



UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D.C. 20230

C-552-819  
Investigation  
**Public Document**  
E&C/OI: SB/TES

October 27, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Countervailing Duty Investigation of Certain Steel Nails 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 steel nails (nails) 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 May 29, 2014, Mid Continent Steel & Wire, Inc. (Petitioner) filed a petition with the Department seeking the imposition of countervailing duties (CVDs) on nails from, *inter alia*, Vietnam.<sup>1</sup> Supplements to the petition are described in the Initiation Checklist.<sup>2</sup> On June 18, 2014, the Department initiated a CVD investigation on nails from Vietnam.<sup>3</sup>

---

<sup>1</sup> See letter from Petitioner, "Petitions for the Imposition of Countervailing Duties on Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam," (May 29, 2014) (Petition).

<sup>2</sup> See "Countervailing Duty Investigation Initiation Checklist: Certain Steel Nails from the Socialist Republic of Vietnam," (June 18, 2014) (Initiation Checklist).

<sup>3</sup> See *Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 79 FR 36014 (June 25, 2014) (Initiation Notice).



We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on United States 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 June 19, 2014, the Department released the CBP entry data under administrative protective order (APO).<sup>4</sup> We received comments from Petitioner on June 30, 2014.<sup>5</sup> We selected Region Industries Co., Ltd. (Region) and United Nail Products Co., Ltd. (United) as the mandatory respondents.<sup>6</sup> We sent our CVD investigation questionnaire seeking information regarding the alleged subsidies on July 16, 2014.<sup>7</sup>

We received a trading-company response from United on July 28, 2014, and affiliation responses from Region and United on July 30, 2014.<sup>8</sup> We received responses to our IQ from Region and United on September 2, 2014, and from the Government of the Socialist Republic of Vietnam (GOV) on September 3, 2014.<sup>9</sup> We sent supplemental questionnaires to the GOV on September 19, 2014, and September 26, 2014.<sup>10</sup> The GOV submitted responses to the supplemental questionnaires on October 6, 2014, October 9, 2014, and October 14, 2014.<sup>11</sup> We sent supplemental questionnaires to Region on September 12, 2014, and September 24, 2014.<sup>12</sup> Region submitted its responses to the supplemental questionnaires on September 22, 2014, and

---

<sup>4</sup> See letter from Department to interested parties (June 19, 2014).

<sup>5</sup> See letter from Petitioner, "Certain Steel Nails from the Socialist Republic of Vietnam: Comments on Respondent Selection," (June 30, 2014).

<sup>6</sup> See Department Memorandum "Countervailing Duty Investigation Certain Steel Nails from the Socialist Republic of Vietnam: Respondent Selection Memorandum," (July 15, 2014). 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.

<sup>7</sup> See letter from Department to the GOV, "Investigation of Certain Steel Nails from the Socialist Republic of Vietnam (Vietnam): Countervailing Duty Questionnaire," (July 16, 2014) (IQ).

<sup>8</sup> See letters "Certain Steel Nails from Vietnam — Trading Company Response," (July 28, 2014) (United Trading Response); "Certain Steel Nails from Vietnam — Affiliation Response of Region Industries Co., Ltd.," (July 30, 2014) (Region Affiliation Response); and "Certain Steel Nails from Vietnam — Affiliation Response of United Nail Products Co., Ltd.," (July 30, 2014) (United Affiliation Response).

<sup>9</sup> See letters "Certain Steel Nails from Vietnam; Section III CVD Response of Region Industries Co., Ltd.," (September 2, 2014) (RQR); "Certain Steel Nails from Vietnam; Section III CVD Response of United Nail Products Co., Ltd.," (September 2, 2014) (UQR); and "Government of Vietnam's Initial Questionnaire CVD Response Steel Nails from Vietnam," (September 3, 2014) (GQR).

<sup>10</sup> See letters from the Department to the GOV, "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Government of the Socialist Republic of Vietnam's Section II CVD Response," (September 19, 2014) (G1SQ); and "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Government of the Socialist Republic of Vietnam's Section II CVD Response- Second Supplemental Questionnaire," (September 26, 2014) (G2SQ), respectively.

<sup>11</sup> See letters from the GOV to the Department, "Government of Vietnam's First Supplemental Questionnaire CVD Response Steel Nails from Vietnam," (October 6, 2014) (G1SR); "Government of Vietnam's Second Supplemental Questionnaire CVD Response (Q5 to Q9)," (October 9, 2014) (G2SR); and "Government of Vietnam's Second Supplemental Questionnaire CVD Response (Q1 to Q4)," (October 14, 2014) (G2SR-2).

<sup>12</sup> See letters from the Department to Region, "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Region Industries Co., Ltd. First Supplemental Questionnaire," (September 12, 2014) (R1SQ); and "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Region Industries Co., Ltd. Second Supplemental Questionnaire," (September 24, 2014) (R2SQ), respectively.

October 1, 2014.<sup>13</sup> We sent supplemental questionnaires to United on August 18, 2014, September 10, 2014, September 17, 2014, and September 24, 2014.<sup>14</sup> United submitted its responses to the supplemental questionnaires on August 20, 2014, September 22, 2014, and October 1, 2014.<sup>15</sup>

On September 19, 2014, Petitioner filed new subsidy allegations and comments regarding the respondents' responses to the IQ.<sup>16</sup> Because we had already asked questions about these programs in supplemental questionnaires, we had already effectively initiated investigations of these programs as subsidies discovered during the course of an investigation pursuant to 19 CFR 351.511. Accordingly, we did not separately initiate investigations of these programs. For a full description of these programs, *see* the "Analysis of Programs" section below.

