



C-560-825
Investigation
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May 28, 2013

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

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

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

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of certain frozen warmwater shrimp (frozen shrimp) in the Republic of Indonesia (Indonesia), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

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

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

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



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

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁵ On January 18, 2013, the Department released the CBP entry data under administrative protective order (APO).⁶

We received respondent selection comments from Petitioner and PT. First Marine Seafoods (First Marine).⁷ On February 13, 2013, we selected PT. Central Pertiwi Bahari (Central Pertiwi) and First Marine as the mandatory respondents.⁸ We sent our CVD questionnaire seeking information regarding the alleged subsidies on February 14, 2013.⁹

For the reasons explained in the *Initiation Notice*, we determined to include in this investigation subsidies allegedly provided to producers of frozen shrimp, as well as to producers of fresh shrimp.¹⁰ Thus, we also sent questionnaires to the mandatory respondents seeking information about their suppliers of fresh shrimp.¹¹ Based on the responses we received,¹² we are analyzing the alleged subsidies provided for (1) the shrimp farming operations owned by Central Pertiwi, and for (2) the shrimp farming operations owned by PT. Windu Mantap Mandiri (Windu Mantap) and its cross-owned shrimp farming companies, which are fresh shrimp suppliers to First Marine.

On February 13, 2013, Petitioner filed its first set of new subsidy allegations.¹³ The Department determined to investigate certain of the newly alleged subsidies,¹⁴ and issued a new subsidy

³ See “Countervailing Duty Initiation Checklist: Certain Frozen Warmwater Shrimp from Indonesia,” (January 17, 2013) (Initiation Checklist).

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

⁵ See *id.*, 78 FR at 5420.

⁶ See Department Memorandum, “Release of Customs and Border Protection (“CBP”) Data,” (January 18, 2013).

⁷ See Letter from Petitioner, “COGSI Comments on Respondent Selection” (February 1, 2013); see also Letter from First Marine, “Rebuttal to COGSI’s Comments on Respondent Selection,” (February 5, 2013).

⁸ See Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Indonesia: Respondent Selection Memorandum,” (May 13, 2013). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2)(A)(ii) of the Act gives the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

⁹ See Letter from the Department, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Indonesia,” (February 14, 2013).

¹⁰ See *Initiation Notice*, 78 FR at 5419.

¹¹ See Letters from Department to Central Pertiwi and to First Marine referencing the questionnaire for sources of fresh and frozen shrimp (February 13, 2013).

¹² See Letters from Central Pertiwi and First Marine referencing responses to questionnaires regarding sources of fresh and frozen shrimp (February 20, 2013).

¹³ See Letter from Petitioner, “COGSI’s Additional Subsidy Allegations,” (March 13, 2013).

¹⁴ See Department Memorandum, “Analysis of February 13, 2013 New Subsidy Allegations,” (March 19, 2013).

questionnaire on March 19, 2013.¹⁵ On March 21, 2013, Petitioner requested that the Department reconsider its determination not to investigate alleged value added tax (VAT) exemptions for purchases of fish feed (included among Petitioner's first set of new subsidy allegations).¹⁶ In this submission, Petitioner revised its allegation and provided additional information in support.

Between February 20, 2013, and May 13, 2013, the GOI, Central Pertiwi, and First Marine submitted timely responses to our questionnaires.

On April 4 and April 9, 2013, we issued supplemental questionnaires to Central Pertiwi and to PT. Central Proteinaprima (Central Proteinaprima) (Central Pertiwi's parent company), requesting that they each provide complete questionnaire responses for certain affiliates that, based on our analysis of record information, appeared to be cross-owned with the respondents and that might possibly have received countervailable subsidies.¹⁷

On April 18, 2013, Petitioner filed its second set of new subsidy allegations.¹⁸ On April 25, 2013, Petitioner alleged that Central Proteinaprima was uncreditworthy from 2009 through 2010, and that both Central Pertiwi and First Marine were uncreditworthy from 2009 through 2011.¹⁹ On May 13, 2013, the Department determined not to investigate these additional, newly alleged subsidies and allegations of uncreditworthiness.²⁰ At that time, the Department also addressed Petitioner's request for reconsideration of our earlier determination not to investigate alleged VAT exemptions and determined to initiate an investigation of the VAT exemptions.²¹ On April 25, 2013, the Department sent its second new subsidy allegation questionnaire.²²

Petitioner filed pre-preliminary determination comments on May 10, May 15, and May 22, 2013, which the Department considered for this preliminary determination.²³ Petitioner also filed pre-verification comments on May 17, 2013.²⁴

¹⁵ See Letter from the Department, "Questionnaire for February 13, 2013 New Subsidy Allegations," (March 19, 2013).

¹⁶ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) – Request to Reconsider VAT Subsidy Allegations," (March 21, 2013).

¹⁷ See Letter from the Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Indonesia," (April 4, 2013); see also Letter from the Department, "Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Indonesia, Supplemental Questionnaires," (April 9, 2013).

¹⁸ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) - COGSI's New Subsidy Allegations," (April 18, 2013).

¹⁹ See Letters from Petitioner, "(C-560-825) – Creditworthiness Allegation for PT. Central Pertiwi Bahari," (April 25, 2013); "(C-560-825) – Creditworthiness for PT. First Marine Seafoods," (April 25, 2013).

²⁰ See Department Memorandum, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Indonesia: Analysis of April 18, 2013 New Subsidy Allegations and April 25, 2013 Creditworthiness Allegations," (May 13, 2013).

²¹ See Department Memorandum, "Reconsideration of Petitioner's February 13, 2013 New Subsidy Allegation Regarding Value Added Tax Exemptions for Purchases of Fish Feed," (April 25, 2013).

²² See Letter from the Department, "Questionnaire for VAT Exemptions on Purchases of Fish Feed," (April 25, 2013).

