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Investigation
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March 25, 2024

MEMORANDUM TO: Abdelali Elouaradia
Deputy 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 of the Countervailing Duty Investigation of Frozen
Warmwater Shrimp from the Socialist Republic of Vietnam

I. SUMMARY

The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of frozen warmwater shrimp (shrimp) from the Socialist Republic of Vietnam (Vietnam), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On October 25, 2023, the American Shrimp Processors Association (the petitioner) filed a petition with Commerce seeking the imposition of countervailing duties (CVD) on imports of shrimp from Vietnam.¹ On November 14, 2023, Commerce initiated a CVD investigation on shrimp from Vietnam.²

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam," dated October 25, 2023 (Petition). We note that the Petition was accompanied by antidumping duty (AD) petitions concerning imports of shrimp from Ecuador and Indonesia.

² See Checklist, "Countervailing Duty Investigation Initiation Checklist: Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated November 14, 2023 (Initiation Checklist); and *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 88 FR 81053 (November 21, 2023) (*Initiation Notice*).



In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.³ No interested party commended on the scope of the investigation as it appeared in the *Initiation Notice*.

B. Respondent Selection

In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that it intended to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for entries of shrimp from Vietnam for the relevant Harmonized Tariff Schedule of the United States (HTSUS) subheadings during the period of investigation (POI), January 1, 2022, through December 31, 2022.⁴ On November 13, 2023, we released the CBP data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁵

In November 2023, we received comments on the CBP data from Soc Trang Seafood Joint Stock Company (STAPIMEX) and Minh Phu Seafood Joint Stock Corporation (Minh Phu). On November 30, 2023, we selected STAPIMEX and Thong Thuan Company Limited (Thong Thuan) for individual examination in this investigation.⁶

On January 5, 2024, Minh Phu reiterated its request to be selected as a mandatory respondent.⁷ On January 18, 2024, we notified Minh Phu that it would not be selected as an additional mandatory respondent.⁸

On January 22, 2024, under section 771B of the Act, Commerce selected Giang Hong Phuong (Mr. Giang), the largest unaffiliated farmer who supplied STAPIMEX with shrimp during the POI, as a respondent in this investigation, as STAPIMEX purchased the majority of its raw shrimp from unaffiliated suppliers.⁹

C. Questionnaires and Responses

On December 4, 2023, Commerce issued the Initial Questionnaire to the Government of Vietnam (GOV) and instructed the GOV to forward the questionnaire to STAPIMEX and Thong Thuan.¹⁰ On the same day, Commerce issued the Sourcing Questionnaire to STAPIMEX and Thong Thuan regarding their sources of fresh shrimp.¹¹ On December 14, 2023, STAPIMEX and

³ See *Initiation Notice*.

⁴ *Id.*, 88 FR at 81056.

⁵ See Memorandum, “Release of U.S. Customs and Border Protection Entry Data,” dated November 13, 2023.

⁶ See Memorandum, “Respondent Selection,” dated November 30, 2023.

⁷ See Minh Phu’s Letter, “MPG’s Request For Individual Examination,” dated January 5, 2024.

⁸ See Commerce’s Letter, “Response to Minh Phu’s Request for Individual Examination,” dated January 18, 2024.

⁹ See Commerce’s Letter, “Questionnaire to Unaffiliated Supplier of Soc Trang Seafood Joint Stock Company,” dated January 22, 2024.

¹⁰ See Commerce’s Letter, “Countervailing Duty Questionnaire,” dated December 4, 2023 (Initial Questionnaire).

¹¹ See Commerce’s Letters, “Questionnaire on Sources of Raw and/or Frozen Warmwater Shrimp,” dated December 4, 2023 (Sources Questionnaire).

Thong Thuan submitted timely responses to the Sources Questionnaire.¹² On December 18, 2023, Commerce also received timely responses from both companies to the affiliated companies portion of the Initial Questionnaire.¹³ On January 4, 2024, Thong Thuan notified Commerce that it would not participate in this investigation.¹⁴

On January 8, 2024, after receiving information regarding suppliers, Commerce issued a supplemental questionnaire to STAPIMEX regarding its suppliers of raw shrimp.¹⁵ On January 10, 2024, STAPIMEX submitted its response to the supplemental questionnaire.¹⁶ On January 22, 2024, under section 771B of the Act, Commerce issued a questionnaire to Mr. Giang.¹⁷ On the same day, Commerce also notified the GOV that it should provide a response to section II of the Initial Questionnaire regarding Mr. Giang.¹⁸ On January 24, 2024, the GOV timely responded to section II of the Initial Questionnaire.¹⁹ On January 25, 2024, STAPIMEX timely responded to the remaining portions of section III of the Initial Questionnaire.²⁰ On February 15, 2024, Mr. Giang timely responded to the first section of the Supplier Questionnaire.²¹ On February 21, 2024, Mr. Giang timely responded to section III of the Supplier Questionnaire,²² and the GOV timely responded to section II of the Initial Questionnaire regarding Mr. Giang.²³

Commerce issued supplemental questionnaires to STAPIMEX, Mr. Giang, and the GOV from January through March 2024.²⁴ In February and March 2024, the GOV timely responded to

¹² See STAPIMEX's Letter, "Response by Soc Trang Seafood Joint Stock Company (Stapimex): Questionnaire Requesting Information on Suppliers of Raw and Frozen Shrimp," dated December 14, 2023; *see also* Thong Thuan's Letter, "Response to the Questionnaire on Sources of Raw Shrimp," dated December 14, 2023.

¹³ See STAPIMEX's Letter, "Response by Soc Trang Seafood Joint Stock Company (Stapimex): Questionnaire Requesting Information on Affiliated Companies," dated December 18, 2023 (STAPIMEX's Affiliated QR); *see also* Thong Thuan's Letter, "Affiliated Companies Questionnaire Response," dated December 18, 2023.

¹⁴ See Thong Thuan's Letter, "Notice of Intent Not to Participate," dated January 4, 2024 (Thong Thuan's Withdrawal Letter).

¹⁵ See Commerce's Letter, "Sources Questionnaire Supplemental," dated January 8, 2024.

¹⁶ See STAPIMEX's Letter, "Soc Trang Seafood Joint Stock Company (Stapimex): Response to Supplemental Sources Questionnaire," dated January 9, 2024.

¹⁷ See Commerce's Letter, "Questionnaire to Unaffiliated Supplier of Soc Trang Seafood Joint Stock Company," dated January 22, 2024 (Supplier Questionnaire).

¹⁸ See Commerce's Letter, "Directions to Respond to the Questionnaire Regarding an Unaffiliated Supplier of Raw Shrimp," dated January 22, 2024.

¹⁹ See GOV's Letter, "GOV's Initial Questionnaire Response," dated January 24, 2024 (GOV's January 24, 2024 IQR).

²⁰ See STAPIMEX's Letter, "Soc Trang Seafood Joint Stock Company (Stapimex): Response to Initial Questionnaire," dated January 25, 2024 (STAPIMEX's Section III Response).

²¹ See Mr. Giang's Letter, "Response to Section II of the Initial Questionnaire by Giang Hong Phuoc, Supplier to Stapimex," dated February 15, 2024.

²² See Mr. Giang's Letter, "Response by Mr. Giang Hong Phuoc, supplier of raw shrimp to Soc Trang Seafood Joint Stock Company (Stapimex) to Section III of the Initial Questionnaire," dated February 21, 2024 (Mr. Giang's February 21, 2024 IQR).

²³ See GOV's Letter, "GOV's Supplier Questionnaire Response," dated February 21, 2024.

²⁴ See Commerce's Letters, "Section III Supplemental Questionnaire," dated February 1, 2024; "Section II Supplemental Questionnaire," dated February 6, 2024; "Supplier Supplemental Questionnaire," dated February 27, 2024; "STAPIMEX Supplemental Questionnaire," dated March 1, 2024; and "Section II and New Subsidy Allegation Supplemental Questionnaire," dated March 4, 2024.

Commerce’s supplemental questionnaires.²⁵ In February and March 2024, STAPIMEX and Mr. Giang timely responded to Commerce’s supplemental questionnaires.²⁶ We intend to issue an additional supplemental questionnaire to the GOV regarding several programs listed in the “Programs Deferred to a Post-Preliminary Determination” section below, as well as to STAPIMEX and Mr. Giang regarding certain programs.

D. Postponement of the Preliminary Determination

On November 27, 2023, the petitioner requested that Commerce postpone the preliminary determination of this investigation.²⁷ Commerce granted the petitioner’s request, and, on December 7, 2023, we postponed the date of the preliminary determination until March 25, 2024, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).²⁸

E. Period of Investigation

The POI is January 1, 2022, through December 31, 2022.

F. New Subsidy Allegations

On January 12, 2024, the Ad Hoc Shrimp Trade Action Committee (AHSTAC) filed four new subsidy allegations (NSAs).²⁹ On February 5, 2024, Commerce initiated an investigation on the four alleged new programs. On February 7, 2024, Commerce issued questionnaires to STAPIMEX and the GOV related to these programs.³⁰ On February 14, 2024, the petitioner filed two additional NSAs.³¹ On February 23, 2024, Commerce initiated an investigation on these two alleged new programs and issued questionnaires to STAPIMEX, Mr. Giang, and the GOV related to the programs.³² On February 28, 2024, the GOV, STAPIMEX, and Mr. Giang

²⁵ See GOV’s Letters, “GOV’s Section II Supplemental Questionnaire Response,” dated February 27, 2024 (GOV’s February 27, 2024 SQR); and “GOV’s Section II and New Subsidy Allegation Supplemental Questionnaire Response,” dated March 15, 2024 (GOV’s March 15, 2024 SQR).

²⁶ See STAPIMEX’s Letters, “Response by Soc Trang Seafood Joint Stock Company (Stapimex) to Supplemental Questionnaire,” dated February 16, 2024 (STAPIMEX’s February 16, 2024 SQR) and “Response by Soc Trang Seafood Joint Stock Company (Stapimex) to the Second Supplemental Questionnaire,” dated March 12, 2024 (STAPIMEX’s March 12, 2024 SQR); *See also* Mr. Giang’s Letter, “Response by Mr. Giang Hong Phuong to Supplemental Questionnaire,” dated March 18, 2024.

²⁷ See Petitioner’s Letter, “Request to Extend the Preliminary Determination,” dated November 27, 2023.

²⁸ See *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 88 FR 85216 (December 7, 2023).

²⁹ See AHSTAC’s Letter, “New Subsidy Allegations,” dated January 12, 2024.

³⁰ See Memorandum, “Initiation of Investigation of New Subsidy Programs,” dated February 5, 2024; *see also* Commerce’s Letters, “New Subsidy Allegations Questionnaire,” dated February 7, 2024. Commerce instructed STAPIMEX in its letter to forward the questionnaire to Mr. Giang.

³¹ See Petitioner’s Letter, “New Subsidy Allegations,” dated February 14, 2024.

³² See Memorandum, “Initiation of Investigation of Additional New Subsidy Programs,” dated February 23, 2024; *see also* Commerce’s Letter, “Additional New Subsidy Allegations Questionnaire,” dated February 23, 2024.

timely responded to the first NSA questionnaire.³³ On March 15, 2024, the GOV, STAPIMEX, and Mr. Giang timely responded to the additional NSA questionnaire.³⁴ Commerce intends to issue a supplemental NSA questionnaire to the GOV. Commerce intends to issue a post-preliminary determination regarding certain alleged NSAs, as well as certain other programs. See the “Programs Deferred to a Post-Preliminary Determination” section below for the list of these programs.

G. Alignment

On February 22, 2024, the petitioner requested that Commerce align the date of the final CVD determination with that of the final AD determinations.³⁵ Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner’s request, we are aligning the final CVD determination in this investigation with the final determinations in the companion AD investigations of shrimp from Ecuador and Indonesia. Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which is currently scheduled to be issued no later than August 5, 2024.

III. SCOPE COMMENTS

In accordance with the preamble to Commerce’s regulations,³⁶ in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.³⁷ We did not receive any comments on the scope of the investigation.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are shrimp from Vietnam. For a full description of the scope of this investigation, see this memorandum’s accompanying *Federal Register* notice at Appendix I.

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 December 14, 2023, the ITC published a preliminary determination that there is a

³³ See GOV’s Letter, “GOV’s New Subsidy Allegations Questionnaire Response,” dated February 28, 2024 (GOV’s February 28, 2024 NSAQR); see also STAPIMEX’s Letter, “Response by Soc Trang Seafood Joint Stock Company (Stapimex) to NSA (newly submitted allegations) Questionnaire,” dated February 28, 2024 (STAPIMEX’s February 28, 2024 NSAQR); and Mr. Giang’s Letter, “Response by Mr. Giang Hong Phuong, supplier of raw shrimp to Soc Trang Seafood Joint Stock Company (Stapimex) to NSA Questionnaire,” dated February 28, 2024.

