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Investigation
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MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination: Countervailing Duty Investigation of Passenger
Vehicle and Light Truck Tires from the Socialist Republic of
Vietnam

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of passenger vehicle and light truck tires (passenger tires) from the Socialist Republic of Vietnam (Vietnam), as provided in section 703 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2019 through December 31, 2019.

II. BACKGROUND

On May 13, 2020, Commerce received a countervailing duty (CVD) petition concerning imports of passenger tires from Vietnam in proper form, on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the petitioner).¹ The CVD petition was accompanied by antidumping duty (AD) petitions on Vietnam, the Republic of Korea, Taiwan, and Thailand. On June 22, 2020, Commerce initiated its CVD investigation on passenger tires from Vietnam.² The initial allegations and supplements to the Petition are described in the CVD Initiation Checklist.³

¹ See Petitioner's Letter, "Passenger vehicle and light truck tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam – Petition for the Imposition of Antidumping and Countervailing Duties," dated May 13, 2020 (Petition).

² See *Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation*, 85 FR 38850 (June 29, 2020) (*Initiation Notice*).

³ See "Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam," dated July 22, 2020 (CVD Initiation Checklist).



Subsequent to publishing the *Initiation Notice*, we obtained and placed on the record U.S. Customs and Border Protection (CBP) data for entries of passenger tires from Vietnam under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10 during the POI.⁴ In the *Initiation Notice*, we stated that we intended to select respondents based on CBP data on entries of passenger tires from Vietnam made during the POI.⁵

On July 8, 2020, Commerce issued its Respondent Selection Memorandum, in which it determined to individually examine Kumho Tire (Vietnam) Co., Ltd. (KTV), and Sailun (Vietnam) Co., Ltd. (Sailun), the largest exporters/producers accounting for the largest volume of subject merchandise exported to the United States from Vietnam during the POI.⁶

On July 8, 2020, Commerce issued its Initial Questionnaire to the Government of Vietnam (the GOV),⁷ and requested that the GOV forward the questionnaire to KTV and Sailun. KTV, Sailun, and the GOV submitted responses to our affiliation,⁸ initial,⁹ and supplemental questionnaires¹⁰

⁴ See Memorandum, “Petition for the Imposition of Countervailing Duties on Imports of Passenger Vehicle and Light Truck Tires from Vietnam: U.S. Customs and Border Protection (CBP) Data Release,” dated June 16, 2020.

⁵ See *Initiation Notice*, 85 FR at 38852-53.

⁶ See Memorandum, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Respondent Selection,” dated July 8, 2020 (Respondent Selection Memorandum).

⁷ See Commerce’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam,” dated July 8, 2020 (Initial Questionnaire).

⁸ See KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Identification of Affiliated Companies Required to Respond to Questionnaire,” dated July 22, 2020 (KTV AQR); and Sailun’s Letter, “Sailun Affiliation Response: Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam (C-552-829) (POI: 2019),” dated July 22, 2020 (Sailun AQR).

⁹ See KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Response to Section III of Questionnaire,” dated August 24, 2020 (KTV IQR); Sailun’s Letter, “Sailun Initial Questionnaire Response in the Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires (“PVL”) from Vietnam (C-552-829),” dated August 24, 2020 (Sailun IQR); and GOV’s Letter, “Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: GOV’s Initial Questionnaire Response,” dated August 24, 2020 (GOV IQR).

¹⁰ See KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Response to July 27 Supplemental Questionnaire,” dated August 3, 2020; KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Response to the Department’s September 4 Supplemental Questionnaire,” dated September 9, 2020; KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Response to September 23 Supplemental Questionnaire,” dated October 13, 2020 (KTV SQR3), KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Response to October 8 Supplemental Questionnaire,” dated October 15, 2020; KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Response to October 13 Supplemental Questionnaire,” dated October 19, 2020; KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam — Response to October 19 Supplemental Questionnaire,” dated October 20, 2020; Sailun’s Letter, “Sailun First Supplemental Questionnaire Response in the Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires (“PVL”) from Vietnam (C-552-829),” dated October 6, 2020; Sailun’s Letter, “Sailun Second Supplemental Questionnaire Response in the Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires (“PVL”) from Vietnam (C-552-829),” dated October 19, 2020; Sailun’s Letter, “Sailun Fourth Supplemental

between July and October 2020. On September 30, 2020, the petitioner, KTV, and Sailun submitted benchmark information¹¹ and, in October 2020, the petitioner and KTV submitted benchmark rebuttal information.¹²

On July 8, 2020 Commerce requested that the Department of Treasury (Treasury) provide its evaluation of whether Vietnam’s currency was undervalued during the period of investigation.¹³ On August 24, 2020, Treasury responded to our request.¹⁴ We sent a request to additional information on September 17, 2020,¹⁵ and Treasury responded on September 24, 2020.¹⁶

On July 16, 2020, Kenda Rubber (Vietnam) Co., Ltd. (Kenda), requested that it be treated as a voluntary respondent.¹⁷ On September 17, 2020, Kenda withdrew its request.¹⁸

On August 4, 2020, Commerce postponed the deadline for the preliminary determination of the investigation to the full 130 days permitted under section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2), making the current due date October 30, 2020.¹⁹

Questionnaire Response in the Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires (“PVLТ”) from Vietnam (C-552-829),” dated October 20, 2020; Sailun’s Letter, “Sailun Third Supplemental Questionnaire Response in the Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires (“PVLТ”) from Vietnam (C-552-829),” dated October 21, 2020; GOV’s Letter, “Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: GOV’s First Supplemental Questionnaire Response,” dated October 6, 2020 (GOV SQR1); GOV’s Letter, “Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: GOV’s Second Supplemental Questionnaire Response,” dated October 13, 2020 (GOV SQR2); and GOV’s Letter, “Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: GOV’s Third Supplemental Questionnaire Response,” dated October 19, 2020 (GOV SQR3).

¹¹ See Petitioner’s Letter, “Passenger Vehicle and Light Truck Tires from Vietnam: Benchmark Submission,” dated September 30, 2020 (Petitioner Benchmark Submission); KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam – Benchmarks Submission,” dated September 30, 2020 (KTV Benchmark Submission); and Sailun’s Letter, “Sailun Benchmark Submission: Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires (“PVLТ”) from Vietnam (C-552-829),” dated September 30, 2020 (Sailun Benchmark Submission).

¹² See Petitioner’s Letter, “Passenger Vehicle and Light Truck Tires from Vietnam: Rebuttal Benchmark Data Submission,” dated October 13, 2020; and KTV’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam – Benchmarks Submission,” dated October 9, 2020.

¹³ See Commerce’s Letter to the Department of Treasury dated July 8, 2020.

¹⁴ See Department of Treasury’s Letter to Commerce dated August 24, 2020 (Treasury Response).

¹⁵ See Commerce’s Letter to the Department of Treasury dated September 17, 2020.

¹⁶ See Department of Treasury’s Letter to Commerce dated September 24, 2020.

¹⁷ See Kenda’s Letter, “Investigation of Passenger Vehicle and Light Truck Tires from Vietnam: Kenda Request for Voluntary Respondent Treatment,” dated July 16, 2020.

¹⁸ See Kenda’s Letter, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam: Withdrawal of Request for Voluntary Treatment,” dated September 17, 2020.

¹⁹ See *Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 48666 (August 12, 2020).

On September 21, 2020, the petitioner submitted two timely new-subsidy allegations.²⁰ We initiated investigations on both allegations on October 2, 2020.²¹ KTV, Sailun, and the GOV filed responses to our new-subsidy questionnaires in October 2020.²²

On October 26, 2020, the petitioner submitted pre-preliminary comments.²³

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is passenger tires from Vietnam. For a full description of the scope of the investigation, *see* the accompanying preliminary determination *Federal Register* notice at Appendix I.

IV. SCOPE COMMENTS

In accordance with the *Preamble*,²⁴ our *Initiation Notice* provided a period of 20 calendar days, until April 20, 2020, for interested parties to raise issues regarding product coverage (*i.e.*, scope).²⁵ We received several comments concerning the scope of the AD and CVD investigations.²⁶ We are evaluating these comments, and intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is December 29, 2020.²⁷ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD

²⁰ See Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from Vietnam: New Subsidy Allegations," dated September 21, 2020.

²¹ See Memorandum, "Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam; New Subsidy Allegations," dated October 2, 2020.

