UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Investigation
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May 13, 2015

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

FROM: James Maeder
Office Director, Office I
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam

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I. SUMMARY

The Department of Commerce (Department) 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).

We analyzed the comments submitted in this investigation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments and/or rebuttal comments from the interested parties:

Comment 1 Whether the Respondents Cooperated to the Best of their Ability and Should Be Subject to Adverse Facts Available

Comment 2 Whether the Department's Post-Preliminary Application of Adverse Facts Available with Respect to Land Preferences for Enterprises in Encouraged Industries or Industrial Zones was Justified

Comment 3 Whether the Department's Preliminary Application of Adverse Facts Available with Respect to Import Duty Exemptions for Raw Materials was Justified

II. BACKGROUND

On November 3, 2014, we published our *Preliminary Determination* for this investigation.[1] Following the *Preliminary Determination*, we issued supplemental questionnaires to the Government of Vietnam (GOV), to which we received responses on November 24, 2014, and on February 14, 2015.[2] On March 11, 2015, we issued a Post-Preliminary Analysis that addressed Land Preferences for Enterprises in Encouraged Industries or Industrial Zones.[3]

On January 5, 2015, and January 8, 2015, respectively, United Nail Products Co., Ltd. (United) and Region Industries Co., Ltd. (Region), the two mandatory respondent companies in this investigation, informed the Department that they were withdrawing from this investigation and would not participate in verification of their responses.[4]

We issued a briefing schedule on March 11, 2015.[5] The GOV submitted a case brief on March 18, 2015; however, we rejected the GOV's March 18, 2015, case brief because it contained new factual information.[6] The GOV submitted a revised case brief with the new factual information removed on March 26, 2015.[7] Mid Continent Steel & Wire, Inc. (the petitioner) submitted a case brief concerning case-specific issues on March 18, 2015, and a rebuttal brief on March 23, 2015.[8]

The "Analysis of Programs" and "Selection of the Adverse Facts Available Rate" sections below describe the subsidy programs and the methodologies used to calculate the countervailable subsidy rate for each program. We have analyzed and responded to the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below.

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[1] *See Certain Steel Nails From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 65184 (November 3, 2014) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Letter from the GOV, " Government of Vietnam's Third Supplemental Questionnaire CVD Response Steel Nails from Vietnam" (November 24, 2014) (G3SR), and Letter from the GOV, "Government of Vietnam's Fourth Supplemental Questionnaire CVD Response Steel Nails from Vietnam (resubmit)" (February 24, 2015) (G4SR).

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, " Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Post-Preliminary Analysis Memorandum" (March 11, 2015) (Post-Preliminary Analysis).

[4] *See* letter from Region, "Certain Steel Nails from Vietnam; Upcoming Verification" (January 8, 2015), and letter from United, "Certain Steel Nails from Vietnam; Upcoming Verification" (January 5, 2015).

[5] *See* Memorandum, "This concerns the countervailing duty investigation on certain steel nails from the Socialist Republic of Vietnam" dated March 11, 2015.

[6] *See* Letter to the GOV (March 24, 2015).

[7] *See* Letter from the GOV, "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Government of Vietnam's Case Brief" (March 26, 2015) (GCB).

[8] *See* Letter from the petitioner, "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Petitioner's Administrative Case Brief" (March 18, 2015) (PCB) and Letter from the petitioner, "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of Vietnam: Petitioner's Rebuttal Case Brief" (March 23, 2015) (PRB).

III. SCOPE OF THE INVESTIGATION

The final version of the scope, reflecting the changes referenced in the "SCOPE COMMENTS" section, below, appears in Appendix I of the *Final Determination*.

IV. SCOPE COMMENTS[9]

On March 17, 2015, the Department invited interested parties to submit additional comments on certain scope issues that had been raised on the record of this and the concurrent antidumping and countervailing investigations of certain steel nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam (All Nails Investigations).

On March 23, 2015, two interested parties, The Home Depot (Home Depot) and Target Corporation (Target) requested in a joint submission that the Department exclude certain nails from the scope of All Nails Investigations. On that same day, another interested party, IKEA Supply AG (IKEA), made the very same request, using identical language to that in the Home Depot/Target submission. On March 26, 2015, Petitioner submitted a response that agreed with the exact scope exclusion language proposed by the aforementioned parties in their March 23, 2015 submissions. The exclusion language proposed by those parties and Petitioner is referenced below as "Interested Parties' Proposed Exclusion." That language reads as follows:

> Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article is described in one of the following current HTSUS subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403 .81 or 9403.89.

On April 10, 2015, the Department provided interested parties in All Nails Investigations the opportunity to comment on a proposed revised version of the scope. That Department proposal modified the language proposed in the Interested Parties' Proposed Exclusion to include narrative from the Harmonized Tariff Schedule of the United States (HTSUS) describing the merchandise referenced in the HTSUS subheadings identified in Interested Parties' Proposed Exclusion, and which altered the reference to "described in one of the following current HTSUS subheadings" to "currently classified under the following HTSUS subheadings." The Department proposal also contained two other revisions.[10] In addition, the Department indicated it was considering including language in the scope to address mixed media and non-subject merchandise kit ("mixed media and kits") analysis criteria.

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[9] In several of the investigations of certain steel nails, The Home Depot and Target Corporation submitted a case brief and IKEA Supply AG submitted a rebuttal brief that reiterate those parties' requests for an additional scope exclusion, which those parties requested in scope comments they made in separate submissions, as discussed below.

[10] The other two other proposed revisions were: moving and altering a sentence that referred to an existing exclusion to account for the additional exclusion language, and an adding a reference noting subject merchandise may enter under HTSUS subheadings other than those listed with the scope.

On April 15, 2015, Home Depot, Target, IKEA, and Petitioner submitted comments objecting to the Department's proposed modification to Interested Parties' Proposed Exclusion. Those parties noted that it was unnecessary to attempt to incorporate language from the HTSUS into the scope itself because the HTSUS chapters in question are on the record and, therefore, can by reference be reflected in any interpretation of the desired scope exclusion.[11] Those parties also commented that language related to "mixed media and kits" analysis would be unnecessary and inappropriate, and would introduce ambiguity that would be burdensome for the Department, importers, and Petitioner. None of those parties commented on the two other minor revisions the Department had proposed.

No parties provided rebuttal comments to those submitted by Home Depot, Target, IKEA, and Petitioner.

The Department has determined that inclusion of language from the HTSUS for the additional exclusion is appropriate, as modified in the Department's April 10, 2015 memorandum to incorporate narrative from the HTSUS. The Department notes it is important for such exclusions to include descriptions of the products in question, instead of relying only upon references to HTSUS subcategory numbers. The Department references HTSUS categories for convenience and customs purposes only, and such references are not intended to be dispositive of the scope. The Department's preference to rely on the physical description of the merchandise to determine the scope of an investigation provides greater clarity should there be future HTSUS number or categorization changes, and allows better enforcement of any order.

