Questionnaire," (April 8, 2013).

²⁵ See letter from the petitioner, "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (C-552-815): Petitioner's Second New Subsidy Allegations on Behalf of COGSI," (April 18, 2013).

²⁶ See Department Memorandum, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis of Petitioner's Second New Subsidy Allegations," (May 3, 2013).

²⁷ See letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Vietnam: Entry of Appearance and Administrative Protective Order Application," (March 12, 2013).

²⁸ See letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Vietnam (C-552-815) – Response to Ad Hoc's Entry of Appearance and APO Application," (March 13, 2013); letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Vietnam: Response to Opposition of COGSI to AHSTEC's Entry of Appearance and Administrative Protective Order Application," (March 15, 2013); letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Vietnam (C-552-815): Reply to AHSTEC's Response to Opposition of COGSI to AHSTEC's Entry of Appearance and APO Application," (March 19, 2013); letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Vietnam: Response to Second Filing in Opposition of COGSI to AHSTEC's Entry of Appearance and Administrative Protective Order Application," (March 25, 2013); letter from AHSTEC, "Certain Frozen Warmwater Shrimp from

the parties' requests, the Department met with counsel for the petitioner and AHSTEC on March 28 and April 19, 2013, respectively.²⁹ On April 23, 2013, the Department found that AHSTEC qualifies as an interested party under section 771(9)(F) of the Act because it is an association, a majority of whose members manufacture, produce, or wholesale frozen shrimp.³⁰ Consequently, AHSTEC's APO applications were approved.³¹

On February 8, 2013, the petitioner requested that the deadline for the preliminary determination be extended until no later than 130 days after the initiation of the investigation. The Department granted the petitioner's request and on February 27, 2013, postponed the preliminary determination until May 28, 2013, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).³²

B. Period of Investigation

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

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.³³ On March 28, 2013, the petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.³⁴ Further comments on this scope clarification were submitted by AHSTEC and the petitioner.³⁵

Vietnam: Supplemental Filing in Support of AHSTEC's Entry of Appearance and Administrative Protective Order Application," (April 8, 2013); letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Vietnam (C-552-815) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); and letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Vietnam: Comments on COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013).

²⁹ See Department Memoranda, "Ex Parte Meeting with Coalition of Gulf Shrimp Industries on March 28, 2013; Countervailing Duty Investigations of Certain Frozen Warmwater Shrimp," (April 1, 2013) and "Meeting with Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC) on April 19, 2013; Countervailing Duty Investigations of Frozen Warmwater Shrimp," (April 19, 2013).

³⁰ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Entries of Appearance and Administrative Protective Order Applications; Interested Party Status Determination," (April 23, 2013).

³¹ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Administrative Protective Order Applications of AHSTEC," (April 23, 2013).

³² See *Certain Frozen Warmwater Shrimp From the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 78 FR 13325 (February 27, 2013).

³³ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*.

³⁴ See letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Vietnam (C-552-815) – Request for Scope Clarification," (March 28, 2013).

³⁵ See letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Vietnam: Supplemental Filing in Support of AHSTEC's Entry of Appearance and Administrative Protective Order Application" (April 8, 2013); letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Vietnam (C-552-815) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Vietnam: Comments On COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013);

For the reasons explained in “Scope Clarification re Brine-Frozen Shrimp” memorandum, which we incorporate here by reference, we preliminarily determine that brine-frozen shrimp are not excluded from this investigation.³⁶

IV. SCOPE OF THE INVESTIGATION

This investigation covers certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³⁷ deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

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

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

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

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

letter from the petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Vietnam – Response to AHSTEC’s Comments from April 17, 2013,” (April 23, 2013); letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Vietnam: Comments on COGSI’s April 23rd Filing,” (April 30, 2013); letter from the petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Vietnam (C-552-815) - Supplemental Information Supporting Petitioner’s Scope Clarification Request,” (May 7, 2013); and letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Vietnam: Comments on COGSI’s Revised Scope Clarification Request,” (May 14, 2013).

³⁶ See Department Memorandum, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, Socialist Republic of Vietnam: Scope Clarification re Brine-Frozen Shrimp,” dated concurrently with this memorandum (Scope Clarification re Brine-Frozen Shrimp).

³⁷ “Tails” in this context means the tail fan, which includes the telson and the uropods.

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

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

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

V. INJURY TEST

Because Vietnam 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 Vietnam materially injure, or threaten material injury to, a U.S. industry. On February 15, 2013, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen shrimp from, *inter alia*, Vietnam.³⁸

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

On April 1, 2010, the Department published *PRCBs Final Determination* in which we found the CVD law applicable to Vietnam.³⁹ Furthermore, on March 13, 2012, HR 4105 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies such as Vietnam. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding. *See* HR 4105, 112th Cong. 1(b) (2012)(enacted).

Additionally, for reasons stated in *PRCBs Final Determination*, we are using the date of January 11, 2007, the date on which Vietnam became a member of the World Trade Organization

³⁸ *See* Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam: Inv. No. 701-TA-491-497 (Preliminary) (February 2013); *Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, 78 FR 11221 (February 15, 2013).

³⁹ *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) (*PRCBs Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

(WTO), as the date from which the Department will identify and measure subsidies in Vietnam for purposes of CVD proceedings.⁴⁰

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.⁴¹ The Department notified the respondents of the 12-year AUL in the initial questionnaire and requested data accordingly.⁴² No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

⁴⁰ *Id.* at Comment 3.

⁴¹ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

⁴² As discussed above and in accordance with the Department's practice, regardless of the AUL chosen, we will not countervail subsidies conferred before January 11, 2007, the date of the Vietnam's accession to the WTO. See, *e.g.*, *PRCBs Final Determination*, and accompanying IDM at comment 3.

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.

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 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.⁴³

Minh Qui

Minh Qui responded to the Department’s questionnaires on behalf of itself and eight affiliates: Minh Phu Seafood Corporation (Minh Phu), Minh Phat Seafood Co., Ltd. (Minh Phat), Minh Phu – Hau Giang Seafood Co., Ltd. (MP Hau Giang), Minh Phu – Kien Giang Seafood Co., Ltd. (MP Kien Giang), Minh Phu Organic Shrimp Farming Co., Ltd. (MP Organic), Minh Phu Aquatic Larvae Co., Ltd. (MP Aquatic), Minh Phu Bio Co., Ltd. (MP Bio), and Minh Phu – Loc An Aquaculture Co., Ltd. (MP Loc An) (collectively, Minh Phu Group).⁴⁴

Minh Qui reports the following roles for each of the companies:⁴⁵

- *Minh Phu*: producer of subject merchandise;
- *Minh Qui*: producer of subject merchandise; a subsidiary of Minh Phu;
- *Minh Phat*: producer of subject merchandise; a subsidiary of Minh Phu;
- *MP Hau Giang*: producer of subject merchandise; a subsidiary of Minh Phu;
- *MP Kien Giang*: farmer of fresh shrimp; a subsidiary of Minh Phu, shares management with Minh Phu;
- *MP Organic*: farmer of fresh shrimp; a subsidiary of Minh Phu, shares common management and shareholders with Minh Phu;
- *MP Aquatic*: shrimp larvae breeder; a subsidiary of Minh Phu; the director of MP Aquatic is one of the two largest shareholders of Minh Phu;
- *MP Bio*: produces biological product for aquaculture and bio-fertilizer for agriculture; a subsidiary of Minh Phu and shares management with Minh Phu;

⁴³ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴⁴ See MQR at 9.

⁴⁵ See MQR at 3-8.

- *MP Loc An*: fresh shrimp farmer; a subsidiary of Minh Phu; MP Loc An is controlled by Minh Phu through management.

Minh Phu combines its subsidiaries' results in its consolidated financial statements.⁴⁶

Based on Minh Phu's common ownership, we find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Because Minh Phu is a parent company, we are preliminarily attributing subsidies received by Minh Phu to Minh Phu's consolidated sales (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iii).