²³ See Letters from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) - Petitioner's Comments on the Upcoming Preliminary Determination," (May 10, 2013); "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) – Petitioner's Additional Comments on the Upcoming Preliminary Determination," (May 15, 2013); and

Interested Party Status of the Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC)

On March 12, 2013, AHSTEC asked that it be placed on the public service list for the seven ongoing CVD investigations of frozen shrimp and that it be granted access to proprietary information under administrative protective order (APO).²⁵ Numerous submissions commenting on AHSTEC's applications followed.²⁶ The Department met with counsel for Petitioner and AHSTEC on March 28 and April 19, 2013, respectively.²⁷ On April 23, 2013, the Department found that AHSTEC qualifies as an interested party under section 771(9)(F) of the Act because it is an association, a majority of whose members manufacture, produce, or wholesale frozen shrimp.²⁸ Consequently, AHSTEC's APO applications were approved.²⁹

Extension of Preliminary Deadline

On February 8, 2013, Petitioner requested that the deadline for the preliminary determination be extended to 130 days after the initiation of the investigation. The Department granted Petitioner's request and on February 27, 2013, postponed the preliminary determination until May 28, 2013, in accordance with section 703(c)(1)(A) of the Act.³⁰

Countervailing Duty Investigation on Certain Frozen Warm water Shrimp from Indonesia (C-560-825)- Petitioner's Additional Comments on the Upcoming Preliminary Determination (May 22, 2013).

²⁴ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) –Petitioner's Pre-Verification Comments," (May 17, 2013).

²⁵ See Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Entry of Appearance and Administrative Protective Order Application," (March 12, 2013).

²⁶ See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) – Response to Ad Hoc's Entry of Appearance and APO Application," (March 13, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Response to Opposition of COGSI to AHSTEC's Entry of Appearance and Administrative Protective Order Application," (March 15, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825): Reply to AHSTEC's Response to Opposition of COGSI to AHSTEC's Entry of Appearance and APO Application," (March 19, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Response to Second Filing in Opposition of COGSI to AHSTEC's Entry of Appearance and Administrative Protective Order Application," (March 25, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Supplemental Filing in Support of AHSTEC's Entry of Appearance and Administrative Protective Order Application," (April 8, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); and Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Comments On COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013).

²⁷ See Department Memoranda, "Ex Parte Meeting with Coalition of Gulf Shrimp Industries on March 28, 2013; Countervailing Duty Investigations of Certain Frozen Warmwater Shrimp," (April 1, 2013) and "Meeting with Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC) on April 19, 2013; Countervailing Duty Investigations of Frozen Warmwater Shrimp," (April 19, 2013).

²⁸ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Entries of Appearance and Administrative Protective Order Applications; Interested Party Status Determination," (April 23, 2013).

²⁹ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Administrative Protective Order Applications of AHSTEC," (April 23, 2013).

³⁰ See *Certain Frozen Warmwater Shrimp From the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 78 FR 13325, 13325 (February 27, 2013).

B. Period of Investigation

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

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.³¹ On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.³² Further comments on this scope clarification were submitted by AHSTEC and Petitioner.³³

For the reasons explained in "Scope Clarification re Brine-Frozen Shrimp," we preliminarily determine that brine-frozen shrimp are not excluded from this investigation.³⁴

IV. SCOPE OF THE INVESTIGATION

This investigation covers certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³⁵ deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

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

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include,

³¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*.

³² See Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) – Request for Scope Clarification," (March 28, 2013).

³³ See Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Supplemental Filing in Support of AHSTEC's Entry of Appearance and Administrative Protective Order Application" (April 8, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Comments On COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Comments on COGSI's April 23rd Filing," (April 30, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia (C-560-825) - Supplemental Information Supporting Petitioner's Scope Clarification Request," (May 7, 2013); and Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Indonesia: Comments on COGSI's Revised Scope Clarification Request," (May 14, 2013); Letter from Petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Indonesia – Response to AHSTEC's Comments from April 17, 2013," (April 23, 2013).

³⁴ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Scope Clarification re Brine-Frozen Shrimp," dated concurrently with this memorandum.

³⁵ "Tails" in this context means the tail fan, which includes the telson and the uropods.

but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

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

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

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

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

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

V. INJURY TEST

Because Indonesia 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 Indonesia materially injure, or threaten material injury to, a U.S. industry. On February 15, 2013, the ITC determined that there is a reasonable indication that an

industry in the United States is materially injured by reason of imports of frozen shrimp from, *inter alia*, Indonesia.³⁶

VI. SUBSIDIES VALUATION

A. Allocation Period

Pursuant to 19 CFR 351.524(b), the Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as updated by the U.S. Department of Treasury.³⁷ The Department notified the respondents of the 12-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

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

B. Attribution of Subsidies

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

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

³⁶ See Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam, Inv. No. 701-TA-491-497, USITC Pub. 4380 (February 2013) (Preliminary); *Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, 78 FR 11221 (February 15, 2013).

³⁷ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he 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.³⁸

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³⁹

Central Pertiwi

The Department has selected Central Pertiwi as a mandatory respondent in this investigation and requested that it submit complete questionnaire responses. In its initial questionnaire response, Central Pertiwi, along with its parent company (*i.e.*, Central Proteinaprima), and two additional cross-owned companies and subsidiaries, PT. Central Bali Bahari (CBB) and PT. Marindolab Pratama (MLP), submitted questionnaire responses.⁴⁰ Central Proteinaprima, a publicly listed company, is also an integrated producer and exporter of shrimp products, and exported subject merchandise to the United States during the POI. Central Proteinaprima owns 99.99 percent of CBB and 90 percent of MLP. Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Central Pertiwi, Central Proteinaprima, CBB, and MLP are cross-owned companies.⁴¹ During the POI, CBB and MLP produced and supplied both Central Pertiwi and Central Proteinaprima with medicines and probiotics for their shrimp farming operations.⁴² Because these products are inputs dedicated to the production of subject merchandise, we preliminarily determine that subsidies received by CBB and MLP are attributable to Central Pertiwi and to Central Proteinaprima, consistent with 19 CFR 351.525(b)(6)(iv).

³⁸ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

³⁹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴⁰ See Letter from Central Pertiwi, "Frozen Warmwater Shrimp from Indonesia: PT Central Pertiwi Bahari Response to the Initial CVD Questionnaire," (April 1, 2013) (Central Pertiwi Initial Questionnaire).

⁴¹ The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

⁴² See Central Pertiwi Initial Questionnaire at 5.