As noted, the April 10, 2015 version proposed by the Department incorporates two other modifications. No parties have raised objections to those other modifications, and the Department determines they are appropriate for clarification purposes.

The Department also determines that it would not be appropriate to introduce language into the scope to address "mixed media and kits." We note no interested parties have requested such language, and those that commented in fact opposed such language.

V. SUBSIDIES VALUATION

Period of Investigation

The period for which we are measuring subsidies, the period of investigation (POI), is January 1, 2013, through December 31, 2013.

[11] Home Depot and Target also noted that use of "described in one of the following current HTSUS subheadings" ties the complete language of the HTSUS regarding those subheadings to the scope, while use of "currently classified under the following HTSUS subheadings" fails to achieve that goal.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE FACTS AVAILABLE

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons explained below, the Department determines that application of facts otherwise available is warranted and that an adverse inference is warranted pursuant to section 776(b) of the Act because, by refusing verification of their responses, Region and United failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information. Moreover, the Department determines that application of facts otherwise available is warranted and that an adverse inference is warranted pursuant to section 776(b) of the Act with respect to the GOV for certain programs because the GOV did not provide adequate responses to our requests for information.

I. Region and United

On January 5, 2015, and January 8, 2015, respectively, United and Region informed the Department that they were withdrawing from this investigation and would not participate in verification of their responses.[13]

Accordingly, in reaching our determination, we have based the countervailing duty (CVD) rates for Region and United on facts otherwise available, pursuant to section 776(a)(2)(D) of the Act.

The Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by withdrawing from the investigation and refusing verification of their responses, Region and United failed to cooperate by not acting to the best of their ability. Accordingly, our determination of benefit received by the respondents for all programs is based on adverse facts available.

II. Government of Vietnam

Although the GOV responded to our questionnaires, it did not provide information we requested with respect to certain programs that is necessary to determine whether the programs are countervailable. The deficiencies in the GOV's responses are described below.

CVD investigations necessarily rely on information from the government regarding the administration of the alleged subsidy programs. In its original questionnaire response, the GOV reported that the respondents did use certain programs. These programs are: (1) Land Rent Reduction/Exemption for Exporters; (2) Land Use Fees or Leases Exemptions/Reductions (Article 26 of Decree 108); (3) Interest Rate Support Program under the State Bank of Vietnam (SBV); (4) Provision of Wire Rod for Less Than Adequate Remuneration (LTAR); and (5) Decree 51 programs.[14] In addition, the GOV reported that the Decree 51 programs are invalid and have been replaced by Decree 108/2006/ND-CP (Decree 108).[15]

Land Rent Reduction/Exemption for Exporters and Land Use Fees or Leases Exemptions/Reductions (Article 26 of Decree 108)

With respect to Land Rent Reduction/Exemption for Exporters and Land Use Fees or Leases Exemptions/Reductions (Article 26 of Decree 108), we asked the GOV to respond to the "Standard Questions Appendix."[16] The "Standard Questions Appendix," in turn, requests "a description of the program, including the purpose of the program, the date it was established," and "the name and address of each of the government agencies or authorities responsible for administering the program," regardless of whether any of the mandatory respondents used the program.[17] The GOV did not provide this information and did not explain why it did not provide

[13] *See* letter from Region, "Certain Steel Nails from Vietnam; Upcoming Verification" (January 8, 2015), and letter from the United, "Certain Steel Nails from Vietnam; Upcoming Verification" (January 5, 2015).
[14] *See* Letter from the GOV, " Government of Vietnam's Initial Questionnaire CVD Response Steel Nails from Vietnam" (September 3, 2014) (GQR) at 29, 60-62, 84, 86, 99, and 125-8.
[15] *See, e.g.*, GQR at 29.
[16] *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) at II-13 and II-14.
[17] *Id.*, at Standard Questions Appendix.

the information.[18] Accordingly, we determine that the GOV did not act to the best of its ability in responding to our requests for information with respect to either of these programs, and, as AFA, we determine that these programs are specific, in accordance with section 776(b) of the Act.

Interest Rate Support Program under the SBV

We asked the GOV to provide a copy of three documents that relate to this program: Decision 131/QD-TTg, dated January 23, 2009 (Decision 131); Circular 2/2009/TT-NHNN, dated February 3, 2009 (Circular 2); and Circular 21/2009/TT-NHNN, dated October 9, 2009 (Circular 21).[19] Although it submitted a copy of Decision 131 and an additional document, Circular 05/2009/TT-NHNN, the GOV did not submit a copy of Circulars 2 or 21.[20] The GOV provided no explanation as to why it did not provide these documents.

We previously determined in *Shrimp from Vietnam* that "this program is specific within the meaning of section 771(5A)(A) and (C) of the Act" based on our finding that "recipients are prohibited from using interest-supported loans to purchase foreign exchange to pay for imports and that only Vietnamese dong-denominated loans are eligible for support."[21] This latter determination was based on Circular 21.[22] Because the GOV did not provide Circular 21 as requested and provided no explanation as to why it did not provide the circular, as AFA, we determine that the program is unchanged since our determination in *Shrimp from Vietnam* and that this program is specific within the meaning of sections 771(5A)(A) and (C) of the Act.

Provision of Wire Rod for LTAR

Citing a market research report, the petitioner alleged that the GOV exercises control in the steel industry in Vietnam, such that it may provide preferentially-priced wire rod to Vietnamese producers of steel nails.[23] Region and United stated that they purchased only imported wire rod during the POI; therefore, we preliminarily determined that the program was not used.[24] Because Region and United withdrew from the investigation and refused to participate in verification, however, we had no verifiable information on Region's or United's wire rod purchases, including the identity of the producers of the wire rod. Accordingly, we sent the GOV a supplemental questionnaire and requested a response to the Input Producer Appendix for the top three producers of wire rod in Vietnam.[25] In reply, the GOV claimed that it did not have

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[18] *See* GQR at 126.
[19] *See* IQ at II-4.
[20] *See* GQR at 24-28.
[21] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387 (August 19, 2013) (*Shrimp from Vietnam*) and accompanying IDM at the "Interest Rate Support Program under the State Bank of Vietnam (SBV)" section.
[22] *Id.*
[23] *See* Petition for the Imposition of Antidumping and Countervailing Duties on Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate Oman, Taiwan, the Republic of Turkey and the Socialist Republic of Vietnam, dated May 29, 2014 (Petition), Volume XV, at 17 (citation omitted).
[24] *See Preliminary Determination* and accompanying PDM at 23.
[25] *See* Letter to the GOV, "Countervailing Duty Investigation of Certain Steel Nails from the Socialist Republic of

statistics on wire rod producers, but that it has statistics on producers of long products.[26] The GOV added that "enterprises in Vietnam operate independently and the GOV does not intervene in the operation and production of enterprises in general and long product enterprises in particular, especially in the context that long product enterprises are not related to this investigation.[27] As a result, it's not relevant for the GOV to require such information from these enterprises."