³⁴ See GOV’s Letter, “GOV’s Additional New Subsidy Allegations Questionnaire Response,” dated March 15, 2024; see also STAPIMEX’s Letter, “Response by Soc Trang Seafood Joint Stock Company (Stapimex) to Additional NSA (newly submitted allegations) Questionnaire,” dated March 15, 2024; and Mr. Giang’s Letter, “Response by Mr. Giang Hong Phuong to Additional NSA (newly submitted allegations) Questionnaire,” dated March 15, 2024.

³⁵ See Petitioner’s Letter, “Request for Alignment,” dated February 22, 2024.

³⁶ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

³⁷ See *Initiation Notice*, 88 FR at 81054.

reasonable indication that an industry in the United States is materially injured by reason of imports of shrimp from, *inter alia*, Vietnam.³⁸

VI. ANALYSIS OF VIETNAM'S FINANCIAL SYSTEM

On December 4, 2023, Commerce placed on the record of this investigation the memorandum, "Review of Vietnam's Financial Sector for Countervailing Duty (CVD) Benchmarking Purposes," dated May 12, 2020.³⁹ This information describes how the GOV uses its control of the banking sector, interest rate controls, policy, administrative guidance, *etc.*, to set or influence lending and deposit interest rates.⁴⁰ Specifically, this information describes how Vietnamese state ownership or control of banks within the domestic market leads to further distortions within the Vietnamese financial markets, and prevents Commerce from using those interest rates in its CVD analysis.⁴¹ The GOV requested that Commerce revise the findings of the Financial System Analysis Memorandum, and in its supplemental questionnaire responses, filed a narrative and documentation to support its request, as well as more documentation regarding state-owned commercial banks (SOCBs).⁴² Given the complexity of the issues addressed in the GOV's request and the volume of submissions the GOV filed on the administrative record, Commerce is unable to make a determination on this issue for the preliminary determination. Moreover, we note that this issue is relevant to Commerce's ongoing changed circumstances review (CCR) of Vietnam's non-market economy (NME) status.⁴³ Therefore, Commerce is postponing any determination regarding the distortion of Vietnam's financial sector and the countervailability of loans received from SOCBs under the following programs until after the completion of the CCR of Vietnam's NME status:

1. Export Factoring by SOCBs
2. Guarantees for Export Activities from SOCBs
3. Preferential Lending to Exporters by SOCBs
4. Agribank Support for Organic Agriculture

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly

³⁸ See *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam*, 88 FR 86677 (December 14, 2023).

³⁹ See Memorandum, "Analysis of Vietnam's Financial System," dated December 4, 2023 (Financial System Analysis Memorandum).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See GOV's January 24, 2024 IQR at 3; see also GOV's February 27, 2024 SQR at 1-22 and Exhibits A-Banking 3 through A-Banking 51; and GOV's March 15, 2024 SQR at 3-4 and Exhibit SQ-5.1.

⁴³ See *Raw Honey from the Socialist Republic of Vietnam: Initiation of Antidumping Duty Changed Circumstances Review*, 88 FR 74152 (October 30, 2023).

impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."⁴⁴ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁴⁵ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the Act does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."⁴⁶ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability standard" does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁴⁷ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.⁴⁸ Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce makes an adverse inference.⁴⁹

⁴⁴ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁴⁵ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 870.

⁴⁶ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁴⁷ *Id.*, 337 F.3d at 1382.

⁴⁸ *Id.*

⁴⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise.”⁵⁰ It is Commerce’s practice to consider information to be corroborated if it has probative value.⁵¹ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁵² However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁵³ Furthermore, Commerce is not required to corroborate any countervailable subsidy rate applied in a separate segment of the same proceeding.⁵⁴

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁵⁵

B. Application of AFA: Thong Thuan

As noted in the “Background” section above, Thong Thuan, a mandatory respondent in this investigation, notified Commerce of its intent to not participate.⁵⁶ As such, Commerce did not receive a complete response from Thong Thuan to section III of the Initial Questionnaire. Therefore, we preliminarily determine that Thong Thuan withheld necessary information that Commerce requested, failed to provide information within the established deadlines, and significantly impeded this proceeding by failing to respond to Commerce’s Initial Questionnaire. Thus, we are relying on the facts otherwise available in making our preliminary determination with respect to Thong Thuan, pursuant to sections 776(a)(2)(A)-(C) of the Act.

Moreover, we preliminarily determine that an adverse inference is warranted in selecting from the facts available, pursuant to section 776(b) of the Act, for Thong Thuan because it ceased participating in this investigation.⁵⁷ Thus, Thong Thuan did not cooperate to the best of its ability to comply with a request for information in this investigation. Accordingly, we preliminarily find that the application of AFA is warranted to ensure that Thong Thuan does not

⁵⁰ See, e.g., SAA at 870.

⁵¹ *Id.*

⁵² *Id.* at 869.

⁵³ *Id.* at 869-70.

⁵⁴ See section 776(c)(2) of the Act.

⁵⁵ See section 776(d)(3) of the Act.

⁵⁶ See Thong Thuan’s Withdrawal Letter.

⁵⁷ *Id.*

obtain a more favorable result by failing to cooperate than if it had fully complied with Commerce's requests for information.

As facts otherwise available with an adverse inference, we find that Thong Thuan used all the programs alleged or self-reported in this proceeding,⁵⁸ and that these programs confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice. We summed the program rates to determine the AFA rate applied to Thong Thuan.

Selection of the AFA Rate

It is Commerce's practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country. When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.⁵⁹ Accordingly, when selecting AFA rates, if we have cooperating respondents, as in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated above zero rate for the identical program. If there is no identical program for which we calculated a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if the identical program was used in another CVD proceeding involving the same country and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁶⁰ If no such rate exists, we then determine whether there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.⁶¹

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act, which states that, when applying an adverse inference in selecting from the facts otherwise available, we may: (i) "use a countervailable subsidy rate applied for the same or similar program in a {CVD} proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that {we} consider {} reasonable to

⁵⁸ See Appendix.

⁵⁹ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying Issues and Decision Memorandum (IDM) at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁶⁰ For purposes of selecting AFA program rates, we normally treat rates of less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at 12-13.

⁶¹ See *Shrimp from China* IDM at 13-14.

use.” Thus, section 776(d)(1)(A) of the Act expressly allows for our existing practice of using an AFA hierarchy in selecting a rate “among the facts otherwise available” in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that we “may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.”⁶² No legislative history accompanied this particular provision. Accordingly, we are left to interpret this “evaluation by the administering authority of the situation” language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

The Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.⁶³

In applying the AFA rate provision, it is well established that, when selecting the rate from among possible sources, we seek to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁶⁴ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable

⁶² See section 776(d)(2) of the Act.

⁶³ This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

⁶⁴ See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1270-80 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages”).

margin.”⁶⁵ It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.⁶⁶

In applying its AFA hierarchy in CVD investigations, Commerce’s goal is as follows: in the absence of necessary information from cooperative respondents, we are seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that we take into account in selecting a rate are: (1) the need to induce cooperation; (2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived?); and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that we can rely upon for the purpose of identifying an AFA rate for a particular program. In investigations, for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy, therefore, does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry, and relevancy to the particular program.

Under the first step of Commerce’s investigation hierarchy, we apply the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program. However, if there is no identical program match within the investigation, or if the rate is zero, then we will shift to the second step of our investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidy that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program. Finally, if no such rate exists, under the third step of Commerce’s investigation hierarchy, we apply the highest rate calculated for a cooperating

⁶⁵ See *De Cecco*, 216 F.3d at 1032.

⁶⁶ We have adopted a practice of applying this hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.⁶⁷

In all three steps of Commerce's AFA investigation hierarchy, if we were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the result of a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁶⁸

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," we may decide that, given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as AFA. As explained above, we are preliminarily applying AFA because Thong Thuan chose not to participate in this investigation. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

In determining the AFA rate for Thong Thuan, we applied Commerce's methodology detailed above. We began by applying, as AFA, the calculated program-specific above zero rates we preliminarily calculated for STAPIMEX in this investigation. Accordingly, we are applying as AFA for Thong Thuan the applicable subsidy rates calculated for STAPIMEX for the following programs:

1. Import Duty Exemptions for Imports Used to Produce Exported Goods
2. Import Duty Exemptions on Equipment and Machinery
3. Exemption or Reduction of Rents for Encouraged Industries

⁶⁷ In an investigation, unlike in an administrative review, Commerce is just beginning to develop an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

⁶⁸ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 ("As AFA in the instant case, {Commerce} is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/exporter in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed ..."). Therefore, when an interested party is deciding whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum. Instead, the interested party makes this decision in an environment in which Commerce may, under its hierarchy, apply the highest rate as AFA.

For the following programs,⁶⁹ we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving Vietnam.⁷⁰ For this preliminary determination, we are able to match, based on program names, descriptions, and treatment of the benefit, the following programs to the same or comparable programs from other CVD proceedings involving Vietnam:

1. Policy Lending from the State Bank of Vietnam (SBV) and Other Policy Banks
2. Interest Rate Support from the SBV
3. Export Credits from the Vietnam Development Bank (VDB)
4. Investment Credits from the VDB
5. Refund for Import Duties on Raw Materials Used to Produce Exports
6. Exemption of Import Duties for Imports into Industrial Zones
7. Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones
8. Exemption from Irrigation Fees
9. Exemptions of Land and Water Surface-Use Taxes and Levies for Encouraged Industries
10. Land Rent Exemptions for Enterprises Located in Special Zones

For the grant programs listed below, we determine that there are no identical or similar programs in this investigation or from another Vietnam CVD proceeding from which to select a rate under section 776(d)(1)(A) of the Act. Thus, we are applying the highest potential *ad valorem* subsidy rate calculated in any Vietnam CVD proceeding:⁷¹

1. Export Promotion Grants
2. Investment Support Grants
3. Insurance Premium Subsidies
4. Grants for Researching, Developing, and Raising New Breeds
5. Programs under the 2030 – 2045 Fishery Strategy: Seafood Processing and Trading Development Project

In determining an AFA rate for the following income tax reduction programs on which we initiated an investigation, we are finding, as AFA, consistent with Commerce's practice,⁷² that Thong Thuan paid no Vietnamese income tax during the POI:

1. Income Tax Preferences for Enterprises in Special Zones

⁶⁹ See Appendix. We note that we did not include in the calculation of the AFA rate the four SOCB programs for which we are postponing our countervailability determination, as described in the "Analysis of Vietnam's Financial System" section above.

⁷⁰ For each program for which the calculated rates were expensed prior to the POI during the average useful life (AUL) period, we applied the highest calculated rate. See Appendix.

⁷¹ The highest rate calculated in any Vietnam CVD proceeding is 25.41 percent *ad valorem* for the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" program in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973 (December 24, 2012) (*Wire Hangers from Vietnam*).

⁷² See, e.g., *Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 84 FR 14647 (April 11, 2019) (*Sacks from Vietnam Inv Final*).

2. Tax Benefits for Old Investments
3. Tax Benefits for New Investments
4. Income Tax Preferences under Decree 24
5. Incentives Under Decree 51: Enterprise Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment (Article 23)
6. Incentives Under Decree 51: Enterprise Income Tax Preferences, Exemptions, and Reductions (Articles 20 and 21)

The standard income tax rate for corporations in Vietnam in effect during the POI was 20 percent.⁷³ Thus, the highest possible cumulative benefit for income tax programs is 20 percent. Accordingly, we are applying a total combined 20 percent AFA rate to the six tax programs listed above. Consistent with Commerce’s practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value added tax exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.⁷⁴

Based on the methodology described above, we preliminarily determine the AFA net countervailable subsidy rate for Thong Thuan to be 196.41 percent *ad valorem*. The appendix contains a chart summarizing our calculation of this AFA rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise.”⁷⁵ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁷⁶

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.⁷⁷ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated, or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁷⁸

⁷³ See GOV’s January 24, 2024 IQR at 8 and Exhibit B-1.1.

⁷⁴ See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM at the section, “Application of Adverse Inferences: Non-Cooperative Companies.”

⁷⁵ See SAA at 870.

⁷⁶ *Id.*

⁷⁷ *Id.* at 869-70.

⁷⁸ See section 776(d)(3) of the Act.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.⁷⁹ In the absence of record evidence concerning Thong Thuan's usage of the subsidy programs at issue due to its decision not to respond to Commerce's Initial Questionnaire, we have reviewed the information concerning Vietnamese subsidy programs in other cases. Where there is a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Vietnamese programs, from which Thong Thuan could actually receive a benefit. Due to the lack of participation by Thong Thuan and the resulting lack of record information concerning the identified programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) of the Act for this preliminary determination.

VIII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.⁸⁰ We find the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.⁸¹ We notified the respondents of the AUL in the Initial Questionnaire and requested data accordingly.⁸² No party in this investigation disputed this allocation period, though the GOV reserved the right to do so.⁸³

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

⁷⁹ See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁸⁰ See 19 CFR 351.524(b).