In our April 4, 2013, and April 9, 2013 supplemental questionnaires, we asked both Central Pertiwi and Central Proteinaprima questions concerning how they had determined that additional affiliates were not cross-owned or were otherwise not relevant to this investigation.⁴³ We requested that both Central Pertiwi and Central Proteinaprima provide complete questionnaire responses for certain affiliates that, based on our analysis of record information, appeared to be cross-owned with the respondents and that might possibly have received countervailable subsidies. Central Pertiwi and Central Proteinaprima submitted complete questionnaire responses for these companies and reported that these companies received no subsidies.⁴⁴ For additional affiliates that appeared cross-owned, we requested that Central Pertiwi and Central Proteinaprima provide either questionnaire responses or an adequate explanation regarding why no questionnaire responses were necessary. Based on the explanations provided, we did not require questionnaire responses from these additional affiliates.⁴⁵

First Marine

As discussed above, we selected First Marine as a mandatory respondent. First Marine reported that it is affiliated with PT. Khom Foods (Khom Foods), an Indonesian company that is engaged in the processing and selling of shrimp products.⁴⁶ Because both companies produce subject merchandise, First Marine and Khom Foods responded collectively to the Department's questionnaires. The two companies stated that First Marine owns a substantial portion of Khom Foods, and that these companies share certain members of their boards of directors, including the same board president.⁴⁷ Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that First Marine and Khom Foods are cross-owned (the two companies are referred to below collectively as First Marine).

On February 13, 2013, the Department issued First Marine a questionnaire concerning the company's suppliers of fresh and frozen shrimp.⁴⁸ On February 20, 2013, First Marine submitted its response to the supplier questionnaire.⁴⁹ Upon review of the response, we determined to examine subsidies provided to the largest of First Marine's supplying farmers, and as a result, requested a complete response to Section III of the Department's initial questionnaire from Windu Mantap. In its April 8, 2013 submission, Windu Mantap stated that it is affiliated with the Indonesian companies PT. Prima Larvae (Prima Larvae), which produces shrimp fry and broodstock, and PT. Sumberwindo Airmas (Airmas) and PT. Teluk Berngin Jaya (Teluk),

⁴³ See April 4, and April 9, 2013 supplemental questionnaires to Central Pertiwi and Central Proteinaprima, respectively.

⁴⁴ See Supplemental questionnaire response submitted by Central Pertiwi and Central Proteinaprima, dated April 22, 2013.

⁴⁵ See Supplemental questionnaire response submitted by Central Pertiwi and Central Proteinaprima, dated April 24, 2013.

⁴⁶ See Letter from First Marine, "Frozen Warmwater Shrimp from Indonesia: PT. First Marine Seafoods Response to Initial Questionnaire," (April 25, 2013) at 3.

⁴⁷ See *id.*

⁴⁸ See Letter from the Department to First Marine Regarding Sources of Fresh and Frozen Shrimp (February 13, 2013).

⁴⁹ See Letter from First Marine, "Frozen Warmwater Shrimp from Indonesia: PT. First Marine Seafoods Response to Questionnaire Regarding Sources of Fresh & Frozen Shrimp," (February 20, 2013).

both of which produce raw shrimp.⁵⁰ Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(iv) of the Department’s regulations, among Windu Mantap, Prima Larvae, Airmas, and Teluk. Because much of our analysis supporting this conclusion involves business proprietary information, a full discussion of the bases for our preliminary determination is set forth in the Department’s analysis memorandum for First Marine.⁵¹

Subsidies to Producers of Fresh Shrimp

Section 771B of the Act states that subsidies provided to producers of a raw agricultural product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed form of the product when two conditions are met. First, the demand for the prior stage (raw agricultural) product is substantially dependent on the demand for the latter stage (processed) product. Second, the processing operation adds only limited value to the raw commodity. Petitioner claimed that these conditions are met with respect to fresh and processed shrimp, and substantiated its claim with supporting evidence.⁵² Based on the information Petitioner submitted, the Department determined at the time of the initiation of this investigation to examine subsidies to producers of fresh shrimp.⁵³ Respondents in certain concurrent investigations of frozen shrimp dispute Petitioner’s claim, though the respondents have not made such arguments in the instant proceeding. Based on the information provided in Petitioner’s allegation, we preliminarily determine that subsidies provided to producers of fresh shrimp are provided with respect to the processed shrimp product. We also have provided a full description of the calculations for such attributed subsidies, summarized below.

To calculate the amount of subsidies to be attributed to processed shrimp as a result of the GOI’s provision of subsidies to producers of fresh shrimp, we have relied on the information submitted with respect to Central Pertiwi’s and Central Proteinaprima’s own shrimp farming operations. We have also relied on the information submitted with respect to Windu Mantap and its cross-owned fresh shrimp producers. Specifically, we have calculated rates of fresh shrimp subsidization measured in rupiah/kilo based on the subsidies each of these companies received. We then computed a simple average of these rates of fresh shrimp subsidization and multiplied the result by the volume of fresh shrimp purchased by the respondents. The subsidy rate for the fresh shrimp “self-produced” by Central Pertiwi and Central Proteinaprima was calculated by attributing its debt forgiveness (discussed below) in accordance with the allocation rules prescribed by 19 CFR 351.525(b)(6) (*i.e.*, the amount of the subsidy attributable to the POI was divided by the total sales of the cross-owned producers). The resulting subsidy amounts were attributed to the sales of the respondents to calculate *ad valorem* rates.

⁵⁰ See Letter from First Marine, “Frozen Warmwater Shrimp from Indonesia: PT First Marine Seafoods/Supplier Questionnaire Response,” (April 8, 2013) at exhibit 1.

⁵¹ See Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Indonesia: PT. First Marine Seafoods Preliminary Calculation Memorandum,” dated concurrently with this memorandum (First Marine Preliminary Calculations Memorandum).

⁵² See Petition at Volume V, at V-3, and V-5 – V-6.

⁵³ See *Initiation Notice*, 78 FR at 5419.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Preliminary Calculation Memoranda" prepared for this investigation.⁵⁴

D. Benchmarks and Discount Rates

Discount Rate

We have determined that Central Proteinaprima received countervailable debt forgiveness in 2001. In order to allocate this subsidy across the AUL, we determined a discount rate for 2001 based on information reported in the *International Financial Statistics* published by the World Bank. Specifically, we used the long-term working capital loan rate of 8.947 percent as reported for Indonesia in the year 2001.⁵⁵ While the Department typically bases discount rates on the respondent's average long-term cost of borrowing, Central Proteinaprima had no long-term loans during 2001. The respondents reported no other non-recurring subsidies during the AUL and had no long-term loans during that period. Therefore, no other discount rates were required.