We determine that this response is deficient and that the GOV did not act to the best of its ability in responding to our requests for information. First, the Input Producer Appendix does not require "statistics on wire rod producers" or information on long product enterprises. Instead, in the Input Producer Appendix, we requested information about the three largest individual wire rod producers (*e.g.*, full corporate name of the company and address, articles of incorporation, and capital verification reports of majority Government-owned enterprises that produced the wire rod).[28] The GOV made no attempt to respond to these questions. Second, because Region and United withdrew from the investigation and refused verification, we cannot determine the identity of the producers from whom Region and United purchased wire rod during the POI. For this reason, our supplemental questionnaire requested that the GOV provide the information in the Input Producer Appendix "for the top three producers of wire rod in Vietnam" and made no exception for any claims that Region and United made about the source of their wire rod.[29] Again, the GOV ignored this instruction.[30] Finally, it is for the Department, not a respondent government or company, to identify the information that is necessary for its analysis and to request that the relevant parties provide it on the record. We requested that the GOV respond to the Input Producer Appendix in order to determine whether wire rod producers in Vietnam constitute public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act. However, the GOV refused to provide any of the information we requested. Accordingly, we determine that the GOV did not act to the best of its ability in responding to our requests for information with respect to this program.

Vietnam: Government of the Socialist Republic of Vietnam's Section II Countervailing Duty ("CVD") Responses and Letter Dated January 9, 2015" (February 6, 2015).

[26] *See* G4SR at 1.

[27] *Id.*

[28] *See* IQ at Input Producer Appendix.

[29] *See* Letter 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 Countervailing Duty ("CVD") Responses and Letter Dated January 9, 2015" (February 6, 2015) (G4SQ) at 1.

[30] *See* G4SR at 1

Decree 51 Programs[31]

With respect to the Decree 51 programs, we requested a response to the "Standard Questions Appendix," which asks for "a description of the program, including the purpose of the program and the date it was established" and "the name and address of each of the government agencies or authorities responsible for administering the program," regardless of whether any of the mandatory respondents used the program.[32] The GOV did not provide this information, claiming only that Decree 51 "has been invalid and replaced by Decree 108/2006/ND-CP."[33] We preliminarily determined that these programs were not used based on Region's and United's questionnaire responses.[34] Because Region and United withdrew from the investigation and refused verification, however, we cannot establish that either Region or United did not use any of the Decree 51 programs. Accordingly, we sent a supplemental questionnaire requesting that the GOV "explain whether companies (regardless of whether they are mandatory respondents) could continue to receive benefits under Decree 51 after the issuance of Decree 108/2006/ND-CP" and, if not, to "please provide evidence supporting your assertion."[35] The GOV responded as follows:

> {I}n order to determine whether companies could continue to receive incentives under Decree No. 51/1999/ND-CP, it's necessary to base on specific information of each enterprise (for example, business licenses, investment certificates...). To this regard, the benefits to which companies are entitled are generally specified in their investment certificates. As a result, it's not possible for the GOV to assert whether all the companies could continue to receive benefits under Decree 51 or not.[36]

We determine that the GOV did not act to the best of its ability in responding to our requests for information with respect to the Decree 51 programs because it did not provide responses to the "Standard Questions Appendix" for any of these programs. The GOV stated that the Decree 51 programs are "invalid," but then stated that it could not demonstrate that companies could not have continued to benefit from the programs. Because the GOV did not respond to the Standard Questions Appendix as we requested, we have no information that would allow us to evaluate the Decree 51 programs.

As explained above, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the

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[31] "Decree 51 Programs" are as follows: Investment Support Under Article 30 of Decree 51, Enterprise Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment (Decree 51 Article 23), Tax Preferences for Investors Producing and/or Dealing in Export Goods (Decree 51 Article 27), Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets in Designated Geographic Areas under Article 26 of Decree 51, Land Use Tax Exemptions/Reductions Decree 51 (Article 19), Infrastructure Development and Investment Support under Article 8 of Decree 51, Land-Use Levy Exemption/Reduction under Article 17 of Decree 51.

[32] *See* IQ at II-4.

[33] *See* GQR at 29. *See also* GQR at 60-62, 84, 86, 99, 127, and 128.

[34] *See Preliminary Determination* and accompanying PDM at 23-24.

[35] *See* G4SQ at 1.

[36] *Id.*, at 3.

Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our requests for information with respect to these programs, the GOV failed to cooperate by not acting to the best of its ability. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.[37]
Accordingly, as AFA, we determine that the Land Rent Reduction/Exemption for Exporters, Land Use Fees or Leases Exemptions/Reductions (Article 26 of Decree 108), Provision of Wire Rod for LTAR, and the Decree 51 programs provided a financial contribution within the meaning of section 771(5)(D) of the Act and were specific within the meaning of 771(5A) of the Act. For further details with respect to these programs, *see* the "Analysis of Programs" section, below.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner."[38] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[39]

It is the Department's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country. In this investigation, there were no cooperating respondents. Accordingly, for programs other than those involving income tax exemptions and reductions, the Department sought to apply the highest calculated non-*de minimis* rate for the identical program from a prior proceeding with respect to Vietnam. If there was no identical subsidy program, the Department sought to apply the highest calculated non-*de minimis* rate for

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[35] *See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006)), in which the Department relied on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D) and 771(5A)(D)(iii) of the Act, respectively.

[38] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[39] *See* SAA at 870.[40] *Id.*

a similar program (based on treatment of the benefit). Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applied the highest calculated subsidy rate for any program in a Vietnam proceeding that could be used by the non-cooperating companies in the industry.[40]

In this case, there is no information on the record of this investigation from which to select appropriate adverse-facts-available rates for any of the subject programs. Although both Region and United provided information, we cannot use this information because of the respondents' refusal to participate in verification. Therefore, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by refusing to participate in verification, Region and United failed to cooperate by not acting to the best of their ability. As a result, it is not possible for us to calculate an accurate subsidy rate for any of the programs alleged. Furthermore, because this is an investigation, we have no previous segments of this proceeding from which to draw potential AFA rates.

For the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, in accordance with our normal practice, we have applied an adverse inference that the respondents paid no income tax during the POI.[41] The standard income tax rate for corporations in Vietnam is 25 percent.[42] Therefore, the highest possible benefit for the income tax rate programs is 25 percent. We are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

For programs other than those involving income tax exemptions and reductions, we applied the highest non-*de minimis* rate calculated for the same or similar program in another Vietnam CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we applied the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the mandatory company respondents.[43]

For a discussion of the application of the individual adverse-facts-available rates for programs determined to be countervailable, *see* the "Analysis of Programs" section, below.

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[40] *Id.*

[41] *See, e.g., Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination* (77 FR 64468) (*CWP—India*) and accompanying IDM at 11.

[42] *See* GQR at 43.

[43] *See, e.g., Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012, 37013 (July 27, 2009); *see also Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 38981, 38982 (July 8, 2008).