⁸¹ See Petition at Volume XI (page 8 and Exhibit XI-17).

⁸² See Initial Questionnaire at II-1 and II-15.

⁸³ See GOV's January 24, 2024 IQR at 2.

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. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁸⁴

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The Court of International Trade upheld 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.⁸⁵

In accordance with 19 CFR 351.525(b)(2), we attribute an export subsidy only to products exported by a firm. In accordance with 19 CFR 351.525(b)(3), we attribute a domestic subsidy to all products sold by a firm, including products that are exported. In accordance with 19 CFR 351.525(b)(6)(i), we attribute a subsidy to the products produced by the corporation that received the subsidy. In accordance with 19 CFR 351.525(b)(6)(ii), for the producers with cross-ownership that produce the subject merchandise, we attribute the subsidies received by any of the producers to the products produced by all producers.

⁸⁴ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁸⁵ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

STAPIMEX reported that it did not have any cross-owned affiliates during the POI.⁸⁶ Therefore, for any subsidies received by STAPIMEX, we are attributing the benefit to the company's own sales, pursuant to 19 CFR 351.525(6)(i).

C. Application of Section 771B of the Act

Section 771B of the Act addresses the calculation of countervailable subsidies on certain processed agricultural products:

In the case of an agricultural product processed from an agricultural product in which—

- (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and
- (2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

The petitioner claimed that these conditions are met with respect to fresh and processed shrimp and substantiated its claim with supporting evidence. Based on the information in the Petition, Commerce found at the time of initiation that the petitioner supported its allegation that subsidies for fresh shrimp may be attributable to frozen shrimp in accordance with section 771B of the Act.⁸⁷

In this case, we find that, consistent with prior CVD shrimp investigations, including *Shrimp from China*,⁸⁸ fresh shrimp is a raw agricultural product under section 771B of the Act. Further, record evidence demonstrates that “it is undisputed that the overwhelming majority of fresh warmwater shrimp is not sold as a finished product but rather is used as an input for further processing into frozen products.”⁸⁹ We find that, because the “overwhelming majority” of fresh shrimp is processed into frozen shrimp, this meets the “substantial” threshold of section 771B(1) of the Act. Moreover, we find that the demand for fresh shrimp is dependent on the market for frozen shrimp because, if demand for frozen shrimp were to cease, a substantial percentage of the market would be negatively affected. Thus, in accordance with our practice,⁹⁰ we

⁸⁶ See STAPIMEX's Affiliated QR at 1-6.

⁸⁷ See Initiation Checklist at 6.

⁸⁸ See *Shrimp from China* IDM at Comment 5.

⁸⁹ See *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam*, Inv. Nos. 701-TA-699-702 and 731-TA-1659-1660 (Preliminary), USITC Pub. 5482 (December 2023) (*ITC Preliminary Report*), at 15.

⁹⁰ See, e.g., *Shrimp from China* IDM at Comment 5; and *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389 (August 19, 2013), and accompanying IDM at Comment 1.

preliminarily determine that the demand for unprocessed fresh shrimp, is “substantially dependent” on the demand for frozen shrimp,⁹¹ in accordance with section 771B(1) of the Act.

Regarding the second prong of section 771B of the Act, evidence on the record demonstrates that fresh shrimp accounts for over 70 percent of the value of the frozen shrimp, as other raw materials and costs together account for less than 30 percent of the final value.⁹² Further, raw materials, specifically raw shrimp, account for most of U.S. processors’ costs,⁹³ ranging from 72.2 to 78.3 percent between 2020 and 2022 on average across processors.⁹⁴ Further, as the ITC explained in the *ITC Preliminary Report*, frozen shrimp after initial processing are not substantially different than the fresh shrimp, and their characteristics appear to be the same, except longer shelf life for frozen shrimp.⁹⁵ As such, we preliminarily find that record evidence shows processing of the raw input adds less than 30 percent of the final value and that the essential character of the fresh shrimp is not changed with processing, in accordance with section 771B(2) of the Act and consistent with our practice.⁹⁶

We preliminarily determine that Mr. Giang, STAPIMEX’s largest unaffiliated shrimp farmer, did not use any of the programs found to be countervailable in this preliminary determination.⁹⁷ Therefore, we have not attributed a benefit from Mr. Giang to STAPIMEX in our calculations for the preliminary determination.

D. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent’s receipt of benefits under each program. As discussed in further detail in the “Programs Preliminarily Determined to Be Countervailable” section below, 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.

IX. BENCHMARKS

⁹¹ While the ITC does not define “overwhelming majority” in *ITC Preliminary Report*, we understand this term to far exceed the requirements of the substantial dependence criterion. See *Asociacion de Exportadores e Industriales de Aceitunas de Mesa v. United States*, 589 F. Supp. 3d 1346, 1347 (CIT 2022) (explaining that the plain meaning of section 771B of the Act requires a finding of substantial dependence where the demand for raw olives is “largely, but not wholly, contingent on the demand for table olives.” (quotations omitted)).

⁹² See *ITC Preliminary Report* at 16.

⁹³ *Id.* at V-1.

⁹⁴ *Id.* at Table VI-1 on page VI-3.

⁹⁵ *Id.* at 16.

⁹⁶ See *Rice from Thailand; Final Results of Countervailing Duty Administrative Review*, 56 FR 68, 69 (January 2, 1991); and *Final Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada*, 54 FR 30774, 30775 (July 24, 1989).

⁹⁷ See Mr. Giang’s February 21, 2024 IQR. We note that, while Mr. Giang reported receiving a loan from an SOCB (see Mr. Giang’s February 21, 2024 IQR at 1-2), as noted above, we are postponing our determination of the countervailability of such SOCB loans. Further, we will evaluate whether Mr. Giang received a benefit from certain additional programs in a post-preliminary determination. See the “Programs Deferred to a Post-Preliminary Determination” section below.

A. Provision of Land for Less Than Adequate Remuneration (LTAR)

1. Land Benchmark

In *Carrier Bags from Vietnam*, Commerce concluded that it 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.⁹⁸ 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.⁹⁹ While some sub-leasing transactions occurred between private parties, the GOV had placed restrictions on those leasing rights.¹⁰⁰ 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.¹⁰¹ In *Tires from Vietnam*, Commerce analyzed developments in Vietnam’s land market since 2009.¹⁰² 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. We preliminarily determine that there is no information on the record of this investigation that warrants a reconsideration of our findings in *Carrier Bags from Vietnam* and *Tires from Vietnam*.¹⁰³

Therefore, in selecting a benchmark for land, Commerce analyzed comparable market-based prices in another country at a comparable level of economic development within the geographic vicinity of Vietnam. The petitioner placed on the record the following sources of information for use as benchmarks in this investigation: (1) the Thailand Board of Investment’s “Cost of Doing Business in Thailand 2023,” which includes industrial and land rental prices in 2022; (2) information from the Thailand Board of Investment’s website, which includes rental rates from different industrial zones; (3) Thailand Board of Investment’s “Cost of Doing Business in Thailand” from November 2021, which also includes industrial land rent prices; (4) “Thailand Manufacturing Property, Market Overview 2022,” produced by Knight Frank which provides

⁹⁸ See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2020) (*Carrier Bags from Vietnam*), and accompanying IDM at Comment 9.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See *Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 71607 (November 10, 2020) (*Tires from Vietnam Inv Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 11-12, unchanged in *Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 86 FR 28566 (May 27, 2021) (*Tires from Vietnam Inv Final*), and accompanying IDM at 46 (collectively, *Tires from Vietnam*). On December 4, 2023, we placed the analysis of Vietnam’s land use rights from *Tires from Vietnam* on the record of this investigation. See Memorandum, “Analysis of Vietnam’s Land-Use Rights,” dated December 4, 2023 (Land Analysis Memorandum).

¹⁰³ See *Tires from Vietnam Inv Final* IDM at 46; see also *Carrier Bags from Vietnam* IDM at Comment 9.

prices for serviced industrial land plots; and (5) a webpage entitled “Cost of Doing Business” from the Philippines’ PHIVIDEC Industrial Authority (PHIVIDEC).¹⁰⁴

In evaluating the potential benchmarks, we find that the prices for “Rental Industrial and Logistics Property” in the Thai Board of Investment’s “Cost of Doing Business in Thailand 2023” are the appropriate benchmarks for valuing land rents in this investigation.¹⁰⁵ Specifically, these benchmarks reflect land rental prices by region over the POI, which is consistent with Commerce’s methodology in *Shrimp from Vietnam 2013*.¹⁰⁶ Regarding the Thailand Board of Investment’s “Cost of Doing Business in Thailand” data from November 2021, we find it less appropriate for use as a benchmark because the prices were not contemporaneous with the POI.¹⁰⁷ Regarding the information from the Thailand Board of Investment’s website, we do not find it appropriate to use this data because the reported rental rates are for individual industrial zones, which are more specific than data used in previous cases and not consistent with the methodology utilized in *Shrimp from Vietnam 2013*.¹⁰⁸ Regarding the “Cost of Doing Business” webpage from PHIVIDEC, we find the data to be unreliable because: (1) the land rental rate data is not dated;¹⁰⁹ and (2) the “Cost of Doing Business” webpage from PHIVIDEC is unclear as to what the basis for the rental rates are.¹¹⁰ Finally, we find the Knight Frank report is not appropriate to use because the prices included reflect land purchase prices, rather than land rental prices.¹¹¹

To calculate benchmarks for land, we followed the methodology used in *Shrimp from Vietnam 2013*.¹¹² Specifically, we used rental rates for industrial and logistics property as reported in the Thai Board of Investment’s “Cost of Doing Business in Thailand 2023.” The data is reported on a region-specific basis, so we relied on the underlying source of the Thai Board of Investment’s data, Knight Frank, and its definitions for the regions indicated in “Cost of Doing Business in Thailand 2023”¹¹³ to analyze the population density of each region, consistent with our analysis in *Shrimp from Vietnam 2013*.¹¹⁴ Consequently, as benchmark for our benefit calculations for STAPIMEX, we have selected the Central Region of Thailand, which is the region of Thailand

¹⁰⁴ See Petitioner’s Letter, “Benchmark Submission,” dated February 26, 2024 (Petitioner’s Benchmark Submission), at 2 and Exhibits 1, 2, 3, 4, and 5, respectively.

¹⁰⁵ *Id.* at Exhibit 1.

¹⁰⁶ *Id.* at Exhibit 2; see also *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013) (*Shrimp from Vietnam 2013 Preliminary Determination*), and accompanying PDM at 15-16, 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 2013 Final Determination*), and accompanying IDM at “Land Benchmarks” and Comment 6 (collectively, *Shrimp from Vietnam 2013*).

¹⁰⁷ *Id.* at Exhibit 3.

¹⁰⁸ *Id.* at Exhibit 2; see also *Shrimp from Vietnam 2013 Preliminary Determination* PDM at 15-16, unchanged in *Shrimp from Vietnam 2013 Final Determination* IDM at “Land Benchmarks” and Comment 6.

¹⁰⁹ *Id.* at Exhibit 5.

¹¹⁰ *Id.*

¹¹¹ *Id.* at Exhibit 4.

¹¹² See *Shrimp from Vietnam 2013 Preliminary Determination* PDM at 15-16, unchanged in *Shrimp from Vietnam 2013 Final Determination* IDM at “Land Benchmarks” and Comment 6.

¹¹³ See Petitioner’s Benchmark Submission at Exhibits 1 and 4. Page 11 of Exhibit 4 contains the definitions of regions used by Knight Frank.

¹¹⁴ See Memorandum, “Placement of Additional Information on the Record,” dated concurrently with this Memorandum, at Attachment 3.

with the closest population density to Soc Trang, the province in which STAPIMEX's facilities are located.¹¹⁵

X. ANALYSIS OF PROGRAMS

1. Programs Preliminarily Determined to Be Countervailable

A. Loan Programs

1. Policy Lending from the State Bank of Vietnam and Other Policy Banks

The GOV stated that Vietnam has two policy banks, the VDB and the Vietnam Bank for Social Policies (VBSP), established by Decision 108/2006/QD/TTg and Decision 131/2002/QD-TTg, respectively.¹¹⁶ The GOV reported that there are two relevant policy lending programs under the purview of VDB and VBSP: (1) credit for entrepreneurs doing business in disadvantaged areas, per Decision No. 92/2009/QD-TTg; and (2) credit for small and medium enterprises under Official Guideline No. 5088/NHCS-TDSV (Guideline 5088).¹¹⁷ According to the GOV, under the first prong of this program, entrepreneurs and other merchants, including enterprises and other commercial entities, operating in mountainous areas, islands, and ethnic minority areas are eligible to receive loans from the VBSP.¹¹⁸ The GOV stated that the second prong of the program was established with funding provided to the GOV by Government of the Federal Republic of Germany's German Reconstruction Bank.¹¹⁹ The GOV stated that eligible borrowers under the second prong are small and medium enterprises, as defined by Article 4 of Guideline 5088.¹²⁰ The VBSP is responsible for administering this program, including by determining loan terms, interest rates, and reviewing loan applications.¹²¹ STAPIMEX reported that it did not use this program.¹²²

We preliminarily determine that this program is regionally specific under section 771(5A)(D)(iv) of the Act because participation is limited to entities operating in mountainous areas, islands, or ethnic minority areas. We preliminarily determine that this program provides a financial contribution in the form of the loans from the VBSP within the meaning of section 771(5)(D)(i) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

¹¹⁵ *Id.* at Attachments 2 and 3; *see also* STAPIMEX's Section III Response at 5-6.