Short-Term IDR- Denominated Loans and Short-Term USD-Denominated Loans

During the POI, Central Proteinaprima and Central Pertiwi had outstanding short-term loans (less than one year), revolving working capital financing, and a letter of credit, from Bank Negara Indonesia (BNI), PT. Bank Rakyat Indonesia Tbk (BRI), and the Export-Import Bank of Indonesia (Ex-Im Bank). (As explained below, we are countervailing the financing provided by only one of these state-owned banks, the Ex-Im Bank). During the POI, Central Proteinaprima and Central Pertiwi also held significant loans from PT. Bank CIMB Niaga Tbk and PT. Bank DBS Indonesia, two private commercial banks in which the GOI does not own shares.

Consistent with 19 CFR 351.505(a)(2)(iv), when investigating a government-provided, short-term loan program, the Department's preference for a benchmark is an annual average of the interest rates on comparable commercial loans during the year in which the government provided loan was obtained, weighted by the principal amount of each comparable commercial loan. For this preliminary determination, the Department has used the private commercial bank IDR- and USD-denominated short-term loans to calculate such an average for determining benefits received by Central Proteinaprima and Central Pertiwi under government loan programs.⁵⁶

⁵⁴ See Department Memorandum, "Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Indonesia: PT. Central Pertiwi Bahari Preliminary Calculation Memorandum," dated concurrently with this memorandum (Central Pertiwi Preliminary Calculations Memorandum); *see also* First Marine Preliminary Calculations Memorandum.

⁵⁵ See Central Pertiwi's Preliminary Calculation Memorandum.

⁵⁶ *Id.*

Central Proteinaprima's Creditworthiness

Based on allegations from Petitioner,⁵⁷ we initiated an investigation of whether Central Proteinaprima was uncreditworthy during 2011.⁵⁸

The Department's creditworthiness analysis is conducted pursuant to 19 CFR 351.505(a)(4). The Department considers a firm to be uncreditworthy if, "based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources."⁵⁹ Our analysis is guided by four regulatory factors: (1) the receipt by the firm of comparable commercial long-term loans; (2) the present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts; (3) the firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.⁶⁰

We have analyzed the above information in light of these factors for the year of the allegation (2011) as well as for the two previous years (2009 and 2010), per the Department's practice of examining both past and present indicators of a company's financial health. First, record information indicates that Central Proteinaprima did not receive any comparable commercial long-term loans in 2011. Second, record information from Central Proteinaprima's financial statements indicates that Central Proteinaprima had 2011 financial ratios of 0.38 for its quick ratio and 0.56 for its current ratio, significantly lower than the benchmarks (1.0 for quick ratios and 2.0 for current ratios) historically relied on by the Department in its creditworthiness analysis. The company's 2010 financial statement indicates a quick ratio of 0.47 and a current ratio of 0.73, also lower than the benchmarks. In 2009, the company had a quick ratio of 1.22 and a current ratio of 1.90, slightly above and below the benchmark for quick and current ratios, respectively. Both the absolute values of the ratios as well as the decreasing trend of the ratios indicate that the company had increasing difficulty maintaining sufficient liquid assets to cover its short-term debt obligations. In addition, while Central Proteinaprima showed a slightly positive cash flow in 2010, the company had negative cash flows in 2009 and 2011, indicating the company could not meet its costs and fixed financial obligations with incoming cash for these two years. Finally, Fitch Ratings progressively downgraded Central Proteinaprima's credit rating from 2009 to 2011.⁶¹ Therefore, we preliminarily determine that Central Proteinaprima was uncreditworthy during 2011, in accordance with 19 CFR 351.505(a)(4).

For this preliminary determination, we have determined that Central Proteinaprima received no long-term loans or non-recurring subsidies in 2011. If, in the final determination, we determine that Central Proteinaprima did receive long-term loans or non-recurring subsidies in 2011, we

⁵⁷ See Petition.

⁵⁸ See Initiation Checklist at 20.

⁵⁹ 19 CFR 351.505(a)(4)(i).

⁶⁰ 19 CFR 351.505(a)(4)(i)(A)-(D).

⁶¹ See Letter from Central Pertiwi, "Frozen Warmwater Shrimp from Indonesia: PT Central Pertiwi Bahari Response to First Supplemental CVD Questionnaire," (April 24, 2013) at exhibit S2-6, Fitch Credit Ratings Reports.

will adjust the long-term interest rate benchmark and/or discount rate for 2011 to reflect this uncreditworthiness determination, pursuant to 19 CFR 351.505(a)(3)(iii).⁶² In the event that an adjustment for uncreditworthiness may be necessary for the final determination, we are including the relevant data and adjustment calculation in Central Pertiwi's Preliminary Calculation Memorandum.

VII. VOLUNTARY RESPONDENTS

Between February 1, 2013, and March 4, 2013, Indonesian frozen shrimp producers/exporters PT. Sekar Bumi, Tbk. (Sekar Bumi), First Marine, PT. Mega Marine Pride (Mega Marine), and PT. Bumi Menara Internusa Dampit and its affiliates (collectively, Bumi Menara) filed separate requests for voluntary respondent status.⁶³ On March 7, 2013, the GOI submitted a letter requesting that the Department consider several companies, including Bumi Menara, Sekar Bumi, and Mega Marine, as voluntary respondents in this investigation. On March 21, 2013, the Department issued a memorandum stating that it would not examine Bumi Menara or any other company requesting voluntary respondent status in this investigation.⁶⁴ On March 28, 2013, the GOI reiterated its request with respect to Sekar Bumi.⁶⁵

In our Voluntary Respondent Requests Memorandum, the Department explained that, given its existing resources and the complexity of this investigation, examining any additional company as a voluntary respondent would be unduly burdensome and would inhibit the timely completion of this investigation.⁶⁶ On May 15, 2013, the Department sent a letter to the GOI reiterating its position as explained in the Voluntary Respondent Requests Memorandum.⁶⁷ Department officials also met with representatives from the GOI to discuss in person the Department's treatment of voluntary respondents.⁶⁸ In this preliminary determination, we reemphasize that existing resources and the complexity of this investigation prevent us from examining any companies as voluntary respondents.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person:

⁶² The adjustments are provided for in detail in 19 CFR 351.505(a)(3)(iii).

⁶³ See Letter from Sekar Bumi, "Frozen Warmwater Shrimp from Indonesia: Request for Voluntary Respondent Status," (February 1, 2013); Letter from First Marine, "Frozen Warmwater Shrimp from Indonesia: Request for Voluntary Respondent Status," (February 4, 2013); Letter from Mega Marine, "Frozen Warmwater Shrimp from Indonesia: Request for Voluntary Respondent Status," (February 5, 2013); and Letter from Bumi Menara, "Certain Frozen Warmwater Shrimp from Indonesia: Reiteration of Request for Voluntary Status," (March 4, 2013).