On September 29, 2014, Petitioner filed comments regarding benchmarks for adequate remuneration.<sup>17</sup>

*Postponement of Preliminary Deadline:* On July 28, 2014, Petitioner requested that the deadline for the preliminary determination be extended until no later than 130 days after the initiation of the investigation. The Department granted Petitioner's request and on August 7, 2014, postponed the preliminary determination until October 27, 2014, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).<sup>18</sup>

## **B. Period of Investigation**

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

---

<sup>13</sup> *See* letters from Region to the Department, "Certain Steel Nails from Vietnam; Supplemental CVD Response of Region Industries Co., Ltd.," (September 22, 2014) (R1SR); and "Certain Steel Nails from Vietnam; Second Supplemental CVD Response of Region Industries Co., Ltd.," (October 1, 2014) (R2SR), respectively.

<sup>14</sup> *See* letters from the Department to United, "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: United Nail Products Co., Ltd.'s Affiliation Response," (August 18, 2014) (U1SQ); "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: United Nail Products Co., Ltd.'s Section III CVD Response," (September 10, 2014) (U2SQ); "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: United Nail Products Co., Ltd.'s Section III CVD Response," (September 17, 2014) (U3SQ); and "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: United Nail Products Co., Ltd.'s Section III CVD Response and Supplemental Response," (September 24, 2014) (U4SQ), respectively.

<sup>15</sup> *See* letters from United to the Department, "Certain Steel Nails from Vietnam — Supplemental Response of United Nail Products Co., Ltd.," (August 20, 2014) (U1SR); "Certain Steel Nails from Vietnam; Second and Third Supplemental CVD Response of United Nail Products Co., Ltd.," (September 22, 2014) (U2SR); and "Certain Steel Nails from Vietnam; Fourth Supplemental CVD Response of United Nail Products Co., Ltd.," (October 1, 2014) (U3SR). United responded to both U2SQ and U3SQ in U2SR. Thus, U3SR is United's response to U4SQ.

<sup>16</sup> *See* letter from Petitioner, "Certain Steel Nails from the Socialist Republic of Vietnam: Comments on the Questionnaire Responses of the Government of Vietnam, United Nail Products Co., Ltd., and Region Industries Co., Ltd., and Allegations of New Subsidies," (September 19, 2014) (NSA).

<sup>17</sup> *See* letter from Petitioner, "Certain Steel Nails from the Socialist Republic of Vietnam: Submission of Factual Information on Benchmarks for Adequate Remuneration," (September 29, 2014).

<sup>18</sup> *See Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 79 FR 46251 (August 7, 2014).

### III. ALIGNMENT OF FINAL COUNTERVAILING DUTY DETERMINATION WITH FINAL ANTIDUMPING DUTY DETERMINATION

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), based on Petitioner's request, we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of nails from Vietnam. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently due no later than March 2, 2015, unless postponed.

### IV. 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.<sup>19</sup> On July 8, 2014, the Department received comments on the scope from The Home Depot and Target, asking the Department to modify the scope language to include the mixed-media factors for evaluating whether subject nails packaged in combination with one or more non-subject articles remain included in the scope of the investigations.<sup>20</sup> IKEA asked the Department to exclude from the class or kind of merchandise subject to the investigations nails packaged in combination with unassembled finished articles such as furniture or storage items.<sup>21</sup> On July 18, 2014, Petitioner filed rebuttal comments to the scope comments raised by The Home Depot, Target, and IKEA.<sup>22</sup>

Petitioner argues that the scope language provides a bright line threshold to address mixed media issues and allows importers and CBP to easily ascertain whether mixed media products are covered by the scope: if the merchandise contains 25 nails or more, those imports must be entered as subject to the AD/CVD order with the value of those nails identified as dutiable on the entry documentation. Therefore, Petitioner contends that no revision of the scope is needed to address mixed media issues and asks the Department to reject the proposals submitted by The Home Depot, Target, and IKEA.

On October 17, 2014, Home Depot and Target filed amended scope comments in which they propose the following change to the scope of this investigation:<sup>23</sup>

... Certain steel nails may be sold in bulk, or they may be collated **in** any manner using any material.

---

<sup>19</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 79 FR at 36015.

<sup>20</sup> See Letters from The Home Depot and Target, "Certain Steel Nails from India, Korea, Malaysia, Oman, Turkey, and Vietnam: Comments on the Scope of the Investigation" (July 8, 2014).

<sup>21</sup> See Letter from IKEA, "Comments on Scope of the Investigation: Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam" (July 8, 2014).

<sup>22</sup> See Letter from Petitioner, "Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Petitioner's Rebuttal Comments Concerning Scope Language," dated July 18, 2014.

<sup>23</sup> See Letters from The Home Depot and Target, "Certain Steel Nails from Korea, Malaysia, Oman, Taiwan and Vietnam: Amendment to Comments on the Scope of the Investigation" (October 17, 2014).

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if

- (1) the total number of nails of all types that are under 2 inches in length, in the aggregate, is 0 to 199, and
- (2) the total number of nails of all types that are 2 inches or more in length, in the aggregate, is 0 to 24.

On October 24, 2014, Petitioner submitted additional comments in response to The Home Depot and Target's October 17, 2014, amended scope comments.<sup>24</sup> In these comments, Petitioner requests the Department reject and remove the October 17, 2014, filings from the records of the AD/CVD investigations covering certain steel nails from Korea, Malaysia, Oman, Taiwan and Vietnam. Petitioner argues that the comments provided by The Home Depot and Target are untimely presented, unsupported by and indeed contrary to evidence, and seek an outcome that would undermine the clarity of the existing scope language.

Due to the limited time available for considering these submissions and given that petitioner has not had sufficient time to consider and comment on the newly proposed scope language, the Department will consider additional comments and address the specific scope comments and exclusion request in the preliminary determination of the companion AD investigation. Any modifications to the scope or scope exclusions that may be made in the AD preliminary determination will be placed on the record of this CVD investigation and parties will be afforded an opportunity to comment.