¹¹⁶ *See* GOV's February 27, 2024 SQR at page 3 of Exhibit SQ-1.1.

¹¹⁷ *Id.* at pages 3-4 of Exhibit SQ-1.1.

¹¹⁸ *Id.* at page 4 of Exhibit SQ-1.1 and Exhibit SQ-1.13.

¹¹⁹ *Id.* at page 4 of Exhibit SQ-1.1.

¹²⁰ *Id.* at page 4 of Exhibit SQ-1.1 and Exhibit SQ-1.14.

¹²¹ *Id.*

¹²² *See* STAPIMEX's Section III Response at 13.

2. Interest Rate Support Program from the State Bank of Vietnam

The GOV reported that this program was established under Decree No. 31/2022/ND-CP (Decree 31) during the POI.¹²³ The GOV stated that under this program the SBV pays two percent of the total interest amount on the outstanding Vietnamese dong loans directly to the issuing commercial bank on behalf of some borrowers.¹²⁴ Per Decree 31, eligible borrowers include companies, cooperatives, and household businesses in specified sectors, including transportation, tourism, education, agriculture, forestry, and fishery, processing and manufacturing.¹²⁵ Commerce found the predecessor to this program to be countervailable in *Shrimp from Vietnam 2013*.¹²⁶ STAPIMEX reported that it did not use this program.¹²⁷

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because participation in this program is limited to a group of enterprises and industries, including the fishery sector and processors. We preliminarily determine that the interest rate support from the SBV provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

3. Export Credits from the VDB

The GOV reported that the VDB is a state-owned policy bank established in 2006.¹²⁸ According to the GOV, under Article 16 of Decree No. 75/2011/ND-CP (Decree 75), the VDB issued export credit loans for exporters in eligible sectors listed under Appendix II of Decree No. 75.¹²⁹ Appendix II lists a variety of goods eligible for export credit loans, including, *inter alia*, aquatic products.¹³⁰ The GOV reported that this program was terminated by Decree 32/2017/ND-CP as of May 15, 2017 but, pursuant to Article 29 of that Decree, loan contracts entered with the VDB before May 15, 2017 are still valid.¹³¹ Therefore, companies could still have outstanding loans and benefit from this program during the POI. STAPIMEX reported that it did not use this program.¹³²

We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because these loans are tied to actual or anticipated exportation of goods listed in Appendix II of Decree 75. We preliminarily determine that this program provides a financial

¹²³ See GOV’s February 27, 2024 SQR at page 13 of Exhibit SQ-1.1.

¹²⁴ *Id.*

¹²⁵ See GOV’s January 24, 2024 IQR at Exhibit A-2.2.

¹²⁶ The GOV describes the predecessor program under Decision No. 131/QD-TTg, dated January 23, 2009. See GOV’s January 24, 2024 IQR at Exhibit A-2.2; see also *Shrimp from Vietnam 2013 Preliminary Determination* PDM at 22, unchanged in *Shrimp from Vietnam 2013 Final Determination*.

¹²⁷ See STAPIMEX’s Section III Response at 15.

¹²⁸ See GOV’s February 27, 2024 SQR at page 52 of Exhibit SQ-1.1.

¹²⁹ *Id.*

¹³⁰ *Id.* at Exhibit SQ-1.4.

¹³¹ *Id.* at page 52 of Exhibit SQ-1.1 and Exhibit SQ-1.4.

¹³² See STAPIMEX’s Section III Response at 17.

contribution under section 771(5)(D)(i) of the Act because the export loans were made by the state-owned policy bank VDB. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

4. Investment Credits from the VDB

The GOV reported that the “Investment Credits from the VDB” program is overseen by the VDB.¹³³ According to the GOV, this program began under Decree 75 and provided investment credit loans for investors with certain eligible investment projects.¹³⁴ The GOV stated that, when Decree 75 was replaced by Decree 32, this program continued under the new guidelines established by Decree 32.¹³⁵ The GOV stated that the Appendix to Decree 32 enumerates eligible sectors, including investments in seafood processing plants, and eligible locations of investment, including investments in industrial parks, industrial zones, export processing zones, or hi-tech parks, or in areas with particularly difficult socio-economic conditions.¹³⁶ STAPIMEX reported that it did not use this program during the POI.¹³⁷

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is available to a limited set of industries, including seafood processing, and also regionally specific under section 771(5A)(D)(iv) of the Act because loan eligibility is limited to certain geographic regions including, *inter alia*, industrial zones and areas with difficult socio-economic conditions. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(i) of the Act because the investment credit loans are made by the state-owned VDB. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

B. Tax Programs

1. Income Tax Preferences for Enterprises in Special Zones

The GOV reported that the “Income Tax Preference for Enterprises in Special Zones” program provides income tax incentives to companies operating within certain sectors and located in certain regions.¹³⁸ During the POI, the GOV stated that this program was implemented by Decree No. 218/2013/ND-CP (Decree 218) and Decree No. 12/2015/ND-CP (Decree 12).¹³⁹ Article 15 of Decree 218 lists the sectors which can benefit from this program, including high-tech investment projects, projects in environmental protection, investments in the “production of high-quality steel,” and a company’s income from “production, multiplication, and breeding of plant variety and animals” and “preservation of agricultural and aquatic products and food.”¹⁴⁰

¹³³ See GOV’s February 27, 2024 SQR at page 60 of Exhibit SQ-1.1.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at page 60 of Exhibit SQ-1.1 and Exhibit SQ-1.4.

¹³⁷ See STAPIMEX’s Section III Response at 18.

¹³⁸ See GOV’s January 24, 2024 IQR at page 1 of Exhibit B-1.2.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at Exhibit B-1.1.

Article 1 of Decree 12, which amended Decree 218, clarifies that income from a variety of sectors can be subject to income tax preferences or exemptions, including fish processing and aquaculture.¹⁴¹ According to the GOV, there are a variety of income tax preferences under this program ranging from preferential income tax rates, income tax reductions, and income tax exemptions, depending on the type of investment project, the sector income is earned in, and the location of the investment or income.¹⁴² The GOV stated that, in areas with “especially difficult socio-economic conditions,” entities with new investment projects pay preferential income tax of 10 percent (rather than the standard 20 percent corporate income tax rate) and companies are exempt from income tax for income from, *inter alia*, aquaculture and processing seafood.¹⁴³ Similarly, the GOV reported that, for entities in designated areas with “difficult socio-economic conditions,” those entities are subject to a reduced income tax rate (*i.e.*, a preferential income tax rate of 17 percent for new investment projects and a preferential income tax rate of 10 percent for income from aquaculture).¹⁴⁴ STAPIMEX reported receiving benefits under this program during the POI.¹⁴⁵ Commerce previously found a similar program to be countervailable in *Sacks from Vietnam*.¹⁴⁶

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to a group of industries, including the aquaculture and seafood processing industries, and also regionally specific under section 771(5A)(D)(iv) of the Act because companies are also eligible based on being located in regions with socio-economic difficulties. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. Finally, we preliminarily determine that this program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) equal to the amount of the tax savings. On this basis, we preliminarily determine that STAPIMEX received countervailable subsidies of 0.96 percent *ad valorem*. Additionally, as described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

2. Tax Benefits for Old Investments

The GOV reported that the “Tax Benefits for Old Investments” program was implemented under Decree No. 164/2003/ND-CP and its amendments under Decree No. 152/2004/ND-CP, which detailed procedures under the Enterprise Income Tax Law No. 09/2003/QH11 (Law No. 9).¹⁴⁷ According to the GOV, under these decrees, companies could receive preferential income tax, tax exemptions, or tax reductions.¹⁴⁸ The GOV stated that these decrees were replaced by

¹⁴¹ *Id.*

¹⁴² *Id.* at page 1 of Exhibit B-1.2.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See STAPIMEX’s Section III Response at 19-21.

¹⁴⁶ See *Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination (Sacks from Vietnam Inv Prelim)*, 83 FR 39983 (August 13, 2018), and accompanying PDM at 14, unchanged in *Sacks from Vietnam Inv Final* (collectively, *Sacks from Vietnam*).

¹⁴⁷ See GOV’s January 24, 2024 IQR at 9-10; see also GOV’s February 27, 2024 SQR at page 79 of Exhibit C-1.1.

¹⁴⁸ See GOV’s February 27, 2024 SQR at page 79 of Exhibit SQ-1.1.

Decree No. 24/2007/ND-CP (Decree 24), which continued to provide a variety of tax preferences to companies for their investment projects.¹⁴⁹ The GOV stated that Article 35 of Decree 24 provides tax preferences for new investment projects by companies operating in certain sectors and regions, as defined in Appendices I and II of Decree No. 108/2006/ND-CP (Decree 108), respectively.¹⁵⁰ The GOV stated that Law No. 9 and all associated regulations, including Decree 24, were terminated by Law No. 14/2008/QH12 (Law No. 14) on January 1, 2009.¹⁵¹ However, according to the GOV, under the transition clause in Article 19.3 of Law No. 14, companies receiving income tax preferences under Law No. 9 are allowed to continue to receive those preferences for their remaining duration.¹⁵² Therefore, companies could still benefit from this program during the POI, as some tax incentives under Decree 24 do not begin until taxable income is first generated and may last up to 13 years.¹⁵³ STAPIMEX reported that it did not use this program during the POI.¹⁵⁴

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because eligibility is limited to an enterprise or groups of enterprises, including *inter alia* those growing and processing aquaculture products, and also regionally specific under section 771(5A)(D)(iv) of the Act because enterprises may qualify for tax incentives on the basis of their location in areas with difficult or especially difficult socio-economic conditions.¹⁵⁵ We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

3. Tax Benefits for New Investments

The GOV reported that the “Tax Benefits for New Investments” program provides corporate income tax preferences under Decree 218 and Decree 12 which included: (1) preferential corporate income tax rates; (2) corporate income tax exemptions; and (3) corporate income tax reductions.¹⁵⁶ The GOV stated that this program aims to support certain new investment projects in specific sectors or meeting other specific criteria contained in the relevant decrees.¹⁵⁷ 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 new investment projects meeting various criteria, including new investment projects in production, that have a “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.”¹⁵⁸ Article 16.1 of Decree 218 provides a tax exemption for four years and a reduction of 50 percent of tax payable for the next

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*; see also GOV’s January 24, 2024 IQR at Exhibit B-3.2; and GOV’s March 15, 2024 SQR at 4-5.

¹⁵¹ See GOV’s February 27, 2024 SQR at page 79 of Exhibit C-1.1.

¹⁵² *Id.* at 26; see also GOV’s January 24, 2024 IQR at Exhibit B-3.3.

¹⁵³ See GOV’s January 24, 2024 IQR at Exhibit B-3.2.

¹⁵⁴ See STAPIMEX’s Section III Response at 26.

¹⁵⁵ See GOV’s January 24, 2024 IQR at Exhibit B-2.2.

¹⁵⁶ See GOV’s February 27, 2024 SQR at page 89 of Exhibit SQ-1.1.

¹⁵⁷ *Id.*

¹⁵⁸ See GOV’s January 24, 2024 IQR at Exhibit B-1.1.

nine years for the income of enterprises eligible for benefits under Article 15.1 if those investments are located in areas with difficult or especially difficult socio-economic conditions.¹⁵⁹ STAPIMEX reported that it did not use this program during the POI.¹⁶⁰ Commerce has previously found this program to be countervailable in *Tires from Vietnam*.¹⁶¹

We preliminarily determine that this program is 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). We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

4. Income Tax Preferences under Decree 24

The GOV stated the “Income Tax Preferences under Decree 24” program was created by Decree No. 24/2007/ND-CP (Decree 24), which implemented portions of Law No. 9.¹⁶² According to the GOV, preferences under Decree 24 include the following: (1) preferential corporate income tax rates; (2) corporate income tax exemptions; and (3) corporate income tax reductions.¹⁶³ Under Article 34 of Decree 24, cooperatives in areas with socio-economic difficulties or businesses newly founded in encouraged sectors under Decree 108 and located in regions with socio-economic difficulties could receive a reduced tax rate for 12 years, while cooperatives or businesses newly founded in areas with especially difficult socio-economic conditions could receive a reduced tax rate for 15 years and businesses newly founded in sectors encouraged under Decree 108 and found by the Ministry of Finance to “{have} great socio-economic impacts” could receive a reduced tax rate for 15 years or up through the length of the execution of the investment project.¹⁶⁴ The GOV stated that Law No. 9 and all associated regulations, including Decree 24, was terminated by Law No. 14 on January 1, 2009.¹⁶⁵ However, the GOV stated that, under the transition clause in Article 19.3 of Law No. 14, companies receiving income tax preferences under Law No. 9 can continue to receive those preferences for their remaining duration.¹⁶⁶ Therefore, companies could still benefit under this program during the POI.¹⁶⁷ STAPIMEX reported that it did not use this program during the POI.¹⁶⁸

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because eligibility is limited to an enterprise or groups of enterprises, including *inter alia* those growing and processing aquaculture products, and also regionally specific under section 771(5A)(D)(iv) of the Act, because enterprises may qualify for tax incentives on the basis of

¹⁵⁹ *Id.*

¹⁶⁰ See STAPIMEX’s Section III Response at 26.