⁶⁴ See Department Memorandum, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from the Republic of Indonesia: Voluntary Respondent Requests," (March 21, 2013) (Voluntary Respondent Requests Memorandum).

⁶⁵ See Letter from the GOI, "Frozen Warmwater Shrimp from Indonesia- Voluntary Respondent Request of PT Sekar Bumi Tbk.," (March 28, 2013).

⁶⁶ See Voluntary Respondent Requests Memorandum.

⁶⁷ See Letter from the Department to Dr. Dino Patti Djalal, Ambassador, Embassy of the Republic of Indonesia (May 15, 2013).

⁶⁸ See Department Memorandum, "Ex-Parte Meeting with the Government of Indonesia on May 6, 2013; Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Indonesia," (May 15, 2013).

(A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability in complying with a request for information.

As explained below, based on information submitted by Central Proteinaprima, we have preliminarily determined that Central Proteinaprima received debt forgiveness in 2001, as part of a loan restructuring agreement.⁶⁹ We asked the GOI twice to provide the agreement between Central Proteinaprima and a syndicate of banks including Indonesian Bank Restructuring Agency (IBRA), a state-owned bank charged by the GOI with restructuring problematic loans held by Indonesian banks. Because the GOI failed to provide the agreement, the Department is unable to determine what portion of the debt forgiven by the syndicate might be attributable to IBRA. Thus, we determine that the use of facts available is necessary in determining the portion of debt forgiveness attributable to IBRA. We also determine that an adverse inference is warranted. The Department requested the agreement on April 9 and April 30, 2013. In response to our first request, the GOI stated: “The Ministry of Finance is searching IBRA’s archived documents for the transfer agreement and will submit to the Department as soon as it is located.”⁷⁰ In our second request, we noted that we must review this documentation prior to verification and that new information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.⁷¹ Nevertheless, in response to our second request, the GOI stated: “We stress that IBRA was dissolved in 2004 and all the hardcopy documents are stored in a large warehouse where manual identification is needed to locate the documents. The GOI has done its best efforts to locate such supporting document since the Department made its request. However, all the relevant transfer documents to third parties have not yet been found.”⁷² Because the GOI did not provide the requested agreement in response to our first request or in response to our second request, whereby we notified the GOI of its prior, deficient response, we preliminarily determine that the GOI did not act to the best of its ability. We have stated repeatedly that interested parties may not give themselves extensions to submit documents.⁷³

⁶⁹ See Central Pertiwi Initial Questionnaire at 49.

⁷⁰ See Letter from the GOI, “Frozen Warmwater Shrimp from Indonesia: Government of Indonesia Response to 2nd Supplemental Questionnaire,” (April 24, 2013) (GOI’s April 24 SQR) at 29.

⁷¹ See Letter from the Department, “Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Indonesia,” April 30, 2013.

⁷² See Letter from the GOI, “Frozen Warmwater Shrimp from Indonesia: Government of Indonesia Response to Third Supplemental CVD Questionnaire,” (May 7, 2013) at 5-6.

⁷³ See *Galvanized Steel Wire from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 76 FR 55031 (September 6, 2011); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 17439 (March 26, 2012).

The Department's practice when making an adverse inference from among the possible sources of information is to ensure that the result is sufficiently adverse "so as to effectuate the statutory purposes of the adverse facts available (AFA) rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁷⁴ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁷⁵ Pursuant to this practice, based on AFA, the Department is attributing the entire amount of the debt forgiven by the syndicate to IBRA.

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined To Be Countervailable

1. Export Financing from the Indonesia Export-Import Bank

Petitioner alleges that Ex-Im Bank provides export credits at preferential rates. These export credits can be provided for up to 90 percent of an exporter's working capital needs, and are provided either directly from the Ex-Im Bank or from other Indonesian banks based on a letter of credit from the Ex-Im Bank. Additionally, record information indicates that these various lines of credit are issued with preferential interest rates. The Ex-Im Bank's 2011 Annual Report states that "Bank Financing" and "Export Loan Financing" are two of its business lines,⁷⁶ and that it targets clients that export, or have export supporting activities.⁷⁷ This Annual Report further states that the Ex-Im Bank serves "customers who need financing with a more competitive interest rate, longer term, higher risk, even customers who are essentially non-bankable but feasible from a business standpoint."⁷⁸ Central Proteinaprima reported having outstanding loans and a line of credit from the Ex-Im Bank during the POI.⁷⁹ Public information notes that Central Proteinaprima had a "Transactional Export Working Capital Loan Facility" from the Ex-Im Bank during the POI.⁸⁰ Because the Ex-Im Bank is an authority of the GOI, we preliminarily determine that the export financing it provides constitutes a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. Based on record evidence, because the loans and lines of credit are contingent upon export performance, they are therefore specific under section 771(5A)(B) of the Act. These loans and lines of credit confer a benefit

⁷⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁷⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 16, 103d Cong. 2d Session, at 870 (1994).

⁷⁶ See Letter from Petitioner, "Certain Frozen Warmwater Shrimp from the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam –Petitioner's Response To The Department's January 4, 2013 Supplemental Questions on Indonesia on Behalf of Coalition of Gulf Shrimp Industries ("COGSI")," (January 9, 2013) exhibit V-SQ-5, at 9.

⁷⁷ See *id.* at 104.

⁷⁸ See *id.*

⁷⁹ See Letter from the GOI, "Frozen Warmwater Shrimp from Indonesia: Government of Indonesia Response to 2nd Supplemental Questionnaire Translations and Loan Documents," (April 30, 2013), at 24; see also Central Pertiwi Initial Questionnaire, at 38 and exhibit 5a.

⁸⁰ See Petition exhibit V-15 at 125.

that is equal to the difference between the amount the recipient pays on the government loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market, in accordance with section 771(5)(E)(ii) of the Act. To calculate the benefit from this program, we have used the short-term loan benchmark discussed above under the “Subsidies Valuation” section. On this basis, we preliminarily determine a subsidy rate of 0.16 percent *ad valorem* for Central Pertiwi and Central Proteinaprima.