## **V. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.<sup>25</sup> Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more

---

<sup>24</sup> See Letter from Petitioner, "Certain Steel Nails from the Republic of Korea, Malaysia, Oman, Taiwan, and Vietnam: Response to Additional Scope Comments," dated October 24, 2014.

<sup>25</sup> The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## **VI. 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 July 18, 2014, the ITC determined that there is a reasonable indication that an

industry in the United States is materially injured by reason of imports of nails from, *inter alia*, Vietnam.<sup>26</sup>

## **VII. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM VIETNAM**

On April 1, 2010, the Department published *PRCBs from Vietnam*, in which we found the CVD law applicable to Vietnam.<sup>27</sup> 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, 112<sup>th</sup> Cong. 1(b) (2012) (enacted).

Additionally, for reasons stated in *PRCBs from Vietnam*, we are using the date of January 11, 2007, the date on which Vietnam became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in Vietnam for purposes of CVD proceedings.<sup>28</sup>

## **VIII. 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 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>29</sup> The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly.<sup>30</sup> No party in this proceeding 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.

---

<sup>26</sup> *See Certain Steel Nails From India, Korea, Malaysia, Oman, Taiwan, Turkey, and Vietnam: Inv. Nos. 701-TA-515-521 and 731-TA-1251-1257* (Preliminary) (July 2014); *Certain Steel Nails From India, Korea, Malaysia, Oman, Taiwan, Turkey, and Vietnam*, 79 FR 42049 (July 18, 2014).

<sup>27</sup> *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) (*PRCBs from Vietnam*).

<sup>28</sup> *Id.* at Comment 3.

<sup>29</sup> *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>30</sup> 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 from Vietnam*, and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

## B. Attribution of Subsidies

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

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

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>31</sup>

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 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.<sup>32</sup>

### *Region*

Region, a producer and exporter of nails to the United States during the POI,<sup>33</sup> responded to the Department's original and supplemental questionnaires on behalf of itself.<sup>34</sup> Region reported

---

<sup>31</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

<sup>32</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>33</sup> See RQR at 1.

<sup>34</sup> See RQR at 5.

that none of its affiliates are Vietnamese entities.<sup>35</sup> Based on Region's responses, we are preliminarily attributing subsidies received by Region to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

### *United*

United produced and exported nails to the United States during the POI.<sup>36</sup> United reported that it has two affiliated companies, Kien Thanh Trade Limited Company (Kien Thanh) and Phat Thanh Co., Ltd. (Phat Thanh), but that neither of these companies is involved with the production or sale of subject merchandise.<sup>37</sup> United reported that neither Kien Thanh nor Phat Thanh has engaged in any manufacturing activities and that neither company purchased or sold steel nails produced by United during the POI.<sup>38</sup> United reported that, although it purchased wire rod from Kien Thanh, all of the wire rod was imported.<sup>39</sup> United reported that Kien Thanh did not receive any duty exemptions, reductions or reimbursement on the imports of wire rod which it sold to United during the POI, and that United did not purchase any other inputs (either imported or locally produced) from Kien Thanh during the POI.<sup>40</sup> Regarding Phat Thanh, United reported that there has been no business relationship between Phat Thanh and United from 2005 through the POI.<sup>41</sup>

Regardless of whether cross-ownership under 19 CFR 351.525(b)(6)(vi) exists between United and either of these companies, we find no evidence that these companies meet the attribution conditions of 19 CFR 351.525(b)(6)(ii)–(v) or 19 CFR 351.525(c). Therefore, we have not attributed the benefit from any subsidies that these companies may have received to United.

In accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by United to its own sales.

United reported that it also exported subject merchandise produced by an unaffiliated producer to the United States during the POI.<sup>42</sup> United reported that the amount of subject merchandise purchased from the unaffiliated producer was “minuscule.”<sup>43</sup> Although we would normally cumulate any subsidies to an unaffiliated producer with subsidies to United pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where their merchandise was not exported to the United States during the POI or accounted for a

---

<sup>35</sup> See Region Affiliation Response at 2 and Appendix 1.

<sup>36</sup> See UQR at 1.

<sup>37</sup> See United Affiliation Response at 2.

<sup>38</sup> *Id.*

<sup>39</sup> See U1SR at 2.

<sup>40</sup> See U2SR at 3.

<sup>41</sup> See United Affiliation Response at 3.

<sup>42</sup> See United Trading Response at 2.

<sup>43</sup> *Id.*

very small share of the respondent's exports to the United States.<sup>44</sup> In this investigation, we have not sent CVD questionnaires to the unaffiliated supplier because its merchandise accounted for a minor share of United's exports to the United States.

### **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 subsidy rates for the various subsidy programs described below are explained in the preliminary calculation memoranda prepared for this investigation.<sup>45</sup>

### **D. Interest Rate Benchmarks**

The Department is examining short-term loans that Region and United had outstanding during the POI. The loans are denominated in Vietnamese dong (VND) and U.S. dollars (USD). The years for which we must calculate benchmarks are 2012 and 2013.

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.<sup>46</sup> 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."<sup>47</sup>

In the CVD investigation on frozen warmwater shrimp from Vietnam, we found that "domestic interest rates in Vietnam are 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

---

<sup>44</sup> See, *e.g.*, *Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001), and accompanying IDM at "Attribution" (in which one of the mandatory respondents was a trading company that exported pasta produced by multiple pasta manufacturers, but the Department limited its analysis to the two major pasta manufacturers that supplied the trading company during the period of review). The percentage of United's exports of subject merchandise to the United States from unaffiliated producers is business proprietary information. See United Trading Response at 2.