Minh Phu is also a producer of subject merchandise, as are Minh Qui, Minh Phat, and MP Hau Giang. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are preliminarily attributing subsidies received by Minh Qui, Minh Phat, and MP Hau Giang to the combined sales of Minh Phu (unconsolidated), Minh Qui, Minh Phat, and MP Hau Giang.⁴⁷

MP Kien Giang, MP Organic, MP Aquatic, MP Bio, and MP Loc An are input suppliers to the cross-owned subject merchandise producers. We preliminarily find that the inputs (*i.e.*, fresh shrimp, shrimp larvae, and biological product for aquaculture) they produce and supply to the subject merchandise producers are primarily dedicated to the production of the downstream product (*i.e.*, frozen shrimp), pursuant to 19 CFR 351.525(b)(6)(iv). Therefore, we are preliminarily attributing subsidies received by any of these input suppliers to the sales of that input supplier plus the combined sales of Minh Phu (unconsolidated), Minh Qui, Minh Phat, and MP Hau Giang (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv).

Nha Trang

Nha Trang responded to the Department's questionnaires on behalf of itself and three affiliates: Nha Trang Seafoods – F89 Joint Stock Company (F89), NT Seafoods Corporation (F440), and NTSF Seafoods Joint Stock Company (F461) (collectively, Nha Trang Seafood Group).⁴⁸

Nha Trang reports the following roles for each of the companies:⁴⁹

- Nha Trang: producer of subject merchandise;
- F89: producer of subject merchandise; a subsidiary of Nha Trang;
- F440: producer of subject merchandise; a subsidiary of Nha Trang;
- F461: producer of subject merchandise; a subsidiary of Nha Trang.

Nha Trang combines its subsidiaries' results in its consolidated financial statements.⁵⁰

⁴⁶ See MQR at 1.

⁴⁷ See, *e.g.*, *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) (*Coated Paper from the PRC*), and accompanying IDM at 9 and Comment 35, where we discuss application of the attribution regulations at 19 CFR 351.525(b)(6) to a company that is both a parent company and a producer of subject merchandise.

⁴⁸ See NTSCQR at 9

⁴⁹ See NTSCQR at 10-11.

⁵⁰ See NTSCQR at 4.

Based on Nha Trang's common ownership, we find these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Because Nha Trang is a parent company, we are preliminarily attributing subsidies received by Nha Trang to its consolidated sales (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iii).

Nha Trang is also a producer of subject merchandise, as are F89, F440, and F461. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are preliminarily attributing subsidies received by F89, F440, and F461 to the combined sales of Nha Trang (unconsolidated), F89, F440, and F461.⁵¹

Consequently, in calculating the *ad valorem* subsidy rates for subsidies received by Minh Phu or Nha Trang, we divided the benefit by Minh Phu's or Nha Trang's consolidated POI sales (less intra-company sales), respectively. Where cross-owned producers of subject merchandise other than Minh Phu or Nha Trang received countervailable subsidies, we divided the total benefit by their combined POI sales of the subject merchandise, and included the unconsolidated sales of Minh Phu or Nha Trang. Finally, where a cross-owned input supplier received countervailable subsidies, we divided the benefit by the combined POI sales of that company and the cross-owned producers of subject merchandise, less intra-company sales.

Subsidies to Fresh Shrimp

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

The GOV has not challenged the application of 771B of the Act, but has reserved the right to do so.⁵²

Based on the petitioner's allegation, we preliminarily determine that subsidies provided to producers of fresh shrimp are provided with respect to the processed shrimp product.

To calculate the amount of subsidies to be attributed to frozen shrimp as a result of the GOV's provision of subsidies to producers of fresh shrimp, we have relied on the information submitted with respect to Minh Qui's cross-owned farming companies and Nha Trang's unaffiliated supplier, Mr. Phong. Specifically, we have calculated a rate of fresh shrimp subsidization measured in Vietnam dong/kilo based on the subsidies received by Minh Qui's farming

⁵¹ See, e.g., *Coated Paper from the PRC*, and accompanying IDM at 9 and Comment 35. These sections discuss the Department's application of the attribution regulations at 19 CFR 351.525(b)(6) to a company that is both a parent company and a producer of subject merchandise.

⁵² See GQR at 5.

companies and Mr. Phong, and the volume of fresh shrimp obtained from them. We then computed a simple average of these rates of fresh shrimp subsidization. For Nha Trang, we multiplied this average rate of fresh shrimp subsidization by the total volume of fresh shrimp purchased by Nha Trang, except for the fresh shrimp it purchased from Mr. Phong. For Minh Qui, we multiplied the average rate of fresh shrimp subsidization by the volume of fresh shrimp purchased by Minh Qui from its remaining suppliers. The resulting subsidy amounts were attributed to the total sales of each company. The subsidies received by Minh Qui's cross-owned farming companies were attributed in accordance with the allocation rules prescribed by 19 CFR 351.525(b)(6)(iv), as explained above.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the preliminary calculation memoranda prepared for this investigation.⁵³

D. Benchmarks and Discount Rates

Interest Rate Benchmarks

The Department is examining short- and long-term loans received by Minh Phu Group and Nha Trang Seafood Group. The loans are denominated in Vietnamese dong (VND) and U.S. dollars (USD). The years for which we must calculate benchmarks are 2009 through 2011.

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes.⁵⁴ If the firm does not receive any comparable commercial loans during the relevant periods, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."⁵⁵

For the reasons explained in the Vietnam Banking Sector Update Memo,⁵⁶ which is incorporated here by reference, we preliminarily determine that domestic interest rates in Vietnam are

⁵³ See Memorandum to the File, from Dustin Ross through Mino Hatten, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Vietnam: Minh Qui Seafoods Co., Ltd., Preliminary Calculation Memorandum," (May 28, 2013) (Minh Qui Preliminary Calculation Memo) and Memorandum to the File, from Michael A. Romani through Mino Hatten, "Preliminary Results Calculation Memorandum for Nha Trang Seaproducts Company and its Cross-Owned Affiliates," (May 28, 2013).

⁵⁴ See 19 CFR 351.505(a)(3)(i).

⁵⁵ See 19 CFR 351.505(a)(3)(ii).

⁵⁶ See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam – Banking Sector Update," (May 28, 2013) (Vietnam Banking Sector Update Memo).

distorted due to the predominant role of the GOV in the banking sector through its direct and indirect ownership as well as through other means such as interest rate controls, policy, plans, and administrative guidance. Therefore, we find that the benchmarks that are described under 19 CFR 351.505(a)(3)(i) and (ii) are not appropriate and that we must use an external, market-based benchmark interest rate.

Short-Term VND Benchmark

For loans denominated in VND, we are calculating the external benchmark following the regression-based methodology first developed in the CVD investigation of *CFS from the PRC*, and updated in several subsequent investigations on exports from the People's Republic of China (PRC).⁵⁷ This methodology bases the benchmark interest rate on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to Vietnam's, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, which is not directly tied to the state-imposed distortions in the banking sector discussed in the Vietnam Banking Sector Update Memo.

Under this methodology, we first determine which countries are similar to the country in question, in this case Vietnam, in terms of GNI, based on the World Bank's classification of countries as: low income, lower-middle income, upper-middle income, and high income. Based on GNI data for 2009-2011, Vietnam falls into the lower-middle income (LMI) category; hence, we selected the countries in the LMI range of the World Bank's GNI rankings for 2009-2011.⁵⁸

After identifying the appropriate interest rates for each year, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance is factored into the analysis by using a statistical regression that relates the interest rates to these governance indicators. As explained in *CFS from the PRC*, the regression captures the broad inverse relationship between income and interest rates.⁵⁹ By limiting the analysis to the pool of countries within the GNI range of the country in question, the analysis yields a reasonable estimate of a benchmark interest rate for the country in question.

Many of the countries in the World Bank's LMI categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "lower middle income" for 2009 through 2011. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years because we use real interest rates (*i.e.*, nominal interest

⁵⁷ See *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying IDM at "Benchmarks" section; see also, *e.g.*, *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying IDM at "Benchmarks and Discount Rates" section.

⁵⁸ See <http://data.worldbank.org>.