2. Debt Forgiveness from the Government of Indonesia

As a result of the Asian banking crisis that occurred during the mid-1990s, a significant number of Indonesian banking institutions experienced illiquidity and insolvency. Lack of public confidence in the Indonesian banking system and pressure from the International Monetary Fund and the World Bank led the GOI to implement a restructuring program to restore the solvency and the stability of the Indonesian banking system. To that end, the GOI put in place a series of policies, one of which was to establish IBRA.

IBRA was established in January 1998 under the “Decree of the President of the Republic of Indonesia (RI) No. 27,” and was expected to operate for five years, although that period could be extended. The scope of responsibilities and duties of IBRA were as follows: (1) to administer the Government guarantees of the third party liabilities of banks; (2) to carry out supervision, development, and other banking reform measures, including the restructuring of banks declared unsound by Bank Indonesia; and (3) to perform other necessary legal measures in restructuring unsound banks. According to the GOI, IBRA was granted responsibility and authority, with a degree of autonomy, to reform the Indonesian financial sector. IBRA’s mandate ended in 2004, leaving in place a smaller IBRA team to perform certain administrative tasks after the dissolution of IBRA. The management of all remaining state assets held by IBRA was eventually transferred to the Ministry of Finance.

The Department has identified four instances of debt restructuring involving Central Proteinaprima. The first two instances, one in 2001 and the other in 2004, involved funds borrowed by farmers, for which Central Proteinaprima acted as the guarantor.⁸¹ Central Proteinaprima itself never became directly liable for the debt. In the third instance, a loan was restructured by privately-owned banks, *i.e.*, the “Ficorinvest” loans.⁸² Record evidence supports the conclusion that neither IBRA nor any other Indonesian authority was involved in the restructuring of this loan.⁸³ In the last instance, Central Proteinaprima assumed debt owed by its “plasma” farmers in 2000. In 2001, the debt was restructured by a bank syndicate, of which IBRA was a member. As part of the debt restructuring, record evidence indicates that debt was forgiven before the loan was sold to Lehman Brothers.

The Department does not believe that the first three instances of debt forgiveness are countervailable. These three instances lack a financial contribution, do not appear to have benefited Central Proteinaprima directly, or involve no clear evidence that debt forgiveness was a part of the restructuring agreements.

⁸¹ See Petition exhibit V-14 at 88.

⁸² See Central Pertiwi Initial Questionnaire at 47-48.

⁸³ See Central Pertiwi Preliminary Calculations Memorandum, for details on the calculation of this rate.

Regarding the fourth instance of debt restructuring, while the GOI provided the transfer document between IBRA and Lehman Brother, the GOI did not provide the restructuring agreement for Central Proteinaprima's January 2000 syndicated bank loan.⁸⁴ As explained above in the "Use of Facts Otherwise Available and Adverse Inferences" section, without the agreement, the Department is unable to determine the amount of the financial contribution (*i.e.*, the amount of the debt forgiveness attributable to IBRA) and, as AFA, is finding the entire amount of the debt forgiveness to be attributable to IBRA. Because IBRA is an authority of the GOI, we preliminarily determine that there is a financial contribution. Moreover, debt forgiveness is a company-specific subsidy and is therefore *de facto* specific because the recipients are limited in number and constitute the principal beneficiaries of the debt forgiveness under sections 771(5A)(D)(iii)(I) and (II) of the Act. The debt forgiveness provides a benefit in the amount of the principal and interest that the government has forgiven under 19 CFR 351.508(a).

The Department determines that this instance of debt forgiveness subsidizes fresh shrimp production. To allocate the benefit from this program to the POI, we have used the discount rate discussed above under the "Subsidies Valuation" section. We divided the amount attributable to the POI by the combined fresh shrimp production volume of the "self-production" operations of Central Pertiwi and Central Proteinaprima. On this basis, we preliminarily determine a subsidy rate of 1,341.22 IDR per kilogram for debt forgiveness for fresh shrimp purchased by the respondents.

3. Discovered Program: Income Tax Article 25 Tax Reduction

Windu Mantap and its two cross-owned suppliers of fresh shrimp (hereinafter, collectively, Windu Mantap) each reported an income tax reduction from the standard rate of 25 percent to 12.5 percent for a portion of their income. Windu Mantap explained that the standard Indonesian income tax rate is 25 percent, but that corporations with an annual "turnover" of up to IDR 50 billion are entitled to a tax discount of 50 percent of the standard rate on taxable income derived from the portion of gross income up to IDR 4.8 billion. Therefore, based on this tax rule, Windu Mantap reported that in 2010 and 2011, the income tax rates applicable to it was 12.5 percent for taxable income derived from "turnover" up to IDR 4.8 billion, and 25 percent for taxable income derived from the portion exceeding IDR 4.8 billion.⁸⁵ Windu Mantap claims that this discount is applicable to all industries in Indonesia.

This tax reduction was discovered during the course of this investigation, and neither the respondents nor the GOI have provided any explanation regarding this program beyond the eligibility criteria. However, based on record evidence, we have preliminarily determined to countervail this income tax reduction. We preliminary determine that this tax reduction provides a financial contribution in the form of government revenue forgone under section 771(5)(D)(ii) of the Act. The tax reductions are limited by law to a group of companies (*i.e.*, those companies with a turnover of IDR 50 billion or less) and is specific under section 771(5A)(D)(i) of the Act.

⁸⁴ See Central Pertiwi Initial Questionnaire at exhibit 24.

⁸⁵ See Letter from First Marine, "Frozen Warmwater Shrimp from Indonesia: PT First Marine Seafoods/Supplier Supplemental Questionnaire Response," (May 9, 2013), at 11-12.

To calculate the benefit from this program, we compared Windu Mantap's tax rate to the rate that would have been paid otherwise (the standard income tax rate of 25 percent). We multiplied the difference by Windu Mantap's taxable income (derived from its first IDR 4.8 billion in sales revenue) and then divided the amount by the total sales quantity during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 143.51 IDR per kilogram for income tax reductions under this program for fresh shrimp purchased by the respondents.

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

We preliminarily determine that Central Pertiwi, First Marine, and their cross-owned affiliates did not apply for or receive benefits during the POI under the programs discussed below.

1. Government Provision of Loans to the Indonesian Fishing and Aquaculture Sector

Petitioner alleges that the GOI subsidizes frozen shrimp producers by directing the Indonesian state bank, BNI, to provide financing to fish farmers. According to the GOI, BNI was the first bank formed and owned by the GOI, which became a state-owned commercial limited liability bank in 1992, and then became a public company through an initial public offering in 1996. At the end of the POI, the GOI held 60 percent of the shares of BNI, while individual and institutional shareholders held the remaining 40 percent.