¹⁶¹ See *Tires from Vietnam Inv Prelim PDM* at 13, unchanged in *Tires from Vietnam Inv Final*.

¹⁶² See GOV’s February 27, 2024 SQR at page 99 of Exhibit SQ-1.1.

¹⁶³ *Id.*

¹⁶⁴ See GOV’s January 24, 2024 IQR at Exhibit B-3.2; see also GOV’s March 15, 2024 SQR at 5.

¹⁶⁵ See GOV’s February 27, 2024 SQR at page 79 of Exhibit SQ-1.1.

¹⁶⁶ *Id.* at 26; see also GOV’s January 24, 2024 IQR at Exhibit B-3.3.

¹⁶⁷ See GOV’s March 15, 2024 SQR at 5-6.

¹⁶⁸ See STAPIMEX’s Section III Response at 26-27.

their location in areas with difficult or especially difficult socio-economic conditions.¹⁶⁹ We preliminarily determine that these tax benefits provide a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

5. Incentives Under Decree No. 51

The GOV reported providing incentives to entities under Decree No. 51/1999/ND-CP (Decree 51), which implemented Law No. 03/1998/QH10.¹⁷⁰ The GOV stated that Decree 51 was terminated by the issuance of Decree 108 on September 22, 2006.¹⁷¹ However, under Article 29.1 of Decree 108, the GOV noted that an investor with incentives under Decree 51 may elect to continue to receive those incentives for the full duration of the original program regardless of the revised regulations established by Decree 108.¹⁷² Therefore, depending on the conditions of the incentives under Decree 51, enterprises could have benefitted from them after Decree 51 was superseded by Decree 108.

a. Enterprise Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment (Article 23)

The GOV stated that under the “Enterprise Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment” program under Article 23 of Decree 51, investors having investment projects defined in List A are eligible for income tax exemptions and reductions.¹⁷³ The GOV reported that the duration of the tax preferences varies depending on the location of the investment, ranging from a one-year exemption and four-year 50 percent reduction following the exemption, to a four year exemption and seven-year 50 percent reduction.¹⁷⁴ Investors under this program can receive longer tax preferences if the project is located in a region with socio-economic conditions or special socio-economic difficulties.¹⁷⁵ Under Article 23 of Decree 51, investors enjoy tax incentives “for the income amount arising from this investment.”¹⁷⁶ Since the tax preferences are connected to “income arising from this investment,” the exemption may be deferred until such time as taxable income is generated.¹⁷⁷ Therefore, given the transition clause of Decree 108, it is possible companies may still have benefitted from Article 23 during the POI. STAPIMEX reported that it did not use this program during the POI.¹⁷⁸

We preliminarily determine this program to be *de jure* specific under section 771(5A)(D)(i) of the Act because eligibility is limited to an enterprise or groups of enterprises in List A, including

¹⁶⁹ See GOV’s January 24, 2024 IQR at Exhibit B-2.2.

¹⁷⁰ See GOV’s February 28, 2024 NSAQR at 1-2.

¹⁷¹ *Id.*

¹⁷² See GOV’s March 15, 2024 SQR at 6.

¹⁷³ *Id.* at page 2 of Exhibit SQ-3.1.

¹⁷⁴ *Id.*

¹⁷⁵ See GOV’s February 28, 2024 NSAQR at Exhibit A-1.1 for List B and List C of Decree 51.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See STAPIMEX’s February 28, 2024 NSAQR at 1.

inter alia processing aquatic products,¹⁷⁹ and also regionally specific under section 771(5A)(D)(iv) of the Act because enterprises may qualify for tax incentives on the basis of their location in areas with difficult or especially difficult socio-economic conditions. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

b. Enterprise Income Tax Preferences, Exemptions, and Reductions (Articles 20 and 21)

The GOV reported that Articles 20 and 21 of Decree 51 granted preferential income tax rates, including tax exemptions and reductions to specific enterprises.¹⁸⁰ Under Article 20, the GOV stated that it provided a range of preferential income tax rates depending on the sector and location of an investment, as listed in Lists A, B, and C of the Decree.¹⁸¹ Under Article 21, the GOV reported that it provided tax exemptions and reductions for investment projects meeting certain criteria established by Articles 15 and 16 (*i.e.*, number of workers).¹⁸² According to the GOV, tax incentives under this program ranged from a two year exemption from income tax and two further years of tax reductions, to a four year exemption and nine further years of tax reductions.¹⁸³ The GOV stated that these incentives also vary depending on whether the investment qualifies under Lists A, B, or C.¹⁸⁴ According to Article 21 of Decree 51, the tax exemption/reductions begin “from the time the taxable income is generated.”¹⁸⁵ Therefore, the exemption may be deferred until such time as taxable income is generated; thus, it is possible companies may still have benefitted under Article 21 during the POI. STAPIMEX reported that it did not use this program during the POI.¹⁸⁶

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because eligibility is limited to an enterprise or groups of enterprises in List A, including *inter alia* processing aquatic products,¹⁸⁷ and also regionally specific under section 771(5A)(D)(iv) of the Act because enterprises may qualify for tax incentives on the basis of their location in areas with difficult or especially difficult socio-economic conditions as defined in Lists B and C, respectively. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

6. Import Duty Exemptions for Imports Used to Produce Exported Goods

¹⁷⁹ See GOV’s February 28, 2024 NSAQR at Exhibit A-1.1 for List B and List C of Decree 51.

¹⁸⁰ See GOV’s March 15, 2024 SQR at page 12 of Exhibit SQ-3.1.

¹⁸¹ *Id.*; see also GOV’s February 28, 2024 NSAQR at Exhibit A-1.1

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See GOV’s February 28, 2024 NSAQR at Exhibit A-1.1.

¹⁸⁶ See STAPIMEX’s February 28, 2024 NSAQR at 1.

¹⁸⁷ See GOV’s February 28, 2024 NSAQR at Exhibit A-1.1 for List B and List C of Decree 51.

The GOV reported under Law 107/2016/QH13 dated April 6, 2016 (Law 107), Decree 134/2016/ND-CP dated September 1, 2016 (Decree 134), and Decree 18/2021/ND-CP, dated March 11, 2021 (Decree 18), that companies can receive import duty exemptions for imported raw materials used in the production of exported goods.¹⁸⁸ Under the program, the GOV stated that import duty exemptions are provided to companies for imported raw materials that are incorporated into exported goods, or directly used in the processing of such goods.¹⁸⁹ According to the GOV, the amount of the exemption provided under this program is equal to the amount of the duty corresponding to the value of imported materials used in the production of the finished goods that are exported.¹⁹⁰ The amount of the exemption is determined or declared at the time of reporting to Vietnam’s Customs Authority on the use of imported raw materials for manufacture of exported goods, in accordance with customs regulations.¹⁹¹ The GOV stated that importers declare import duty exempt goods under this program under form E31 upon importation, granting them an import duty exemption, and declare upon export using form E61 that the declared products were manufactured utilizing imported raw materials under this program.¹⁹² The GOV asserted 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 recovered in the production process (within an allowable “consumption norm”); and (2) whether the exported products are actually exported.¹⁹³ STAPIMEX reported receiving benefits under this program during the POI.¹⁹⁴

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), a 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.¹⁹⁵

The GOV provided a description of the multi-step process which Vietnam’s Customs Authority employs to determine eligibility for duty exemptions.¹⁹⁶ The GOV explained 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

¹⁸⁸ See GOV’s January 24, 2024 IQR at page 1 of Exhibit C-1.1 and Exhibit C-1.2.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at page 1 of Exhibit C-1.1.

¹⁹¹ *Id.*

¹⁹² *Id.* at pages 5-6 of Exhibit C-1.1.

¹⁹³ *Id.* at pages 1-2 of Exhibit C-1.1 and Exhibit C-1.3.

¹⁹⁴ See STAPIMEX’s Section III Response at 31.

¹⁹⁵ 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 *Sacks from Vietnam Inv Final IDM* at Comment 2.

¹⁹⁶ See GOV’s January 24, 2024 IQR at pages 1-2 of Exhibit C-1.1 and Exhibit C-1.3.

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 raw 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.¹⁹⁷ This report must be reconciled to the accounting documentation of the producer, and the company takes legal responsibility for its accuracy.¹⁹⁸ The producer submits this report to the Customs Authority on a yearly basis.¹⁹⁹

The GOV further reported that it implements a risk-management based customs system, through which the taxpayers (importers) take legal responsibility for import declarations.²⁰⁰ According to the GOV, the Customs Authority tracks the inflow and outflow of exports, enabling it to detect fraud, and taxpayers that commit fraud are subject to duty recollection and other penalties.²⁰¹ The GOV also reported that the Customs Authority randomly inspects importers to verify the accuracy of the annual reports and declarations under this program.²⁰²

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 No. 38/2015/ND-CP (Circular 38).²⁰³ Specifically, Article 71 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.”²⁰⁴ This process remained in place under the most recent pertinent legislation, Decree 18, as taxpayers remain exempt from the import duty when selling scrap and discarded product in Vietnam.²⁰⁵ Therefore, producers may recover and sell “waste” material from imported inputs without paying duties on that waste. The GOV contended that its treatment of waste and the Customs Authority’s verification system is reasonable, effective for the purposes intended, and based on generally accepted commercial practices in Vietnam.²⁰⁶

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

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 12 and pages 1-2 of Exhibit C-1.1 and Exhibit C-1.3.

¹⁹⁹ *Id.* at page 6 of Exhibit C-1.1.

²⁰⁰ *Id.* at 12.

²⁰¹ *Id.* at 12-13.

²⁰² *Id.* at 13.

²⁰³ *Id.*

²⁰⁴ *Id.* at Exhibit C-1.3.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 13-14.

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.²⁰⁷

As explained above, record evidence demonstrates that the GOV’s system does not account for resalable waste, because such waste is exempt from duties; therefore, we find this system does 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 previous cases involving this program, including most recently in *Tires from Vietnam*.²⁰⁸

We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because the import duty exemptions on raw materials are contingent upon export performance. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. Finally, we preliminarily determine that this program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.519(a)(4) equal to the total amount of the duties exempted.

Commerce’s standard practice is to 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 STAPIMEX, 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, accounting for any duties actually paid. We then divided this amount by the total value of STAPIMEX’s POI export sales. On this basis, we preliminarily determine that STAPIMEX received countervailable subsidies of 0.30 percent *ad valorem*. Additionally, as described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

7. Refund for Import Duties on Raw Materials Used to Produce Exports

The GOV reported that the “Refund for Import Duties on Raw Materials Used to Produce Exports” program is implemented by Law 107 and Decree 134.²⁰⁹ Under this legislation, companies that paid import duties on raw materials that are eventually used for the production of exported goods are eligible for a refund of the duties paid upon importation.²¹⁰ The GOV reported that the refund equals the amount of the import duty corresponding to the value of the imported raw materials that were actually used in the production of the finished product for export.²¹¹ In order to receive the refund, the GOV stated that the company must submit an application to the Customs Authority detailing the amount of duty to be refunded, export

²⁰⁷ 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

²⁰⁸ See *Tires from Vietnam Inv Final* IDM at Comment 8.

²⁰⁹ See GOV’s January 24, 2024 IQR at page 1 of Exhibit C-2.1.

²¹⁰ *Id.* at page 1 of Exhibit C-2.1 and Exhibit C-1.2.

²¹¹ *Id.* at page 1 of Exhibit C-2.1.

contract, and documentation regarding the manufacture of the finished product in Vietnam.²¹² The Customs Authority then reviews the application, and either allows a refund before inspection or requires the company undergo an inspection by the Customs Authority before receiving a refund.²¹³ STAPIMEX reported receiving benefits under this program during the POI.²¹⁴ Commerce found a prior version of this program to be countervailable in *Steel Nails from Vietnam*.²¹⁵

The GOV stated that this program treats waste under the same procedures as described above in the “Import Duty Exemptions for Imports Used to Produce Exported Goods” section. Record evidence shows that the GOV’s system does not account for resalable waste, because such waste is allowed to be resold in Vietnam without duties in the form of a refund upon export of the duty paid as long as it is within the consumption norm. Therefore, we find this system does 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.