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it sball, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[44] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[45] The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[46]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[47] In this case, no evidence has been presented or obtained that contradicts the relevance of the information relied upon in prior Vietnam CVD proceedings. Therefore, in this case, the Department finds that the information used has been corroborated to the extent practicable pursuant to Section 776(c) of the Act.

VII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following.

A. <u>Programs Determined To Be Countervailable</u>

1. Preferential Lending to Exporters

We initiated an investigation into whether the respondents received preferential lending to exporters during the POI.[48] The GOV reported that the Vietnam Development Bank (VDB), one of the "policy banks of the government," carries out export credit pursuant to Decision 108/2006/QD-TTG.[49]

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[44] *See* SAA at 870.
[45] *Id.*
[46] *See* SAA at 869-870.
[47] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[48] *See* Initiation Checklist at 6-7.
[49] *See* GQR at 19 and Exhibit GOV-14.

We determine that the GOV's provision of export credit constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act. As cited above, the GOV stated that the VDB provides "export credit," and Article 4 of Decision 108/2006/QD-TTG states that a function of the VDB is "{g}ranting loans for export."[50] Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act. Although the GOV claimed at page 19 of the GQR that "steel nails are not included in the list of export credit loans under Decree 75/2011/ND-CP," there is no verified information on the record to determine whether Region or United received loans under this program.

For this program, we are assigning Region and United a net subsidy rate of 1.17 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[51]

2. Income Tax Preferences Under Chapter V of Decree 24

The GOV reported that it issued Decree 24/2007/ND-CP (Decree 24) in 2007, in part to phase out export subsidies under the terms of Vietnam's Accession to the World Trade Organization.[52] 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 in regions of "exceptionally" difficult socioeconomic conditions.[53] 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."[54] 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."[55]

We 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 in the amount of the tax savings pursuant to section 771(5)(E) of

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[50] *Id.*, at Exhibit GOV-14.
[51] *See Shrimp from Vietnam* and accompanying IDM at the "Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank)" section.
[52] *See* GQR at 45.
[53] *Id.*, at Exhibit GOV-27 (Decree 108/2006/ND-CP, detailing the implementation of the Law on Investment 2005 (Decree 108)), listing specific sectors or regions entitled to preferences.
[54] *Id.*, at Exhibit GOV-27, Appendix I.
[55] *Id.*, at Exhibit GOV-27, Appendix II.

the Act and 19 CFR 351.509(a)(1). We also 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).

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

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

The GOV 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.[56] The GOV also explained that "{t}he 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."[57]

The petitioner did not allege this program in the Petition.[58] 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, we investigated this program and found it to be countervailable in the *Preliminary Determination*.[59]

We 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 in the amount of the tax savings pursuant to section 771(5)(E) of the Act. We also find that the income tax

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[56] *See* Letter from the GOV, "Government of Vietnam's First Supplemental Questionnaire CVD Response Steel Nails from Vietnam" (October 6, 2014) (G1SR) at 14.
[57] *Id.*
[58] *See* Petition at Volume XV.
[59] *See Preliminary Determination* and accompanying PDM at 17-18.

reductions under 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).[60]

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

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).[61] 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.[62] 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.[63]

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

[60] *See* G1SR at 14.
[61] *See* GQR at 63 and Exhibits GOV-42 and GOV-43.
[62] *Id.* at 64.
[63] *Id.*

to confirm which inputs are consumed in the production of the exported products and in what amounts, including a normal allowance for waste.[64]

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.[65] 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.[66] The GOV further explains that norm inspection is conducted through documentary inspection and, in some cases, physical inspection.[67]

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.[68] Further, Article 113(5)(D) of Circular 194 states that, "{t}he 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."[69] On September 10, 2013, the GOV issued Ministry of Finance Circular 128/2013/TT-BTC (Circular 128).[70] Article 112.5.d3 of Circular 128 states that "{t}he 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."[71] 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

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[64] *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*) 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.
[65] *See* GQR at 65-66 and Exhibit GOV-44; *see also* G1SR at 34 and Exhibit GOVS1-17.
[66] *Id.*, at 64-69.
[67] *Id.*
[68] *See* GQR at Exhibit GOV-44.
[69] *Id.*
[70] *See* G1SR at 36 and Exhibit GOVS1-17.
[71] *Id.*

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.[72]

As explained above, the GOV's system does not account for resalable waste, because such waste is exempt from duties. Thus, we 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 determine that they are specific in accordance with section 771(5A)(A) and (B) of the Act. We further 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.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 4.46 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving Vietnam.[73]

5. Land Rent Exemptions Under Decision 189

According to the GOV, Article 8.3 of Decision 189 provides a rent exemption of seven years for certain projects of investment in areas with difficult socio-economic conditions.[74] 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.[75]

The petitioner did not allege this program in the Petition. 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

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[72] *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) 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."
[73] *See Wire Hangers from Vietnam* and accompanying IDM at the "Import Duty Exemptions or Reimbursements for Raw Materials" section.
[74] *See* G2SR at 4.
[75] *Id.*

with respect to the merchandise which is the subject of the proceeding..." *See also* 19 CFR 351.311(b). Accordingly, we investigated this program and found it to be countervailable in the *Preliminary Determination.*[76]

We determine 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. We also 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.[77]

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from tbis program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[78]

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

Decree 87 states that "{g}oods imported to create fixed assets of investment projects in domains entitled to import duty preferences listed in Appendix I to this Decree or in geographical areas entitled to import duty incentives, and investment projects funded with official development assistance (ODA) which are exempted from import duty, including...{e}quipment and machinery" are exempt from import duty.[79]

Because the import duty exemptions on equipment and machinery imported to create fixed assets are limited to certain investment projects or geographical areas, we determine that they are specific in accordance with sections 771(5A)(D)(i) and 771(5A)(D)(iv) of the Act. We further 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.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

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[76] *See Preliminary Determination* and accompanying PDM at 20-22.
[77] *See* G2SR at 4.
[78] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.
[79] *See* GQR at Exhibit GOV-43.

For this program, we are assigning a net subsidy rate of 0.03 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving Vietnam.[80]

7. Provision of Wire Rod for LTAR

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the provision of wire rod for LTAR under this program provides a financial contribution and is specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

We have never investigated a program under which the GOV provided a production input at LTAR. As we stated above, absent an above-*de minimis* subsidy rate calculated for the same or similar program, we applied the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the mandatory company respondents.[81] Accordingly, for this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for any program in any segment of any proceeding involving Vietnam.[82]

8. Export Factoring

The GOV reported that "state-owned commercial banks or joint-stock commercial banks can provide export factoring activities if they meet the conditions defined in Article 7 of the Regulation on Factoring."[83]

We find that export factoring from state-owned commercial banks (SOCBs) 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, and preliminarily determined in this investigation,

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[80] *See Shrimp from Vietnam* and accompanying IDM at the "Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets" section.
[81] *See, e.g., CWP—India* and accompanying IDM at 11.
[82] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.
[83] *See* GQR at 22.