⁵⁹ See *CFS from the PRC* and accompanying IDM at the "Benchmarks" section.

rates less inflation) in the regression. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign currency-denominated instruments.⁶⁰ Finally, for each year we excluded from the regression any countries that had aberrational or negative real interest rates for the year in question.

For 2009-2011, the results of the regression analysis reflect a normal relationship: stronger institutions were associated with relatively lower real interest rates, while weaker institutions were associated with relatively higher real interest rates.

As stated above, the regression relies on real interest rates. However, the loans under investigation have not been adjusted to remove inflation. Therefore, to ensure an “apples-to-apples” comparison in the benefit calculation, we adjusted the short-term benchmark to include inflation. This adjustment was done using the inflation rates that Vietnam reported to the IFS. The details of our calculation are explained in Loan Benchmark Memorandum.⁶¹

Long-Term VND Benchmark

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

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.⁶² Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency Benchmarks

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB

⁶⁰ For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L’Este reported dollar-denominated rates; therefore, such rates have been excluded.

⁶¹ See Department Memorandum, “Interest Rate Benchmarks,” (May 28, 2013) (Loan Benchmark Memorandum).

⁶² See *Citric Acid from the PRC* and accompanying IDM at the “Benchmarks and Discount Rates” section.

bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.

Discount Rates

Consistent with 19 CFR 351.524(d)(3), we have based the discount rate on the year in which the subsidy was approved by the GOV. These benchmarks are provided in the Loan Benchmark Memorandum.

Land Benchmarks

Section 351.511(a)(2) of the Department’s regulations describes the benchmarks we use for determining whether a government is providing a good or service for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (tier one benchmark); (2) world market prices that would be available to purchasers in the country under investigation (tier two benchmark); or (3) an assessment of whether the government price is consistent with market principles (tier three benchmark).

In *PRCBs Final Determination*, we concluded that we could not rely on tier one benchmarks to determine whether the GOV was receiving adequate remuneration for land. We found that the GOV retained ultimate ownership of all land in Vietnam and that the government-determined land prices, which are set by decree, provided the starting point for all land prices in Vietnam, regardless of what valuation methods were utilized, and that the resulting rates were not market-determined. While some sub-leasing transactions occurred between private parties, the GOV had placed restrictions on those leasing rights. We also found that the GOV had significant control over the supply of land on the market through conversions and that the government -- not the market -- decided land allocations.⁶³

We preliminarily determine that there is no information on the record of the instant investigation that warrants a reconsideration of our finding in *PRCBs Final Determination*.

Following the methodology used in *PRCBs Final Determination*,⁶⁴ we have developed an external benchmark for land. Specifically, to measure the benefit for industrial land leased from the GOV, we are using rental rates for industrial property in Hyderabad, India, as reported in “CBRE India Industrial Overview.”⁶⁵ We selected Hyderabad because of the cities represented in the India data, it had the closest population density to the areas in which our respondents are located. Because the Indian lease rates date to 2008, we have indexed them to the years in which

⁶³ See *PRCBs Final Determination* and accompanying IDM at Comment 9.

⁶⁴ See also *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 FR 32930 (June 4, 2012), unchanged in *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 45973 (December 26, 2012) (*Wire Hangers Final Determination*).

⁶⁵ See Department Memorandum, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Vietnam - Land Benchmark Memorandum,” (May 28, 2013) (Land Benchmark Memorandum).

the respondents signed their land lease contracts using consumer price index data for India, as published by the International Monetary Fund.

We were not able to find an Indian rate for aquacultural or agricultural land. Therefore, to measure the benefit for aquacultural land leased from the GOV, we relied on ranged publicly available data on agricultural land prices in Ecuador.

These calculations are detailed in the Land Benchmark Memorandum.

VIII. 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. **Loan and Land Subsidies Provided Pursuant to National and Provincial Plans**

During the POI and for many prior years, the national and provincial governments in Vietnam had in place sectoral development plans for aquaculture. Among these plans are:

- Decision No. 224/1999/QD-TTg Approving the Aquaculture Development Program for the 1999-2010 Period (Decision No. 224 – 1999)⁶⁶
- Decision No. 10/2006/QD-TTg Approving the Fisheries Master Plan to 2010 and Oriented to 2020 (Decision No. 10 – 2006)⁶⁷
- Circular 03/2006/TT-BTS of the Ministry of Aquaculture Guiding the Implementation of the Master Plan to Develop the Aquaculture Sector up to 2010 and Orientation to 2020 (Circular No. 03 – 2006)⁶⁸
- Decision No. 2194/QD-TTg Approving the Scheme on Development of Agricultural Plant and Forest Tree Varieties, Livestock Breeds, and Aquatic Strains Up to 2020 (Decision No. 2194 – 2009)⁶⁹
- Decision No. 332/QD-TTg Approving the Scheme on the Development of Aquaculture through 2020, promulgated on March 3, 2011 (Decision No. 332 – 2011)⁷⁰

Beginning in 2011, a separate plan was promulgated for seafood processing:

- Decision No. 2310/QD-BNN-CB Approving the National Fishery Processing Development Plan Towards 2020 (Decision No. 2310 – 2011)⁷¹

⁶⁶ See GQR at Exhibit 7.

⁶⁷ See G2SR at Exhibit 125.

⁶⁸ See G3SR at Exhibit 126.

⁶⁹ See NSA at Exhibit 2; *see also* GNSAR at 1.

⁷⁰ See GQR at Exhibit 5.

⁷¹ See GQR at Exhibit 5 and GSR at Exhibit GOV-90.

According to the GOV, the purposes of its economic plans, including the sectoral plans, are to facilitate and act as a catalyst for economic development based on market forces by: identifying priorities for the government in terms of removing regulatory roadblocks, providing incentives for certain development priorities, channeling infrastructure expenditures, providing structural support for the private sector; guiding overseas donors and lenders, and, for private entities, indicating market opportunities and the economic direction of the country.⁷²

The goal of Decision No. 224 – 1999 was to develop and modernize Vietnam’s aquaculture sector. Shrimp (prawns) are prominent among the species to be developed and shrimp farmers are targeted for assistance. With regard to investment, Decision No. 224 – 1999 provides that, “The State shall adopt policies to lend capital to poor farmers and fishermen, who have labor and land for aquaculture, without having to mortgage their properties.”⁷³ Decision No. 224 – 1999 identifies among the various sources of funds, short-, medium- and long-term capital provided in addition to funds provided directly from the State budget.⁷⁴ Decision No. 224 – 1999 also discusses the provision of land to support the goal of developing Vietnam’s aquaculture sector.⁷⁵ In particular, it states that land previously planned for other uses be provided for aquaculture.

Starting with Decision No. 10 – 2006 and Circular No. 3 – 2006, the goals of the national plans broadened to include seafood processing. For example, aquaculture processing is part of Decision No. 10 - 2006 and one of the “tasks and solutions” in Circular No. 03 – 2006 is for the provincial aquaculture ministries to adjust their plans to include processing facilities and to collaborate with the Vietnam Association of Seafood Exporters and Processors.⁷⁶ The 2006 documents also call for the provision of financing and land to the sector. For example, in discussing how it will mobilize capital to achieve the goals of the plan, Decision No. 10 – 2006 describes trade banks giving loans to enterprises and the Ministry of Finance ensuring financial policies to implement the plan.⁷⁷ The Ministry of Planning and Investment directs local authorities to undertake the plan countrywide.⁷⁸ Decision No. 10 - 2006 further requires that local governments implement the plan.⁷⁹

Regarding land, Decision No. 10 – 2006 calls for the establishment of concentrated industrial aquaculture areas.⁸⁰ Circular No. 03 – 2006 reiterates this and, additionally, directs the provincial governments to consider and approve new aquaculture processing facilities of “appropriate scale.”⁸¹ These same directives also appear in contemporaneous provincial and municipal plans. For example, Decision No. 2438/QD-UBND Approving the Master Plan on Aquaculture Development of Can Tho City up to 2015 and Orientation up to 2020 includes among its “Implementation Solutions,” encouraging commercial banks to participate directly in

⁷² See GQR at 7.

⁷³ See GQR at Exhibit 7, provision V.2.1.