²² See KTV's Letter, "Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from Vietnam – Response to October 5 New Subsidy Questionnaire," dated October 13, 2020; Sailun's Letter, "Sailun New Subsidy Allegations Questionnaire Response in the Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires ("PVL") from Vietnam (C-552-829)," dated October 16, 2020; and GOV's Letter, "Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: GOV New Subsidy Allegation Questionnaire Response," dated October 16, 2020.

²³ See Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from Vietnam: Pre-Preliminary Comments," dated October 26, 2020 (Pre-Preliminary Comments). We did not address these comments for the preliminary determination, which were filed less than five days before signature date.

²⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁵ See *Initiation Notice*, 85 FR at 38851.

²⁶ See Atturo Tire Corp.'s Letter, "Passenger Vehicle and Light Truck Tires from Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Comments on Scope," dated July 20, 2020; Brand, Inc.'s Letter, "Comments on Scope of the Investigation: Mud-Terrain Tires Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and Vietnam," dated July 20, 2020; Cheng Shin Rubber Ind. Co. Ltd.'s Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Scope Comments," dated July 20, 2020; and Deestone Corporation Ltd.'s Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Comments on Scope," dated July 20, 2020.

²⁷ See *Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 65791 (October 16, 2020).

determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.

V. INJURY TEST

Because Vietnam is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Vietnam materially injure, or threaten material injury to, a U.S. industry. On August 28, 2018, the ITC published its preliminary determination finding that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of passenger tires from Vietnam that are alleged to be subsidized by the GOV.²⁸

VI. APPLICATION OF THE CVD LAW TO IMPORTS FROM VIETNAM

On April 1, 2010, Commerce published *PRCBs from Vietnam*, in which we found the CVD law applicable to Vietnam.²⁹ Furthermore, on March 13, 2012, HR 4105 was enacted, which makes clear that Commerce has the authority to apply the CVD law to non-market economies such as Vietnam.³⁰ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.

Additionally, for reasons stated in *PRCBs from Vietnam*, we are using the date of January 11, 2007, the date on which Vietnam became a member of the World Trade Organization, as the date from which Commerce will identify and measure subsidies in Vietnam for purposes of CVD proceedings.³¹

VII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.³² In the Initial Questionnaire, we notified the respondents to this proceeding that the AUL period would be 14 years, pursuant to 19 CFR 351.524(d)(1).³³ No party in this proceeding submitted comments challenging the proposed AUL period, and we, therefore, preliminarily determine that a 14-year period is appropriate to allocate benefits from non-recurring subsidies.

Furthermore, for non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given

²⁸ See *Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand, and Vietnam*, 85 FR 44322 (July 22, 2020).

²⁹ 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 Issues and Decision Memorandum (IDM).

³⁰ See HR 4105, 112th Cong. 1(b) (2012) (enacted).

³¹ See *PRCBs from Vietnam* IDM at Comment 3.

³² See 19 CFR 351.524(b).

³³ See Initial Questionnaire at 8.

program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are expensed to the year of receipt rather than allocated over the AUL.

B. Attribution of Subsidies

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

Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³⁴

KTV

As discussed above, we selected KTV as a mandatory respondent. KTV responded to Commerce's questionnaire on behalf of itself.³⁵ KTV is the producer of the subject merchandise.³⁶ Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by KTV to its own sales. Although KTV identified other companies with which it was affiliated during the POI, these affiliates were not involved in the production or sale of subject merchandise during the POI, and they did not otherwise meet any of the attribution conditions in our regulations. Therefore, we preliminarily determine that such affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v).

Sailun

As discussed above, we selected Sailun as a mandatory respondent. Sailun responded to Commerce's questionnaire on behalf of itself.³⁷ Sailun is the producer of the subject merchandise.³⁸ Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Sailun to its own sales. Although Sailun identified other companies with which it was affiliated during the POI, these affiliates were not involved in the production or sale of subject merchandise during the POI, and they did not otherwise meet any of the attribution conditions in our regulations. Therefore, we preliminarily determine that such affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v).

³⁴ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³⁵ See generally KTV AQR.

³⁶ See KTV IQR.

³⁷ See generally Sailun AQR.

³⁸ See Sailun IQR.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below under "Programs Preliminarily Determined to be Countervailable," where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. Where the program has been found to be countervailable based on an allegation of currency undervaluation, we used the recipient's total sales conducted in United States dollars as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the KTV Preliminary Calculation Memorandum³⁹ and the Sailun Preliminary Calculation Memorandum.⁴⁰

VIII. BENCHMARKS AND INTEREST RATES

A. Interest Rate Benchmarks

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. Normally, Commerce uses comparable commercial loans reported by the company for benchmarking purposes.⁴¹ If the firm does not receive any comparable commercial loans during the relevant periods, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."⁴²

In the CVD investigation on frozen warmwater shrimp from Vietnam, we found that "domestic interest rates in Vietnam are distorted due to the predominant role of the GOV in the banking sector through its direct and indirect ownership as well as through other means such as interest rate controls, policy, plans, and administrative guidance."⁴³ For the reasons explained in the Financial Sector Memorandum,⁴⁴ which is incorporated here by reference, we preliminarily determine that domestic interest rates in Vietnam are distorted due to the predominant role of the GOV in the banking sector through its direct and indirect ownership, as well as through other means such as interest rate controls, policy, plans, and administrative guidance. Therefore, we find that any loans received by respondents from private Vietnamese or foreign-owned banks are

³⁹ See Memorandum, "Kumho Tire (Vietnam) Co., Ltd.; Calculations for the Preliminary Determination," dated concurrently with this memorandum (KTV Preliminary Calculation Memorandum).

⁴⁰ See Memorandum, "Sailun (Vietnam) Co., Ltd.; Calculations for the Preliminary Determination," dated concurrently with this memorandum (Sailun Preliminary Calculation Memorandum).

⁴¹ See 19 CFR 351.505(a)(3)(i).

⁴² See 19 CFR 351.505(a)(3)(ii).

⁴³ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 12-13, unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387 (August 19, 2013) (*Shrimp from Vietnam*).

⁴⁴ See Memorandum, "Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Analysis of Vietnam's Financial System," dated concurrently with this memorandum (Financial Sector Memorandum).

not suitable for use as benchmarks under 19 CFR 351.505(a)(3)(i). For the same reasons, we cannot use a national interest rate for commercial loans pursuant to 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Vietnamese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice. For example, in *Lumber from Canada*, Commerce used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁴⁵

A. Short-Term Vietnamese Dong (VND) Benchmark

For loans denominated in VND, we are calculating the external benchmark following the regression-based methodology first developed in the CVD investigation of *CFS from China*, and updated in several subsequent investigations on exports from China.⁴⁶ This methodology bases the benchmark interest rate on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to Vietnam's, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, which is not directly tied to the state-imposed distortions in the banking sector discussed in the Vietnam Banking Sector Update Memo.

Under this methodology, we first determine which countries are similar to the country in question, in this case Vietnam, in terms of GNI, based on the World Bank's classification of countries as: low income, lower-middle income, upper-middle income, and high income. Based on GNI data for 2018 and previous years for which we require a benchmark, Vietnam falls into the lower-middle income (LMI) category; hence, we selected the countries in the LMI range of the World Bank's GNI rankings for 2018 and previous years.⁴⁷

After identifying the appropriate interest rates for each year, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance is factored into the analysis by using a statistical regression that relates the interest rates to these governance indicators. As explained in *CFS from China*, the regression captures the broad inverse relationship between income and interest rates.⁴⁸ By limiting the analysis to the pool of countries within the GNI range of the country in question, the analysis yields a reasonable estimate of a benchmark interest rate for the country in question.

⁴⁵ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying IDM at "Analysis of Programs: Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

⁴⁶ See *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*) and accompanying IDM at "Benchmarks" section; see also, e.g., *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009), and accompanying IDM at "Benchmarks and Discount Rates" section.

⁴⁷ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also KTV Preliminary Calculation Memorandum and Sailun Preliminary Calculation Memorandum.

⁴⁸ See *CFS from China* IDM at the "Benchmarks" section.

Many of the countries in the World Bank’s LMI categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency’s international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as “lower middle income” for 2016 and previous years for which we require a benchmark. First, we did not include those economies that Commerce considered to be non-market economies for antidumping purposes for any part of the years in question. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years because we use real interest rates (*i.e.*, nominal interest rates less inflation) in the regression. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign currency-denominated instruments. Finally, for each year we excluded from the regression any countries that had aberrational or negative real interest rates for the year in question.