SOCBs are "authorities."[84] Because exportation is necessarily a condition for receiving export factoring, we find that this program was contingent on export performance. Therefore, we determine that export factoring is specific under sections 771(5A)(A) and (B) of the Act.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning Region and United a net subsidy rate of 1.17 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[85]

9. Financial Guarantees by VietinBank and VietcomBank for Export Activity

The GOV reported that "guarantees are normal operations of commercial banks, irrespective of whether they are state-owned commercial banks or joint-stock commercial banks. Credit institutions can perform guarantees if they meet the conditions stipulated in Circular 28/2012/TT-NHNN."[86] The GOV stated, "{a}ccording to Article 2 of Circular 28/2012/TT-NHNN providing on bank guarantee (Exhibit GOV - 22), commercial banks, cooperative banks and financial companies, foreign bank branches, People's credit funds in the period not having conversed to cooperative banks perform guarantee operation."[87] The GOV provided Circular 28/2012/TT-NHNN, which states the following with respect to foreign currency guarantees under this program:

> The credit institutions, branches of foreign bank perform guarantee in foreign currency for organizations, individuals being resident with respect to the guarantee obligation arising from legal transaction in foreign currency.

We determine that financial guarantees under this program from SOCBs constitute financial contributions pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act because, as the

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[84] *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) (unchanged in *PRCBs from Vietnam* and accompanying IDM). *See also Preliminary Determination* and accompanying PDM at 14, which cites *Shrimp from Vietnam* and accompanying IDM at "Analysis of Programs - Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank)." The GOV did not comment on this aspect of the *Preliminary Determination*. *See generally* GCB.
[85] *See Shrimp from Vietnam* and accompanying IDM at the "Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank)" section.
[86] *See* GQR at 24.
[87] *Id.*

Department has determined in past cases, SOCBs are "authorities."[88] Moreover, as explained above, SOCBs grant guarantees under the program for foreign currency transactions. Therefore, the receipt of a guarantee for export shipments in a foreign currency is contingent on export performance. Therefore, we determine that the receipt of a financial guarantee for an export transaction in a foreign currency is specific under sections 771(5A)(A) and (B) of the Act.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning Region and United a net subsidy rate of 1.17 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[89]

10. Export Credits from the VDB

The GOV reported that export credit is carried out by the VDB, "one of the 02 policy banks of the government pursuant to Decision 108/2006/QD-TTG."[90] Decision 108 states that the purpose of VDB is "to implement state policies on development investment credit and export credit."[91]

We find that export credits from the VDB constitute financial contributions pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act because, as the Department has determined in past cases, the VDB, "one of the 02 policy banks of the government," is an authority."[92] Because exportation is necessarily a condition for receiving export credits, we find that this program was contingent on export performance. Therefore, we determine that export credits from the VDB are specific under sections 771(5A)(A) and (B) of the Act.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

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[88] *See, e.g.*, *Shrimp from Vietnam* 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) (unchanged in *PRCBs from Vietnam* and accompanying IDM).
[89] *See Shrimp from Vietnam* and accompanying IDM at the "Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank)" section.
[90] *See* GQR at 19.
[91] *See* GQR at Exhibit GOV-14.
[92] *See Shrimp from Vietnam* and accompanying IDM at "Export Credits from the Vietnam Development Bank (VDB)" section. *See also* GQR at 19.

For this program, we are assigning a net subsidy rate of 0.21 percent *ad valorem*, wbicb corresponds to the highest above-*de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving Vietnam.[93]

11. Export Promotion Program

The GOV reported that the National Trade Promotion program was established by Decision 279 and is governed by Decision 80.[94] According to the GOV, the process of providing funds for trade promotion is overseen by the Evaluation Council, which is led by the Ministry of Trade (now known as Ministry of Industry and Trade (MOIT)), but also includes the Ministry of Finance and other relevant ministries and agencies.[95] Article 9 of Decision 279 specifies the types of trade promotion schemes that are eligible for support (*e.g.*, hiring domestic and foreign experts to advise on development of export and designing of models and products to raise the quality of goods and services).[96] Article 10 of Decision 279 specifies the level of support that is available for each of the eligible schemes in Article 9 (*e.g.*, the GOV will cover 50 percent of the expenses associated with hiring domestic and foreign experts to advise on development of export and designing of models and products to raise the quality of goods and services).[97]

We find that the export promotion program constitutes a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act. Because participation in the program is contingent upon exportation, the program is specific pursuant to section 771(5A)(B) of the Act.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[98]

12. Interest Rate Support Program under the SBV

The GOV reported that the purpose of this program is to assist borrowers in maintaining production and creating jobs in response to the financial crisis and global economic downturn.[99]

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[93] *See Shrimp from Vietnam* and accompanying IDM at the "Export Credits from the Vietnam Development Bank (VDB)" section.
[94] *See* GQR at 4.
[95] *Id.*, at 5.
[96] *Id.*, at Exhibit GOV-6.
[97] *Id.*
[98] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.

According to the GOV, Decision 131 provided for four percent interest rate support for a maximum period of eight months for loans under credit contracts signed and disbursed in the time period from February 1, 2009, to December 31, 2009.[100] The program was extended to medium- and long-term loans with a period of support of up to 24 months.[101] The GOV added that Decision 2072 expanded the interest rate support for medium and long-term to loans made in 2010 with a period of support of up to 24 months counting from the time of disbursement.[102]

We determine that the interest rate support from the SBV is a financial contribution as a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the interest rate support under this program is specific.

The GOV claimed that, according to Decision 2072, the interest rate support for all loans ended on December 31, 2012.[103] However, the Department normally will consider a benefit as having been received in the year in which a firm otherwise would have had to make a payment on the comparable commercial loan, rather than when the loan was made.[104] Absent the cooperation of Region and United, we cannot determine that the companies did not make payments during the POI on loans they received prior to the POI. Therefore, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Accordingly, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.05 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[105]

13. Land Preferences for Enterprises in Encouraged Industries or Industrial Zones under Decree 142

The GOV submitted Decree 142/2005/ND-CP (Decree 142), which provides in Article 14 that "{l}and rents and water surface rents shall be exempted in…Investment projects in the domains where investment is specially encouraged, which are executed in geographical areas facing exceptional socio-economic difficulties."[106] The GOV also reported that "{t}he lists of domains

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[99] *See* GQR at 26.
[100] *Id.*
[101] *Id.*, at 27.
[102] *Id.*
[103] *Id.*
[104] *See* 19 CFR 351.505(b).
[105] *See Shrimp from Vietnam* and accompanying IDM at the "Interest Rate Support Program under the State Bank of Vietnam (SBV)" section.
[106] *See* GQR at Exhibit GOV-75.

of investment encouragement, domains of special investment are specified in the Appendix issued together with Decree 108."[107]