The GOI provided details for two loan programs to fish farmers in which BNI is a participating bank, stating that they are the only programs relating to fish farmers in which BNI is involved. The first program, Kredit Usaha Rakyat (KUR), was established on November 5, 2007, and provides credit for micro, small, and medium enterprises and cooperatives to empower them in creating employment and eradicating poverty.⁸⁶ The second program, Kredit Ketahanan Pangan dan Energi/Food and Energy Security Credit (KKPE), provides investment credit and/or working capital to promote food security in Indonesia, as part of the implementation of the Food Security Program and Development of Plants as Raw Materials for Biofuel Program.⁸⁷ Record information indicates that the KKPE program is limited to certain industries, including, for example, horticulture, rice farming, cattle-raising, and aquaculture of shrimp.⁸⁸ The GOI claims that the KUR program is limited to small and medium sized enterprises.⁸⁹ Central Pertiwi and Central Proteinaprima reported outstanding loans from BNI during the POI.

Although Central Pertiwi and Central Proteinaprima reported loans outstanding during the POI from BNI, the GOI claims that these loans were not disbursed through either KUR or KKPE. Record evidence does not contradict this claim.⁹⁰ Therefore, we preliminarily determine the KUR and KKPE programs to be not used during the POI.

⁸⁶ See Letter from the GOI, "Frozen Warmwater Shrimp from Indonesia: Government of Indonesia Response to Initial Questionnaire," (April 1, 2013) (GOI Initial Questionnaire) at exhibit 10.

⁸⁷ See GOI Initial Questionnaire at exhibit 11.

⁸⁸ See *id.*

⁸⁹ See GOI Initial Questionnaire at exhibit 10.

⁹⁰ See Central Pertiwi Initial Questionnaire at 14-17 and exhibit 9a-9d; see also GOI Initial Questionnaire at 13-14.

2. Government Loans to the Indonesian Fishing and Aquaculture Sector through Bank Rakyat Indonesia

Petitioner alleges that the GOI has provided loans to the fishing and aquaculture sector through the state-owned lender, BRI. According to the GOI, BRI was founded in 1895, and since then has undergone various changes, up to 1992, when its current official name was established, indicating that it was a state-owned enterprise. In 2003, BRI became a publicly listed company, with 40.10 percent of its shares listed on the Jakarta Stock Exchange. Based on guidelines from the GOI, BRI participates in three programs that relate to the fishing and aquaculture industry, namely the KUR and KKPE programs (referenced above) and the “Loan for Economic Empowerment of Coastal” (PEMP) program.⁹¹

The PEMP program was implemented under the Directorate General of Marine, Coastal Areas and Small Island, No. SK.07/KP3K/I/2006, “General Guideline on the Implementation of Economic Empowerment Program for Coastal Communities,”⁹² and the MMAF Decree No. KEP.18/MEN/2004, “General Guidance of the Implementation of the Coastal Community Economy Empowerment Program.”⁹³

Central Proteinaprima reported receiving a loan from BRI during the POI. Central Proteinaprima explains that the loan, issued in 2009, was initially between BRI and farmers located at a farm site serviced by Aruna Wijaya Sakti (AWS), a company that manages and provides services and infrastructure to one of the farmers’ cooperatives that supplies Central Proteinaprima. Central Proteinaprima signed a “Corporate Guarantee Agreement,” under which Central Proteinaprima agreed that if the farmers defaulted, Central Proteinaprima would settle the defaulted farmers’ obligations at the first request of BRI.⁹⁴ Consistent with its obligations under the “Corporate Guarantee Agreement,” when the farmers defaulted on the loan, Central Proteinaprima serviced the debts (*i.e.*, repaid the interest and principal owed), which included payments in November and December 2011. On December 20, 2011, Central Proteinaprima and BRI signed a “Deed of Liability Acknowledgement Guarantee,” under which Central Proteinaprima agreed to repay the full amount of the ex-AWS farmers’ obligations to BRI.⁹⁵ Central Proteinaprima states that it did not receive a preferential interest rate from BRI and that it agreed to repay the full amount of the unpaid loans in four installments in 2012.⁹⁶ The GOI states that the repayment terms are on a commercial basis and are not part of any specific program.

Although Central Proteinaprima reported a loan outstanding during the POI from BRI, the GOI claims that the loan was not disbursed through KUR, KKPE, or PEMP. Record evidence does

⁹¹ The KUR and KKPE programs are explained in the program “Government Provision of Loans to the Indonesian Fishing and Aquaculture Sector,” above.

⁹² See Letter from the GOI, “Frozen Warmwater Shrimp from Indonesia: Government of Indonesia New Subsidy Allegations Questionnaire Response,” (April 8, 2013) (GOI NSA QR) at exhibit 5.

⁹³ See GOI NSA QR at exhibit 6.

⁹⁴ See Letter from Central Pertiwi, “Frozen Warmwater Shrimp from Indonesia: PT. Central Pertiwi Bahari Response to NSA Questionnaire,” (April 8, 2013) (Central Pertiwi NSA QR) at exhibit NSA-1.

⁹⁵ See *id.*

⁹⁶ See *id.* at 6.

not contradict this claim.⁹⁷ Therefore, we preliminarily determine that the KUR, KKPE, and PEMP programs to be not used during the POI.

3. Government Provision of Electricity to the Indonesian Fishing and Aquaculture Sector for LTAR

Petitioner's information indicated that the provision of electricity to shrimp farmers in Lampung was provided free of charge, and was financed by a government budget. The GOI stated that the only company in Indonesia that has the right to supply and distribute electricity throughout all regions is PT. PLN, a state-owned company, except in cases where PT. PLN has not reached a remote area, where private companies may provide their own electricity or provide electricity to the public.⁹⁸ The GOI explained that PT. PLN's electricity rates were established in "Presidential Decree No. 8 of 2011 concerning Basic Electricity Rate Provided by PT. PLN,"⁹⁹ which establishes standard rates throughout Indonesia.