As stated above, the regression relies on real interest rates. However, the loans under investigation have not been adjusted to remove inflation. Therefore, to ensure an accurate comparison in the benefit calculation, we adjusted the short-term benchmark to include inflation. This adjustment was done using the inflation rates that Vietnam reported to the IFS.⁴⁹

B. Long-Term VND Benchmark

Many of the countries in the World Bank’s LMI categories reported lending and inflation rates to the IMF, and they are included in that agency’s IFS. The lending rates reported in the IFS represent short – and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce has developed an adjustment to the short – and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.

In *Citric Acid from China*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.⁵⁰ We are using the revised methodology here. Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

C. Foreign Currency Benchmarks

To calculate benchmark interest rates for foreign currency-denominated loans, Commerce is, again, following the methodology developed over a number of successive China investigations. For any short-term foreign currency loans, Commerce is using as a benchmark the one-year dollar London Inter-bank Offered Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. For any long-term foreign currency loans, Commerce is adding the applicable short-term LIBOR rate to a spread which is

⁴⁹ See KTV Preliminary Calculation Memorandum and Sailun Preliminary Calculation Memorandum.

⁵⁰ See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at the “Benchmarks and Discount Rates” section.

calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.⁵¹

D. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOV provided non-recurring subsidies. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the KTV Preliminary Calculation Memorandum and the Sailun Preliminary Calculation Memorandum.

B. Input Benchmarks

Both respondents reported purchases of natural rubber during the POI for the production of subject merchandise.⁵²

Section 351.511(a)(2) of Commerce’s regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).⁵³

The GOV reported that it “has only one state-owned company involved in processing natural rubber: Vietnam Rubber Group (VRG).”⁵⁴ The GOV further reported that it “does not issue any laws or policies to control or govern the pricing of natural rubber,” that it “does not impose any restriction on the production or development of natural rubber capacity or interfere in the decisions of natural rubber producers on how to develop their capacity or production volume,” and that there “have not been any price controls or established any price floors or ceilings for the natural rubber during the POI or the prior two years.”⁵⁵ In addition, the GOV provided data indicating the volume of natural rubber produced by VRG, the total volume of natural rubber produced by all producers in Vietnam, and the volume of imports of natural rubber into Vietnam during the POI.⁵⁶ Based on this information, we preliminarily determine that the market for natural rubber is not distorted through the GOV’s predominant role in the market via VRG, and nor does the GOV intervene in the market, specifically through controls on imports and exports. Accordingly, we preliminarily determine that market prices from actual transactions within Vietnam may serve as a tier one benchmark.

⁵¹ See Sailun Preliminary Calculation Memorandum.

⁵² See KTV IQR at 28; and Sailun IQR at 18.

⁵³ See 19 CFR 351.511(a)(2).

⁵⁴ See GOV IQR at 27.

⁵⁵ See GOV IQR at 29-33.

⁵⁶ *Id.* at 28-29; *see also* GOV SQR1 at 8. Because this data is proprietary, we are unable to divulge these figures in this memorandum

We used the actual prices Sailun paid for purchases of natural rubber from private rubber producers as the tier one benchmark for Sailun. We preliminarily determine that it is not appropriate to use any of the prices KTV paid for purchases of natural rubber for proprietary reasons, which are discussed in the KTV Preliminary Calculation Memorandum. We also preliminarily determine that it is not appropriate to use the prices Sailun paid to non-state-owned-enterprises as the tier one benchmark for KTV because those prices contain Sailun’s business proprietary information. The only other data appropriate for a tier one benchmark on the record are import prices for Vietnam for HTS code 4001.22 for 2019 from UN Comtrade which were submitted by KTV.⁵⁷ No other party submitted data appropriate for a tier one benchmark – the petitioner did not submit natural rubber prices from any source and the prices Sailun submitted were world export prices⁵⁸ which would be appropriate for a tier two benchmark. Accordingly, for this preliminary determination, we used the Comtrade import prices KTV submitted as the basis for the natural rubber benchmark for KTV. Because these were import statistics, we added the freight expenses associated with moving merchandise between the factory and port⁵⁹ to the weighted-average import price to calculate the benchmark for natural rubber.

C. Land Benchmarks

In *PRCBs from Vietnam*, we concluded that we could not rely on the use of so-called “first-tier” and “second-tier benchmarks” to assess the benefits from the provision of land at LTAR in Vietnam.⁶⁰ We found that the GOV retained ultimate ownership of all land in Vietnam and that the government-determined land prices, which are set by decree, provided the starting point for all land prices in Vietnam, regardless of what valuation methods were utilized, and that the resulting rates were not market-determined.⁶¹ While some sub-leasing transactions occurred between private parties, the GOV had placed restrictions on those leasing rights.⁶² We also found that the GOV had significant control over the supply of land on the market through conversions and that the government – not the market – decided land allocations.⁶³ Commerce recently completed a memorandum analyzing developments in Vietnam’s land market since 2009.⁶⁴ As discussed in the Land Analysis Memorandum, although modest reforms have taken place, the reforms have not addressed the fundamental institutional factors that underlie the Vietnamese government’s monopoly control over land use. It is, therefore, the government (at the central and local level) that ultimately decides whether and how land is used in Vietnam under a unified but decentralized land planning system. From our prior findings and updated Land analysis Memorandum, we preliminarily determine that there is no information on the record of the instant investigation that warrants a reconsideration of our finding in *PRCBs from Vietnam*.

⁵⁷ See KTV Benchmark Submission at 2 and Exhibit 1.

⁵⁸ See Sailun Benchmark Submission at 1 and Exhibit 1.

⁵⁹ See KTV IQR at Appendix 8-E and Sailun IQR at Exhibit P.F.1.4.

⁶⁰ See *PRCBs from Vietnam* IDM at Comment 9.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Memorandum, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Analysis of Vietnam’s Land-Use Rights,” dated concurrently with this Memorandum (Land Analysis Memorandum).

Therefore, in selecting a benchmark for land, the Department analyzed comparable market-based prices in another country at a comparable level of economic development within the geographic vicinity of Vietnam. We have on the record the following sources of information for use as benchmarks in this investigation: three price quotes from advertisements on www.99acres.com for industrial/commercial plots in Andhra Pradesh for lease in 2019 (99acres Quotes),⁶⁵ land-pricing data for several industrial land localities in 2019 from the “India Industrial and Logistics Market View for H2 2019” prepared by CBRE Group, Inc. (CBRE Data),⁶⁶ and summaries of all rentals for “Industrial” and “Agricultural/Farm Land” properties in India that were listed on www.99acres.com as of October 5, 2020 (99acres Summaries).⁶⁷

Regarding the 99acres Summaries data Commerce received, we do not find it appropriate to use this data set because the prices were not contemporaneous with the POI. We also do not find it appropriate to use the prices from the 99acres Quotes, because we find the prices to be self-selected from that website and to be less representative of market conditions in India. We preliminarily determine that the CBRE Data, which is a source we have used in previous investigations, are more reflective of the broad range of prices in India.⁶⁸ Therefore, for purposes of the preliminary determination, we find that the prices in the CBRE Data are the appropriate benchmark for valuing land rents in this investigation.

In order to calculate benchmarks for land, we followed a methodology similar to what we used in *Shrimp from Vietnam*.⁶⁹ Specifically, we are using rental rates for industrial property as reported in “CBRE India Industrial Overview.” For KTV, we have selected Kolkata, which is in West Bengal, as the location with the closest population density to Binh Duong, the province in which KTV’s head office and tire production facility are located.⁷⁰ For Sailun, we have selected Hyderabad, which is in Andhra Pradesh, as the location with the closest population density to Tay Ninh, the province in which Sailun is located.⁷¹ Because this data was from 2019, we did not need to attempt to index the data to the POI.

IX. ANALYSIS OF PROGRAMS

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

⁶⁵ See Petitioner Benchmark Submission at Exhibit 5.

⁶⁶ See KTV Benchmark Submission at Appendix 2.

⁶⁷ See KTV Benchmark Rebuttal at Attachment S-1.

⁶⁸ See, e.g., *Shrimp from Vietnam* IDM at “Land Benchmarks.”

⁶⁹ *Id.*

⁷⁰ See Memorandum, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Placement of Additional Information on the Record,” dated concurrently with this memorandum (Additional Information Memorandum) at Attachments 1 and 2; see also KTV IQR at 5.

⁷¹ See Additional Information Memorandum at Attachments 1 and 2; see also Sailun IQR at 4.