We determine that the rent exemption is specific under section 771(5A)(D)(iv) of the Act because it is only available to companies located in particular regions—specifically, those facing "exceptional socio-economic difficulties."[108] We also determine 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.[109]

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[110]

14. Land Rent Reduction/Exemption for Exporters

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the land rent reduction/exemption for exporters under this program provides a financial contribution and is specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[111]

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[107] *See* letter from the GOV to the Department, "Government of Vietnam's Second Supplemental Questionnaire CVD Response (Q5 to Q9)," (October 9, 2014) (G2SR) at 2-3.
[108] *See* GQR at Exhibit GOV-75.
[109] *See Shrimp from Vietnam Preliminary Determination* and accompanying PDM at "Analysis of Programs – Exemption from Land and Water Rents for Encouraged Industries," in which the Department preliminarily determined that a land rent exemption under Decree 142 was a financial contribution in the form of revenue foregone. (Unchanged in *Shrimp from Vietnam* and accompanying IDM at "Analysis of Programs - Exemption from Land and Water Rents for Encouraged Industries").
[110] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.
[111] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.

15. Income Tax Preferences under Chapter V of Decree 164

Chapter V of Decree 164 governs enterprise income tax exemptions and reductions.[112] Article 33 concerns conditions for enterprise income tax preferences.[113] Specifically, investment projects meeting one of the following conditions may enjoy enterprise income tax preferences: 1) making investment in branches, lines and/or domains defined in List A of the Appendix to Decree 164, or 2) making investment in branches, lines and/or domains, which are not banned by law, and employing a minimum average number of laborers in a year depending on the location of the project.[114] Article 36 also provides for tax exemptions or reductions for newly established enterprises which vary depending on 1) whether the enterprise fall within the list of encouraged industries/sectors, 2) whether the enterprise is located in geographical areas with difficult socio-economic conditions or special socio-economic difficulties, and/or 3) whether the enterprise satisfies certain labor employment conditions.[115]

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.[116] List B and List C specify the regions entitled to investment preferences because of socio-economic difficulties and "special" socio-economic difficulties, respectively.[117]

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] The GOV also reported that "certain provisions of Decree 164 were grandfathered with respect to certain respondents."[119]

We determine that the income tax preferences 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. These income tax reductions are specific because they are limited to an industry or group of industries (*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 socio-economic difficulty), pursuant to section 771(5A)(D)(iv) of the Act.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the

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[112] *See* GQR at 31.
[113] *Id.*
[114] *Id.*, at 31-32.
[115] *Id.*, at 32-34.
[116] *Id.*, at Exhibit GOV-28.
[117] *Id.*
[118] *Id.*, at 31.
[119] *See* GQR at Exhibit GOV-33.

POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

16. Income Tax Preferences under Chapter IV of Decree 124

Decree 124 took effect in 2009. Articles 15 through 18 of Chapter IV of Decree 124 specify various income tax benefits available to particular enterprises and activities under Decree 124.[120] Specifically, Article 15 provides a tax incentive rate of 10 percent for 15 years for new enterprises located in the areas with extreme socio-economic difficulties as enumerated in the Appendix to Decree 124, as well as in economic zones and high-tech parks; additionally, an incentive tax rate of 20 percent for 10 years is available for new enterprises located in the areas with socio-economic difficulties as enumerated in the Appendix of Decree 124.[121] Moreover, Article 16 of Decree 124 provides a tax exemption for 4 years and a 50 percent tax reduction for the subsequent 9 years for new enterprises located in the areas with extreme socio-economic difficulties as enumerated in the Appendix of Decree 124, as well as in economic zones and high-tech parks.[122] Additionally, Article 16 provides a two-year tax exemption and 50 percent tax reduction for the four subsequent years for new enterprises established under investment projects in regions with socio-economic difficulties as enumerated in the Appendix of Decree 124.[123]

We determine that the income tax preferences under Chapter IV of Decree 124 are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act. These income tax reductions are specific because they are limited to enterprises or industries located within designated geographical regions (*i.e.*, regions of socio-economic difficulty and/or economic zones and high-tech parks), pursuant to section 771(5A)(D)(iv) of the Act.[124]

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

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[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*

17. Land Use Fees or Leases Exemptions/Reductions (Article 26 of Decree 108)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that land use fees or lease exemptions/reductions under this program provide a financial contribution and are specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[125]

18. Enterprise Income Tax Preferences, Exemptions, and Reductions (Articles 20 and 21 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the Enterprise Income Tax preferences, exemptions, and reductions under Decree 51 provide a financial contribution and are specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

19. Enterprise Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment (Article 23 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the Enterprise Income Tax exemptions and reductions for business expansion and intensive investment under Decree 51 provide a financial contribution and are specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and

[125] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.

(3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

20. Tax Preferences for Investors Producing and/or Dealing in Export Goods (Article 27 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that tax preferences for investors producing and/or dealing in export goods under Decree 51 provide a financial contribution and are specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 25 percent benefit).

21. Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets in Designated Geographic Areas (Article 26 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the import duty exemption on equipment and machinery imported to create fixed assets in designated geographic areas under Decree 51 provides a financial contribution and is specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.03 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[126]

[126] *See Shrimp from Vietnam* and accompanying IDM at the "Import Duty Exemption on Equipment and Machinery Imported to Create Fixed Assets" section.

22. Land-Use Levy Exemption/Reduction (Article 17 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the land-use levy exemption/reduction under Decree 51 provides a financial contribution and is specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the bighest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[127]

23. Land-Rent Exemption/Reduction (Article 18 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the land-rent exemption/reduction under Decree 51 provides a financial contribution and is specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[128]

24. Land Use Tax Exemptions/Reductions (Article 19 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the land use tax exemptions/reductions under Decree 51 provide a financial contribution and are specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during tbe

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[127] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.
[128] *Id.*

POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[129]

25. Investment Support (Article 30 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that investment support under Decree 51 provides a financial contribution and is specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 1.17 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[130]

26. Infrastructure Development Investment Support (Article 8 of Decree 51)

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that infrastructure development investment support under Decree 51 provides a financial contribution and is specific.

Absent the cooperation of Region and United, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that the respondents did not benefit from this program during the POI. Therefore, we find that Region and United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[131]

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[129] *Id.*

[130] *See Shrimp from Vietnam* and accompanying IDM at the "Export Lending from the Vietnam Joint Stock Bank for Industry and Trade (Vietinbank)" section.

[131] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.