We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because the import duty refunds on raw materials are contingent upon export performance. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. We preliminarily determine that this program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.519(a)(4) equal to the total amount of the duties refunded to STAPIMEX. Finally, as described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

8. Exemption of Import Duties for Imports into Industrial Zones

The GOV reported that import duty preferences under this program were provided under Law 107, Decree 134, and Decree 18.²¹⁶ 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.²¹⁷ Under Appendix II to Decree No. 118/2015/ND-CP (Decree 118) and Appendix III to Decree No. 31/2021/ND-CP (Decree 31), the GOV stated that industrial zones are among the areas subject to investment preferences.²¹⁸ Therefore, companies are eligible to import equipment duty free for projects in industrial zones.

²¹² *Id.*

²¹³ *Id.* at pages 1-2 of Exhibit C-2.1.

²¹⁴ See STAPIMEX’s Section III Response at 37. However, we preliminarily determine that STAPIMEX did not receive measurable benefits pursuant to this program.

²¹⁵ See *Certain Steel Nails from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 80 FR 28962 (May 20, 2015) (*Steel Nails from Vietnam*), and accompanying IDM at 15-17.

²¹⁶ See GOV’s February 27, 2024 SQR at page 119 of Exhibit SQ-1.1.

²¹⁷ *Id.*; see also GOV’s January 24, 2024 IQR at Exhibit C-1.2.

²¹⁸ See GOV’s February 27, 2024 SQR at page 119 of Exhibit SQ-1.1; see also GOV’s January 24, 2024 IQR at Exhibit B-1.3.

STAPIMEX reported that it did not use this program during the POI.²¹⁹ Commerce previously found this program to be countervailable in *Tires from Vietnam*.²²⁰

We preliminarily determine that these duty exemptions are regionally specific pursuant to section 771(5A)(D)(iv) of the Act because they are available only to enterprises in designated geographic regions, namely industrial zones. We preliminarily determine that this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

9. Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones

The GOV stated that Law 107 implemented this program during the POI. Under Article 2.4 of Law 107, goods imported from foreign countries to a free trade zone (FTZ) and used within the FTZ do not incur import duties.²²¹ According to the GOV, FTZs include export processing zones and export processing enterprises (EPEs), as well as “tax-suspension warehouses, bonded warehouses, special economic zones, commercial - industrial zones, and other economic zones established and provided with similar tax incentives as free trade zones.”²²² The GOV reported that EPEs must follow customs procedures outlined in Circular 38 and Circular No. 39/2015/TT-BTC.²²³ The GOV stated that the customs procedures under this program are similar to those under the “Import Duty Exemptions for Imports Used to Produce Exported Goods,” discussed above, with some additional conditions for EPEs.²²⁴ Further, the GOV reported that as above, “waste or scrap within the norm that is the byproduct of producing goods intended for export can be recycled or sold in the domestic market without paying the import duty.”²²⁵ STAPIMEX reported that it did not use this program during the POI.²²⁶ Commerce previously found benefits received under Article 2.4 of Law 107 to be countervailable in *Sacks from Vietnam*.²²⁷

As discussed above, record evidence shows that the GOV’s system does not account for resalable waste, because such waste is allowed to be resold in Vietnam without import duties by EPEs and other enterprises eligible under this program as long as it is within the consumption norm. Therefore, we find this system does 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.

We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because it is contingent upon exports and contingent upon a company’s location in an

²¹⁹ See STAPIMEX’s Section III Response at 41-42.

²²⁰ See *Tires from Vietnam Inv Prelim PDM* at 16-17, unchanged in *Tires from Vietnam Inv Final*.

²²¹ See GOV’s February 27, 2024 SQR at page 141 of Exhibit SQ-1.1.

²²² *Id.* at page 141 of Exhibit SQ-1.1 and Exhibit SQ-1.2.

²²³ *Id.* at page 141 of Exhibit SQ-1.1.

²²⁴ See GOV’s March 15, 2024 SQR at 8-10.

²²⁵ *Id.* at 9.

²²⁶ See STAPIMEX’s Section III Response at 42.

²²⁷ See *Sacks from Vietnam Inv Prelim PDM* at 17-20, unchanged *Sacks from Vietnam Inv Final*.

FTZ or its status as an EPE. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

10. Import Duty Exemptions on Equipment and Machinery

The GOV reported that import duty exemptions for equipment and machinery imported to create fixed assets for investment projects are regulated under Article 14 of Decree 134 and Article 1.7 of Decree 18.²²⁸ Prior to September 1, 2016, this program fell under Law No. 45/2005/QH11 and Decree 87/2010/ND-CP.²²⁹ According to the GOV, companies in certain sectors and located in certain regions, as established by Appendix I of Decree 118 and Appendices II of Decree 118 and III of Decree 31, respectively, are entitled to investment preferences including import duty exemptions for equipment and machinery.²³⁰ Sectors eligible for investment incentives include “{f}arming, processing, preserving agriculture, forestry, and aquaculture products.”²³¹ Further, locations eligible for investment incentives include areas designated as disadvantaged or extremely disadvantaged, including locations in Soc Trang province.²³² The GOV stated that to participate in this program, a company must notify the Customs Authority prior to its first importation of equipment and machinery to register a duty-free list and provide relevant documentation about investment projects.²³³ STAPIMEX reported receiving benefits under this program.²³⁴ Commerce found the predecessor program to this program countervailable in *Shrimp from Vietnam 2013*.²³⁵

We preliminarily determine this program to be *du jure* specific under section 771(5A)(D)(i) of the Act because these duty exemptions are limited to a group of industries, including those producing aquaculture products and processing aquaculture products. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. Finally, we preliminarily determine that this program provides a benefit under 19 CFR 351.510(a)(1) equal to the total amount of the duties exempted.

Consistent with 19 CFR 351.524(c)(1), Commerce treats exemptions from indirect taxes and import charges as conferring recurring benefits. Thus, we allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, Commerce treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL period, according to 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we preliminarily find that this program is non-recurring.

²²⁸ See GOV’s January 24, 2024 IQR at 20 and page 1 of Exhibit C-6.1.

²²⁹ *Id.*

²³⁰ *Id.* at 20, page 1 of Exhibit C-6.1, and Exhibit B-1.3.

²³¹ *Id.* at Exhibit B-1.3.

²³² *Id.*

²³³ *Id.* at page 1 of Exhibit C-6.1.

²³⁴ See STAPIMEX’s Section III Response at 42.

²³⁵ See *Shrimp from Vietnam 2013 Final Determination* IDM at 20-21.

STAPIMEX provided lists of tariff exemptions that it received for equipment and machinery imported to create fixed assets.²³⁶ For the years prior to the POI, the duty exemptions on equipment and machinery were less than 0.5 percent of STAPIMEX's sales in each of those respective years. Therefore, in accordance with 19 CFR 351.524(b)(2), the benefits were expensed in the year of receipt and did not give rise to a countervailable subsidy in the POI. To calculate the subsidy rate, we divided the total amount of exemption during the POI by the POI FOB sales total, as described in the "Denominators" section above. On this basis, we preliminarily determine that STAPIMEX received countervailable subsidies of 0.03 percent *ad valorem*. Additionally, as described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

11. Exemption from Irrigation Fees

The GOV stated that the "Exemption from Irrigation Fees" program provides exemptions from irrigation fees for irrigation works under certain circumstances, and was first introduced in 2003.²³⁷ The GOV stated that during the POI this program was implemented under Law on Irrigation No. 8/2017/QH14 and Decree No. 96/2018/ND-CP (Decree 96), the latter of which details financial support for the use of public irrigation products.²³⁸ According to Article 11 of Decree 96, the following groups are eligible for this financial support: (1) households and individuals using land for cereal production; (2) poor households and individuals on land rented from the GOV; (3) households and individuals using land for salt production; (4) households and individuals using agricultural land within certain limits for, *inter alia*, growing vegetables, industrial crops, and aquaculture; (5) households or individuals farming on land received from agricultural or forestry companies; (6) organizations and individuals in charge of water drainage; and (7) organizations and individuals in charge of, *inter alia*, flood proofing and saltwater intrusion prevention.²³⁹ According to the GOV, those operating irrigation projects should coordinate with the People's Committee of the Commune to determine what entities are eligible for financial support under Decree 96 and the GOV will then make direct payments to the irrigation operators on their behalf.²⁴⁰ STAPIMEX reported that it did not use this program during the POI.²⁴¹

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act, because the subsidy is limited to, *inter alia*, households involved in aquaculture. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

12. Exemptions of Land and Water Surface-Use Taxes and Levies for Encouraged Industries

²³⁶ See STAPIMEX's Section III Response at Exhibit IV.5.

²³⁷ See GOV's February 27, 2024 SQR at page 150 of Exhibit SQ-1.1.

²³⁸ *Id.*

²³⁹ See GOV's January 24, 2024 IQR at Exhibit 7.3.

²⁴⁰ See GOV's February 27, 2024 SQR at page 150 of Exhibit SQ-1.1.

²⁴¹ See STAPIMEX's Section III Response at 48.

According to the GOV, this program provides exemptions on land use taxes during the POI under Law No. 48/2010/QH12 (Law No. 48).²⁴² Under Article 9, the law provides exemptions of land-use taxes to a variety of households and individuals, as well as “Land of investment projects in domains eligible for special investment promotion; investment projects in areas with extreme socio-economic difficulties; investment projects in domains eligible for investment promotion in areas with socio-economic difficulties; and land of enterprises with over 50% of their employees being war invalids and diseased soldiers.”²⁴³ The GOV stated that taxpayers declare, calculate, and pay land-use taxes at rates specified in Chapter II of Law No. 48 and under the procedure in Decree 126/2020/ND-CP.²⁴⁴ STAPIMEX reported that it did not use this program during the POI.²⁴⁵

We preliminarily determine this program to be *de jure* specific under section 771(5A)(D)(i) of the Act because the subsidy is limited to enterprises operating in “domains eligible for special investment promotion,” and also regionally specific under section 771(5A)(D)(iv) of the Act because it is limited to enterprises with investment projects in areas with socio-economic difficulties. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

C. Provision of Inputs and Services for LTAR

1. Exemption or Reduction of Rents for Encouraged Industries

The GOV reported that it provided STAPIMEX with exemptions on land rent for this program under Decree 142/2005/ND-CP dated November 4, 2005, and Decree 108/2006/ND-CP dated September 22, 2006.²⁴⁶ Article 4, Chapter II of Decree 142/2005/ND-CP, “ON COLLECTION OF LAND RENTS AND WATER SURFACE RENTS” outlines the relevant eligibility for reduced rent, which includes land in areas facing difficult socio-economic conditions, as well as land used for aquaculture production. For these areas, “provincial-level People’s Committee presidents shall decide on the promulgation of land rent units lower than the set land rent units.”²⁴⁷

The GOV reported that these two decrees expired prior to the POI and were superseded by Decree No. 46/2014/ND-CP dated May 15, 2014, and Decree No. 31/2021/ND-CP dated March 26, 2021.²⁴⁸ The GOV provided Decree No. 46/2014/ND-CP, which lists the formula the GOV uses to calculate rent and provides rent reductions for land in difficult socio-economic conditions, as well as for land used for aquaculture.²⁴⁹ Decree No. 31/2021/ND-CP lists the

²⁴² See GOV’s February 27, 2024 SQR at page 160 of Exhibit SQ-1.1.

²⁴³ *Id.* at SQ-1.16.

²⁴⁴ *Id.* at pages 160-161 of Exhibit SQ-1.1.

²⁴⁵ See STAPIMEX’s Section III Response at 48-49.

²⁴⁶ See GOV’s January 24, 2024 IQR at 22.

²⁴⁷ *Id.* at Exhibit D-1.4.

²⁴⁸ *Id.* at Exhibit D-1.2.