⁷⁴ *Id.* at provisions IV.3., V.2.3., and V.2.4.

⁷⁵ *Id.* at provision V.1.

⁷⁶ See G2SR at Exhibit 125, provisions I.2, II.1, and II.3; see also G3SR at Exhibit 126, provisions II.3. and II.3.a.

⁷⁷ See G2SR at Exhibit 125, provisions V.1. and VI.2.

⁷⁸ *Id.* at provision VI.1.

⁷⁹ *Id.* at provision VI.3.

⁸⁰ *Id.* at provision V.3.

⁸¹ See G3SR at Exhibit 126, provisions II.2.a. and II.3.a.

financing infrastructure construction to develop the sector.⁸² Decision No. 232/QD-CTUB Approving the Adjustment Project of Aquaculture Development Planning in Ca Mau Province 2005 – 2010 describes exploiting its land resources and shifting land from inefficient “extensive” shrimp farming and attracting investors to develop concentrated industrial shrimp farming.⁸³

Subsequently, Decision No. 2194 – 2009, sought to promote the development of new varieties and breeds. This plan applied generally to agriculture (including aquaculture), but prioritized the development of common tiger prawn and white-legged green tiger prawn breeds, along with a handful of other agricultural and aquaculture varieties and breeds.⁸⁴ Decision No. 2194- 1999 stated that commercial loans would account for 25 percent of the funding under the plan and directed state-run commercial banks to provide favorable conditions for such investment.⁸⁵

In 2010, the GOV laid out a new, comprehensive development strategy focusing on the entire “value chain” from raw material production (fisheries and aquaculture) to processing to consumption.⁸⁶ As described by the GOV, Decision No. 1690 – 2010, “addresses wild caught fishing development, aquaculture development, related shipbuilding and repair for the fisheries sector, human resources development for the sector, seafood processing, and various other issues related to the development of the fisheries sector defined broadly.”⁸⁷ The details for achieving the goals of Decision No. 1690 – 2010 are laid out in Decision Nos. 332 – 2011 and 2310 – 2011.

While Decision No. 332 – 2010 is targeted at aquaculture, it reflects the breadth of the overall plan, Decision No. 1690 - 2010. In particular, in describing the mechanisms for achieving the plan’s objectives, Decision No. 332 – 2010 includes “to further implement policies on investment and credit to support aquatic breed and feed producers, raisers and processors.”⁸⁸ Fifty percent of the funds for financing the objectives of Decision No. 332 – 2010 are to come from commercial banks.⁸⁹ Decision 2310 – 2010 which is targeted at the seafood processing sector also appears to rely heavily on bank lending: the State budget accounts for approximately six percent of funds needed to implement this plan from 2011 – 2015, with the remainder coming from domestic and foreign bank loans, preferential loans from the State, and the issuance of shares and bonds.⁹⁰

The GOV’s provision of land is also addressed in these plans. As the GOV explains:

The local authorities must facilitate expansion of aquaculture through what is essentially a “zoning” function, namely allowing aquaculture end use on an increasing amount of land and promoting larger scale aquaculture farming through assembling larger parcels of land designated for aquaculture use. At the

⁸² See G3SR at Exhibit 130, provision VI.1.

⁸³ See G3SR at Exhibit 127, provisions 1.2 and 1.3.

⁸⁴ See NSA at Exhibit 2, provision II.8.

⁸⁵ *Id.* at V.3.

⁸⁶ See GQR at Exhibit 5 (Decision No. 1690/QD-TTg Approving Vietnam’s Fisheries Development Strategy Through 2020 (Decision No. 1690 – 2010) at I. 2..

⁸⁷ *Id.* at 12.

⁸⁸ See GQR at Exhibit 5, provision 5.c.

⁸⁹ *Id.* at 7.a.

⁹⁰ See GQR at Exhibit 5, Appendix V and 5.

same time, the local authorities must address the infrastructure and land use issues needed to implement {Decision No. 2310 – 2011}. ... Thus, local authorities must and do facilitate the conversion of land from agricultural use to aquacultural use or from farming use to industrial use in order to promote the objectives of the plans.⁹¹

In this context, the GOV describes two instances in which the Minh Phu Group was able to expand its farming and processing operations with land use rights obtained in 2011 and 2012.⁹²

Based on the information submitted by the GOV on its planning process and the plans themselves, we preliminarily determine that the GOV has targeted its aquaculture and seafood processing industries for development and that it is supporting this development by providing loans and land to enterprises operating in these industries. Because the GOV controls the state-run commercial banks that lend to these enterprises and directly leases the land to them, the GOV is providing financial contributions within the meaning of sections 771(5)(D)(i) and (iii) of the Act, respectively. These financial contributions confer benefits on the respondents, as described further below. Because the plans limit access to the subsidies to aquaculture and seafood processors, they are *de jure* specific within the meaning of section 771(5a)(D)(i) of the Act. Finally, because the plans limit access to the subsidies to aquaculture and seafood processors, they are *de jure* specific within the meaning of section 771(5a)(D)(i) of the Act. With respect to Decision No. 2194 – 2009, which is aimed more broadly at agriculture, we preliminarily find *de facto* specificity because a limited number of products, including shrimp, are prioritized. See section 771(5A)(D)(iii)(I) of the Act.

Loan Benefit: Under section 771(5)(E)(ii) of the Act, government-provided loans confer a benefit to the extent that the recipient pays less than it would pay on a comparable commercial loan. As described above under “Interest Rate Benchmarks,” we have constructed short- and long-term commercial benchmarks for Vietnam. Comparing what the respondents paid on their loans given under the plans to what they would have paid under the benchmark rates, we preliminarily find that a benefit exists. We divided the benefit each company received during the POI by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we preliminarily determine that Minh Phu Group and Nha Trang Seafood Group received countervailable subsidies of 0.55 percent *ad valorem* and 0.17 percent *ad valorem*, respectively, from the loans given under the aquaculture and seafood processing plans.

Land Benefit: Under section 771(5)(E)(iv) of the Act, government-provided land confers a benefit if the government receives LTAR. As described above under “Land Benchmarks,” we have used land values outside of Vietnam to measure the adequacy of remuneration received by the GOV. Comparing what Minh Phu Group paid for agricultural land used for farming shrimp to what it would have paid under the benchmark, we preliminarily find no benefit. Comparing what Minh Phu Group and Nha Trang Seafood Group paid for industrial land used for processing facilities to what they would have paid under the benchmark, we preliminarily find that a benefit

⁹¹ See GQR at 15.

⁹² *Id.*

exists. We divided the benefit each received during the POI by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we preliminarily determine that Minh Phu Group and Nha Trang Seafood Group received countervailable subsidies of 0.21 percent *ad valorem* and 1.03 percent *ad valorem*, respectively, from the land provided under the aquaculture and seafood processing plans.

2. Export Credits from the Vietnam Development Bank (VDB)

Based upon the petitioner’s allegation, we initiated an investigation into “Preferential Export Lending; Export Credits and Export Credit Guarantees under Decree 51.”⁹³ The GOV and Minh Qui reported that Minh Phu utilized an export credit line through the VDB, which the GOV explains is one of two government-owned policy banks in Vietnam.⁹⁴ The VDB lends to designated industries or projects according to specified criteria, pursuant to Decision 108/2006/QD/TTG (Decision 108).⁹⁵ Specifically, Article 4 of Decision 108 states that the function of the bank is to mobilize and receive funds from domestic and foreign organizations to implement the State’s development assistance programs and its export credit policies.⁹⁶ Thus, one of the VDB’s primary functions is to provide export financing pursuant to state-directed export credit policies.⁹⁷

Under the program, the VDB provides lines of credit to exporters, with the loan contracts stipulating that a penalty interest rate will be charged if the loan proceeds are not used for the intended purpose of supporting the production and shipment of exported goods.⁹⁸ Minh Qui explains that, in practice, Minh Phu enters into an export line of credit with the VDB and, in order to receive the “preferential export” interest rate, it must provide documentation demonstrating it utilized the funds to produce exported goods or otherwise pay the “agreed” rate.⁹⁹ If Minh Phu does provide this documentation, interest payments are reimbursed (for payments already made) at the difference between the agreed interest rate and the export credit interest rate.¹⁰⁰

The Department preliminarily determines that the export loans made by the GOV policy bank, VDB, to Minh Phu are a financial contribution within the meaning of section 771(5)(D)(i) of the Act. Pursuant to section 771(5)(E)(ii) of the Act, these loans confer a benefit equal to the difference between what the recipients paid on the loans and what they would have paid under the benchmark interest rates described in the “Interest Rate Benchmarks” section. Finally, receipt of these loans is tied to actual or anticipated exportation. We therefore preliminarily determine that this program is specific under section 771(5A)(A) and (B) of the Act.