A. Programs Preliminarily Determined to Be Countervailable

1. Tax Benefits for New Investments

The GOV reported that it provided corporate income tax preferences under Decree 218/2013/ND-CP (Decree 218), which included: (i) preferential corporate income tax rates; (ii) corporate income tax exemptions; and (iii) corporate income tax reductions.⁷² The GOV further reported that these preferences are aimed at supporting certain newly established investment projects of certain sectors or satisfying certain criteria set in Articles 15 and 16.⁷³

Article 15.1 of Decree 218 provides that an incentive tax rate of 10 percent within 15 years is applied to high-tech enterprises, agricultural enterprises applying high-tech, and the income of enterprises from the performance of a new investment projects meeting various criteria, including new investment projects in production that “has scale of investment capital of at least 6 trillion dong disbursed no later than 3 years after the issue of investment license and employs over 3,000 employees after 3 years at the latest since year of revenue.”⁷⁴ Article 16.1.a of Decree 218 provides a tax exemption for 4 years and a reduction of 50 percent of tax payable for the next 9 years for the income of enterprises eligible for benefits under Article 15.1.⁷⁵

The GOV and Sailun both reported that Sailun received tax benefits under this program.⁷⁶ KTV reported that it did not use this program.⁷⁷

We preliminarily determine that these tax benefits provide a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act and provide a benefit to Sailun in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We preliminarily determine that the income tax reductions are specific under section 771(5A)(D)(i) of the Act, because the subsidy is limited to an enterprise or group of enterprises (*i.e.*, those sectors entitled to special investment incentives in Articles 15 and 16 of Decree 218). To calculate the net subsidy rate we divided Sailun’s tax savings applicable to the tax return Sailun filed during the POI by the appropriate POI sales total, as described in the section above. On this basis, we preliminarily determine that Sailun received a countervailable subsidy of 2.78 percent.⁷⁸

2. Import Duty Exemptions on Imports of Raw Materials for Exporting Goods

Import duty reimbursements for imported raw materials for exporting goods are governed by the 107/2016/QH13 dated April 6, 2016 (Law 107), Decree 134/2016/ND-CP dated September 1, 2016 (Decree 134), Decree 08/2015/ND-CP dated January 21, 2015 (Decree 08) and Circular 38/2015/TT-BTC dated March 25, 2015 (Circular 38).⁷⁹ Under the program, import duty

⁷² See GOV IQR at Exhibit A-3.

⁷³ *Id.*

⁷⁴ *Id.* at Exhibit 5.

⁷⁵ *Id.*

⁷⁶ See GOV IQR at Exhibit A-3; and Sailun IQR at 8.

⁷⁷ See KTV IQR at 14.

⁷⁸ See Sailun Preliminary Calculation Memorandum.

⁷⁹ See GOV’s IQR at Exhibit A-4-1.

exemptions are provided for imported raw materials that are incorporated into exported goods, or directly used in the processing of such goods.⁸⁰ The amount of the exemption is equal to the amount of the duty corresponding to the value of imported materials actually used in the production of the finished goods that are exported. This amount is determined or declared at the time of reporting to Vietnam’s Customs agency on the use of imported raw materials for manufacture of exported goods, in accordance with customs regulations.⁸¹ In this regard, the GOV claimed that it has developed a mechanism to track: (1) the amount of imported material actually consumed for the production of export products, including scrap and discarded products that are lost in the production process (this is called the “consumption norm”); and (2) whether the exported products are actually exported.⁸²

The GOV and both respondents reported that both KTV and Sailun received import duty exemptions under this program.⁸³

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, Commerce has concluded that the GOV does not have in place a system to confirm which inputs are consumed in the production of the exported products and in what amounts, including a normal allowance for waste.⁸⁴

The GOV has provided a description of the multi-step process which Vietnam’s Customs authority employs to determine eligibility for duty exemptions.⁸⁵ The GOV explains that companies who import raw materials to produce exported goods are required to: (1) inform Vietnamese Customs about their production facilities, including the location where imported materials are stocked, finished export goods are stored, and manufacturing equipment and machinery are installed; (2) maintain records on norms of material consumption for each type of material, finished product design, or production process chart; and (3) prepare a report on the stock in and stock out for manufacturing, leftovers of imported materials, and supplies for each finished product code. This report must be reconciled to the accounting documentation of the producer. The producer uses this report and the norms therein to determine the amount of import duty subject to exemption.⁸⁶

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ See GOV IQR at Exhibit A-3; and Sailun IQR at 8.

⁸⁴ See, e.g., *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances*, 85 FR 40229 (July 6, 2020) (*Wind Towers from Vietnam*), and accompanying IDM at Comment 2; see also *Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 84 FR 14647 (April 11, 2019) (*Laminated Woven Sacks from Vietnam*) IDM at Comment 2.

⁸⁵ See GOV IQR at Exhibit A-4-1.

⁸⁶ *Id.*

The GOV also reported that “waste or scrap within the norm can be recycled or sold in the domestic market without paying the import duty” pursuant to Article 71 of Circular 38.⁸⁷ Specifically, the article states that “{w}hen rejects and waste within the norm for manufacture of goods for export (such as peanut shells) are sold domestically, customs procedures are exempt. However, taxes must be declared and paid to inland tax authorities in accordance with regulations of law on taxation.”⁸⁸ Therefore, producers may recover and sell “waste” material from imported inputs without paying duties on that waste.⁸⁹

The GOV further reported that both respondents underwent verifications by the Department of Post-Clearance Audit under this program and that, based on its findings, the Department of Post-Clearance Audit issued decisions on tax assessment to collect tax arrears, including import duties and value added taxes.⁹⁰ The GOV contended that this demonstrates that the GOV has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts.⁹¹

As stated in 19 CFR 351.519(a), “{t}he term ‘remission or drawback’ includes full or partial exemptions and deferrals of import charges.” Under 19 CFR 351.519(a)(1)(ii), in the case of exemptions of import charges upon export, “a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste ...” Under 19 CFR 351.519(a)(4)(i), the entire amount of such exemptions will confer a benefit, unless Commerce 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.⁹²

As explained above, record evidence shows that the GOV’s system does not account for resalable waste, because such waste is exempt from duties; therefore, we find this system to not meet the regulatory requirements under 19 CFR 351.519(a)(4)(i) for calculating a benefit on an amount other than the total amount of exempted duties. This is consistent with our findings in *Wind Towers from Vietnam* and *Laminated Woven Sacks from Vietnam*.⁹³ In fact, the GOV admitted that there “have been no substantive changes to the GOV’s system since 2017,” which was the POI for *Laminated Woven Sacks from Vietnam*.⁹⁴ On this basis, we preliminarily find

⁸⁷ See GOV IQR at 9.

⁸⁸ *Id.* at Exhibit A-4-2.

⁸⁹ *Id.*

⁹⁰ See GOV SQR1 at 1.

⁹¹ *Id.*

⁹² See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Steel from Thailand*), and accompanying IDM at “Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36(1)”; see also *Wind Towers from Vietnam* IDM at Comment 2.

⁹³ See *Wind Towers from Vietnam* IDM at Comment 2; and *Laminated Woven Sacks from Vietnam* IDM at Comment 2.

⁹⁴ See GOV SQR1 at 1.

that the import duty exemptions enjoyed by the respondents under this program confer a benefit equal to the total amount of the duties exempted, in accordance with section 771(5)(E) of the Act and 19 CFR 351.519(a)(4). Because the import duty exemptions on raw materials are contingent upon export performance, we preliminarily determine that they are specific in accordance with section 771(5A)(A) and (B) of the Act. We further preliminarily determine that the exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act.

Normally, we treat exemptions from indirect taxes and import charges on raw materials, where applicable, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and attribute the benefits to the year in which they were received. Thus, to calculate the net subsidy rate for the respondents, we determined the total value of duties exempted during the POI by multiplying the value of each exempted raw material imported during the POI by the applicable tariff rate but accounted for any duties actually paid. We then divided this amount by the total amount of POI export sales.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.52 percent *ad valorem* for KTV and a net countervailable subsidy rate of 0.03 percent *ad valorem* for Sailun.⁹⁵

3. *Exemption of Import Duties for Imports into Industrial Zones*

The GOV reported that import duty preferences were provided under Law 107/2016/QH13 (Law 107), and Decree 134/2016/ND-CP (Decree 134).⁹⁶ According to the GOV, Article 14 of Decree 134 provides the exemption for equipment and machinery imported to create fixed assets of investment projects subject to investment preferences.⁹⁷ Investment projects subject to investment preferences are provided in Appendices I and II to Decree 118/2015/ND-CP (Decree 118).⁹⁸

However, the GOV reported that Decree 118 had not been issued when the respondents were established.⁹⁹ With respect to KTV, the GOV reported that the applicable regulation was Decree 149/2005/ND-CP (Decree 149).¹⁰⁰ The GOV reported that Article 16.6 of Decree 149 provides that imported goods to create fixed assets of companies subject to investment preferences under Appendix I or Appendix II to Decree 149 are exempt from import duties.¹⁰¹ According to the GOV, these appendices identify sectors and areas eligible for investment preferences, and were amended by Appendices I and II of Decree 108/2006/ND-CP (Decree 108).¹⁰² The GOV reported that Decree 108 identified My Phuoc 3 Industrial Zone, where KTV's investment project is located, as an area with difficult socio-economic conditions and, thus, KTV was entitled to import duty exemptions on its imported goods to create fixed assets.¹⁰³

⁹⁵ See KTV Preliminary Calculation Memorandum; and Sailun Preliminary Calculation Memorandum.