<sup>45</sup> See Department Memoranda, "Countervailing Duty Investigation of Certain Steel Nails from Vietnam: Region Industries Co., Ltd., Preliminary Calculation Memorandum," dated concurrently with this memorandum (Region Preliminary Calculation Memo); and "Countervailing Duty Investigation of Certain Steel Nails from Vietnam: United Nail Products Co., Ltd., Preliminary Calculation Memorandum," dated concurrently with this memorandum (United Preliminary Calculation Memo).

<sup>46</sup> See 19 CFR 351.505(a)(3)(i).

<sup>47</sup> See 19 CFR 351.505(a)(3)(ii).

rate controls, policy, plans, and administrative guidance.”<sup>48</sup> For the reasons explained in the Vietnam Banking Sector Update Memo of the frozen warmwater shrimp investigation,<sup>49</sup> which is incorporated here by reference, we preliminarily determine that domestic interest rates in Vietnam are 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).<sup>50</sup> 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 2012 and 2013, 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 2012-2013.<sup>51</sup>

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

---

<sup>48</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013) (*Shrimp from Vietnam Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 12-13 (unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387 (August 19, 2013) (*Shrimp from Vietnam*)). *Shrimp from Vietnam Preliminary Determination*, and accompanying PDM (pages 12-13) incorporate by reference the 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). The Petition at Exhibit Vietnam CVD-2 on the record of this investigation contains the Vietnam Banking Sector Update Memo.

<sup>49</sup> See Petition at Exhibit Vietnam CVD-2 (Vietnam Banking Sector Update Memo).

<sup>50</sup> 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.

<sup>51</sup> See Memorandum from Shane Subler to the File dated concurrently with this memorandum, “Interest Rate Benchmark Memorandum,” (“Interest Rate Benchmark Memo”).

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.<sup>52</sup> 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 (IMF), 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 2012 and 2013. 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 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. 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 2012 and 2013, 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. See the Interest Rate Benchmark Memorandum for the benchmark calculations and supporting data from the World Bank and IMF.

#### *Long-Term VND Benchmark*

Neither Region nor United had any long-term borrowings during the POI.<sup>53</sup> Accordingly, we have not calculated a long-term VND benchmark.

#### *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

---

<sup>52</sup> See *CFS from the PRC* and accompanying IDM at the "Benchmarks" section.

<sup>53</sup> See RQR at 14 and UQR at 15.

between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating. See the Interest Rate Benchmark Memorandum.

## **IX. ANALYSIS OF PROGRAMS**

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

### **A. Programs Preliminarily Determined To Be Countervailable**

#### **1. Preferential Lending to Exporters**

##### *United*

We initiated an investigation into whether respondents received preferential lending to exporters during the POI.<sup>54</sup> United reported that it had outstanding financing during the POI in both USD and VND from Joint Stock Commercial Bank for Investment and Development of Vietnam (BIDV).<sup>55</sup> The GOV reported that BIDV had a USD credit package for exporters available during the POI.<sup>56</sup> United also reported that it had had outstanding financing during the POI in USD from three other banks.<sup>57</sup>

At page II-4 of the Questionnaire, we requested that the GOV provide all documentation for each respondent's largest loan outstanding during the POI from State-Owned Commercial Banks (SOCBs). At page 21 of the GQR, the GOV claimed that it provided internal appraisals of loan requests and loan approval documents for loans from more than one of United's lending banks. By submitting information for more than one bank, the GOV provided documentation beyond the parameters of our request in the Questionnaire, in which we requested documentation "for the largest loan outstanding." The exhibit that the GOV cited, however, included documentation for only one lending bank.<sup>58</sup>

At page 4 of the G2SQ, we noted that the GQR only included a loan appraisal from one bank. We requested that the GOV provide appraisals from all of United's lending banks.<sup>59</sup> Although the GOV provided additional appraisals, the GOV did not provide appraisals from all of United's lending banks.

---

<sup>54</sup> See Initiation Checklist at 6-7.

<sup>55</sup> See UQR at 15.

<sup>56</sup> See G2SR-2 at 2.

<sup>57</sup> See UQR at 16-17.

<sup>58</sup> See GQR at Exhibit GOV-18.

<sup>59</sup> See GSQ2 at 4.

In *Sinks from the PRC*, the Department analyzed whether respondents received financing that was contingent on export performance.<sup>60</sup> As part of this analysis, the Department examined credit reports on the record from the lending banks.<sup>61</sup> The Department concluded, “In short, the credit report indicates that the main factor in the bank’s decision to grant financing to {respondent} was {respondent’s} past, present, and future export business,” and found the financing to be contingent on exports under section 771(5A)(B) of the Act and 19 CFR 351.514(a).<sup>62</sup>

At page 4 of the UQR, United stated, “United was incorporated to produce and export (100% wire nails and screws.” Because the GOV did not provide all of the loan appraisals for United as we requested in the G2SQ, however, we cannot consider them as evidence of whether BIDV’s decisions to grant United’s VND loans were contingent upon United’s export performance.

The Department has previously found that BIDV is an SOCB.<sup>63</sup> This finding is consistent with the record in the instant proceeding, in which the GOV identifies BIDV as an SOCB.<sup>64</sup> Therefore, we preliminarily find that United’s VND financing from BIDV constitutes a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act because, as the Department has determined in past cases, SOCBs such as BIDV are “authorities.”<sup>65</sup> Pursuant to section 771(5)(E)(ii) of the Act, we preliminarily find that these loans confer a benefit equal to the difference between the interest United paid on the loans and the interest United would have paid under the benchmark interest rates described above in the “Interest Rate Benchmarks” section. Finally, because the GOV did not provide a complete set of loan appraisals as we requested in the G2SR, we preliminarily find, based on United’s incorporation as a “100%” exporter, that BIDV’s financing to United was contingent on export performance. Therefore, we

---

<sup>60</sup> See United Preliminary Calculation Memo at Attachment 8 (Memorandum dated January 8, 2013, from Christian Marsh, Deputy Assistant Secretary for Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, “Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Post-Preliminary Analysis Memorandum for Guangdong Yingao Kitchen Utensils Co., Ltd. (“Yingao”) and Foshan Magang Kitchen Utensils Co., Ltd. (“Magang”)) (Sinks Post-Preliminary Analysis Memo). The Department did not include an analysis of this program in the final determination of the Drawn Stainless Steel Sinks from the PRC investigation because it found respondents’ loans to be countervailable under a separate policy lending program. See *Drawn Stainless Steel Sinks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (“*Sinks from the PRC*”), and accompanying IDM at Comments 5-7.