Law No. 30 of 2009 states that "the regional government under its authority stipulates the electricity tariff for the consumer subject to the approval from the Regional House of Representatives in accordance with the guidance stipulated by the Government." Despite the fact that this law allows for regional electricity rates, the GOI confirmed that there was no regional electricity tariff schedule in effect in Lampung during the POI, nor did the regional government of Lampung propose a regional electricity tariff schedule.¹⁰⁰ Additionally, neither the PT. PLN nor the GOI reimbursed, or otherwise compensated, the private companies that provided electricity in Lampung.¹⁰¹

Central Pertiwi and its cross-owned affiliates reported four facilities in Lampung that purchased electricity from PT. PLN. In addition, First Marine's shrimp supplier, Windu Mantap and its cross-owned affiliate, Prima Larvae, reported purchasing electricity from PT. PLN in Lampung. The GOI provided the tariff schedule applicable to these companies entitled "Electricity Basic Tariff for Industrial Purpose."¹⁰² We compared the electricity rates charged to the companies with the PT. PLN tariff schedule for industries, and determined that all companies were charged and paid the appropriate industrial rate, and therefore received no benefit. Additionally, after reviewing PT. PLN's tariff schedule for all the types of users, we found no evidence of regional rates or rates specifically for the fishing and aquaculture sector. Moreover, the respondents claim that they received no rebates or exemptions and we saw no evidence to contradict their claim. Therefore, we preliminarily determine that none of the respondents received a benefit from the provision of electricity during the POI.

⁹⁷ See GOI NSA QR at 27; see also Central Pertiwi NSA QR.

⁹⁸ See GOI Initial Questionnaire at 25.

⁹⁹ See GOI Initial Questionnaire at exhibit 13a.

¹⁰⁰ See GOI's April 24 SQR at 11-12.

¹⁰¹ See GOI's April 24 SQR at 12.

¹⁰² See GOI's April 24 SQR at exhibit 13a, annexure IV.

4. VAT Exemptions for Purchases of Fish Feed

As noted above, we granted Petitioner's request to reconsider its allegation that the respondents received countervailable benefits from VAT exemptions on fish feed purchases. Petitioner alleged that the benefit from these exemptions was in the form of a "time value of money," relying, *inter alia*, on *Thai Hot-Rolled Steel*,¹⁰³ in which the Department investigated whether VAT exemptions gave rise to a "time value of money" benefit based on the time period that a company would otherwise have to wait for a VAT rebate. Specifically, Petitioner claimed that in the normal system in Indonesia under which VAT on inputs is payable, the company is obliged to apply for a rebate of the input VAT paid in excess of output VAT collected by the company, and that the waiting period between the company's rebate application and GOI's payment of the rebate can extend to one year or more. Therefore, Petitioner claimed that, in comparison to this waiting period under the normal system, an exemption on input VAT gave rise to a "time value of money" benefit because the money that the company kept in hand under the exemption would be worth more than the money the company could recover much later from a rebate.

Central Proteinaprima, First Marine, Windu Mantap and several cross-owned affiliates received VAT exemptions for "strategic goods" (e.g., fish feed). Central Proteinaprima and First Marine reported the number of days they waited to receive their VAT rebates for the tax years 2009-2011, which are proprietary in nature. The GOI reported that based on Law No. 28/2007 concerning "General Provision of Tax and Taxation Procedures," tax rebates should be approved within 1-12 months.¹⁰⁴ The GOI did not provide any information concerning the average time that applicants have to wait for rebate checks, but it did provide the applicable law which explained that, when the waiting period for a rebate has reached 12 months, the GOI must pay the taxpayer a penalty of two percent per month for each additional month thereafter.

Upon review of the record information and the Department's prior determinations regarding VAT exemptions, we find that a waiting period of up to a year for a VAT rebate is not significant as to give rise to a "time value of money" when the VAT is exempted, consistent with our finding in *Thai Hot-Rolled Steel*. Moreover, for any additional waiting period beyond one year, we find that any "time value of money" benefit that might accrue at that point is negated by the two percent monthly interest that the GOI pays on the amount owed. Therefore, we preliminarily determine that the VAT exemptions did not confer a benefit to the respondents during the POI.

¹⁰³ See *Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) (*Thai Hot-Rolled Steel*) and accompanying Issues and Decision Memorandum under "VAT Exemptions Under the Investment Promotion Act." The Department ultimately found that a waiting period of "well less than one year" would not give rise to a time value of money benefit when the VAT is exempted.

¹⁰⁴ See Letter from the GOI, "Frozen Warmwater Shrimp from Indonesia: Government of Indonesia Response to 4th Supplemental Questionnaire," (May 13, 2013).

Respondents reported not using the following programs during the POI and the record indicates nothing to contradict these claims.

1. Government Provision of Goods and Services Used to Promote the Indonesian Fishing and Aquaculture Sector for LTAR
2. Government Provision of Land to the Indonesian Fishing and Aquaculture Sector for LTAR
3. Government Provision of Shrimp Breeding Stock and Fry for LTAR
4. Tax Incentives from the Capital Investment Coordinating Board
5. Import Duty and VAT Exemptions in Bonded Zones
6. Government Provision of Grants to the Indonesian Fishing and Aquaculture Sector
7. Government Provision of Grants for the Lampung Shrimp Pond Project
8. Export Credit Insurance
9. Export Credit Guarantees
10. Export Ban on Raw Shrimp
11. Government Provision of Assistance through the Aquaculture Intensification (INBUDKAN) Program
12. Government Provision of Assistance through the Fish Culture Intensification (FCIP) Program
13. Government Provision of Assistance through the Revitalisation of Aquaculture Development (RPPB) Program
14. Government Provision of Clean Water Facilities to the Indonesian Fishery Sector for LTAR
15. Government Provision of Fishing Boats for LTAR
16. Government Provision of Cold Storage Facilities for LTAR
17. Government Provision of Shrimp Breeding Stock and Seed for LTAR
18. Government Loans to Coastal Community Businesses under the Project of Coastal Community Empowerment/Loans for the Economic Development of Coastal Communities (PEMP) Program
19. Government Provision of Land to Brackish-Water Aquaculture Farms for LTAR

X. ITC NOTIFICATION

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

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

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁰⁵ Case briefs or other written comments for all non-scope issues may be submitted to Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.¹⁰⁶ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the Federal Register, and rebuttal briefs, limited to issues raised in the case briefs, maybe submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the seven concurrent CVD investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁰⁷ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the Federal Register.¹⁰⁸ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

¹⁰⁵ See 19 CFR 351.224(b).

¹⁰⁶ See 19 CFR 351.309(d).

¹⁰⁷ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰⁸ See 19 CFR 351.310(c).