⁹³ See Initiation Checklist at 19-21.

⁹⁴ See GQR at 29 and 41-42; MQR at 26.

⁹⁵ See GQR at 29 and Exhibit GOV-25.

⁹⁶ See GQR at Exhibit GOV-25.

⁹⁷ See GSR at 8.

⁹⁸ See GQR at 66.

⁹⁹ See MQR at 26.

¹⁰⁰ *Id.*

To calculate the benefit, we summed the interest savings on the VDB loans outstanding during the POI and divided the total by the appropriate POI export sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.21 percent *ad valorem* for the Minh Phu Group.

3. Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank)

The GOV and Minh Qui reported that Minh Phu participated in the export lending program through the VDB, as discussed above. In the course of our investigation, we learned that Minh Phu Group also participated in an export lending program administered by Vietinbank. The Department found Vietinbank administers a countervailable export lending program in *Wire Hangers Final Determination*.¹⁰¹ Due to the proprietary nature of Minh Phu Group’s participation in this program, it is separately discussed in the proprietary preliminary calculation memorandum for Minh Qui.¹⁰²

Section 775 of the Act provides that if the Department “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition ... then the administering authority (1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” *See also* 19 CFR 351.311(b). Accordingly, the statute authorizes us to investigate this program.

The Department has previously found that Vietinbank is a state-owned commercial bank (SOCB).¹⁰³ This finding is supported by the record in the instant proceeding as the GOV characterizes Vietinbank as an SOCB in which the GOV holds an 80.31 percent ownership position.¹⁰⁴ (Further information on the role of SOCBs – including Vietinbank -- in the banking sector can be found in the Vietnam Banking Sector Update Memo). Therefore, we preliminarily determine that the export loans issued to Minh Phu Group by Vietinbank are a financial contribution within the meaning of section 771(5)(D)(i) of the Act. Pursuant to section 771(5)(E)(ii) of the Act, these loans confer a benefit equal to the difference between what the recipients paid on the loans and what they would have paid under the benchmark interest rates described in the “Interest Rate Benchmarks” section. Finally, receipt of these loans is tied to actual or anticipated exportation. We therefore preliminarily determine that this program is specific under section 771(5A)(A) and (B) of the Act.

¹⁰¹ *See Wire Hangers Final Determination* and accompanying IDM at Comment 4.

¹⁰² *See Minh Qui Preliminary Calculation Memorandum*.

¹⁰³ *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Determination Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 45811, 45817 (September 4, 2009). The Department’s finding that Vietinbank was a government authority operating as a SOCB was not reversed as a result of the *PRCBs Final Determination*. *See PRCBs Final Determination* and accompanying IDM at “Application of Facts Otherwise Available and AFA for API and Fotai.”

¹⁰⁴ *See* GQR at 28-29 and GSR at 3.

To calculate the benefit, we summed the interest savings on the Vietinbank loans outstanding during the POI and divided the total by the appropriate POI export sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.53 percent *ad valorem* for Minh Phu Group.

4. Interest Rate Support Program under the State Bank of Vietnam (SBV)

Based upon information in the petition, we initiated an investigation of an interest rate support program the GOV allegedly directed toward exporters.¹⁰⁵ In response to our questionnaire, the GOV clarified that this program is not limited to exporters. Instead, an interest rate support program was instituted in January of 2009 under Decision No. 131/QD-TTG to stimulate the economy in the midst of an economic downturn by providing capital support to organizations and individuals carrying out business projects.¹⁰⁶ Circular 2/2009/TT-NHNN of February 3, 2009, provides detail on the implementation of the program.

The SBV is responsible for implementing the program.¹⁰⁷ Initially, the program provided four percent interest rate support on short-term loans for qualifying businesses but the SBV subsequently expanded it to include medium- and long-term loans of up to 24 months.¹⁰⁸ Circular 21/2009/TT-NHNN of October 9, 2009 (Circular 21), amended and clarified Circular 5. Decision No. 2072/QD-TTg of December 11, 2009, which was implemented by SBV Circular 27/2009/TT-NHNN of December 31, 2009, extended the period for obtaining interest rate support on medium- and long-term loans through 2010 but lowered the support level to two percent.¹⁰⁹

Several of these decisions and circulars specify eligibility criteria for the interest support, including Circular 21, which expands and clarifies previous eligibility criteria and adds a list of projects ineligible for interest rate support from the SBV.¹¹⁰ This list of ineligible projects includes, “Loans in Vietnamese Dong for purchasing foreign currency to make payment to foreign countries for the import of consumer commodities or to make payment to domestic suppliers for the purchase of consumer commodities, imported from foreign countries, as materials, raw materials and assets for performing project of production, business investment and development,”¹¹¹ Thus, the SBV will not provide support to projects making use of imported goods used in the production process.

Minh Qui reported that in addition to itself, Minh Phu, Minh Phat, and MP Hau Giang received interest rate support under this program.¹¹²

¹⁰⁵ See Initiation Checklist at 19.

¹⁰⁶ See GSR at 13.

¹⁰⁷ *Id.*

¹⁰⁸ See GSR at 14, referencing Circular 05/2009/TT-NHNN of April 7, 2009 (Circular 5) (Exhibit GOV-104).

Circular 21/2009/TT-NHNN of October 9, 2009 (Circular 21) (Exhibit GOV-105), amended and clarified Circular 5.

¹⁰⁹ See GSR at 14-15, Exhibit GOV-106 and GOV-107.

¹¹⁰ See GSR at Exhibit GOV-105, Article 1.

¹¹¹ See GSR at Exhibit GOV-105, Article 1.b.4.

¹¹² See MSR at 11-12 and Exhibits MPG Supp-15 through MPG Supp-18.

We preliminarily determine that the interest rate support from the central bank of Vietnam, the SBV, is a financial contribution within the meaning of section 771(5)(D)(i) of the Act, which provides a benefit in the amount of the interest savings.¹¹³ We also preliminarily determine that this program is specific within the meaning of section 771(5A)(A) and (C) of the Act as receipt of the interest support is contingent upon the use of domestic goods over imported goods, alone or as one of two or more conditions.

To measure the benefit, we summed the amount of interest rate support received in the POI and divided it by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.05 percent *ad valorem* for Minh Phu Group.

INCOME TAX PROGRAMS

Based upon information the petitioner provided in its allegation, we initiated investigations into preferential income tax programs identified under several different Vietnamese laws. Specifically, we initiated on different provisions identified in Decree No. 51/1999/ND-CP (Decree 51), Decree No. 164/2003/ND-CP (Decree 164), Decree No. 24/2000/ND-CP (Decree 24), and Decree No. 101/2011/ND-CP. In response to the petition, the GOV informed the Department that Decree 51 was repealed by Decree No. 108/2006/ND-CP (Decree 108), which provides guidelines for implementation of the Law on Investment, No. 59/2005/QH11 (Law on Investment).¹¹⁴ Since the enactment of Decree 108, there have been several additional tax laws offering variations of the income tax preferences adopted in Vietnam.

The GOV explains that with respect to income tax preferences, when a new law or decree is passed, there is always a clause that specifies that enterprises may maintain the tax preferences granted under the previous law(s) but if the preferences are higher under the new law, enterprises may opt for the preferences under the new law.¹¹⁵ Thus, despite the repeal of Decree 51, firms in Vietnam may continue benefitting under certain tax preferences in Decree 51.¹¹⁶ Nevertheless, it appears that, in this investigation, income tax preferences under Decree 51 were not used, as firms opted for income tax preferences under more recent laws, as discussed below.