⁹⁶ See GOV IQR at Exhibit A-5-1.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

With respect to Sailun, the GOV reported that the applicable regulation was Decree 87/2010/ND-CP (Decree 87).¹⁰⁴ The GOV reported that Article 12.6 of Decree 87 provides that imported goods to create fixed assets of companies subject to import duty preferences under Appendix I or located in areas subject to import duties preferences are exempt from import duties.¹⁰⁵ The GOV further reported that Article 12.18 of Decree 87 provides that areas subject to import duties preferences are the same areas subject to income tax preferences under Decree 124 (Decree 124).¹⁰⁶ According to the GOV, Sailun is located in Go Dau district, Tay Ninh province and thus falls within the list of areas subject to income tax preferences under Decree 124 and, thus, Sailun was entitled to import duty exemptions on its imported goods to create fixed assets.¹⁰⁷

The GOV and both respondents reported that both KTV and Sailun received import duty exemptions for imports into industrial zones during the AUL.¹⁰⁸

We preliminarily determine that these exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act. Because the exemptions are available only to enterprises in designated geographic regions, we preliminarily determine that they are specific in accordance with section 771(5A)(D)(iv) of the Act. Exemptions from import duties are normally treated as a recurring subsidy, except for duty exemptions on imports of plant and equipment, which are treated as non-recurring, pursuant to 19 CFR 351.524(b)(2).¹⁰⁹ Because the respondents received the duty exemption for imports of equipment and machinery, we treated this as a non-recurring subsidy and, therefore, we applied the “0.5 percent test,” as described under 19 CFR 351.524(b)(2). Further, we preliminarily determine that the program provides a benefit equal to the total amount of the duties exempted, in accordance with 19 CFR 351.519(a).

With respect to the benefits that the respondents received for imported factory equipment during the AUL that passed the “0.5 percent test,” we allocated the benefit to the POI.¹¹⁰ Accordingly, we divided the POI benefit received by the total sales of the respondents and then summed the individual rates for this program. On this basis, Commerce preliminarily determines a net countervailable subsidy rate of 0.04 percent *ad valorem* for KTV and a net countervailable subsidy rate of 0.01 percent *ad valorem* for Sailun.¹¹¹

4. Natural Rubber for LTAR

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*; see also KTV IQR at 15-16 and Sailun SQR at 1.

¹⁰⁹ See 19 CFR 351.524(c)(1).

¹¹⁰ See KTV Preliminary Calculation Memorandum and Sailun Preliminary Calculation Memorandum.

¹¹¹ *Id.*

Commerce is examining whether the GOV or other “authorities” within Vietnam provided KTV or Sailun with natural rubber for LTAR. Both respondents reported that they purchased natural rubber from unaffiliated parties during the POI.¹¹²

The GOV reported that it has only one state-owned company involved in processing natural rubber: VRG.¹¹³ In the Initial Questionnaire, we indicated that, “{i}f the GOV seeks to argue that any of these rubber producers are not an ‘authority, ‘ please submit the information requested in the Information Regarding Input Producers in Vietnam Appendix” to the Initial Questionnaire.¹¹⁴ The GOV did not refute that VRG is a state-owned company that produces natural rubber in the Information Regarding Input Producers in Vietnam Appendix to the Initial Questionnaire. Rather, the GOV reported that “{a}s indicated by the company’s name, {VRG} is a group, and the VRG owns other rubber producers in Vietnam, which are specified in Exhibit E-11 {of the GOB SQR1}. The producers of natural rubber to KTV and Sailun, identified as state-owned enterprises in the company’s responses are included on that list.”¹¹⁵ Accordingly, we preliminarily determine that VRG is an authority within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from VRG in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹¹⁶

With regard to specificity, we preliminarily determine that there is no evidence on the record indicating that VRG sells natural rubber to the PVT industry in a manner that is *de jure* specific, as described under section 771(5A)(D)(i) of the Act. However, section 771(5A)(D)(iii) of the Act provides that, where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist:

- (I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
- (II) An enterprise or industry is a predominant user of the subsidy.
- (III) An enterprise or industry receives a disproportionately large amount of the subsidy.
- (IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

Section 771(5A)(D)(iii) of the Act further provides that, in evaluating the factors set forth in subclauses (I), (II), (III), and (IV), Commerce shall take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation. The Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA) elaborates that “these additional criteria serve to inform the application of, rather than supersede or substitute for, the enumerated specificity factors;” that is, they “may provide a clearer context

¹¹² See KTV IQR at Exhibit 8-C and Sailun IQR at Exhibit P.F.1.3.

¹¹³ See GOV IQR at 27.

¹¹⁴ See Initial Questionnaire at Section II, page 9.

¹¹⁵ See GOV SQR1 at 8.

¹¹⁶ In its Pre-Preliminary Comments, the petitioner argued that “Commerce should apply an adverse inference to determine that all Vietnamese suppliers of natural rubber are authorities and countervail all rubber they have provided.” See Pre-Preliminary Comments at 11. We have not had time to consider this argument for this preliminary determination but we will consider it for the final determination.

within which the *de facto* factors would be analyzed” but are not *per se* “additional indicators of whether specificity exists.”¹¹⁷

In this investigation, we asked that the GOV provide information on the economic activities within the jurisdiction of the granting authority for each relevant program.¹¹⁸ The GOV reported that it “does not have available data for the number of establishments within the specific sectors as requested by {Commerce},” and that “to fully cooperate with {Commerce’s} investigation, the GOV provides in Exhibit A-5-5 the Statistical Summary Book of Viet Nam for 2019, which contains statistics and other information related to various industry sectors in Viet Nam.”¹¹⁹ The evidence on the record indicates that, for the purposes of our *de facto* specificity analysis, the Vietnamese economy is diversified. Specifically, the Statistical Summary Book of Vietnam indicates that many industries operate in Vietnam, including: agriculture, forestry and fishing; mining and quarrying; manufacturing; electricity, gas, steam and air conditioning supply; water supply, sewerage, waste management and remediation activities; construction; wholesale and retail trade, repair of motor vehicles and motorcycles; transportation and storage; accommodation and food service activities; information and communication; financial, banking, and insurance activities; real estate activities; professional, scientific, and technical activities; and others.¹²⁰ Based on this information, we preliminarily determine that the level of economic diversification in Vietnam does not detract from finding a program to be *de facto* specific where other information so indicates in accordance with section 771(5A)(D)(iii) of the Act (*e.g.*, where the number of recipients are limited in number).

With respect to the length of time that VRG has provided natural rubber in Vietnam, the GOV reported that VRG “began providing natural rubber to enterprises in Viet Nam when it began operations in 1995.”¹²¹ Thus, for the provision of natural rubber for LTAR, we preliminarily determine that the subsidy program has not been in operation for only a limited period of time.

The GOV reported that VRG provided natural rubber for the following industries and output during the POI: Tire, Mattress and Pillow, Gloves, Conveyor, Sports Balls and Children’s Toys, Spandex Thread, and Shoes and Shoe Soles.¹²² On this basis, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited.

As discussed in the “Input Benchmarks” section above, we are relying on an internal benchmark for determining the benefit from the provision of natural rubber for LTAR under section 771(5)(E)(ii) of the Act. To derive the benchmark prices, we included inland freight, where applicable, that would be incurred to deliver inputs to the respondents’ production facilities.¹²³ Additionally, we added VAT of 5 percent to the benchmark prices for inputs purchased during the POI.¹²⁴

¹¹⁷ See SAA, H.R. Doc. 103-316, vol 1 (1994) at 931.

¹¹⁸ See Initial Questionnaire at 19.

¹¹⁹ See GOV IQR at Exhibit A-4-1.

¹²⁰ *Id.* at Exhibit A-5-5.

¹²¹ See GOB SQ1 at 7.