²⁴⁹ *Id.* at Exhibit D-1.4.

business lines eligible for special investment incentives, including aquaculture.²⁵⁰ Commerce previously found a similar rent subsidy program to be countervailable in *Tires from Vietnam*.²⁵¹

STAPIMEX reported that it pays rent for its An Phu factory to the GOV through the Soc Trang Provincial Tax Department. The company reported that it was exempted from paying for a portion of rent on its An Phu factory for the period of April 2008 through March 2023.²⁵² STAPIMEX reported that benefits under this program were provided under Decree No. 142/2005/ND/CP dated November 14, 2005, which states, “land rent, water surface rent exemption or reduction,” are available for “investment projects in the domains where investment is specially encouraged, which are executed in geographical area facing exceptional socio-economic difficulties.”²⁵³ STAPIMEX explained that both the amount of rent it is contracted to pay for its An Phu factory as well as rent exemptions are due to the fact that An Phu is located in a depressed economic zone.²⁵⁴

STAPIMEX also reported that its New Dragon factory qualifies for benefits under Decree No. 51/1999/ND-CP dated July 8, 1999, because it processes aquatic products for export and employs at least 20 people per year in an area with difficult socio-economic conditions.²⁵⁵ For its New Dragon factory, STAPIMEX reported that “the unit {land rent} price requested by the government is fixed.”²⁵⁶ STAPIMEX reported that in 1999, the People’s Committee of Soc Trang Province issued an investment incentive certificate which outlined the incentives for which STAPIMEX’s New Dragon factory is eligible, including land rent exemption.²⁵⁷

Furthermore, STAPIMEX reported that it leases a portion of its Green Farm land through the People’s Committee of Soc Trang Province.²⁵⁸ STAPIMEX reported that, for this contract, the land had to qualify as being subject to socio-economic difficulties, and that the government does not negotiate its prices for land.²⁵⁹

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because only certain sectors, including aquaculture, are eligible for these rent reductions and exemptions, and also regionally specific under section 771(5A)(D)(iv) of the Act because it is limited to companies in regions with socio-economic difficulties. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(iii) of the Act in the form of the provision of a good (*i.e.*, land). Finally, we preliminarily determine that this program provides a benefit under section 771(5)(E)(iv) of the Act because the GOV provides land for LTAR.

²⁵⁰ *Id.* at Exhibit B-1.3.

²⁵¹ See *Tires from Vietnam Inv Prelim PDM* at 25-27, unchanged in *Tires from Vietnam Inv Final*.

²⁵² See STAPIMEX’s Section III Response at 53-54 and Exhibit V.8.

²⁵³ *Id.* at 53 and Exhibit V.6.

²⁵⁴ *Id.* at 49-50.

²⁵⁵ *Id.* at 62 and Exhibit V.24. STAPIMEX reported that the latest land use lease for New Dragon factory was acquired in 2014.

²⁵⁶ *Id.* at 61.

²⁵⁷ *Id.* at 62-64.

²⁵⁸ *Id.* at 72, 74.

²⁵⁹ *Id.* at 72-73.

To calculate STAPIMEX’s benefits, we compared the POI annual rent figures for land rented from government authorities to the benchmarks described in “Land Benchmarks” section above. We then divided the sum of the benefits STAPIMEX received by the appropriate sales denominator, as described in the “Subsidies Valuation” section above. On this basis, we preliminarily determine that STAPIMEX received countervailable subsidies of 1.55 percent *ad valorem*. Additionally, as described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

2. Land Rent Exemptions for Enterprises Located in Special Zones

The GOV reported that the “Land Rent Exemptions for Enterprises Located in Special Zones” program is administered under Decree No. 35/2022/ND-CP dated May 28, 2022 (Decree 35), which details regulations and management of industrial parks and other economic zones in Vietnam.²⁶⁰ According to the GOV, under Articles 32 and 33 of Decree 35, investments in the “construction and business of infrastructure facilities of supporting industrial parks, specialized industrial parks and hi-tech industrial parks” as well as “functional zones” in industrial – urban – service zones are eligible for rent exemptions or reductions.²⁶¹ To receive a rent exemption or reduction, an application must be submitted to the local tax authority.²⁶² STAPIMEX reported that it did not use this program during the POI.²⁶³

We preliminarily determine that the land rent exemptions and reductions are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they are limited to enterprises located in special zones like industrial parks or industrial – urban – service zones. We preliminarily determine that the rent exemptions and reductions under this program 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. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

D. Grant Programs

1. Export Promotion Grants

The GOV reported that this program, titled the National Trade Promotion program, is provided under Decision No. 72/2010/QĐ-TTg (Decision No. 72).²⁶⁴ The GOV stated that this program aims to improve trade promotion and develop export markets for Vietnamese companies and goods.²⁶⁵ Chapter 2 of Decision No. 72 lists activities for which funds are available under this program, including, *inter alia*, market research, advertising, hiring product and market entry experts, training courses, trade fairs, trade delegations, and brand assistance in foreign markets.²⁶⁶ The GOV reported to receive funds under this program, trade associations (or

²⁶⁰ See GOV’s March 15, 2024 SQR at page 30 of Exhibit SQ-3.1.

²⁶¹ *Id.*; see also GOV’s February 28, 2024 NSAQR at Exhibit B-2.1.

²⁶² See GOV’s March 15, 2024 SQR at page 30 of Exhibit SQ-3.1.

²⁶³ See STAPIMEX’s February 28, 2024 NSAQR at 20.

²⁶⁴ See GOV’s February 27, 2024 SQR at page 170 of Exhibit SQ-1.1.

²⁶⁵ *Id.*

²⁶⁶ *Id.*; see also GOV’s January 24, 2024 IQR at E-1.1.

companies if there are no trade association in a specific industry) apply annually to the Ministry of Industry and Trade (MOIT), which reviews the applications and decides whether to refer them to the Evaluation Council.²⁶⁷ The GOV stated that the Evaluation Council is led by the MOIT but includes other relevant ministries and oversees the process of providing funds and determines whether the application should proceed.²⁶⁸ If so, the GOV stated the Evaluation Council refers proposals to the Minister of the MOIT for final approval.²⁶⁹ According to the GOV, while the Vietnam Association of Seafood Exporters and Producers received approval for funding under this program during the POI, STAPIMEX itself did not participate.²⁷⁰ STAPIMEX reported receiving benefits under this program during the AUL period.²⁷¹ Commerce previously found this program countervailable in *Steel Nails from Vietnam*.²⁷²

We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because it is contingent upon export performance as this program seeks to improve trade promotion and develop export markets. We preliminarily determine that grants from this program provide a financial contribution in the form of a direct transfer of funds from the GOV under section 771(5)(D)(i) of the Act. Finally, we preliminarily determine that this program provides a benefit to the recipient in the amount of the grant provided, pursuant to 19 CFR 351.504(a).

STAPIMEX provided a list of export promotion grants that it received during the AUL period.²⁷³ The grants were less than 0.5 percent of STAPIMEX's sales in each of those respective years. Therefore, in accordance with 19 CFR 351.524(b)(2), the benefits STAPIMEX received were expensed in the year of receipt and did not give rise to a countervailable subsidy in the POI. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

2. Investment Support Grants

The GOV reports that investment support grants were provided under Law No. 61/2020/QH14 during the POI.²⁷⁴ The GOV reported a variety of forms of assistance under this program, including assistance in developing technical infrastructure, training, credit, business relocation, technology transfer, market development, and research and development.²⁷⁵ Further, the GOV stated that this support is limited to the following: (1) hi-tech enterprises; (2) science and technology enterprises and organizations; (3) enterprises investing in agriculture and rural areas; (4) enterprises investing in education, dissemination of laws, and other entities.²⁷⁶ To participate in this program, an investor submits a project proposal to the GOV and must specify the forms of

²⁶⁷ See GOV's February 27, 2024 SQR at page 170 of Exhibit SQ-1.1.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ See STAPIMEX's Section III Response at 93.

²⁷² See *Steel Nails from Vietnam* IDM at 22.

²⁷³ See STAPIMEX's March 12, 2024 SQR at Exhibit SSQ-14.

²⁷⁴ See GOV's February 27, 2024 SQR at page 181 of Exhibit SQ-1.1.

²⁷⁵ *Id.*; see also GOV's January 24, 2024 IQR at Exhibit E-2.1.

²⁷⁶ *Id.*

assistance requested.²⁷⁷ The GOV reported that the Ministry of Planning and Investment oversees this program, while provincial People’s Committees approve and provide assistance in their respective provinces.²⁷⁸ STAPIMEX reported that it did not use this program during the POI or AUL period.²⁷⁹

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to a group of enterprises, including hi-tech enterprises and enterprises investing in rural areas. We preliminarily determine that the investment support from this program provides a financial contribution in the form of a direct transfer of funds from the GOV under section 771(5)(D)(i) of the Act. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

3. Insurance Premium Subsidies

The GOV reported that this program was launched in 2011 as a pilot program and during the POI was provided under Decree No. 58/2018/ND-CP (Decree No. 58).²⁸⁰ The GOV stated that this program seeks to encourage the sale of agricultural insurance to enable producers of agricultural, forestry, and aquatic products to recover financial losses due to risks in their production processes.²⁸¹ According to Article 18 of Decree No. 58, aquaculture of shrimp is eligible for insurance premium subsidies under this program.²⁸² To participate, producers apply to the People’s Committee of their respective commune, the process for which is enumerated in Article 24 of Decree No. 58.²⁸³ The GOV stated that the People’s Committee publishes a list of producers eligible for assistance, which enables insurance companies to submit an application to the Ministry of Agriculture and Rural Development (MARD) to receive the financial support.²⁸⁴ STAPIMEX reported that it did not use this program during the POI or AUL period.²⁸⁵

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to a group of enterprises, including those producing shrimp. We preliminarily determine that the insurance premium subsidies from this program provide a financial contribution in the form of a direct transfer of funds from the GOV under section 771(5)(D)(i) of the Act. As described in the “Use of Facts Otherwise Available and Adverse

²⁷⁷ See GOV’s February 27, 2024 SQR at page 181 of Exhibit SQ-1.1.

²⁷⁸ *Id.*

²⁷⁹ See STAPIMEX’s Section III Response at 98.

²⁸⁰ See GOV’s February 27, 2024 SQR at page 192 of Exhibit SQ-1.1.

²⁸¹ *Id.*

²⁸² *Id.*; see also GOV’s January 24, 2024 IQR at Exhibit E-3.2.

²⁸³ *Id.*

²⁸⁴ See GOV’s February 27, 2024 SQR at page 192 of Exhibit SQ-1.1.

²⁸⁵ See STAPIMEX’s Section III Response at 99.

Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

4. Grants for Researching, Developing, and Raising New Breeds

The GOV stated that this program, implemented under Decision No. 703/QD-TTg, seeks to improve research, production, and competitiveness of Vietnamese agriculture, while also adapting the sector for climate change.²⁸⁶ The GOV reported that grants under this program are dispersed by provincial People’s Committees under MARD’s supervision to organizations and individuals who research and produce agricultural and forestry plant varieties, and livestock and aquatic breeds.²⁸⁷ According to the GOV, grants under this program consist of the following types of support: (1) seed production costs; (2) technical labor costs and food costs for the livestock breeding process; (3) hiring foreign experts; and (4) project management costs.²⁸⁸ These grants are funded based on the guidelines set in Article 5 of Circular 107/2021/TT-BTC.²⁸⁹ STAPIMEX reported that it did not use this program during the POI or AUL period.²⁹⁰

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to a group of enterprises in the aquaculture sector producing and researching different aquaculture breeds. We preliminarily determine that this program provides a financial contribution in the form of a direct transfer of funds from the GOV under section 771(5)(D)(i) of the Act. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

5. Programs under the 2030 – 2045 Fisheries Strategy: Seafood Processing and Trading Development Project

The GOV stated that this program was established in accordance with Decision No. 339/QD-TTg (Decision No. 339), dated March 11, 2021, on Approval of the Strategy for Development of Vietnam fisheries by 2030 with vision towards 2045 (Fisheries Strategy).²⁹¹ Decision No. 339 seeks to develop the fisheries industry to become an important economic sector that is integrated and competitive in the global market.²⁹² The GOV explained that the “Seafood Processing and Trading Development Project” program is implemented under Decision No. 1408/QD-TTg and Decision No. 1527/QD-BNN-TCTS (Decision No. 1527) and aims to develop processed seafood products and improve their quality and value-added to meet market demand.²⁹³ The GOV reported that the specific goals of the program include controlling and developing raw materials for seafood processing, attracting investment into the sector, improving productivity, quality and efficiency of seafood processing, developing Vietnam’s seafood market, and reorganizing the

²⁸⁶ See GOV’s February 27, 2024 SQR at Exhibit SQ-1.1; see also GOV’s January 24, 2024 IQR at E-4.1.

²⁸⁷ See GOV’s February 27, 2024 SQR at Exhibit SQ-1.1.

²⁸⁸ *Id.*

²⁸⁹ *Id.* at Exhibits SQ-1.1 and SQ-1.6.

²⁹⁰ See STAPIMEX’s Section III Response at 99.

²⁹¹ See GOV’s January 24, 2024 IQR at 27-31.

²⁹² *Id.* at Exhibit E-6.1.

²⁹³ See GOV’s February 27, 2024 SQR at page 245 of Exhibit SQ-1.1.

supply chain to improve efficiency and competitiveness.²⁹⁴ According to Decision 1527, there are several key aspects of the plan to implement this project, including: (1) implementing improved quality control including of raw materials; (2) attracting investment, especially in storage and in the form of building and forming new large processing companies; (3) promoting processing of high-value added products through support for those products like shrimp and research on other end-uses; (4) developing domestic and export seafood markets; (5) reorganizing the supply chain including through investment projects; (6) developing science and technology through supporting businesses engaging in research and technology transfer; (7) improving institutions to attract investment; (8) improving and ensuring quality and safety of processed seafood products; (9) developing logistics and other supporting sectors; (10) training to serve seafood processing; and (11) environmental protection.²⁹⁵ STAPIMEX reported that it did not use this program.²⁹⁶

We preliminarily determine this program to be *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to a group of enterprises in the seafood processing sector. We preliminarily determine that this program provides a financial contribution in the form of a direct transfer of funds from the GOV under section 771(5)(D)(i) of the Act. As described in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that Thong Thuan benefited from this program during the POI.