Based on the information provided by the respondents, the scope of the investigation into income tax preferences expanded to also include preferences granted under Decree 24 and Decree

¹¹³ Any loans from SOCBs that benefitted from the interest rate support program are also being countervailed under the loan programs described above in the amount of the difference between the benchmark and what the recipient would have paid without the interest rate support.

¹¹⁴ See Memorandum to the file, “Consultations with Officials from the Government of Vietnam on the Countervailing Duty Petition on Certain Frozen Warmwater Shrimp from Vietnam,” (January 17, 2013) at Attachment A, point II.B; see also GQR at 23.

¹¹⁵ See GQR at 25.

¹¹⁶ This was the case in *PRCBs from Vietnam*, where the Department discovered at verification that a respondent maintained its tax preferences granted under Decree 51, despite its repeal. See *PRCBs Final Determination* and accompanying IDM at 6-7.

124,¹¹⁷ in addition to Decree 164. To the extent that these Decrees constitute different programs from among those that we enumerated in our initiation, section 775 of the Act and 19 CFR 351.311(b) allow the Department to investigate other possible countervailable subsidies discovered during the course of a proceeding.

5. Income Tax Preferences under Chapter V of Decree 164

Laws concerning income tax are implemented at the national level in Vietnam through the Ministry of Finance. According to the GOV, Decree 164, detailing the implementation of the Law on Enterprise Income Tax 2003, was replaced by Decree 24, also detailing the implementation of the Law on Enterprise Income Tax 2003.¹¹⁸ However, certain provisions of Decree 164 were grandfathered with respect to Nha Trang, Minh Qui, and Minh Phat.

Chapter V of Decree 164 governs enterprise income tax exemptions and reductions.¹¹⁹ Article 35 provides incentives for newly established business investments including, *inter alia*, income tax rate reductions for enterprises that operate in a sector identified in the list of “encouraged industries” and/or operate in geographical areas of difficult socio-economic conditions.¹²⁰ Article 36 of Decree 164 provides a variety of additional income tax benefits for firms in “encouraged” industries, for firms that operate in areas of difficult socio-economic conditions, and/or satisfy certain labor requirements.¹²¹ Article 39 of Decree 164 provides additional benefits for certain firms that export and also meet the conditions of Articles 35 and 36.¹²²

The Appendix to Decree 164 is comprised of lists identifying the “encouraged” industries and regions that may qualify for the preferences described therein. List A identifies branches, lines, and domains qualifying as “encouraged” industries, and includes aquaculture in unexploited water areas; processing of agricultural, forestry, and aquatic products; and export oriented industries.¹²³ List B and List C specify the regions entitled to investment preferences because of socioeconomic difficulties and “special” socioeconomic difficulties, respectively.¹²⁴

Minh Qui qualified for tax preferences under Article 35 as a company in an encouraged industry defined by List A, while Minh Phat qualified for tax preferences pursuant to Article 35 as a company in an encouraged industry because it satisfied certain labor conditions, pursuant to Article 36.¹²⁵

Under Articles 35, 36, and 39, Nha Trang qualified for a 20 percent corporate income tax rate because it operates in an industry specified on List A of the Appendix, an additional reduction for satisfying specified labor conditions and, finally, a reduction in income tax paid on export

¹¹⁷ Decree 124/2008/ND-CP (Decree 124).

¹¹⁸ See GQR at 71.

¹¹⁹ The standard corporate income tax rate in Vietnam during the POI was 25 percent. See GQR at 23-24.

¹²⁰ See GQR at 71-72 and Exhibit GOV-22.

¹²¹ See GQR at 72-73 and Exhibit GOV-22.

¹²² See GQR at 73-74 and Exhibit GOV-22.

¹²³ See GQR at Exhibit GOV-22, Appendix provisions I., III., and IV.

¹²⁴ See GQR at Exhibit GOV-22, Appendix.

¹²⁵ See MQR at 31.

related income, for meeting export quotas, respectively.¹²⁶

We preliminarily determine that the income tax reductions under Chapter V of Decree 164 are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act and provide a benefit to Minh Phu Group and Nha Trang Seafood Group in the amount of tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). These income tax reductions are specific because they are limited to an enterprise or group of enterprises (*i.e.*, preferred industries identified on List A to the Appendix to the Decree), pursuant to section 771(5A)(D)(i) of the Act, and/or limited to enterprises or industries located within designated geographical regions (*i.e.*, regions of socioeconomic difficulty), pursuant to section 771(5A)(D)(iv) of the Act. Finally, with respect to Nha Trang, we find the program specific, pursuant to section 771(5A)(A) and (B) of the Act because Nha Trang qualified for its income tax preferences based on its export performance, in accordance with Article 39 of Decree 164.

To calculate the net subsidy rate, we divided the amount of the respondents' tax savings, as indicated on their 2010 tax returns filed during the POI, by the appropriate POI sales total, as described in the "Attribution of Subsidies" section above.

On this basis, we preliminarily determine that Minh Phu Group and Nha Trang Seafood Group received countervailable subsidies of 0.21 percent *ad valorem* and 0.40 percent *ad valorem*, respectively.

6. Income Tax Preferences Under Chapter V of Decree 24

As discussed above, the GOV reported that Decree 24 replaced Decree 164 in 2007, in part to phase out export subsidies under the terms of Vietnam's Accession to the WTO.¹²⁷ Many of the income tax reductions under Chapter V of Decree 24 are similar to those described above for Decree 164. Article 33 of Decree 24 details these preferences, which include income tax reductions for projects undertaken by sectors qualifying for special investment incentives and/or preferences for firms operating in regions of difficult socioeconomic conditions or operating in regions of "specially" difficult socioeconomic conditions.¹²⁸ The list of sectors entitled to special investment incentives is found in Appendix I to Decree 108 and includes "breeding, rearing, growing and processing agricultural, forestry and aquaculture products."¹²⁹

Among the respondents and their cross-owned firms, several enjoyed income tax preferences under Chapter V of Decree 24. MP Kien Giang and F440 qualified for tax reductions because they operate in Kien Giang province, which is included in the list of regions experiencing especially difficult socioeconomic conditions.¹³⁰ F461 qualified for tax reductions under Chapter V of Decree 24 because it is considered a "Labor Intensive" firm, based on having met

¹²⁶ See NTSCQR at 33.

¹²⁷ See GQR at 71.

¹²⁸ The lists specifying the sectors or regions entitled to preferences may be found in Exhibit GOV-19 (Decree 108/2006/ND-CP, detailing the implementation of the Law on Investment 2005 (Decree 108)). See GNS2QR at 7; see also GQR at Exhibit GOV-64 (Decree 24).

¹²⁹ See GQR, Exhibit GOV-19 at Appendix I.

¹³⁰ See GNS2QR at 9; MSR at 7; NSR at 5; GQR at Exhibit GOV-19, Article 22.2 and Appendix II.

particular employee quotas and based.¹³¹

We preliminarily determine that the income tax reductions under Chapter V of Decree 24 are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act and provide a benefit Minh Phu Group and Nha Trang Seafood Group in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). With respect to F461, we find the income tax reductions are specific under 771(5A)(D)(i) of the Act because access to the subsidy is limited to an enterprise or group of enterprises (*i.e.*, those sectors entitled to special investment incentives in Appendix I to Decree 108). With respect to MP Kien Giang and F440, which operate in Kien Giang province, we find the tax preferences under Chapter V of Decree 24 are specific pursuant to section 771(5A)(D)(iv) of the Act, as they are limited to enterprises or industries located within designated geographical regions (*i.e.*, regions experiencing especially difficult socioeconomic conditions).

To calculate the net subsidy rate, we divided the respondents' tax savings, as indicated on their 2010 tax returns filed during the POI, by the appropriate POI sales total, as described in the "Attribution of Subsidies" section above.

On this basis, we preliminarily determine that Minh Phu Group and Nha Trang Seafood Group received countervailable subsidies of 0.28 percent *ad valorem* and 0.21 percent *ad valorem*, respectively.