¹²² See GOV IQR at 35.

¹²³ See KTV Preliminary Calculation Memorandum and Sailun Preliminary Calculation Memorandum.

¹²⁴ See GOV IQR at 33.

We compared these monthly benchmark prices to the purchase prices paid by KTV and Sailun for individual domestic transactions, including VAT and delivery charges. We determined the benefit as the difference between the benchmark prices and the prices reported. We divided the total benefits received by the appropriate sales denominators, as described in the “Subsidies Valuation” section above.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.11 percent *ad valorem* for Sailun;¹²⁵ we preliminarily determine that there is no measurable benefit for KTV.¹²⁶

5. Currency Undervaluation

The GOV reported that the State Bank of Vietnam (SBV) is the main authority handling foreign exchange activities in Vietnam. Through various decrees and laws, the government sets forth certain guidelines and procedural requirements that credit institutions, including private Vietnamese banks and foreign-owned banks, must follow. The SBV operates under a central rate mechanism that follows the State’s monetary goals and foreign exchange market situation.¹²⁷ The GOV states that credit institutions determine the USD/VND exchange rate within a three percent band.¹²⁸ Currently, under Vietnamese law, only authorized credit institutions (ACIs) defined as domestic commercial banks (established, organized in the form of joint stock companies or one-member limited liability companies with 100 percent capital owned by the State); domestic non-bank credit institutions (established, organized in the form of joint stock companies, limited liability companies); joint venture credit institutions; privately owned Vietnamese credit institutions; and 100 percent foreign-owned credit institutions—are permitted to carry out the activities of buying and selling foreign currency.¹²⁹ Only after an ACI receives approval from the State Bank of Vietnam is it allowed to engage in the foreign exchange activities listed in its license.¹³⁰ Through the SBV an ACI with a license to exchange currency is responsible for supplying and meeting the demand of the foreign exchange market within Vietnam.¹³¹

With respect to financial contribution, in prior proceedings, Commerce has found the Vietinbank and Vietcombank to be state-owned commercial banks (SOCBs).¹³² Furthermore, the record in this investigation confirms that Vietinbank and the Vietcombank are SOCBs with 64.46 percent and 74.8 percent majority government ownership respectively.¹³³ As stated in the Financial Sector Memorandum, state ownership and control has been observed at the highest level of SOCBs’ corporate structures. This has included many high-ranking government or Communist

¹²⁵ See Sailun Preliminary Analysis Memorandum.

¹²⁶ See KTV Preliminary Analysis Memorandum.

¹²⁷ See GOV IQR at Exhibit F-1.

¹²⁸ *Id.*

¹²⁹ *Id.* at Exhibit F-8.

¹³⁰ See GOV IQR at 40-42.

¹³¹ See GOV IQR at Exhibit F-2

¹³² See *Shrimp from Vietnam* IDM at 14 and *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 45811, 45816-7 (September 4, 2009)(unchanged in final; 75 FR 16428, April 1, 2010).

¹³³ See GOV’s IQR at Exhibit F-1.

Party of Vietnam (CPV) officials that serve on the board of directors in an official government capacity to actively manage the banks' daily activities and ensure they are consistent with GOV policies and objectives.¹³⁴ Moreover, the Financial Sector Memorandum explains that according to Vietcombank's annual report, these officials are "armed with the confidence and expectations of the Central Party" and together with the leaders of Agribank and Vietinbank work under the guidance and direction of the GOV and the SBV as principal managers of all aspects of the banks' operations.¹³⁵ Given the evidence from the record of this investigation, we find that the GOV is able to control the decisions of these SOCB banks through a CPV-appointed board of members and the banks are vested with government authority. Therefore, for all foreign currency exchange transactions involving the Vietinbank and Vietcombank, we preliminarily find a direct financial contribution by an "authority" under section 771(5)(B) of the Act in the form of a direct transfer of funds within the meaning of 771(5)(D)(i).

With respect to private banks, under section 771(5)(B)(iii) of the Act, a subsidy exists when, *inter alia*, a government "makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments," and a benefit is thereby conferred. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act states that, "the Administration intends that the 'entrusts or directs' standard shall be interpreted broadly," and "plans to continue its policy of not permitting the indirect provision of a subsidy to become a loophole when unfairly traded imports enter the United States and injure a U.S. industry."¹³⁶

In this case, the Vietnamese government has supported domestic manufacturers through an exchange rate policy that is directed by various laws and provisions. The Ordinance on Foreign Exchange Control: Article 3 of General Provisions: Policy of Vietnam on Foreign Exchange Control states:

"The State of Socialist Republic of Vietnam shall implement its policy on foreign exchange control in order to facilitate the participation of organizations and individuals in foreign exchange activities and in order to protect the legitimate interest of such participants, contributing to further economic development, achieving the objectives of the national monetary policy, raising the convertibility of the Vietnam dong, achieving the objective of using only Vietnamese dong in the territory of Vietnam, fulfilling the commitments of the Socialist Republic of Vietnam in the schedule for international economic integrations, enhancing the effectiveness of the State management of the foreign exchange and perfecting of foreign exchange control system in VN."¹³⁷

Pursuant to Ordinance No. 28/2005/PL-UBTVQH11, of December 13th, 2005, the State Bank of Vietnam's objective is to "carry out the purchase and sale of foreign currency on the domestic

¹³⁴ See Financial Sector Memorandum at Attachment 1, page 11.

¹³⁵ *Id.*

¹³⁶ See SAA, H.R. Doc. 103-316, vol 1 (1994) at 926.

¹³⁷ See Petition at Exhibit VI-53.

foreign currency market in order to achieve the objectives of the national monetary policy.”¹³⁸ Article 30 of this law defines the SBV involvement to be applicable to the Vietnam dong supply and demand. Specifically, Article 30 states “{t}he exchange rate mechanism applicable to the Vietnamese dong shall be determined on the basis of supply and demand for the foreign currency market as regulated by the State. The State Bank of Vietnam shall determine the exchange rate applicable to the Vietnamese dong in accordance with specific macro-economic objectives ...”¹³⁹ Through the government’s legislation, private banks, like GOV state-owned banks, must exchange USD for dong for any party wishing to do so, and the rates for that exchange must be within the SBV established rate of +/- 3 percent to +/-1 percent.¹⁴⁰ As noted above, the SBV sets the official exchange rate within this narrow band.¹⁴¹

Moreover, credit institutions authorized to provide foreign exchange services conduct foreign currency exchange for their customers in accordance with Article 7 of the Law on Credit Institutions.¹⁴² Article 39 of the Consolidated Ordinance on the Foreign Exchange states that authorized credit institutions are responsible for meeting the demand for foreign currency of the residential institutions or individuals for their payment of current transactions abroad.¹⁴³ Article 17 of Decree 70/2014/ND-CP stipulates that, “{w}ithin the existing amount of foreign currency, authorized credit institutions are responsible to satisfy the demand of residents and non-residents for foreign currency to perform current payment transactions, depending on the actual demand of each transaction.”¹⁴⁴ This requirement is again dictated under Article 17, which states that “authorized credit institutions are responsible to satisfy the demands of residents and non-residents for foreign currency to perform current payment transactions, depending on the actual demand for each transaction.”¹⁴⁵ Vietnamese law itself recognizes that the supply and demand for foreign currency is heavily influenced by a state-controlled market. The SBV regulates the exchange rate through the use of monetary policy and takes measures to control transactions on the foreign currency market.¹⁴⁶ In conjunction with the above laws, Ordinance No. 28/2005/PL-UBTVQH11, of December 13th, 2005 again restates that the credit institutions are responsible for satisfying the foreign currency demand for overseas payments of residents.¹⁴⁷ In addition to the direct financial contribution, we preliminarily find that through the GOV’s implementation of laws and decrees on foreign exchange it is entrusting or directing a private entity (*i.e.*, non-GOV owned banks) to exchange VND for USD within the narrow government regulated band. Therefore, we find that both the exchange of currency by authorities under section 771(5)(B) of the Act and the exchange of currency by private Vietnamese and/or foreign owned banks, entrusted or directed by the GOV under 771(5)(B)(iii) of the Act, constitute financial contributions in the form of direct transfers of funds to KTV and Sailun.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at Exhibit VI-49.

¹⁴¹ *Id.*

¹⁴² *See* GOV IQR at Exhibit F-8.

¹⁴³ *See* GOV IQR at Exhibit F-3

¹⁴⁴ *See* GOV IQR at Exhibit F-2.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at Exhibit VI-56.

¹⁴⁷ *Id.* at Exhibit VI-53.