<sup>61</sup> See United Preliminary Calculation Memo at Attachment 8 (Sinks Post-Preliminary Analysis Memo).

<sup>62</sup> *Id.* (Sinks Post-Preliminary Analysis Memo).

<sup>63</sup> See Petition at Exhibit Vietnam CVD-2 (Vietnam Banking Sector Update Memo).

<sup>64</sup> See GQR at 12. The GOV treated BIDV’s percentage of government ownership as business proprietary information, but identified BIDV in its discussion of SOCBs in Vietnam. *Id.* The Vietnam Banking Sector Update Memo provides additional information on the role of SOCBs – including BIDV -- in the banking sector. See Petition at Exhibit Vietnam CVD-2.

<sup>65</sup> See, e.g., *Shrimp from Vietnam* and accompanying IDM at “Analysis of Programs - Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank),” citing *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 an 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.”

preliminarily determine that United's VND loans from BIDV under this program are specific under sections 771(5A)(A) and (B) of the Act. Because the GOV only had one opportunity to provide a complete set of loan appraisals, however, we intend to request this information again from the GOV after this preliminary determination.

To calculate the benefit, we summed the interest savings on United's VND loans from BIDV 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 0.10 percent *ad valorem*. See the United Preliminary Calculation Memo.

As explained above in this section, United also reported that it had outstanding financing during the POI in USD from BIDV and three other banks. Based on the interest rate benchmark methodology described above under the "Subsidies Valuation – Interest Rate Benchmarks" section, we preliminarily find that any total benefit to United from all of its USD loans would be less than 0.005 percent *ad valorem*. As such, consistent with our past practice, we have not included any benefit from United's USD loans in our preliminary CVD rate.<sup>66</sup> Therefore, without prejudice to whether United received its USD loans under a countervailable subsidy program, we preliminarily determine that United received no measurable benefit from its USD loans during the POI. See United Preliminary Calculation Memo.

Region reported that all of its outstanding financing during the POI was from CTBC Bank Co., Ltd. – Ho Chi Minh City Branch.<sup>67</sup> The GOV reported that CTBC Bank Co., Ltd - Ho Chi Minh City Branch is a branch of CTBC Bank Co., Ltd. Taiwan, headquartered in Taiwan.<sup>68</sup> Regarding this bank's status as a foreign bank branch, the GOV explained that branches of foreign banks in Vietnam are dependent units of foreign banks, have no legal status, and are ensured by foreign banks for all obligations and commitments of the branches in Vietnam.<sup>69</sup> The GOV cited the Law on Credit Institutions 2010 of Vietnam as the basis for its explanation.<sup>70</sup> Based on the GOV's and Region's responses, we preliminarily find that Region did not use the Preferential Lending to Exporters program during the POI.

## **2. Income Tax Preferences Under Chapter V of Decree 24**

The GOV reported that it issued Decree 24 in 2007, in part to phase out export subsidies under the terms of Vietnam's Accession to the WTO.<sup>71</sup> Article 34 of Decree 24 details the income tax reductions under Chapter V of Decree 24, 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

---

<sup>66</sup> 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), and accompanying IDM at 23.

<sup>67</sup> See RQR at 14.

<sup>68</sup> See G2SR at 11.

<sup>69</sup> *Id.*

<sup>70</sup> See GQR at Exhibit GOV-12.

<sup>71</sup> See GQR at 45.

“exceptionally” difficult socioeconomic conditions.<sup>72</sup> The list of sectors entitled to special investment incentives is found in Appendix I to Decree 108 and includes “{i}nvestment projects on production activities in industrial parks established under decisions of the Prime Minister.”<sup>73</sup> The list of regions entitled to special investment incentives is found in Appendix II to Decree 108 and includes “{i}ndustrial parks established under decisions of the Prime Minister.”<sup>74</sup>

United reported that, as recorded in its amended Investment Certificate No. 572031000032 dated October 31, 2007, issued by Can Tho Export Processing and Industrial Zone Authority, United’s income is subject to income tax preferences under Decree 24, which applied to investors in designated industrial zones.<sup>75</sup> United reported that manufacturing projects located in industrial zones were designated as encouraged industries, and industrial zones were designated as areas with social-economic difficulties.<sup>76</sup> United reported that, as a result, its corporate income tax rate was set at 15 percent for 12 years from the date the factory commenced commercial operation. The normal corporate income tax that the GOV applied to the 2012 tax year was 25 percent.<sup>77</sup>

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 to United in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We preliminarily determine that the income tax reductions are specific under: 1) section 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); and 2) section 771(5A)(D)(iv) of the Act, because 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 United’s tax savings applicable to the tax return United 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 United received a countervailable subsidy of 0.02 percent. We preliminarily find that Region did not use this program.<sup>78</sup>

---

<sup>72</sup> The lists specifying the sectors or regions entitled to preferences may be found in GQR, Exhibit GOV-27 (Decree 108/2006/ND-CP, detailing the implementation of the Law on Investment 2005 (Decree 108)).

<sup>73</sup> See GQR, Exhibit GOV-27 at Appendix I.