OTHER TAX PROGRAMS

7. Import Duty Exemptions for Imported Raw Materials for Exported Goods

Import duty exemptions are governed by the Law on Import Duty and Export Duty, No.45/2005/QH-11 (Law 45) and Decree No. 87/2010/ND-CP (Decree 87).¹³² Article 15 of Law 45 provides that when a firm imports raw materials that are used for the production of exported goods and such exportation occurs within 275 days, no duty liability is incurred.¹³³ Article 19 of Law 45 provides for reimbursement of duties on raw materials or supplies imported for the production of export goods, for which import tax has been paid.¹³⁴

The GOV reported that Minh Phu, Minh Qui, Minh Phat, and Nha Trang did not pay import duties on raw materials used in the production of exported goods. The GOV and Minh Phu assert that this program is not countervailable, citing 19 CFR 351.519(a)(1)(ii), which states that a benefit exists from the exemption of import charges only to the extent that the inputs are not consumed in the production of the exported product, allowing for wastage.¹³⁵ According to Minh Phu, this was the situation for all instances where Minh Phu Group companies did not pay the full, applicable import duty.

¹³¹ See NTSCSQR at 6. "Labor Intensive Industries" are categorized under Decree 108/2006 in Appendix I "List of investment incentive sectors," at list B, part IV, point 29 "Projects regularly employing between five hundred (500) and five thousand (5,000) employees." See GOV QR Exhibit GOV-19 at 44.

¹³² See GQR at 86 and Exhibit GOV-64.

¹³³ See GQR at 86.

¹³⁴ *Id.*

¹³⁵ See GQR at 85 and MQR at 38.

For import duty exemptions on raw materials for exported goods, the exemptions cannot exceed the amount of duty levied; otherwise, the excess amounts exempted confer a countervailable benefit under 19 CFR 351.519(a)(1)(i). Moreover, under 19 CFR 351.519(a)(4), the government must have a system or procedure to confirm which inputs are consumed in production and in what amounts and such system or procedure must be reasonable, effective for the purposes intended and based on generally accepted commercial practices in the country of export; otherwise, the exemptions confer a benefit equal to the total amount of duties exempted. In previous investigations, the Department concluded that the GOV does not have in place a system to confirm which inputs are consumed in the production of the exported products and in what amounts, including a normal allowance for waste.¹³⁶

The GOV has provided, in the instant investigation, a description of the multi-step process which the Vietnam customs authority employs to determine eligibility for duty exemptions, as governed by Circular No. 194/2010/TT.¹³⁷ First, firms must register the materials to be used in the production of exported goods prior to importation of those materials. Next, firms must register “consumption norms” prior to exportation of the finished products. These norms identify the actual quantity of inputs used in the production of the exported products, allowing for waste, and may be adjusted by the firm if a change to the registered norms is detected during the production process. After exportation of the finished product, Vietnam’s customs office may inspect the registered consumption norm against the materials that constitute the final exported product.¹³⁸

The GOV further explains that norm inspection is conducted through documentary inspection and in some cases physical inspection.¹³⁹ According to the GOV, Minh Phu and Minh Phat were both subject to random physical inspection by the provincial customs authority of Ca Mau during the POI and both were verified by the provincial customs authority to have declared the correct consumption norm.¹⁴⁰ The GOV also provided a customs norms inspection report for another, unrelated company that reported incorrect norms for its production process and was, therefore, sanctioned by the customs authority.¹⁴¹

Based on our further questions, the GOV has confirmed that the consumption norms used in Vietnam allow producers to recover and sell “waste” material from imported inputs without paying duties on that waste.¹⁴² The Ministry of Finance Circular No. 194/2010/TT-BTC of December 6, 2010 (Circular 194) provides guidance for Vietnamese customs procedures. Article 33(2)(d) of Circular 194 states that consumption norms, as reported to and verified by Vietnam’s customs officials, include not only the proportion of imports used in production of exported goods but also scrap and waste.¹⁴³ Further, Article 113(5)(D) of Circular 194 states that, “The

¹³⁶ See *PRCBs Final Determination* and accompanying IDM at “Import Duty Exemptions for Imported Raw Materials for Exported Goods;” see also *Wire Hangers Final Determination* and accompanying IDM at Comment 5.

¹³⁷ See GQR at 88 and Exhibit GOV-65.

¹³⁸ See GQR at 88-91.

¹³⁹ See GSR at 18.

¹⁴⁰ See GSR at 20, Exhibit GOV-120, 121, and 122.

¹⁴¹ See GSR at 21-22, Exhibits GOV-112 through GOV-115.

¹⁴² See G3SR at 1-2.

¹⁴³ See G3SR at 1 and GQR at Exhibit 65.

portion of scraps and discarded products within the consumption norm recovered in the production of exports from imported materials and supplies...is exempt from import duty.”¹⁴⁴

As stated in 19 CFR 351.519(a), “{t}he term ‘remission or drawback’ includes full or partial exemptions and deferrals of import charges.” Under 19 CFR 351.519(a)(1)(ii), in the case of exemptions of import charges upon export, “...a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste ...” Under 19 CFR 351.519(a)(4)(i), the entire amount of such exemptions will confer a benefit, unless the Department determines that “{t}he government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.” As stated in *Hot-Rolled Steel from Thailand*, we consider whether the production process produces resalable scrap to be essential to the calculation of a normal allowance for waste.¹⁴⁵

As explained above, the GOV’s system does not account for resalable waste because such waste is exempt from duties. Thus, we preliminarily find that the import duty exemptions on raw materials confer a benefit equal to the total amount of the duties exempted, in accordance with 19 CFR 351.519(a)(4). Because the import duty exemptions on raw materials are contingent upon export performance, we preliminarily determine that they are specific in accordance with section 771(5A)(A) and (B) of the Act. We further preliminarily determine that the exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act.

Normally, we treat exemptions from indirect taxes and import charges on raw materials as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. Thus, to calculate the net subsidy rate for Minh Phu Group, we first determined the total value of duties exempted during the POI by multiplying the value of each raw material imported during the POI by the applicable tariff rate. We then divided this by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above. Following this same calculation for Nha Trang Seafood Group, we preliminarily determine that the company received no measurable benefit from its import duty exemptions during the POI.

On this basis, we preliminarily determine a net countervailable subsidy rate of 1.07 percent *ad valorem* for the Minh Phu Group.

8. Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets

We initiated an investigation of import duty exemptions on equipment and machinery under Decree 51. No respondents received such exemptions under Decree 51, but the GOV and Minh Qui reported that several cross-owned firms in the Minh Phu Group received import duty

¹⁴⁴ See G3SR at 2 and GQR at Exhibit 65.

¹⁴⁵ See *Hot-Rolled Steel* and accompanying IDM at “Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36(1).”

exemptions for equipment and machinery imported to create fixed assets under Article 16 of Law 45 and Article 12(6)(a) of Decree 87/2010/ND-CP (Decree 87), which details a number of the articles of Law 45.¹⁴⁶ Article 16 of Law 45 states that, *inter alia*, projects entitled to investment incentives shall be exempted from import duties for those imports used to create fixed assets.¹⁴⁷ Article 12 of Decree 87 provides additional detail, stating that “goods imported to create fixed assets of investment projects in domains entitled to import duty preferences listed in Appendix I” to the Decree or projects located in geographical areas entitled to certain incentives shall be exempted from import duties.¹⁴⁸ Thus, Decree 87, implementing Law 45, explicitly limits access to import duty exemptions to, *inter alia*, the industrial sectors included in Appendix I’s list of “preferred industries.” Appendix I to Decree 87 begins with a list of sectors in which “investment is particularly promoted,” which includes “aquaculture in unclaimed land areas and unexploited water areas.”¹⁴⁹ The second list in the appendix is reserved for those sectors where “investment is promoted,” including investment in the preservation of farm and aquatic products as well as investment in fishery product processing.¹⁵⁰

We preliminarily determine that these duty exemptions are specific pursuant to section 771(5A)(D)(i) of the Act, because they are only provided to designated, preferred industries as identified in Appendix I of Decree 87. In addition, we preliminarily determine that a financial contribution exists pursuant to section 771(5)(D)(ii) of the Act because the exempted duties represent revenue forgone by the GOV. Finally, there is a benefit equal to the total amount of the duties exempted, in accordance with 19 CFR 351.519(a)(4).