In determining whether currency undervaluation by the government of Vietnam is specific, we considered 19 CFR 351.502(c) and preliminary find that the subsidy is predominantly used by the group of enterprises constituting the traded goods sector. We have based this finding on the responses provided by the GOV to our initial and supplemental questionnaires. In the GOV's responses, there are certain places where it was unable to provide the information we requested for our evaluation.¹⁴⁸ As a result, we have considered information placed on the record by Commerce, which reflects data submitted by the State Bank of Vietnam to the IMF.

In response to our initial and supplemental questionnaires, the GOV stated that the "State Bank does not collect data of USD capital inflows or USD trading by field and by sector."¹⁴⁹ As a result, we relied upon the available data regarding USD inflows to Vietnam as a proxy for USD currency conversions. Although our Initial Questionnaire requested that the GOV provide us with total USD inflow from the "traded goods sector," "the traded services sector and utilized FDI and inbound portfolio investment,"¹⁵⁰ in its response, the GOV reported values on a different basis as explained below. Following the GOV's initial currency response, Commerce placed IMF data on USD inflows to Vietnam on the record,¹⁵¹ and because this data was based on information reported by the State Bank of Vietnam, we asked the GOV to clarify in a supplemental questionnaire response whether this data was consistent with the values it had reported and to provide us with the values we had originally requested.¹⁵²

According to the GOV's response on October 19, 2020, "{t}he GOV understands that the {IMF's} data (*i.e.*, 21.49 billion USD) is based on preliminary data submitted to the IMF in April 2020, prior to the finalization and publication of the General Statistics Office data, which occurred in May-June 2020. As the Department indicates, these figures differ only 'slightly,' but nevertheless the GOV will carry out procedures to provide updated data to the IMF."¹⁵³ However, when asked to "report all original values requested including total USD inflow from the traded goods sector and the traded services sector" the government of Vietnam continued to report "net commodity trade."¹⁵⁴ Therefore, in order to conduct our analysis of whether the exchange of foreign currency is disproportionately or predominantly used by the traded goods sector, we have relied upon the IMF data on the record,¹⁵⁵ which the GOV concedes is based on information submitted by the GOV.¹⁵⁶

Based on the IMF data considered, we estimated the total proportion of USD inflows Vietnam has received in the POI through the following four major channels of exchange: (a) exports of goods, (b) exports of services, (c) various forms of portfolio and direct investment, and (d)

¹⁴⁸ See GOV IQR at Exhibit F-1; and GOV SQR2 at 5.

¹⁴⁹ *Id.*

¹⁵⁰ See Initial Questionnaire at Government Currency Undervaluation Appendix.

¹⁵¹ See Memorandum, "Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: International Monetary Fund and the Organisation for Economic Co-operation and Development Data," dated October 8, 2020 (IMF/OECD Memorandum) at Attachment 1.

¹⁵² See Commerce's Letter, "Countervailing Duty Investigation on Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam," dated October 8, 2020 at 1.

¹⁵³ See GOV SQR3 at 1.

¹⁵⁴ *Id.* at 3.

¹⁵⁵ See IMF/OECD Memorandum at Attachment 1.

¹⁵⁶ See GOV SQR3 at 1.

earned income from abroad. To add precision to the amount of USD inflows received from Vietnam's exports of goods, we discounted Vietnam's exports of goods value by the amount of intermediary imported inputs (based on OECD estimates) to arrive at a reasonable estimate of exports that earned foreign exchange.¹⁵⁷ Even after adjusting Vietnam's exports by its share on intermediary imported inputs, this analysis has found that among the four channels, the vast majority (71.94 percent) of USD inflows coming into Vietnam during the POI came from goods exports.¹⁵⁸ As a result, we preliminarily determine that enterprises that buy or sell goods internationally are the predominant users of the GOV's currency undervaluation subsidy, and, therefore, this program is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act.

With respect to benefit, our analysis is guided by 19 CFR 351.528. Pursuant to 19 CFR 351.528(a), Commerce considers whether a benefit is conferred from the exchange of currency under a unified exchange rate system only if that currency is undervalued. In determining whether there is undervaluation, we will normally "take into account the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER)."¹⁵⁹ Pursuant to 19 CFR 351.528(a)(2), we normally will make an affirmative finding of undervaluation only if there has been government action on the exchange rate that contributes to that undervaluation. Next, pursuant to 19 CFR 351.528(b)(1), after making an affirmative finding of undervaluation, we will determine the existence of a benefit after examining the difference between the "nominal, bilateral United States dollar rate consistent with the equilibrium REER," and the "actual nominal, bilateral United States dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate." Consistent with 19 CFR 351.528(c), we requested that "the Secretary of the Treasury provide its evaluation and conclusion as to the determinations" under 19 CFR 351.528(a) and (b)(1).

In its August 24, 2020 response to our request,¹⁶⁰ Treasury reported that the VND was undervalued during 2019, because there was a gap between Vietnam's REER and its equilibrium REER.¹⁶¹ Treasury also reported its finding that "on a bilateral basis, {it} assesses that the Government of Vietnam's actions on the exchange rate had the effect of undervaluing the dong vis-à-vis the U.S. dollar by 4.7%."¹⁶² Based on this evidence, we preliminarily determine that Vietnam's currency vis-à-vis the U.S. dollar was undervalued during the period of investigation by 4.7 percent.

With respect to government action on the exchange rate within the meaning of 19 CFR 351.528(a)(2), Treasury also determined that Vietnam's undervaluation in the POI was

¹⁵⁷ See IMF/OECD Memorandum at Attachment 2.

¹⁵⁸ See Memorandum, "Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Calculation Based on USD Inflows Calculation," dated concurrently with this memorandum.

¹⁵⁹ See 19 CFR 351.528(a)(1).

¹⁶⁰ See Treasury Response.

¹⁶¹ *Id.*

¹⁶² "The uncertainty range around this assessment, based on one standard error, spans from bilateral undervaluation of 4.2% to 5.2%." See Treasury Response.

exclusively a result of GOV action.¹⁶³ It did so by analyzing the GOV's purchase and sales of foreign exchange reserves over the POI.¹⁶⁴ Using a complex and interdependence country economic model, where the sale of foreign exchange reserves in one country affected changes in the stock of foreign exchange in more than 50 other considered countries, Treasury was able to estimate that all of the undervaluation of the dong was attributable to changes in the stock of Vietnam's foreign exchange reserves.¹⁶⁵ Consequently, we preliminarily determine that all of Vietnam's 4.7 percent undervaluation vis-à-vis the U.S. dollar in the POI was attributable to government action.

For each POI currency exchange transaction of USD to VND, KTV¹⁶⁶ and Sailun¹⁶⁷ reported the total value of USD exchanged, the exchange rate used for each of these transactions, and the authorized credit institution which processed the currency exchange transaction. In order to determine the benefit provided to respondents by this currency undervaluation in a manner consistent with 19 CFR 351.528(b)(2), we calculated "the difference between the amount of currency the firm received in exchange for United States dollars and the amount of currency that firm would have received absent the difference referred to in paragraph (b)(1) of this section" by applying the 4.7 percent undervaluation reported by Treasury to each currency exchange transaction reported by KTV and Sailun during the POI. For each company, we then aggregated the total benefits in USD based on the sum of these individual transactional during the POI.¹⁶⁸

Using this benefit as a numerator, we then calculated a countervailable subsidy rate for the exchanges of currency by dividing the benefits obtained by each respondent during the POI by that respondent's total sales conducted in USD. On this basis, Commerce preliminarily determines a net countervailable subsidy rate of 1.69 percent *ad valorem* for KTV and a net countervailable subsidy rate of 1.16 percent *ad valorem* for Sailun during the POI.¹⁶⁹

6. *Preferential Rent for Areas with Difficult Socio-Economic Conditions*

KTV leases the land on which its head office and tire-production plant is located from an entity¹⁷⁰ the GOV reported is majority owned by the Binh Duong Provincial People's Committee (the GOV further stated that it does not argue that this entity is not an authority).¹⁷¹ KTV further reported that it leases the land on which its natural-rubber production facility is located from the Natural Resources and Environment Department of Binh Duong Province.¹⁷² Sailun leases its land from an entity which the GOV reported is majority owned by the GOV.¹⁷³ Thus, all of the land-use rights leased by both respondents were provided by government providers.

¹⁶³ See Treasury Response.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See KTV IQR at Appendix 9-A.

¹⁶⁷ See Sailun IQR at Exhibit P.G.5.

¹⁶⁸ See calc memo.