<sup>74</sup> See GQR, Exhibit GOV-27 at Appendix II.

<sup>75</sup> See UQR at Appendix 10A.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*; see also GQR at 43. The Department’s regulations at 19 CFR 351.509(b)(1) state the following: “In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.” Therefore, under the regulations, the receipt of a tax benefit for a tax return filed in 2013 to cover the 2012 tax year is the date on which the recipient filed its tax return in 2013.

<sup>78</sup> See RQR at 20-21 and GQR at 50.

### 3. Income Tax Preferences Under Decree 60/2012/ND-CP (Decree 60)

United reported that it “was entitled the additional 30% tax reduction ... as a result of an incentive program applicable to small and medium-sized enterprises promulgated by the Government under Decree 60/2012/ND-CP dated July 30, 2012 and guided by Resolution 29/2012/Q1113. This program entitled small- and medium sized enterprises meeting certain criteria to a reduction of 30% of enterprise income tax amount in 2012.”<sup>79</sup> United reported that it received a tax reduction pursuant to this program.<sup>80</sup>

Based on United’s response, we asked the GOV questions about this program. The GOV confirmed United’s representations, and further reported that “small- and medium-sized enterprises, not including small- and medium-sized enterprises business in lottery, real estate, securities, finance, bank, insurance, or manufacture of goods subject to the excise tax, tax, first-class enterprises, special-class enterprises belonging to economic groups, corporations” are eligible for this program.<sup>81</sup> The GOV also explained that “The small- and medium-sized enterprises being reduced tax specified in this clause are enterprises, including cooperatives (not including non-business units) that satisfy the criteria of capital or labor as prescribed in clause 1, Article 3 of the Government’s Decree No. 56/2009/ND-CP, of June 30, 2009 on assistance to the development of small and medium-sized enterprises.”<sup>82</sup>

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.

We preliminarily determine that the income tax reductions under Decree 60 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 United in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We find the income tax reductions under Chapter V of Decree 60 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.*, small- and medium-sized enterprises exclusive of businesses in lottery, real estate, securities, finance, bank, insurance, or manufacture of goods subject to the excise tax, tax, first-class enterprises, special-class enterprises belonging to economic groups, and corporations, as detailed above under paragraph 2 of this section).

---

<sup>79</sup> See UQR at Appendix 10B.

<sup>80</sup> *Id.*

<sup>81</sup> See G1SR at 14.

<sup>82</sup> *Id.*

To calculate the net subsidy rate, we divided the United’s tax savings applicable to the tax return United filed during the POI by the appropriate POI sales total, as described in the “Attribution of Subsidies” section above.

On this basis, we determine that United received a countervailable subsidy of 0.01 percent. We preliminarily find that Region did not use this program.<sup>83</sup>

#### **4. Import Duty Exemptions and Reimbursements for Imported Raw Materials for Exported Goods**

Import duty reimbursements 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).<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup>

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.<sup>87</sup>

The GOV has provided 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 and its replacement, Circular No.128/2013/TT-BTC, which went into effect in November 2013.<sup>88</sup> 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

---

<sup>83</sup> See RQR at 20-21.

<sup>84</sup> See GQR at 63 and Exhibits GOV-42 and GOV-43.

<sup>85</sup> See GQR at 64.

<sup>86</sup> *Id.*

<sup>87</sup> See *PRCBs from Vietnam* and accompanying IDM at “Import Duty Exemptions for Imported Raw Materials for Exported Goods;” see also *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75980 (December 26, 2012) (*Wire Hangers from Vietnam*), and accompanying IDM at Comment 5; see also *Shrimp from Vietnam* and accompanying IDM at Comment 7.

<sup>88</sup> See GQR at 65-66 and Exhibit GOV-44; see also G1SR at 34 and Exhibit GOVS1-17.

exportation of the finished product, Vietnam's customs office may inspect the registered consumption norm against the materials that constitute the final exported product.<sup>89</sup>

The GOV further explains that norm inspection is conducted through documentary inspection and in some cases physical inspection.<sup>90</sup> With respect to Region, the GOV reported that "the customs authority has not inspected actual norm for {Region}, because the customs official has not found any suspicions."<sup>91</sup> With respect to United, the GOV reported that, because United purchased wire rod domestically to produce steel nails and exported under normal procedures, United is not subject to import tax reimbursement for imported materials to produce exports and, as a result, United does not have to register norm with customs authority.<sup>92</sup>

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.<sup>93</sup> Further, Article 113(5)(D) of Circular 194 states that, "The 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."<sup>94</sup> On September 10, 2013, the GOV issued Ministry of Finance Circular 128/2013/TT-BTC of September 10, 2013 (Circular 128).<sup>95</sup> Article 112.5.d3 of Circular 128 states that "The collected waste and scrap within the limit during the production of goods from imported raw materials ... are exempt from import tax. If the taxpayer sells such waste and scrap, they are still exempt from import tax."<sup>96</sup> Therefore, producers may recover and sell "waste" material from imported inputs without paying duties on that waste.

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

---

<sup>89</sup> See GQR at 64-69.

<sup>90</sup> *Id.*

<sup>91</sup> See G1SR at 32.

<sup>92</sup> *Id.*

<sup>93</sup> See GQR at Exhibit GOV-44.

<sup>94</sup> *Id.*

<sup>95</sup> See G1SR at 36 and Exhibit GOVS1-17.

<sup>96</sup> *Id.*

whether the production process produces resalable scrap to be essential to the calculation of a normal allowance for waste.<sup>97</sup>

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 Region and United, we first determined the total value of duties exempted during the POI by multiplying the value of each exempted raw material imported during the POI by the applicable tariff rate. We subtracted any partial duties that the respondents paid. We then divided this amount by the POI export sales total for each respondent, as described in the "Attribution of Subsidies" section above.

On this basis, we preliminarily determine a net countervailable subsidy rate of 8.34 percent *ad valorem* for Region and 0.04 percent *ad valorem* for United.

## **5. Land Rent Exemptions Under Decision 189**

Region reported that its predecessor company, Corporate Specialist Vietnam Co., Ltd. (Corp-Vietnam), a foreign-invested enterprise producing sport shoes for export, received an exemption in 2003 from all rent payments from the People's Committee of Dong Nai Province during the period of Corp-Vietnam's facilities construction and for seven years after commencement of operation.<sup>98</sup> According to Region, Corp-Vietnam enjoyed this benefit because, pursuant to Article 8.3 of Decision 189/2000/QD-BTC (Decision 189), Corp-Vietnam's project fell into the list of encouraged projects with special investment.<sup>99</sup>

In June of 2005, the owners of Corp-Vietnam sold their shares. The new owners changed the company's name to "Region" and the company's operations from shoemaking to producing nails.<sup>100</sup> Region received a new investment certificate from the GOV for this change and inherited the same rent exemption for seven years from the commencement of the modified

---

<sup>97</sup> See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Steel from Thailand*), and accompanying IDM at "Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36(1);" see also *Shrimp from Vietnam* and accompanying IDM at "Import Duty Exemptions for Imported Raw Materials for Exported Goods."

<sup>98</sup> See RQR at Appendix 13-C.

<sup>99</sup> *Id.* We note that both Region and the GOV reported Decision 189 under their respective discussion of Decree 142. (See GQR at 110.) However, record evidence demonstrates that Region received the rent exemption pursuant to Decision 189, as explained above.

<sup>100</sup> See RQR at 4.

company's operations.<sup>101</sup> Region started its nail production factory in September 2007; therefore, Region's rent exemption lasted through September 2014.<sup>102</sup> Between 2008 and November 2013, Region received six amended investment certificates. These certificates indicate that all previous certificates "remain legally valid."<sup>103</sup> Therefore, the certificates continued the rent exemption that Corp-Vietnam received from its original 2003 investment certificate.

Region executed its original lease in 2006 and signed a modification to the lease, which increased its rental rate by 15 percent, in November 2013.<sup>104</sup> This modified lease rate was retroactive to February 2009.<sup>105</sup> Notwithstanding, the 2013 modification had no effect until the end of Region's exemption period because Region was exempt from rent payments until September of 2014, per its investment certificate.<sup>106</sup>

According to the GOV, Article 8.3 of Decision 189 provides a rent exemption for seven years for certain projects of investment in areas with difficult socio-economic conditions.<sup>107</sup> The GOV adds that Appendix 1b of Decision 189 lists, among other projects eligible for rent exemption, projects processing 80 percent or more products for export.<sup>108</sup> The GOV confirmed that Corp-Vietnam's projects fell into the lists of projects with special investment encouragement.

The Department did not initiate an investigation into land rent exemptions under Decision 189 in the *Initiation Notice*. However, 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.<sup>109</sup>

As noted above under the "Application of the Countervailing Duty Law to Imports from Vietnam" section, the Department has adopted January 11, 2007, the date on which Vietnam became a member of the WTO, as the date from which the Department will identify and measure subsidies in Vietnam. In this case, Region received its investment certificate and executed its lease prior to the cut-off date. However, Region received amended investment certificates which preserved all of the legal provisions of the original certificate after the accession date. In *PRCBs from Vietnam* and *Wire Hangers from Vietnam*, the respondents executed their original leases before the accession date, but altered the material terms (*i.e.*, lease length and rental rate) after

---

<sup>101</sup> *Id.* at Appendix A-5.

<sup>102</sup> *Id.* at 37.

<sup>103</sup> *Id.* at Appendix A-5.

<sup>104</sup> *Id.* at Appendix 13-A.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at Appendix 13-C.

<sup>107</sup> See G2SR at 4.

<sup>108</sup> *Id.*

<sup>109</sup> We note that Petitioner subsequently included Decision 189 in its NSA.

the accession date.<sup>110</sup> We determined that the new leases constituted new contracts and countervailed the benefit from respondents' leases with the GOV.<sup>111</sup> Consistent with *PRCBs from Vietnam* and *Wire Hangers from Vietnam*, we preliminarily determine that Region's revised investment certificates represent new contracts with the GOV with respect to Region's land rental because the provisions of the original investment certificate that gave rise to the exemption "remain legally valid."

We preliminarily determine that the rent exemption is specific under sections 771(5A)(D)(iii)(I) and 771(5A)(D)(iv) of the Act because it provides rent exemptions for investments in certain areas with difficult socio-economic conditions and is limited to specific projects. We also preliminarily determine, consistent with past practice, that the rent exemption constitutes a financial contribution in the form of revenue foregone within the meaning of section 771(5)(D)(ii) of the Act.<sup>112</sup> In addition, we preliminarily find that the rent exemption confers a benefit in accordance with section 771(5)(E) of the Act in the amount of rent that Region did not pay.

The land contract Region signed with the Dong Nai Province does not require lump-sum payments at the time the original lease was signed. Rather, the contract calls for annual rent payments, which the GOV exempted. Thus, in accordance with 19 CFR 351.524(c)(1), we preliminarily determine that the rent exemption constitutes a recurring subsidy. Pursuant to 19 CFR 351.524(a), we have allocated the benefit from the rent exemption to the year in which the exemption was received. *See also* 19 CFR 351.511(b).

To calculate the benefit, we multiplied the rent per square meter which Region would have paid for the POI, absent the rent exemption, by the total area of the land plot at issue. To calculate the net subsidy rate, we divided the total benefit by Region's total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.01 percent *ad valorem* for Region.