27. Land Preferences for Enterprises in Encouraged Industries or Industrial Zones

We explained in the PDM our intention to request additional information from the GOV with respect to this program.[132] In the Post-Preliminary Analysis, we preliminarily found that the provision of the land to United within Tra Noc 1 is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.[133]

The GOV reported that United leased land directly from an industrial zone infrastructure development company, Can Tho Industrial Zone Infrastructure Construction Co., Ltd. (CTIZ).[134] The GOV states that CTIZ, a state-owned enterprise (SOE), leases the Tra Noc 1 land from the People's Committee of Can Tho, a local executive/administrative branch of the national government.[135] In turn, CTIZ subleases the land to enterprises.[136]

The GOV reported that "{t}he People's Committee {of Can Tho} has the authority for the provision of land not only in industrial zones but all over the Can Tho province."[137] The GOV further explained, "{i}n determining the land rental rates applied to enterprises outside the industrial zone, the land price framework of the province is generally applied.[138] According to Decree 142/2005/ND-CP dated November 14, 2005, on the collection of land rents and water surface rents, land prices have to be re-adjusted to be close to the market price."[139] Therefore, this record information indicates that the People's Committee of Can Tho, which owns CTIZ, has authority over the provision of land in Tra Noc 1, in other industrial zones, and in other provincial areas outside the zones.

In past cases in which a land granting authority has provided land in a designated geographical region within the larger area of the granting authority, the Department has examined differences between the provision of land within the designated geographical area and outside of it as a basis for the Department's specificity analysis.[140] Record information in this investigation shows differences between the provision of land within Tra Noc 1 and outside of it. For example, the granting authority sets different rental rates across different zoned areas and uses different

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[132] *See Preliminary Determination* and accompanying PDM at 24.
[133] *See* Post-Preliminary Analysis at 3-4.
[134] *See* GQR at 110.
[135] *See* G3SR at 4.
[136] *Id.*, at 4.
[137] *Id.*, at 3.
[138] *Id.*
[139] *Id.*, at 7.
[140] *See, e.g., 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 Comment 14.

processes to establish rates within Tra Noc 1 and outside of it.[141] Further, record information shows differences between the processes for leasing land within Tra Noc 1 and outside of it.[142] All these characteristics of industrial land rental demonstrate a distinct land regime within Tra Noc 1.

Therefore, consistent with *Sinks from the PRC*, we find that the GOV's provision of land to enterprises within Tra Noc 1 constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. Also consistent with *Sinks from the PRC* and for the reasons outlined immediately above, we find that the provision of the land to enterprises within Tra Noc 1 is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.

Absent the cooperation of United, we determine that United's submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that it did not benefit from this program during the POI. Therefore, we find that United used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning United a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.[143]

B. Programs Determined Not to Exist During the POI

1. Incentives Regarding Corporate Income Taxes (Article 25(1) of Decree 108) and Incentives Regarding Import and Export Duties (Article 25(2) of Decree 108)

The GOV reported that Decree 108 provides only general principles for determining incentives pertaining to corporate income taxes.[144] Decree 24, the GOV explained, provides the specific income tax incentives that the GOV applies in accordance with Decree 108.[145] Further, the GOV explained that Law 45 and its guiding decrees provide specific import/export tax preferences.[146] As a result, we have analyzed income tax benefits under Decree 24 under the "Income Tax

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[141] *See* G3SR at 6-7. Regarding prices in Tra Noc 1, the GOV stated, "Since the Law on Land 2003 takes effect, the land sublease prices for new projects in the {Tra Noc 1} are not determined by the People's Committee of Can Tho, rather they are determined by the CTIZ Construction Co., Ltd and submitted to the People's Committee for approval." Regarding prices outside Tra Noc 1, however, the GOV stated, "In determining the land rental rates applied to enterprises outside the industrial zone, the land price framework of the province is generally applied." *See also* the Post-Preliminary Analysis at 3 for additional business proprietary information from the GQR that we cited in our analysis.

[142] At pages 7-8 of the G3SR, the GOV explained that enterprises wanting to locate in Tra Noc 1 must reach an agreement with CTIZ. The GOV explained that outside of Tra Noc 1, however, enterprises must submit a land application to the Department of Natural Resources and Environment, which will then consult the People's Committee of Can Tho.

[143] *See Wire Hangers from Vietnam* and accompanying IDM at the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" section.

[144] *See* G4SR at 2.

[145] *Id.*

[146] *Id.*, at 2-3.

Preferences Under Chapter V of Decree 24" section above, and we have analyzed duty exemptions under Law 45 under the "Import Duty Exemptions and Reimbursements for Imported Raw Materials for Exported Goods" section above.

The GOV provided the entire text of Articles 25(1) and 25(2) of Decree 108, which is as follows:

> Article 25 - Enterprise income tax and import duty preferences
>
> 1. Investors having investment projects in domains or geographical areas entitled to investment preferences defined in this Decree are entitled to enterprise income tax preferences in accordance with the law on enterprise income tax.
>
> 2. Investors having investment projects in domains or geographical areas entitled to investment preferences defined in this Decree are entitled to import duty preferences for imports in accordance with the law on import and export duties.[147]

Consistent with the GOV's explanation, these articles simply refer to the same income tax and duty exemption benefits under separate laws that we have analyzed under the programs identified above. Accordingly, we determine that no separate subsidy programs exist under Articles 25(1) and 25(2). For our analysis of the specific income tax and duty exemption programs to which Article 25 refers, *see* above at the "Income Tax Preferences Under Chapter V of Decree 24" and "Import Duty Exemptions and Reimbursements for Imported Raw Materials for Exported Goods" sections.

Analysis of Comments

Comment 1 Whether the Respondents Cooperated to the Best of their Ability and Should Be Subject to Adverse Facts Available

The petitioner argues that the Department should apply total AFA to countervail all investigated programs.[148]

- The statutory criteria for the use of facts available are satisfied.
  - Region and United provided information that cannot be verified.
  - Region and United significantly impeded the proceeding.
- Total AFA is warranted because both Region and United failed to cooperate by not acting to the best of their ability to comply with a request for information from the Department.
  - By withdrawing from the investigation prior to verification, each respondent did not "do the maximum it is able to do" and prevented the Department from verifying the accuracy of information on the record.[149]

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[147] *See* GQR at Exhibit GOV – 27.
[148] *See* PCB.
[149] The petitioner cites *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) in support of its argument.

- The Department should assign CVD rates to both Region and United for all investigated programs in accordance with agency practice as articulated in *PRC Shelving*.[150]
    - It is not relevant that the Department preliminarily found some of these programs not to have been used during the POI or to have resulted in *de minimis* CVD rates.
        - Because Region and United withdrew prior to verification, the Department is unable to verify its preliminary determinations – or obtain any further information from the respondents – with respect to these programs.

No party submitted a rebuttal of this argument.

Department's Position

We agree with the petitioner with respect to determining the subsidy benefit for programs we find to be countervailable. As explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section, above, both Region and United withdrew from the investigation and refused to permit verification of their responses. However, as also explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section, although the GOV's responses were deficient with respect to some programs, it never discontinued its participation and it did provide information necessary to make determinations with respect to other programs. Therefore, as explained in detail in the program-specific descriptions, above, we determined financial contribution and specificity for certain programs based on the GOV's responses, we determined financial contribution and specificity for the remaining programs based on adverse facts available, and we determined benefit for all programs based on AFA.