2. Programs Deferred to a Post-Preliminary Determination

Commerce intends to issue a post-preliminary determination to address the following programs, which include those in the “New Subsidy Allegations” section above:

1. Income Tax Preferences for Exporters
2. Preferential Income Tax Program for Foreign-Invested Enterprises
3. Exemption of Import Duties for Foreign-Invested Enterprises
4. Exemptions or Reductions of Rent for Foreign-Invested Enterprises
5. Land Rent Reduction for Entities Affected by COVID-19²⁹⁷
6. Provision of Utilities at Reduced Rates in Industrial and Export Processing Zones
7. Provision of Shrimp Broodstock and Seed for LTAR
8. Provision of Shrimp Feed for LTAR

3. Programs Preliminarily Determined Not to Provide Measurable Benefits During the POI

STAPIMEX reported receiving benefits under various programs, some of which were specifically alleged and others of which were self-reported. Based on the record evidence, we preliminarily determine that the benefits from certain programs: (1) were fully expensed prior to the POI; or (2) are less than 0.005 percent *ad valorem* when attributed to STAPIMEX’s

²⁹⁴ *Id.*

²⁹⁵ *Id.* at Exhibit SQ-1.10.

²⁹⁶ See STAPIMEX’s Section III Response at 102.

²⁹⁷ STAPIMEX reported this program under the title of “Rent Reduction Due to COVID-19.” See STAPIMEX’s Section III Response at 108.

applicable sales as discussed above in the “Denominators” section above. Consistent with Commerce’s practice,²⁹⁸ we have not included the programs which provided no measurable benefit in our preliminary subsidy rate calculations for STAPIMEX.

1. Refund for Import Duties on Raw Materials Used to Produce Exports
2. Export Promotion Grants

4. Programs Preliminary Found Not to be Used During the POI by STAPIMEX

1. Policy Lending from the SBV and Other Policy Banks
2. Interest Rate Support Program from the SBV
3. Export Credits from the VDB
4. Investment Credits from the VDB
5. Income Tax Preferences for Exporters
6. Tax Benefits for Old Investments
7. Tax Benefits for New Investments
8. Income Tax Preferences under Decree 24
9. Preferential Income Tax Program for Foreign-Invested Enterprises
10. Exemption of Import Duties for Imports into Industrial Zones
11. Exemption of Import Duties for Foreign-Invested Enterprises
12. Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones
13. Exemption from Irrigation Fees
14. Exemptions of Land and Water Surface-Use Taxes and Levies for Encouraged Industries
15. Investment Support Grants
16. Insurance Premium Subsidies
17. Grants for Researching, Developing and Raising New Breeds
18. Seafood Processing and Trading Development Project
19. Land Rent Exemptions for Enterprises Located in Special Zones

5. Programs Preliminarily Determined Not to Be Countervailable

1. Accelerated Depreciation and Increases of Deductible Expenses

According to the GOV, this program allows companies operating with “high economic efficiency” and a profitable business to accelerate the depreciation of their fixed assets for tax

²⁹⁸ See, e.g., *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at “Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;” *Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at “Income Tax Reductions for Firms Located in the Shanghai Pudong New District;” *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at “Programs Used By the Alnan Companies;” and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at “Tax Deduction for Research and Development Expenses.”

purposes under Circular No. 45/2013/TT-BTC (Circular 45), dated April 25, 2013.²⁹⁹ The GOV reported that, *inter alia*, machinery, measuring instruments, transportation equipment, management tools, animals, and orchards are eligible for accelerated depreciation under this program.³⁰⁰ Since accelerated depreciation increases operating expenses, the GOV stated that this program reduces taxable income for companies.³⁰¹ According to the GOV, there is no application process for this program; instead, under Circular 45 and Circular No. 96/2015/TT-BTC, dated June 22, 2015, companies simply must inform the tax authority prior to implementing accelerated depreciation.³⁰² The GOV reported that this program is guided by the Ministry of Finance and administered city/provincial tax departments.³⁰³ STAPIMEX reported using this program during the POI.³⁰⁴

Based on the information on the record, we preliminarily find that this program is not specific within the meaning of section 771(5A) of the Act. Specifically, the information on the record indicates that participation in this program is not limited to any enterprise or industry (or group thereof), because all profitable businesses are eligible and the list of eligible assets for accelerated depreciation is broadly applicable.

2. Aquatic Resource Protection and Development Fund

The GOV explained that, because no fund has yet been established under this program as of the POI, no enterprises received benefits under this program during the POI.³⁰⁵ Therefore, we preliminarily determine that this program is not countervailable.

3. Programs under the 2030 – 2045 Fisheries Strategy

- a. Fishery Infrastructure Investment and Upgradation Project
- b. National Program for Protection and Development of Aquatic Resources
- c. National Program for Effective and Sustainable Fishing Development
- d. National Program for Aquaculture Development
- e. Marine Aquaculture Development Project
- f. Project on Developing Science, Technology, and Digital Transformation in the Fisheries Sector
- g. Fishery Human Resource Training and Development Project
- h. Project on Development of Co-Management of Aquatic Resource Protection
- i. Fishery Environmental Protection Project

²⁹⁹ See GOV's January 24, 2024 IQR at page 1 of Exhibit B-5.1.

³⁰⁰ *Id.* at page 1 of Exhibit B-5.1 and Exhibit B-5.2.

³⁰¹ *Id.* at page 1 of Exhibit B-5.1.

³⁰² *Id.* at page 1 of Exhibit B-5.1 and Exhibit B-5.2.

³⁰³ *Id.* at page 2 of Exhibit B-5.1.

³⁰⁴ See STAPIMEX's Section III Response at 27.

³⁰⁵ See GOV's March 15, 2024 SQR at page 12 of Exhibit SQ-1.1; see also GOV's February 27, 2024 SQR at Exhibit SQ-2.8.

For the above subprograms under the 2030 – 2045 Fisheries Strategy, the GOV reported that no enterprises participated in the programs during the POI.³⁰⁶ Therefore, we preliminarily determine that these programs are not countervailable.

4. Unemployment Insurance Benefit for Employees and Employers Affected by COVID-19

According to the GOV, this program was provided under Resolution No. 116/NQ-CP dated September 24, 2021, to support employers and employees through difficulties caused due to the COVID-19 pandemic.³⁰⁷ The GOV reported this program reduced the employer’s contribution rate for unemployment insurance from one percent to zero percent of an employee’s wage during the period from October 1, 2021, through September 30, 2022.³⁰⁸ Further, the GOV stated that this program was automatic for all companies with workers participating in unemployment insurance.³⁰⁹ This program was administered by Vietnam Social Security under the supervision of the Ministry of Labor, Invalids, and Social Affairs.³¹⁰ STAPIMEX reported receiving a benefit under this program.³¹¹

Based on the information on the record, we preliminarily find that this program is not specific within the meaning of section 771(5A) of the Act. Specifically, the information on the record indicates that the receipt of the benefit is not limited to any enterprise or industry (or group thereof) as it is available to all companies employing workers who participate in unemployment insurance.

5. Reduction of Occupational Accidents and Disease Insurance

The GOV stated that this program was introduced by Resolution No. 68/NQ-CP dated July 1, 2021, and Decision No. 23/2021/QD-TTg and sought to support employees and employers facing difficulties due to the COVID-19 pandemic. The GOV reported that this program reduced the employer’s contribution for paying social insurance premiums, in this case premiums for the Insurance Fund for Occupational Accidents and Diseases, from 0.5 percent to zero percent of an employee’s wage for the period from July 1, 2021, through June 30, 2022. Under Article 1 of Decision 23, participation in this program was automatic for all employers that pay premiums for employee wages to the Insurance Fund for Occupational Accidents and Diseases. The GOV reported that this program was implemented by provincial Vietnam Social Security offices under the supervision of the Ministry of Labor, Invalids, and Social Affairs. STAPIMEX reported receiving a benefit under this program.³¹²

³⁰⁶ See GOV’s February 27, 2024 SQR at pages 212, 223, 234, and 257 of Exhibit SQ-1.1; see also GOV’s March 15, 2024 SQR at pages 23, 33, 43, 53, and 63 of Exhibit SQ-1.1.

³⁰⁷ See GOV’s January 24, 2024 IQR at page 1 of Exhibit F-2.2 and Exhibit 2.1.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ STAPIMEX reported this program under the title “Occupational Accidents and Diseases Insurance and Unemployment Insurance.” See STAPIMEX’s Section III Response at 103-104. However, the GOV reported this program as two separate programs.

³¹² STAPIMEX reported this program under the title “Occupational Accidents and Diseases Insurance and Unemployment Insurance.” See STAPIMEX’s Section III Response at 103-104. However, the GOV reported this program as two separate programs.

Based on the information on the record, we preliminarily find that this program is not specific within the meaning of section 771(5A) of the Act. Specifically, the information on the record indicates that the receipt of the benefit is not limited to any industry or group of industries as it is available to all companies that pay premiums for worker occupational accidents and disease insurance.

XI. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

3/25/2024

X



Signed by: ABDELALI ELOUARADIA

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

Appendix

AFA Rate Calculation

Programs	AFA Rate (percent)
Loan Programs	
Policy Lending from the SBV and Other Policy Banks	1.38 ³¹³
Interest Rate Support from the SBV	0.05 ³¹⁴
Export Credits from the VDB	1.38 ³¹⁵
Investment Credits from the VDB	1.38 ³¹⁶
Income Tax Programs	
Income Tax Preferences for Enterprises in Special Zones	20.00 ³¹⁷
Tax Benefits for Old Investments	
Tax Benefits for New Investments	
Income Tax Preferences under Decree 24	
Incentives Under Decree 51: Enterprise Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment (Article 23)	
Incentives Under Decree 51: Enterprise Income Tax Preferences, Exemptions, and Reductions (Articles 20 and 21)	
Other Tax Programs	
Import Duty Exemptions for Imports Used to Produce Exported Goods	0.30 ³¹⁸
Refund for Import Duties on Raw Materials Used to Produce Exports	4.46 ³¹⁹
Exemption of Import Duties for Imports into Industrial Zones	0.04 ³²⁰
Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones	4.46 ³²¹
Import Duty Exemptions on Equipment and Machinery	0.03 ³²²
Exemption from Irrigation Fees	4.46 ³²³

³¹³ See *Sacks from Vietnam Inv Final IDM* at 18-19, for the rate for “Preferential Lending to Exporters.”

³¹⁴ See *Shrimp from Vietnam 2013 Final Determination IDM* at 15-16.

³¹⁵ See *Sacks from Vietnam Inv Final IDM* at 18-19.

³¹⁶ *Id.*

³¹⁷ The standard corporate tax rate in Vietnam is 20 percent. See GOV’s January 24, 2024 IQR at 8 and Exhibit B-1.1.

³¹⁸ See Memorandum, “Preliminary Determination Calculation for Soc Trang Seafood Joint Stock Company,” dated concurrently with this memorandum (STAPIMEX Calculation Memorandum).

³¹⁹ See *Wire Hangers from Vietnam IDM* at 15-16 for “Import Duty Exemptions or Reimbursements for Raw Materials.”

³²⁰ See *Tires from Vietnam Inv Final IDM* at 4.

³²¹ See *Wire Hangers from Vietnam IDM* at 15-16 for “Import Duty Exemptions or Reimbursements for Raw Materials.”

³²² See STAPIMEX Calculation Memorandum.

³²³ See *Wire Hangers from Vietnam IDM* at 15-16.

Exemptions of Land and Water Surface-Use Taxes and Levies for Encouraged Industries	4.46 ³²⁴
Provision of Goods or Services for LTAR	
Exemption or Reduction of Rents for Encouraged Industries	1.55 ³²⁵
Land Rent Exemptions for Enterprises Located in Special Zones	25.41 ³²⁶
Grant Programs	
Export Promotion Grants	25.41 ³²⁷
Investment Support Grants	25.41 ³²⁸
Insurance Premium Subsidies	25.41 ³²⁹
Grants for Researching, Developing, and Raising New Breeds	25.41 ³³⁰
Programs under the 2030 – 2045 Fisheries Strategy:	
Seafood Processing and Trading Development Project	25.41 ³³¹
Total	196.41

³²⁴ *Id.*

³²⁵ *See* STAPIMEX Calculation Memorandum.

³²⁶ *See Wire Hangers from Vietnam* IDM at 12-14.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*