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

### **1. Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets for Preferred Industries**

Both Region and the GOV reported that Region did not use this program.<sup>113</sup> However, a comparison of Region's list of imported fixed assets with the GOV's tariff schedule indicates

---

<sup>110</sup> See *PRCBs from Vietnam* and accompanying IDM at 7; *see also Wire Hangers from Vietnam* and accompanying IDM at 12.

<sup>111</sup> *Id.*

<sup>112</sup> See *Shrimp from Vietnam Preliminary Determination* and accompanying PDM at "Analysis of Programs – Exemption from Land and Water Rents for Encouraged Industries." (Unchanged in *Shrimp from Vietnam* and accompanying IDM at "Analysis of Programs - Exemption from Land and Water Rents for Encouraged Industries.")

<sup>113</sup> See RQR at 28-29 and GQR at 79.

certain equipment and machinery that Region claimed were exempt from import duties were actually subject to duties under the tariff schedule.<sup>114</sup>

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).

Region imported all of the imports at issue prior to the POI. For the years prior to the POI, the duty exemptions on equipment and machinery were less than 0.5 percent of Region's sales in each of those respective years. Therefore, in accordance with 19 CFR 351.524(b)(2), we preliminarily expensed the benefits to the year of receipt. Accordingly, without prejudice to the countervailability of this program, we preliminarily determine that this program did not confer a benefit during the POI.

## **2. Provision of Wire Rod for Less Than Adequate Remuneration (LTAR)**

Both United and Region reported that they only purchased imported wire rod during the POI.<sup>115</sup> Based on these responses, we preliminarily determine that neither United nor Region used this program.

3. Export Factoring
4. Financial Guarantees
5. Export Credits from the Vietnam Development Bank
6. Interest Rate Support Program under the State Bank of Vietnam (SBV)
7. Export Promotion Program
8. Land Preferences for Enterprises in Encouraged Industries or Industrial Zones under Decree 142
9. Land Rent Reduction/Exemption for Exporters
10. Income Tax Preferences under Chapter V of Decree 164
11. Income Tax Preferences under Chapter IV of Decree 124
12. Incentives Regarding Corporate Income Taxes (Article 25(1) of Decree 108)
13. Incentives Regarding Import and Export Duties (Article 25(2) of Decree 108)
14. Land Use Fees or Leases Exemptions/Reductions (Article 26 of Decree 108)
15. Enterprise Income Tax Preferences, Exemptions, and Reductions (Articles 20 and 21 of Decree 51)
16. Enterprise Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment (Article 23 of Decree 51)
17. Tax Preferences for Investors Producing and/or Dealing in Export Goods (Article 27 of Decree 51)

---

<sup>114</sup> *See* RQR at Appendix 11B and G1SR at 39-43.

<sup>115</sup> *See* UQR at 27 and R1SR at 13.

18. Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets in Designated Geographic Areas (Article 26 of Decree 51)
19. Land-Use Levy Exemption/Reduction (Article 17 of Decree 51)
20. Land-Rent Exemption/Reduction (Article 18 of Decree 51)
21. Land Use Tax Exemptions/Reductions (Article 19 of Decree 51)
22. Investment Support (Article 30 of Decree 51)
23. Infrastructure Development Investment Support (Article 8 of Decree 51)

## C. Program That Requires More Information

### 1. Land Preferences for Enterprises in Encouraged Industries or Industrial Zones

United is located in Tra Noc 1 Industrial Zone, Can Tho City.<sup>116</sup> United subleased its land under a land sublease agreement with Can Tho Industrial Zone Construction Limited Liability Company.<sup>117</sup> The land sublease rental and the infrastructure use fee are under a tariff set out by Can Tho Industrial Zone Construction Limited Liability Company, which is a state-owned company.<sup>118</sup>

The GOV and United reported that, despite the fact that United is located in a geographical area facing socioeconomic difficulties, United is not subject to the land rent exemption under Decree 142 because that decree only regulates the land lease directly from the state.<sup>119</sup>

Given that United subleases land within an industrial zone from a state-owned company that operates the zone, United may have received land from the GOV at LTAR if information shows preferential treatment with respect to the provision of land within Tra Noc 1 Industrial Zone. As described above under the “Programs Preliminarily Determined to Be Countervailable - Land Rent Exemptions Under Decision 189” section, the statute authorizes us to investigate programs discovered during the course of an investigation. Based on information on the record of this investigation, we intend to request additional information from the GOV on the provision of land within the zone and outside of it to determine whether companies within Tra Noc 1 Industrial Zone received preferential treatment with respect to the provision of land.

## X. CALCULATION OF THE ALL OTHERS RATE

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an “all others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents by those companies’ exports of the subject merchandise to the United States. The “all-others” rate does not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, because we have only one rate that we can use to calculate the “all-others” rate (*i.e.*, the rate for Region), we have assigned that rate to “all-others.”

---

<sup>116</sup> See UQR at 3.

<sup>117</sup> See UQR at 38 and Appendix 14A.

<sup>118</sup> *Id.*, at 39; see also G1SR at 62-63.

<sup>119</sup> See G2SR at 3.

## **XI. ITC NOTIFICATION**

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

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after we make our final determination.

## **XII. 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.<sup>120</sup> Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>121</sup> For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the five 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.<sup>122</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.<sup>123</sup> 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.<sup>124</sup> Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>125</sup> on the due dates established above.

---

<sup>120</sup> See 19 CFR 351.224(b).

<sup>121</sup> See 19 CFR 351.309.

<sup>122</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>123</sup> See 19 CFR 351.310(c).

<sup>124</sup> See 19 CFR 351.303(b)(2)(i).

<sup>125</sup> See 19 CFR 351.303(b)(1).

**XIII. 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.

**XIV. CONCLUSION**

We recommend that you approve the preliminary findings described above.

✓  
Agree                      Disagree

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

27 OCTOBER 2014  
(Date)