Comment 2 Whether the Department's Post-Preliminary Application of Adverse Facts Available with respect to Land Preferences for Enterprises in Encouraged Industries or Industrial Zones was Justified

The GOV argues that the Department should reverse its post-preliminary analysis with respect to the land preferences for enterprises in encouraged industries or industrial zones.[151]

- United did not receive any preferential policies with respect to the provision of land within Tra Noc 1 Industrial zone.
    - Under the land lease contract with CTIZ, United is not entitled to any exemptions or reductions to the contract price.
    - The sublease price for United was applied to enterprises of all industries/sectors within Tra Noc 1 Industrial zone and constructed based on the comparison and reference to the land price in other provinces.
- There is always a difference between the provision of land within an industrial zone and the area outside industrial zones in terms of rental rates, method for establishing rental rates and the process of leasing land.

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[150] *See Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 5089 (January 30, 2015) (*PRC Shelving*), and accompanying PDM at 12-13.
[151] *See* GCB.

- Land leasing within an industrial zone is typically conducted by an industrial zone infrastructure development company.
    - The rental rates within the industrial zone generally include the infrastructure development cost and a certain amount of profit of the infrastructure development company; whereas,
- Land leasing outside the industrial zone is generally conducted by the Department of Natural Resources and Environment (which receives the land application).
    - Rental rates are based on the land price framework of the province.

- There are no differences in terms of rental rates, the method for establishing rental rates, and the process of leasing land between Tra Noc 1 and other industrial zones.
    - The same policy for the establishment of rental rates and procedures for leasing land is applied.

The petitioner argues that the Department properly found in the *Preliminary Determination* that the provision of land to United at less than adequate remuneration was regionally specific and that the GOV provides no basis to alter that finding in the final determination.[152]

- The Department clearly based its specificity finding on record evidence showing differences between the processes for leasing land within Tra Noc 1 and outside of it.
- The fact that companies located within Tra Noc 1 are eligible for rental rates that differ from those located outside of industrial zones – as acknowledged by the GOV – renders the program specific because the actual recipients are limited in number.
- The GOV's assertion that there is always a difference between the provision of land within an industrial zone and the area outside does not undermine the Department's specificity analysis.

Department's Position

We agree with the petitioner. In our Post-Preliminary Analysis, we found that the evidence on the record demonstrated differences between the processes for leasing land within Tra Noc 1 and outside of it.[153] The GOV has not offered any reason for reversing our post-preliminary analysis; indeed, the GOV admits in its case brief that differences exist between the provision of land within industrial zones and the areas outside industrial zones.[154] Moreover, the GOV's assertion that there are no differences in terms of rental rates, methods for establishing rental rates, and the process of leasing land between Tra Noc 1 and other industrial zones is contradicted by tbe record evidence that we cited in the post-preliminary analysis.[155] Therefore, we continue to find that the GOV's provision of land within Tra Noc 1 constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act, and we continue to find that the provision of land within Tra Noc 1 is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.

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[152] *See* PRB.
[153] *See* Post-Preliminary Analysis at 3.
[154] *See* GCB at 5 ("As a matter of fact, there is always difference between the provision of land within an industrial zone and the area outside industrial zones in terms of rental rates, method for establishing rental rates and the process of leasing land.").
[155] *See* Post-Preliminary Analysis at footnote 20 (citing business proprietary information subject to the administrative protective order of this investigation).

Comment 3 Whether the Department's Preliminary Application of Adverse Facts Available with Respect to Import Duty Exemptions for Raw Materials was Justified

The GOV argues that the Department should reverse its preliminary determination that the entire amount of Region's import duty exemptions is countervailable because of its finding that the GOV does not have a reasonable, effective, and generally accepted system in place to confirm which inputs are consumed in the production of exported products and in what amounts.[156]

- The Department's conclusion relied principally on the Department's belief that the GOV's system does not adequately account for resalable scrap in the calculation of a normal allowance for waste.
    - Vietnamese Customs does account for Region's resalable scrap in the calculation of the loss rate.
        - With respect to the customs procedures governing the import of raw materials and supplies for the production of export goods, enterprises are obligated to register (1) the materials and supplies they import to produce export products and (2) the norms of these materials and supplies.
        - Norms of materials and supplies are defined as the amount of material or supplies that are actually used for the production of export products, including the proportion of scraps and discarded products within the consumption norms collected in the process of producing exports from imported materials and supplies.
        - The process of norm inspection conducted by Vietnamese Customs authorities confirms which inputs are consumed in the production of exported products and in what amounts.
    - The documentation on the record of this investigation confirms that there are multiple checks in place to ensure accurate reporting by importers and exporters. These checks occur at each stage of the process.

The petitioner argues that the GOV offers no basis for the Department to alter this finding in the final determination.[157]

- The GOV's claim that it has effective procedures for monitoring the import and export of goods should be rejected.
    - The GOV merely repeats the same generalities about its system made prior to the *Preliminary Determination.*
    - The GOV continues neglecting to specifically address the exempt scrap used by Region during the POI.

[156] *See* GCB.
[157] *See* PCB.

Department's Position

We disagree with the GOV. 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 the government applies a system to confirm which inputs are consumed in the production of the exported products and in what amounts.

As we have stated in past cases, we consider whether the production process produces resalable scrap to be essential to the calculation of a normal allowance for waste.[158] Consistent with these cases, we preliminarily determined 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. Specifically, we found that the GOV's system does not account for resalable waste, because such waste is exempt from duties.[159] Article 112.5.d3 of Circular 128 states that "{t}he 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."[160] Therefore, producers may recover and sell "waste" material from imported inputs without paying duties on that waste. Because the duty exemption applied to waste and not just the exported merchandise, we countervailed the exemption in full.[161] The GOV did not address this finding except to claim that they account for resalable scrap in the calculation of the loss rate. Regardless of what the loss rate is (unless it were zero), however, the fact remains that the portion of the imported inputs that become waste from a company's production process is allowed to be sold by the producer without the application of import duties. This determination is consistent with *Shrimp from Vietnam*, in which we found this program countervailable and we recognized the full amount of the exempted duties as the benefit for the same reason.[162]

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[158] *See, e.g., Shrimp from Vietnam* and accompanying IDM at "Import Duty Exemptions for Imported Raw Materials for Exported Goods."
[159] *See Preliminary Determination* and accompanying PDM at "Import Duty Exemptions and Reimbursements for Imported Raw Materials for Exported Goods."
[160] *See* GQR at Exhibit GOV – 45.
[161] *See Preliminary Determination* and accompanying PDM at "Import Duty Exemptions and Reimbursements for Imported Raw Materials for Exported Goods."
[162] *See Shrimp from Vietnam* and accompanying IDM at "Import Duty Exemptions for Imported Raw Materials for Exported Goods."

XI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the International Trade Commission of our determination.

✓

Agree Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

5/13/15
(Date)