Consistent with 19 CFR 351.524(c)(1), we generally treat exemptions from indirect taxes and import charges as conferring recurring benefits. Thus, we 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 may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

Minh Qui provided lists of tariff exemptions that Minh Phu Group cross-owned firms received for equipment and machinery imported to create fixed assets.¹⁵¹ For the years prior to the POI, the duty exemptions on equipment and machinery were less than 0.5 percent of Minh Phu Group’s consolidated sales in each of those respective years. Therefore, in accordance with 19 CFR 351.524(b)(2), the benefits were expensed in the year of receipt and did not give rise to a countervailable subsidy in the POI. Regarding its imports during the POI, Minh Phu Group’s import exemptions in the POI were also less than 0.5 percent and, hence, expensed in the POI.

To calculate the net subsidy rate, we divided the total amount of exemption by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

¹⁴⁶ *See* GQR at 100 and MQR at 43-44.

¹⁴⁷ *See* GQR at Exhibit GOV-64, Article 16.6.

¹⁴⁸ *See* GQR at Exhibit GOV-67, Article 12.6.

¹⁴⁹ *See* GQR at Exhibit GOV-67, Article A.II.8.

¹⁵⁰ *See* GQR at Exhibit GOV-67, Article B.II.19 and B.II.24.

¹⁵¹ *See* MQR at Exhibits MPG-59 through MPG-62.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.03 percent *ad valorem* for the Minh Phu Group.

9. Exemption from Land and Water Rents for Encouraged Industries

The Department is investigating land rent exemptions under Article 18 of Decree 51 and land and water rent exemptions under Decree No. 142/2005/NC-CP of November 14, 2005 (Decree 142). Nha Trang reported that F440 received a rent exemption for its facility under Article 14.4(d) of Decree 142.¹⁵² This article provides land rent exemptions for projects in “geographic areas facing exceptional socio-economic difficulties.”¹⁵³

We preliminarily determine that the land rent exemption provided to F440 under Article 14.4(d) of Decree 142/2005 is a financial contribution in the form of revenue forgone. We further determine preliminarily that this land rent exemption is specific within the meaning of section 771(5A)(D)(iv) of the Act because it is limited to designated geographical regions. Normally, we would find a benefit from rent exemptions in the amount of the rent savings. However, in this instance, the GOV has not set a rental rate for the F440 properties.¹⁵⁴ Lacking that, we have used the industrial land benchmark described under the “Land Benchmark” section above.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.17 percent *ad valorem* for Nha Trang Seafood Group.

10. Fresh Shrimp Subsidies

As explained above under “Subsidies Valuation/Attribution of Subsidies/Subsidies to Fresh Shrimp,” we have calculated an average rate of fresh shrimp subsidization based on the subsidies received by Minh Phu’s cross-owned farms and Nha Trang’s unaffiliated supplier, Mr. Phong. Minh Phu’s cross-owned farms received countervailable subsidies under the “Income Tax Preferences Under Chapter V of Decree 24” program. The GOV and Mr. Phong reported that Mr. Phong received no subsidies.

Based on the methodology described above under “Subsidies to Fresh Shrimp,” we preliminarily determine that the fresh shrimp subsidies result in a countervailable subsidy rate of 1.94 percent *ad valorem* for Minh Phu Group and 5.07 percent *ad valorem* for Nha Trang Seafood Group.

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

1. Land-Use Tax Exemption/Reduction Under Article 19 of Decree 51

Minh Qui informed the Department that, while no Minh Phu Group entity applied for, used, or benefited from this program during the POI, it did describe an instance in which its land-use tax was exempted or reduced.¹⁵⁵ However, any potential subsidy is less than 0.005 percent and, as

¹⁵² See NSR at 11.

¹⁵³ See GQR at Exhibit GOV-76, Article 14.1.

¹⁵⁴ See NTSC3SQR at 3.

¹⁵⁵ See MQR at 47.

such, does not have an impact on Minh Phu Group's overall subsidy rate.¹⁵⁶

2. Income Tax Preferences Under Chapter IV of Decree 124

The GOV and Minh Qui informed the Department that MP Bio's corporate income tax provisions are governed by Decree 124.¹⁵⁷ The income tax preferences under Chapter IV of Decree 124 include preferential income tax rates along with reductions or exemptions on income taxes for newly established industries in certain regions of socioeconomic difficulty. MP Bio reportedly benefitted under these provisions. However, any potential subsidy is less than 0.005 percent and, as such, does not have an impact on Minh Phu Group's overall subsidy rate.¹⁵⁸

C. Programs Preliminarily Determined Not to Be Used

1. Enterprise Income Tax Preferences under Articles 20 and 21 of Decree 51
2. Enterprise Income Tax Preferences Under Article 23 of Decree 51
3. Income Tax Preferences for FIEs
4. Income Tax Reduction for Labor-Intensive Enterprises Under Decree No. 101/2011/ND-CP
5. Preferential Loans for Aquaculture Upgrades
6. Preferential Loans to Shrimp Farms for Hatcheries
7. Investment Support Under Article 30 of Decree 51
8. Land-Use Levy Exemption/Reduction Under Article 17 of Decree 51
9. Land Use Levy Exemption under the Aquatic Strains Development Scheme
10. Grants under the Aquaculture Scheme
11. Grants under the Seafood Processing Development Plan
12. Grants under the Aquatic Strains Development Scheme
13. Exemption of Irrigation Charge under the Aquatic Strains Development Scheme
14. Provision of Broodstock, Fries, and Fingerlings by Public Hatcheries for LTAR
15. Agricultural Insurance Premium Support Under Decision 315.

IX. CALCULATION OF THE ALL OTHERS RATE

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on adverse facts available under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all others" rate by weight averaging the rates of Minh Qui and Nha Trang because doing so risks disclosure of proprietary information. In these circumstances, our normal practice is to calculate a weighted-

¹⁵⁶ See Minh Qui Preliminary Calculation Memo.

¹⁵⁷ The GOV explains that since January 1, 2009, corporate income tax provisions are defined by the Law on Enterprise Income Tax, No. 14/2008/QH-12 and its implementation is dictated by Decree 124. See GQR at Footnote 3; see also G3SR at 3.

¹⁵⁸ See Minh Qui Preliminary Calculation Memo.

average CVD rate using the publicly available, ranged values of the mandatory respondents' exports of subject merchandise to the United States. This weighted-average rate and a simple average of the mandatory respondents' CVD rates is compared to the actual weighted-average rate (calculated using the proprietary export values). We then assign to all others the amount closer to the actual weighted-average countervailable subsidy rate. For this preliminary determination, we are unable to follow our normal practice because Minh Qui and Nha Trang have not provided publicly ranged values for their total exports of subject merchandise to the United States. Therefore, for the all others rate, we have assigned the simple average of the rates calculated for Minh Phu Group and Nha Trang Seafood Group. For further information, see the Department Memorandum, "Calculation of the All-Others Rate," dated concurrently with this notice.

X. ITC NOTIFICATION

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

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

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.¹⁵⁹ Case briefs or other written comments for all non-scope issues may be submitted to Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than five 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.¹⁶⁰ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the Federal Register, and rebuttal briefs, limited to issues raised in the case briefs, maybe submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the seven concurrent CVD investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁶¹ This summary should be limited to five pages total, including footnotes.

¹⁵⁹ See 19 CFR 351.224(b).

¹⁶⁰ See 19 CFR 351.309.

¹⁶¹ See 19 CFR 351.309(c)(2) and (d)(2).

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.¹⁶² Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using IA ACCESS.¹⁶³ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁶⁴ on the due dates established above.

XII. VERIFICATION

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

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

May 28, 2013

(Date)

¹⁶² See 19 CFR 351.310(c).

¹⁶³ See 19 CFR 351.303(b)(2)(i).

¹⁶⁴ See 19 CFR 351.03(b)(1).