¹⁶⁹ See calc memo.

¹⁷⁰ See KTV IQR at 34.

¹⁷¹ See GOV SQR1 at 31.

¹⁷² See KTV IQR at 34.

¹⁷³ See GOV IQR at 15-16 and GOV SQR1 at Exhibit E-12.

The GOV reported that, under Article 4 of Decree 46/2014/ND-CP (Decree 46), the annual land rent unit price equals a ratio (expressed as a percentage) times land price.¹⁷⁴ The GOV explained that this ratio is normally one percent, with certain exceptions.¹⁷⁵ One such circumstance is for land in “urban centers, commercial and service centers, traffic hubs, and residential areas that have special profitability and have advantages in using land for production, business, and commerce;” for such land, the ratio is not to exceed 3 percent.¹⁷⁶ The other circumstance is for land in “isolated, remote, high-mountain areas, islands; areas with difficult socioeconomic conditions; areas with extremely difficult socio-economic conditions; land used for agricultural production, forestry, aquaculture or salt making; land used as production and business ground for projects in sectors subject to investment encouragement; and areas specially encouraged to invest in accordance with law;” for such land, the ratio is not to be less than 0.5 percent.¹⁷⁷

Decree 46, however, was issued after the respondents entered into their leases.¹⁷⁸ KTV explained that it received rent exemptions for its head office and tire-production facility for the first five years of the lease pursuant to Ministry of Finance Decision 189/2000/QD-BTC (Decision 189).¹⁷⁹ We preliminarily determine that these rent exemptions were recurring subsidies in accordance with 19 CFR 351.524(c) and that KTV received no benefit attributable to the POI for these exemptions, in accordance with 19 CFR 351.524(b)(2). However, Decision 189 indicates the minimum and maximum rents applicable to various types of land (*i.e.*, urban, non-urban) and provides for multipliers, called “co-efficients,” which are similar to the ratios the GOV described with respect to Decree 46, except that these co-efficients are always one or greater.¹⁸⁰ Moreover, Article 3.1.2 of Decree 189 provides that, with respect to “urban land in areas with specially difficult socioeconomic conditions, the rate of rent shall be equal to fifty (50) per cent of the rate stipulated in clause 1.1 of this article.”¹⁸¹ Article 3.1.2 of Decree 189 further provides that, “{i}n the case of townships in areas with difficult socio-economic conditions or specially difficult socio-economic conditions, the applicable rate of rent shall be the minimum of the rate framework stipulated in clause 1.1 of this article, and the co-efficients shall not be applied.”¹⁸²

Based on this information, we preliminarily determine that the GOV provides preferential rent to areas with difficult socio-economic conditions or specially difficult socio-economic conditions. Appendix 1b of Decree 189 lists the areas with difficult socio-economic conditions or specially difficult socio-economic conditions;¹⁸³ the townships where the lands leased by KTV and Sailun are located appear in the list of areas with difficult socio-economic conditions, with the exception of KTV’s natural-rubber plant.¹⁸⁴ Accordingly, we preliminarily determine that the preferential rents available to Sailun and to KTV for the land on which its head office and tire

¹⁷⁴ See GOV SQR1 at Exhibit G-11.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* See also KTV IQR at Appendices 13-B and 13-D and Sailun IQR at Exhibits P.B.1 and P.B.2.

¹⁷⁹ See KTV IQR at 35.

¹⁸⁰ *Id.* at Exhibit 13-H.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See KTV IQR at Appendices 13-B and 13-D and Sailun IQR at Exhibits P.B.1 and P.B.2.

production facility are located are specific within the meaning of section 771(5A)(D)(iv) of the Act. Moreover, we preliminarily determine that the preferential rents constitute a financial contribution in the form of the provision of a good (*i.e.*, land) within the meaning of section 771(5)(D)(iii) of the Act.

We preliminarily determine that this program provides a benefit equal to the difference between the market rate for rent in the locality and the actual rent paid pursuant to section 771(5)(E) of the Act and 19 CFR 351.511(a)(1). Because both KTV and Sailun pre-paid portions of their rents, we have attributed the lump-sum pre-paid portions over the life of the lease and added that figure to the rent actually paid during the POI and divided the sum by the area of the lease to calculate per-square-meter annual rent figures. To calculate the per-square-meter benefit, we compared the per-square-meter annual rent figures to the benchmarks described in “Land Benchmarks,” above. To calculate the total benefits received, we multiplied the per-square-meter benefits by the areas and summed the products for each respondent. Because KTV’s natural-rubber plant does not appear to be in an area with difficult socio-economic conditions, we have preliminarily not included the land associated with that lease in our calculation of the total benefit received by KTV. We divided the total benefits the respondents received by the appropriate sales denominators, as described in the “Subsidies Valuation” section above.

On this basis, Commerce preliminarily determines a net countervailable subsidy rate of 7.41 percent *ad valorem* for KTV and a net countervailable subsidy rate of 2.14 percent *ad valorem* for Sailun.¹⁸⁵ In addition, please see KTV Preliminary Analysis Memorandum for further proprietary analysis which cannot be discussed in this memorandum.

7. Other Subsidies

Other Income Tax Preferences

KTV reported that it received income tax exemptions under Articles 34 and 35 of Decree No. 24/2007/ND-CP (Decree 24).¹⁸⁶ The GOV reported that KTV received its income tax exemptions under Decree 152/2004/ND-CP (Decree 152), which the GOV indicated was an amendment to Decree 164/2003/ND-CP (Decree 164) on the basis of the location of its investment project in an industrial zone.¹⁸⁷ The GOV clarified that “the corporate income tax preferences and the criteria for receiving these preferences under Decree 152/2004/ND-CP and Decree 24/2007/ND-CP are the same.”¹⁸⁸

The GOV also reported that Decree 152 and Decree 164 ceased their effects on March 21, 2007, and thus were not applicable during the POI.¹⁸⁹ However, the GOV reported that enterprises having an investment project eligible for income tax preferences provided in the regulations applicable at the issuance date of the investment license and at the same time eligible for income tax preferences under the amended regulations may choose to benefit either from preferences

¹⁸⁵

See KTV Preliminary Analysis Memorandum and Sailun Preliminary Analysis Memorandum..

¹⁸⁶ *See* KTV IQR at 32.

¹⁸⁷ *See* GOV IQR at 52.

¹⁸⁸ *See* GOV SQR1 at 27.

¹⁸⁹ *See* GOV IQR at 52.

under the old regulations or under the new regulations.¹⁹⁰ Thus, the GOV averred, while Decree 152 and 164 were not applicable during the POI, KTV's income tax benefits received during the POI are based on these Decrees.¹⁹¹

According to the GOV, KTV qualified for corporate income tax preferences under Article 1.4 of Decree 152 because it is located in Phuoc My 3 Industrial zone, Binh Duong province.¹⁹² Therefore, we preliminarily determine that these exemptions are specific in accordance with section 771(5A)(D)(iv) of the Act because they are available only to enterprises in designated geographic regions. Furthermore, we preliminarily determine that these exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act. To calculate the net subsidy rate, we divided KTV's tax savings applicable to the tax return KTV filed during the POI by the appropriate POI sales total, as described in the section above. On this basis, we preliminarily determine that KTV received a net countervailable subsidy rate of 0.42 percent.¹⁹³

B. Programs Preliminarily Determined Not to Be Used During the POI

1. *Income Tax Preferences for Companies in Special Zones (Decree No. 124/2008/ND-CP)*
2. *Income Tax Preferences for Exporters*
3. *Exemption of Import Duties for Foreign-Invested Enterprises (FIEs)*
5. *Exemptions or Reductions of Rent for Encouraged Enterprises*
6. *Exemption or Reduction of Rent for Exporters*
7. *Exemption or Reduction of Rent for FIEs*
8. *Preferential Rent for Enterprises Located in Special Zones*
9. *Export Promotion Grants*
10. *Export Credits from the Vietnam Development Bank*
11. *Interest Rate Support from the Vietnam Development Bank*
12. *Export Factoring by State-Owned Commercial Banks (SOCB)*
13. *Guarantees for Export Activities*
14. *Preferential Lending to Exporters by SOCB*
15. *Investment Support (Decree 51, Article 30)*
16. *Land Use Rights for LTAR for Encouraged Industries*
17. *Exemption of Import Taxes on Imports of Iron and Steel for Tire Production*
18. *Policy Lending for Industries Supporting Backbone Industries*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at Exhibit G-1.

¹⁹³ See KTV Preliminary Calculation Memorandum.

X. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

10/30/2020

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance