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International Trade Administration
Washington, D.C. 20230

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Investigation

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August 12, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Frozen
Warmwater Shrimp from the People's Republic of China

I. Summary

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain frozen warmwater shrimp (frozen shrimp) in the People's Republic of China (PRC), as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

II. Background

On June 4, 2013, the Department published the *Preliminary Determination* in this investigation.¹ Between June 10, 2013, and June 14, 2013, we conducted verification of the questionnaire responses submitted by Zhanjiang Guolian Aquatic Products, Co., Ltd. (Guolian), Zhanjiang Guolian Feed Co., Ltd. (Guolian Feed), Zhanjiang Guolian Aquatic Fry Technology Co., Ltd. (Guolian Fry), and Zhanjiang Guotong Aquatic Co., Ltd. (Guotong) (collectively, the Guolian Companies). We conducted verification of the questionnaire responses of the Government of the

¹ See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) (*Preliminary Determination*), and accompanying Issues and Decision Memorandum.



PRC (GOC) on June 17 and June 19, 2013. We released the verification reports for the Guolian Companies and the GOC on July 1, 2013.²

The mandatory respondent in this investigation is the entity referred to as the Guolian Companies.

On July 5, 2013, the Coalition of Gulf Shrimp Industries (Petitioner) submitted comments on the scope of this investigation.³ On July 10, 2013, the Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC) submitted scope rebuttal comments.⁴ At the request of Petitioner, on July 23, 2013, the Department held a hearing limited to the scope issues addressed in these comments.⁵ We have addressed these issues in the August 12, 2013, Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, and Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp,” which is hereby adopted by this notice.

Petitioner, the GOC, and the Guolian Companies submitted case briefs concerning case-specific issues on July 17, 2013,⁶ and rebuttal briefs on July 22, 2013.⁷ At the request of Petitioner and the Guolian Companies, the Department held a hearing concerning these case-specific issues on July 24, 2013.⁸

The “Subsidies Valuation Information,” and “Use of Facts Otherwise Available and Adverse Inferences,” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s positions on the issues raised in the briefs. Based on the comments received, and our verification findings, we have made certain

² See Memorandum to Eric B. Greynolds, Program Manager, Office 8, Operations, “Verification of Zhanjiang Guolian Aquatic Products Co., Ltd., (Guolian), Zhanjiang Guolian Feed Co., Ltd. (Guolian Feed), Zhanjiang Guolian Aquatic Fry Technology Co., Ltd. (Guolian Fry), and Zhanjiang Guotong Aquatic Co., Ltd. (Guotong) (collectively, the Guolian Companies)” (July 1, 2013) (Guolian Companies Verification Report); *see also* Memorandum to Eric B. Greynolds, Program Manager, Office 8, Operations, “Verification of Information Submitted by the Government of the People’s Republic of China” (July 1, 2013) (GOC Verification Report).

³ See Letter from Petitioner, “Frozen Warmwater Shrimp from the People’s Republic of China: Scope Case Brief” (July 5, 2013).

⁴ See Letter from AHSTEC, “Frozen Warmwater Shrimp from the People’s Republic of China: Scope Rebuttal Brief” (July 10, 2013).

⁵ See Memorandum to the File, “Scope Hearing Transcript: Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Various Countries” (July 31, 2013).

⁶ See Letter from Petitioner, “Frozen Warmwater Shrimp from the People’s Republic of China: Case Brief” (July 17, 2013) (Petitioner’s Case Brief); Letter from GOC, “Frozen Warmwater Shrimp from the People’s Republic of China: Case Brief” (July 17, 2013) (GOC’s Case Brief); and Letter from the Guolian Companies, “Shrimp from the People’s Republic of China: Case Brief” (July 17, 2013) (Guolian Companies’ Case Brief).

⁷ See Letter from Petitioner, “Frozen Warmwater Shrimp from the People’s Republic of China: Rebuttal Brief” (July 22, 2013) (Petitioner’s Rebuttal Brief); Letter from GOC, “Frozen Warmwater Shrimp from the People’s Republic of China: Rebuttal Brief” (July 22, 2013); and Letter from the Guolian Companies, “Shrimp from the People’s Republic of China: Case Brief” (July 22, 2013).

⁸ See Memorandum to the File, “Hearing Transcript: Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from the People’s Republic of China” (August 1, 2013).

modifications to the *Preliminary Determination*, which are discussed below in the “Analysis of Programs,” “Use of Facts Otherwise Available and Adverse Inferences,” and “Analysis of Comments” sections. We recommend that you approve the positions described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

- Comment 1:** Application of the Countervailing Duty (CVD) Law to the PRC
- Comment 2:** Simultaneous Application of CVD and Non-Market Economy (NME) Measures
- Comment 3:** Proper “Cut-Off” Date to Apply in the Investigation
- Comment 4:** Whether the Department’s Application of Section 771B of the Act Improperly Attributes Subsidy Benefits to Shrimp Suppliers
- Comment 5:** Whether the “Substantially Dependent” Criterion under Section 771B(1) of the Act is Satisfied
- Comment 6:** Whether the “Limited Value” Criterion Under Section 771B(2) of the Act is Satisfied
- Comment 7:** Whether the Department Applied Section 771B of the Act in a Manner that Was Flawed
- Comment 8:** Denominator Used in Calculating the Net Subsidy Rate for Programs in Which the Department Attributed Benefits to Unaffiliated Farmers under Section 771B of the Act
- Comment 9:** Manner in Which the Department Conducted the 0.5 Percent Test When Attributing Benefits to Unaffiliated Farmers under Section 771B of the Act
- Comment 10:** Whether the Guolian Companies Benefited from Subsidies Received in Connection with the Zhanjiang City Seafood Center
- Comment 11:** Whether the Department Should Initiate Investigations of Petitioner’s Second Round of New Subsidy Allegations
- Comment 12:** Calculation of Guolian’s Tax Exemption Benefit Using Tax Payments Made During the POI
- Comment 13:** Whether the Department Made Ministerial Errors in the *Preliminary Determination* That Should be Corrected for the Final Determination
- Comment 14:** Whether the Department Should Countervail the Three Grants Reported at Verification and Whether the Department’s Refusal to Collect Benefit Information Regarding the Grants is Contrary to Past Practice
- Comment 15:** Treatment of Additional Grants Received by the Guolian Companies Not Addressed by the Department in the *Preliminary Determination*
- Comment 16:** Whether to Apply Adverse Facts Available (AFA) with Regard to the Export Buyer’s Credits from the China Export-Import (Ex-IM) Bank Program
- Comment 17:** Whether the Export Seller’s Credits from the China Ex-Im Bank Program is Countervailable
- Comment 18:** Whether the GOC Provided Preferential Lending to the Aquaculture Industry
- Comment 19:** Whether the Benchmark Used to Measure Benefits under the Preferential Lending to the Aquaculture Industry Program is Flawed
- Comment 20:** Whether Tax Benefits under Article 28 of the *Enterprise Income Tax Law (EITL)* for High or New Technology Enterprises is Not Countervailable Because It is Not Specific
- Comment 21:** Whether the Grants under the GOC White Shrimp Processing Project are Specific

III. Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.⁹ In *CFS from the PRC*, the Department found that

... given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.¹⁰

The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.¹¹ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies such as the PRC.¹² The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.¹³

Additionally, for the reasons stated in the CWP Decision Memorandum as well as Comment 3 below, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.¹⁴

IV. Subsidy Valuation Information

A. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. 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.¹⁵ No party in this proceeding has disputed this allocation period.

For non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to relevant sales (*e.g.*, total sales or total export sales) for the same

⁹ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum.

¹⁰ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 6.

¹¹ See, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), (*CWP from the PRC*), and accompanying Issues and Decision Memorandum at Comment 1.

¹² Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act (hereinafter referred to as Public Law 112-99).

¹³ See Public Law 112-99, 126 Stat. 265 § 1(b).

¹⁴ See, *e.g.*, *CWP from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

year. If the amount of subsidies is less than 0.5 percent of the relevant sales, the benefits are allocated to the year of receipt rather than allocated over the AUL period.

B. Attribution of Subsidies

19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a cross-owned firm supplies the subject company with an input that is produced primarily for the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to the cross-owned subject corporation.

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 regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The 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.¹⁶

As noted above, the Department selected Guolian as a mandatory respondent. In accordance with 19 CFR 351.525(b)(6)(vi), the Guolian Companies provided a response to the Initial QNR¹⁷ on behalf of the following companies:¹⁸ 1) Guolian, a fully integrated farmer of fresh shrimp and producer/exporter of subject merchandise; 2) Guolian Feed, a producer of shrimp feed sold to affiliated parties (such as Guolian) as well as unaffiliated entities; 3) Guolian Fry, a producer of shrimp fry sold to affiliated parties (such as Guolian) as well as unaffiliated parties; and 4) Guotong, the largest shareholder of Guolian.¹⁹

The Guolian Companies reported that Guolian has sole ownership of Guolian Feed and Guolian Fry.²⁰ Therefore, we determine that Guolian, Guolian Feed, and Guolian Fry are cross-owned with each other within the meaning of 19 CFR 351.525(b)(6)(iv).

Concerning Guotong, as noted above it is the largest shareholder of Guolian. The remainder of Guolian is owned by an investment company; its other shares are publicly traded.²¹ Taken together, Guotong and the investment company own the majority of Guolian. Guotong and the investment company are, in turn, both wholly-owned by the same three individuals from the

¹⁶ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (*Fabrique*) (CIT 2001).

¹⁷ See Department's February 4, 2013, initial questionnaire (Initial QNR).

¹⁸ See Guolian Companies' April 1, 2013, initial questionnaire response (Guolian Initial QNR Response), at 7-8.

¹⁹ As noted above, we refer to these four entities collectively as the Guolian Companies.

²⁰ See Guolian Initial QNR Response, at Exhibit 2.

²¹ The name of the investment company is proprietary and cannot be disclosed in this memorandum. See Guolian Initial QNR Response, at Exhibit 2 for the name of the investment company.

PRC. Thus, these three individuals own, indirectly, the majority of Guolian. Further, the Guolian Companies responded to the Initial QNR with regard to Guotong.²² Thus, based on this information, we determine that Guotong is cross-owned with Guolian, Guolian Feed, and Guolian Fry within the meaning of 19 CFR 351.525(b)(6)(vi).

In accordance with 19 CFR 351.525(b)(6)(i) and (ii), we have attributed subsidies received by Guolian to the consolidated sales of Guolian. *See* Comment 13 for additional information.

As noted above, Guolian Feed and Guolian Fry provide inputs to Guolian. We find the shrimp feed and shrimp fry Guolian received during the POI from Guolian Feed and Guolian Fry, respectively, constitute inputs that are primarily dedicated to the production of subject merchandise. Thus, in accordance with 19 CFR 351.525(b)(6)(iv), we have attributed subsidies received by Guolian Feed to the combined sales of Guolian Feed and Guolian (excluding intra-company sales) and subsidies received by Guolian Fry to the combined sales of Guolian Fry and Guolian (excluding intra-company sales).

Concerning Guotong we have attributed subsidies received by Guotong to the consolidated sales of Guotong and its subsidiaries, as provided under 19 CFR 351.525(b)(6)(iii).

C. Application of Section 771B of the Act

Section 771B of the Act directs that subsidies provided to the 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. The Petitioner claimed that these conditions are satisfied with respect to fresh and processed shrimp, and supported the claim such that the Department sought information that permitted inclusion of subsidies to fresh shrimp in the preliminary countervailing duty rates for the processed product. In comments submitted prior to the *Preliminary Determination*, the GOC and the Guolian Companies argued against Petitioner's claim that the facts of the investigation satisfied the conditions of section 771B of the Act. However, in the *Preliminary Determination* the Department found the facts of the instant investigation satisfied the criteria of section 771B of the Act and, thus, deemed the subsidies provided to fresh shrimp to be provided to the Guolian Companies.²³

For the reasons discussed in Comments 4 – 6 below, we continue to find that the facts of this proceeding satisfy the criteria of section 771B of the Act. Accordingly, we have deemed subsidies provided to fresh shrimp as provided with respect to the sales of the Guolian Companies. However, we have modified the methodology used to apportion subsidies to fresh shrimp for the Guolian Companies. For further information, *see* Comment 7 below.

²² *See id.*, at 7 – 8, in which the Guolian Companies state that they provided a questionnaire response with regard to Guotong “in accordance with the Department’s cross-ownership criteria under 19 351.525(b)(6)(vi).”

²³ *See Preliminary Determination*, and accompanying Issues and Decision Memorandum at 10.

Furthermore, as explained in Comment 4 below, the Department selected Guolian’s in-house shrimp supplier to serve as a proxy for purposes of determining the level of subsidization provided to Guolian’s remaining unaffiliated suppliers of fresh shrimp. Thus, we did not apply the methodology described under section 771B of the Act for the Tax Incentives for Enterprises Engaged in Aquaculture and Processing program, for which we find Guolian’s receipt of the subsidy was solely contingent upon its shrimp processing operations. Rather, for such programs, in accordance with 19 CFR 351.525(b)(6)(i) and (ii), we attributed subsidies received by Guolian to the sales of Guolian.²⁴ However, in those instances in which the relevant law and application forms of the subsidy program at issue do not appear to distinguish between processing and farming activities, we apportioned subsidies to Guolian’s unaffiliated shrimp farmers using the methodology discussed below in Comment 7. Furthermore, we have not invoked section 771B of the Act with regard to the income tax subsidies provided under the Enterprise Income Tax Reduction for High Tech Enterprises program because we find that such subsidies would not be available to household farmers.²⁵

D. 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 denominator we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the “Calculation Memoranda” prepared for this final determination.²⁶

As described above, for certain subsidies received by Guolian we are applying section 771B of the Act. In such instances, we have apportioned a benefit to Guolian, as a processor, and calculated a net subsidy rate using Guolian’s consolidated sales. *See* Comments 7 and 13. In such instances, we have also apportioned a benefit to Guolian’s in-house farming operations, and, as described below, used that as a proxy to calculate a benefit for its unaffiliated farmers, and calculated the subsidy rate using Guolian’s sales of subject merchandise *See* Comment 8.

E. Benchmarks and Discount Rates

The Department is investigating loans received by the Guolian Companies from PRC policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

²⁴ As discussed below, we utilized this approach with regard to the “Tax Incentives for Enterprises Engaged in Aquaculture and Processing” program.

²⁵ *See* Guolian Companies’ February 28, 2013, supplier questionnaire (Supplier QNR), at Attachment 1, which indicates that all of Guolian’s unaffiliated shrimp suppliers are household farmers.

²⁶ *See* Department Memorandum, “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Guolian Companies Final Calculations Memorandum” dated concurrently with this memorandum (Guolian Companies Final Calculations Memorandum).

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.²⁷ If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”²⁸ Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons first explained in *CFS from the PRC*,²⁹ the Department finds that loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondent from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate.³⁰

We first developed in *CFS from the PRC*³¹ and more recently updated in *Thermal Paper from the PRC*,³² the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank’s classification of countries as: low income, lower-middle income, upper-middle income, and high income. As explained in *CFS from the PRC*, the pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.³³ Beginning with 2010, however, the

²⁷ See 19 CFR 351.505(a)(3)(i).

²⁸ See 19 CFR 351.505(a)(3)(ii).

²⁹ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10; see also Memorandum to the File from John Conniff, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding “Placement of Banking Memorandum on Record of the Instant Investigation” (May 28, 2013) (Banking Memorandum).

³⁰ The use of an external benchmark is consistent with the Department’s practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

³¹ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

³² See *Lightweight Thermal Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum at 8-10.

³³ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to All Interested Parties from John Conniff, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations 8, regarding “Interest Rate Benchmark Memorandum (2001 – 2011)” (Interest Rate Benchmark Memorandum) (May 28, 2013).

PRC is in the upper-middle income category.³⁴ This methodology relies on data published by the World Bank and International Monetary Fund.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries’ institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each year from 2001-2009, and 2011, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.³⁵ For 2010, however, the regression does not yield that outcome for the PRC’s income group.³⁶ We find this contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.³⁷

Many of the countries in the World Bank’s upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency’s international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as “upper middle income” by the World Bank for 2010 and 2011, and “lower middle income” for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.³⁸ Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.³⁹ Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

³⁴ See *id.*

³⁵ See *id.*, and Memorandum to the File from John Conniff, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding “Additional Documents for Preliminary Determination” (May 29, 2013) at Attachment I for Federal Reserve Consultation Memorandum.

³⁶ See Interest Rate Benchmark Memorandum.

³⁷ The Department approach in this regard is consistent with its practice. See, e.g., *See Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying Issues and Decision Memorandum at 8.

³⁸ For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L’Este reported dollar-denominated rates; therefore, such rates have been excluded.

³⁹ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country’s real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁴⁰

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.⁴¹ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations. For US dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.

Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.

⁴⁰ See, e.g., *Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*Rectangular Pipe from the PRC*), and accompanying Issues and Decision Memorandum at 8.

⁴¹ See *Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum at Comment 14.

V. Use of Facts Otherwise Available and Adverse Inferences

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

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 to comply with a request for information. For purposes of this final determination, we find it necessary to apply AFA.

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”⁴² 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.”⁴³

Corroboration of Secondary Information - Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it 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 concerning the subject merchandise.”⁴⁴ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.⁴⁵

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.⁴⁶

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering

⁴² 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) (*DRAMS from Taiwan*).

⁴³ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong. 2d Session at 870 (1994).

⁴⁴ See SAA, at 870.

⁴⁵ See *id.*

⁴⁶ See *id.*, at 869-870.

the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.⁴⁷

As discussed below, due to the failure of the GOC and the Guolian Companies, in part, to respond to the Department's questionnaires concerning the programs at issue, the Department relied on the information concerning Chinese subsidy programs from other proceedings. Because these rates reflect the actual behavior of the GOC with respect to similar subsidy programs, and lacking questionnaire responses or adequate information from the GOC and the Guolian Companies demonstrating otherwise, the rates calculated for cooperative respondents provide a non-punitive and reasonable AFA rate.

A. Export Buyers Credits from China Ex-Im Bank Program

The Department investigated whether the customers of the Guolian Companies received loans from China Ex-Im Bank that, in turn, facilitated the Guolian Companies' sales of subject merchandise. We received comments from interested parties on the application of AFA in this investigation as it applies to the Export Buyers Credits from China Ex-Im Bank program. *See* Comment 16. After considering the arguments presented, we have determined to apply AFA with regard to this program.

The GOC and the Guolian Companies claimed that the Guolian Companies did not use this program during the POI.⁴⁸ At the company verification, the Guolian Companies stated that their customers did not use the program as evidenced by the lack of requisite paperwork and records the Ex-Im Bank requires Chinese companies to maintain under the program,⁴⁹ the absence of any single contract outstanding during the POI that exceeded USD two million,⁵⁰ the absence of export insurance on any sales of subject merchandise to the United States during the POI that would be required for contracts made under the program,⁵¹ and certifications of non-use by the Guolian Companies' U.S. customers.⁵² At the verification of the GOC, the official from the China Ex-Im Bank stated that the bank maintains records of all loans to buyers and the official stated that he had searched those records and found no entry for any of the customers' names given to him by the Guolian Companies.⁵³ The Department verifiers attempted to confirm the GOC official's statements by examining the bank's files and searching for the relevant customer names; however the official refused the request asserting that such information was confidential.⁵⁴

⁴⁷ *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁴⁸ *See, e.g., Guolian Initial QNR Response*, at 22.

⁴⁹ *See GOC Initial QNR Response*, at 22; *see also Guolian Initial QNR Response*, at CVD-12, which contains the *Export Buyer's Implementing Rules*.

⁵⁰ *See Guolian Initial QNR Response*, at CVD-12, which contains the *Export Buyer's Implementing Rules*.

⁵¹ *See id.*

⁵² *See Guolian Verification Report*, at 18; *see also Guolian Companies' Case Brief*, at 3 – 8.

⁵³ *See GOC Verification Report*, at 8.

⁵⁴ *See id.*

We find that the GOC failed to provide the requested information at verification and, thus, significantly impeded this proceeding in the manner described under 776(a)(2)(A) and (C) of the Act. We further find that the by not providing the requested information, the GOC failed to cooperate by not acting to the best of its ability and, thus, pursuant to section 776(b) of the Act, we are applying AFA.

Consistent with the Department's findings, we find that the Ex-Im Bank of the GOC is the primary entity that possesses the supporting records that the Department needs to verify the accuracy of the reported non-use of the export buyer's credit program.⁵⁵ Specifically, because the Ex-Im Bank is the lender under the program, we determine that it would have complete records of all recipients of export buyer's credits. In this regard, the Department's experience is that granting authorities and governments in general keep track of the users of subsidy programs in the normal course of administering their programs, and that respondent governments use such records to respond to the Department's inquiries in CVD investigations. Thus, at verification the Department sought to examine such records and query such databases to verify whether the U.S. customers of the Guolian Companies had received export buyer's credits. However, the GOC did not allow the verifiers to examine the requested documents and records. Therefore, pursuant to section 776(b) of the Act, we are also determining that the GOC's Ex-Im Bank conferred benefits upon the Guolian Companies as described under section 771(5)(E) of the Act. We further find that the loans issued under the program constitute a financial contribution under section 771(5)(D)(i) of the Act and that the loans are limited to export activity and, thus, are specific under section 771(5A) of the Act.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record.

The Department has devised a methodology for instances in which it is necessary to assign an AFA rate for a particular subsidy program. Specifically, it is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.⁵⁶

As noted above, when selecting rates, we first determine if there is an identical program and take the highest calculated rate for the identical program. If there is no identical program above *de*

⁵⁵ See, e.g., *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 7.

⁵⁶ See, e.g., *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Woven Sacks from the PRC*), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available," *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Extrusions from the PRC*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies;" *Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (*Steel Wire from the PRC*), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences;" and *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*Steel Pipe from India*), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate."

minimis, we then determine if there is a similar/comparable program (based on treatment of the benefit) and apply the highest calculated rate for a similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program, but we do not use a rate from a program if the industry in the proceeding cannot use that program.⁵⁷

Because the Department has not calculated a rate for the Export Buyer's Credits program in this investigation, and has not calculated a rate for the program in another CVD PRC proceeding, the Department proceeds to the next prong of its CVD AFA hierarchy, which is to identify the highest rate calculated for a similar program in a prior CVD PRC proceeding. Consistent with *Wind Towers from the PRC*, we determine that a lending program is similar to the program at issue because the credits function as short-term or medium-term loans. We, therefore, determine that the highest calculated rate for a comparable lending program is 10.54 percent calculated for preferential policy lending in *Coated Paper from the PRC*.⁵⁸ See Comment 16 for further discussion of the Department decision to apply AFA with regard to this program.

B. Additional Grants Received by the Guolian Companies Not Addressed by the Department in the *Preliminary Determination*

On April 11, 2013, the Department issued supplemental questionnaires to the GOC and Guolian Companies. The GOC and the Guolian Companies submitted their supplemental responses on April 16, and April 25, 2013.⁵⁹ The Guolian Companies reported the receipt of numerous grants from the GOC as well as provincial and local governments that they did not previously disclose to the Department.⁶⁰ We found there was insufficient time to incorporate the Guolian Companies' receipt of these grants into the *Preliminary Determination* and explained that we would address these grant programs in the final determination.⁶¹

In a supplemental questionnaire, we instructed the GOC to provide information concerning each of the additional grant programs listed in the Guolian Companies' supplemental questionnaire response.⁶² However, the GOC failed to provide the requested information.⁶³ As a result of the GOC's refusal to respond to our questionnaire, we find the GOC withheld requested information and significantly impeded this proceeding in the manner described under 776(a)(2)(A) and (C) of the Act. We further find that by not providing the requested information, the GOC failed to cooperate by not acting to the best of its ability and, thus, pursuant to section 776(b) of the Act, we are applying AFA. As AFA, we are determining that each of the additional grant programs at

⁵⁷ See, e.g., *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8.

⁵⁸ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010).

⁵⁹ See GOC's April 16 and April 25, 2013, first supplemental questionnaire responses (GOC 1st Supp QNR Response Part 1 and GOC 1st Supp QNR Response Part 2, respectively); see also Guolian Companies' April 16 and April 25, 2013, supplemental questionnaire responses (Guolian 1st Supp QNR Response Part 1 and Guolian 1st Supp QNR Response Part 2, respectively).

⁶⁰ See Guolian 1st Supp QNR Response Part 2, at 7-8 and, at Exhibits S1-4a – S1-4d.

⁶¹ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 3.

⁶² See Department's May 9, 2013, supplemental questionnaire to the GOC (Third Supp QNR) at 3.

⁶³ See GOC's May 22, 2013, supplemental questionnaire response (GOC 3rd Supp QNR Response) at 4.

issue constitute a financial contribution and are specific under sections 771(5)(D) and 771(5A) of the Act, respectively. For purposes of calculating the benefit under each program, we have relied on the benefit information provided by the Guolian Companies.⁶⁴ See Comment 15 for further discussion of the Department decision to apply AFA with regard to this program.

C. Three Grants Reported At Verification

In the company verification outline, we requested that Guolian reconcile the additional grant programs that it reported to the Department in its Guolian 1st Supp QNR Response Part 2.⁶⁵ At verification, officials from the Department reviewed a reconciliation worksheet based on the annual grant totals in year of receipt for all items listed in Exhibit S1-4b of the Guolian 1st Supp QNR Response Part 2. During the reconciliation process, company officials stated that there were two accounts in which non-operational income, or grants, are booked; non-operational and special payables. According to company officials, in 2010 and 2011 grants were booked in both accounts which showed both the grant and the allocated amounts of different grants over time. Company officials further explained that two 2006 grants (the 2006 Fund for Agricultural Industrialization Project by the Ministry of Agriculture and the Granting of Bidding for Shrimp Cake Project) were not included in the Guolian 1st Supp QNR Response Part 2 because both had not been included in either non-operational income or special payables when Guolian was preparing its supplemental response. Company officials further explained that the Guolian Companies also failed to report a 2007 grant (the Notice of Science and Technology Fund) for the same reasons as above.⁶⁶ At verification, officials from the Department noted the receipt of the three grants but did not collect information concerning the amounts of each grant.⁶⁷

We find the Guolian Companies failed to provide information regarding the three grant programs at issue by the deadlines established by the Department and, thus, we find that section 776(a)(2)(B) of the Act applies. We further determine that by not divulging the receipt of these three additional grants prior to the commencement of verification or during the “Minor Corrections” phase of verification, the Guolian Companies failed to cooperate by not acting to the best of their ability and, thus, pursuant to section 776(b) of the Act, we are applying AFA. The Guolian Companies’ failure to divulge the receipt of these three grant programs precluded the Department from conducting an adequate examination (*e.g.*, the Department was unable to issue a supplemental questionnaire to the GOC concerning the extent to which these programs constitute a financial contribution or are specific under sections 771(5)(D) and 771(5A) of the Act). Thus, as AFA, we are determining that each of the three grants meet the financial contribution and specificity criteria under these two provisions of the statute. Further, as AFA, we are determining that each of the three grant programs confers a benefit under section 771(5)(E) of the Act.

To determine the AFA rate applicable to each of the three grant programs at issue, we utilized the CVD AFA methodology described above. Because the Department has not calculated a rate

⁶⁴ See Guolian 2nd Supp QNR Response Part 2, at 7-8 and at Exhibits S1-4a – S1-4d.

⁶⁵ See Department’s June 4, 2013, verification outline for the Guolian Companies (Guolian Companies’ Verification Outline), at 4 referencing Guolian 1st Supp QNR Response Part 2, at 7-8 and, at Exhibits S1-4a – S1-4d.

⁶⁶ See Guolian Companies Verification Report, at 17 – 18.

⁶⁷ See *id.*, at 17.

for the three grant programs at issue, and has not calculated a rate for these programs in another CVD PRC proceeding, the Department must identify the highest rate calculated for a similar program in another CVD PRC proceeding. We, therefore, determine that the highest calculated rate for a similar grant program is 0.55 percent rate calculated for a grant program in *Wind Towers from the PRC*.⁶⁸ Accordingly, we have applied this rate to each of the three grant program at issue.⁶⁹ See Comment 14 for further discussion of the Department's decision to apply AFA with regard to this program.

D. Central Government Grants in Connection With the Zhanjiang Guolian's Penaeus Vannamei Boone (aka White Shrimp) Processing Project

The Guolian Companies report that Guolian received funds under this program in years prior to the POI.⁷⁰ Concerning specificity, in its initial questionnaire response, the GOC did not provide data concerning the manner in which grants under the program were provided, stating that it “does not maintain such statistics.”⁷¹ In our supplemental questionnaire, we asked the GOC to explain why it was able to provide usage data for the Guolian Companies but unable to provide aggregated benefit disbursement data for all other grant recipients under the program.⁷² In its response, the GOC stated that it was unable to provide the requested *de facto* specificity data because the program is administered and the records are maintained by local offices of the Ministry of Finance (MOF), of which there are more than 1000 such offices in the PRC, and the MOF does not maintain such information in the ordinary course of business.⁷³

We find that the GOC has failed to adequately explain why it is unable to provide aggregated benefit disbursement data for grant recipients under the program, data that are in the GOC's possession, as evidenced by the fact that the GOC “maintained the relevant application and approval documents” of the Guolian Companies and was able to determine the amount of grants provided to the Guolian Companies over the course of several years.⁷⁴ Thus, we find that the GOC withheld information that had been requested and significantly impeded the proceeding, such that sections 776(a)(2)(A) and (C) of the Act apply. We further determine that the GOC has failed to cooperate by not acting to the best of its ability and, therefore, pursuant to section 776(b) of the Act we are finding as AFA that the grants provided to Guolian Companies are *de facto* specific under section 771(5A)(D)(iii) of the Act.

VI. Analysis of Programs

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

⁶⁸ See *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at “Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ.”

⁶⁹ See Guolian Companies Final Calculations Memorandum.

⁷⁰ See Guolian's April 1, 2013, new subsidy questionnaire response (Guolian NSA QNR Response) at 12.

⁷¹ See GOC's April 1, 2013, new subsidy questionnaire response (GOC NSA QNR Response), at 30 – 31.

⁷² See Department's April 11, 2013, supplemental QNR issued to the GOC, at 5.

⁷³ See GOC 1st Supp QNR Response Part 2, at 6.

⁷⁴ See GOC NSA QNR Response, at 25 and 33.

A. Programs Determined To Be Countervailable

1. Preferential Lending to Shrimp Producers by the Central Government and Province of Guangdong

The Department has examined whether producers of frozen shrimp receive preferential lending through SOCBs or policy banks. According to the allegation, preferential lending to frozen shrimp producers is supported by the GOC and the Provincial Government of Guangdong (PGOG) through the issuance of national and provincial five-year plans, industrial plans for the aquaculture sector, and catalogues in which encouraged industries are identified. Based on our review of the responses and documents provided by the GOC, we determine that loans received by producers of frozen shrimp from SOCBs and policy banks were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the shrimp industry. At the national level, the GOC has identified specific products selected for development. For example, the *2005 Directory Catalogue on Readjustment of Industrial Structure (Encouraged Industries Catalogue for 2005)*, identifies “aquatic animals” as an “encouraged” product category.⁷⁵ The GOC once again identified “aquatic animals” as well as the “intensive processing of aquatic products” as “encouraged” product categories in the *2011 Directory Catalogue on Readjustment of Industrial Structure (Encouraged Industries Catalogue for 2011)*.⁷⁶

Further, the GOC implemented the *Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation* (No. 40 (2005)) (*Decision 40*) to assist “encouraged” industries that are listed in the *Encouraged Industries Catalogues for 2005 and 2011*.⁷⁷ For example, Article 12 of *Decision 40* states:

The “Catalogue for the Guidance of Industrial Structure Adjustment” is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.⁷⁸

Further, Article 17 of *Decision 40* states:

The encouraged investment projects shall be examined, approved, ratified or archived in accordance with the relevant provisions of the state on investment administration. *All financial institutions shall provide credit supports in compliance with credit principles.* The equipment shall be imported within the total amount of investments for the importer’s own use. Except for the commodities listed in the “Catalogue of Non-tax Free Imported Commodities for Domestic Investment Projects (Amended in 2000)” promulgated by the Ministry of Finance, the abovementioned equipment shall still be

⁷⁵ See GOC’s April 1, 2013, initial questionnaire response (GOC Initial QNR Response), at Exhibit O-I.A.2.a.

⁷⁶ See *id.*, at Exhibit O-I.A.2.b.

⁷⁷ See GOC 1st Supp QNR Response Part 2 at Exhibit S1-B-9, which contains *Decision 40*.

⁷⁸ See *id.*

exempted from customs duties and import value-added tax, and shall, after the new provisions such as the catalogue of investment projects exempted from no tax have been promulgated, be governed by such new provisions. As for other preferential policies on encouraged industry projects, the relevant provisions of the state shall apply.⁷⁹

In addition, the *11th and 12th Five Year Development Plans for the National Fishery*, issued by the GOC in 2006 and 2011, discuss financial support that is to be provided to aquaculture producers.⁸⁰ For example, the *11th Five Year Fishery Plan* under the heading “Establishing a diversified investment mechanism and improving the fishery development foundation,” states the following:

Actively seek special inputs: Emphasize on the implementation of “Action Plan for Cultivation and Conservation of Aquatic Biological Species Resources of China,” and *actively seek national financial support* in the exploratory fishing, monitoring, ranching and resource enhancement of fishery resources, the protection of aquatic wild creatures, the monitoring of ecological environment of fishing waters, the ecological disaster prevention of fishing waters, the ecological restoration and other public goods, to providing a financial support in the fishery development.

Encourage multi-channel financing: *Fully play the demonstration role, instruction role and controlling role of the national investment, insist in both guiding by the government investment and pushing forward by marketplace, fully use market economic means to guide bank loans, corporate funds, individual donors, national aids and other social funds to join in the fishery development and resources and environment protection, form a new diversified and benefit shared investment system, and expand the total funds of fishery development.*⁸¹

Concerning the *12th Five Year Fishery Plan*, under the heading “Improving Industrial Supporting Policies,” it states:

The state will increase the financial support to the construction of modern fishery; try to ensure that financial investment growth in fishery is not less than that of agriculture; motivate all social parts to provide investment to fishery and enhance the support to offer microfinance to fishery; explore the mortgage, pledge and circulation of certificate of culture rights and fishing rights; increase the support to offer credit to fishing operator and promote the formation of pluralistic, multi-channel investment and financing pattern for fishery; broaden categories of fishery machinery products which are eligible for subsidies and intensify such subsidies; promote the inclusion of fishery insurance in the scope of national agricultural policy insurance; establish a stable security system against fishery risk as quickly as possible; promote fishery to enjoy comprehensive agricultural preferential policies, inter alia, in terms of taxation, water, electricity and land, etc.; to

⁷⁹ See *id.* (emphasis added).

⁸⁰ See GOC Initial QNR Response, at Exhibit at O-I.A.3.a and O-I.A.3.b, which contain the *11th Five Year Fishery Plan* and *12th Five Year Fishery Plan*, respectively.

⁸¹ See GOC’s May 7, 2013, second supplemental questionnaire response (GOC 2nd Supp QNR Response), at Exhibit S2-1 at 9 (emphasis added).

include fisheries infrastructure construction is included in the overall planning of agricultural and rural development as well as quality and efficient agricultural production bases land improvement, irrigation and water conservancy facilities renovation project. Actively promote the fishermen using boat for home to make ashore settle and help to make allowance to the fishermen for their difficulties during the fishing moratorium and fishing ban period, and to promote the development of social undertakings in the field of fisheries.⁸²

As noted in *Citric Acid from the PRC*, in general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals.⁸³ Where such plans or policy directives exist, then it is the Department's practice to determine that a policy lending program exists that is specific to the named industry (or producers that fall under that industry).⁸⁴ Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC* to further conclude that national and local government control over the SOCBs result in the loans being a financial contribution by the GOC.⁸⁵ Therefore, on the basis of the record information described above, we determine that the GOC has a policy in place to encourage the development of the production of frozen shrimp through policy lending.

The Guolian Companies reported that Guolian, Guotong, and Guolian Feed had outstanding loans from PRC-based banks during the POI. Consistent with our determinations in prior proceedings, we find these PRC-based banks to be SOCBs.⁸⁶ We determine that the loans to aquaculture producers, such as shrimp producers, from SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act). We further determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the aquatic industry.

To determine whether a benefit is conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest Guolian, Guotong, and Guolian Feed paid on their outstanding loans to the amount they would have paid on comparable commercial loans.⁸⁷ In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above.

⁸² See GOC Initial QNR Response, at Exhibit O-I.A.3.b, Item VII.2.

⁸³ See *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5.

⁸⁴ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8; *see also Thermal Paper from the PRC*, and accompanying Issues and Decision Memorandum at "Government Policy Lending Program."

⁸⁵ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8.

⁸⁶ See, e.g., *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4.

⁸⁷ See 19 CFR 351.505(a).

Based on our review of the industrial plans discussed above, we find that benefits provided under this program are not solely contingent upon aquatic processing or farming activities.⁸⁸ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Application of Section 771B of the Act” section of this memorandum.

To calculate the net subsidy rate, we then divided the benefit by total sales, as described in the “Attribution of Subsidies” section. On this basis, we determine a countervailable subsidy of 2.77 percent *ad valorem* for the Guolian Companies under this program.

2. Central Government, Provincial, and Municipal Grants under the Famous Brands Program

The Famous Brand program is administered at the central, provincial, and municipal government levels. During the POI, Guolian, Guolian Feed, and Guotong reported receiving grants under the Famous Brand program from the municipal government of Zhanjiang.⁸⁹

We determine that the grants received under the Famous Brand program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. In *Extrusions from the PRC*, the Department determined that though the program is operated at the local level, the *Measures for the Administration of Chinese Top-Brand Products*, as issued by the GOC, state that firms applying for grants under the Famous Brands program are required to provide information concerning their export ratio as well as the extent to which their product quality meets international standards.⁹⁰ Further, Article 10.4 of the *Measures for the Administration of Chinese Top-Brand Products* lists circumstances that will disqualify firms from receiving the famous brands designation. Among the circumstances is the following: “exported commodities failed in the inspection, or their exported products were subject to foreign claim for compensation in the last three year.”⁹¹ Therefore, we determine that grants provided to Guolian, Guolian Feed, and Guotong under the famous brands program are contingent on export activity because export activities are among the conditions examined by Chinese central, provincial, and municipal governments when determining eligibility under the program. Accordingly, we find that the program is specific under sections 771(5A)(A) and (B)

⁸⁸ See, e.g., GOC Initial QNR Response, at Exhibit O-I.A.2.b containing the *Encouraged Industries Catalogue for 2011*, which identifies “aquatic animals” as well as the “intensive processing of aquatic products” as “encouraged” product categories; see also GOC 2nd Supp QNR Response, at Exhibit S2-1 at 9, containing the *11th Five Year Fishery Plan*, and GOC Initial QNR Response, at Exhibit O-I.A.3.b, Item VII.2, containing the *12th Five Year Fishery Plan*, both of which to financial support to be provided for fishery development.

⁸⁹ See Guolian Initial QNR Response, at 25; see also Guolian 1st Supp QNR Response Part 2, at 7-8 and at Exhibits S1-4a – S1-4d.

⁹⁰ See *Extrusions from the PRC*, and accompanying Issues Decision Memorandum at 18, citing to Chapter 3 of the “Measures for the Administration of Chinese Top-Brand Products.” The GOC included Chapter 3 of the “Measures for the Administration of Chinese Top-Brand Products in the GOC 1st Supp QNR Part 2, at S1-B-10A.

⁹¹ See GOC 1st Supp QNR Part 2, at S1-B-10A.

of the Act. Our approach in this regard is consistent with the Department’s findings in prior CVD proceedings involving the PRC.⁹²

To calculate the benefit from the grants, we first applied the “0.5 percent expense test” as described in the “Allocation Period” section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. For grant amounts that exceeded the 0.5 percent threshold, we allocated the benefits over the 12-year AUL using the methodology described under 19 CFR 351.524(d)(1).

Based on our review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.⁹³ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Application of Section 771B of the Act” section of this memorandum.

We then divided the benefit, allocated to the POI, by total export sales, as described in the “Attribution of Subsidies” section. On this basis, we determine a countervailable subsidy of 0.04 percent *ad valorem* for the Guolian Companies under this program.

3. Value-Added (VAT) Exemptions on Imports of Shrimp Fry

Pursuant to the *Circular of Ministry, General Administration of Customs and State Administration of Taxation on Printing Measures for the Tax Exemption Policy on the Importation of Seed Sources During the “Twelfth Five-Year Plan” Period* (Cai Guan Shui (2011) No. 76), the GOC provides VAT exemptions for imports of certain agricultural and forestry products.⁹⁴ The GOC states that the program is designed to support and develop agricultural and forestry products.⁹⁵ According to the GOC, only enterprises that import qualified seeds (seedlings), breeding stock (poultry), and fingerlings (fry) may receive the VAT exemptions provided under the program.⁹⁶ During the POI, Guolian and Guolian Fry used the program to import shrimp broodstock (*i.e.*, male and female adult shrimp used for breeding) that were exempt from VAT.⁹⁷

The GOC has argued that this program does not result in any revenue forgone because VAT collected on items at the time of importation will be returned to firms in the form of export tax rebates when the items are incorporated into exported products. Thus, according to the GOC, the

⁹² See *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 Issues and Decision Memorandum at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

⁹³ See Guolian Initial QNR Response, at Exhibit 14, containing its application for grants under the program, *see also* Guolian 1st Supp QNR Response Part 2, at Exhibit S1-2, containing Guolian’s application for designation as a famous brand.

⁹⁴ See GOC Initial QNR Response, at 48.

⁹⁵ See *id.*

⁹⁶ See *id.*, at 53.

⁹⁷ See *id.*, at 34.

tax burden for firms is the same with respect to exported goods regardless of whether firms use the VAT exemption program.⁹⁸

We disagree with the GOC's characterization of this program. Under this program, certain enterprises, as described above, are afforded VAT exemptions on imported items regardless of whether the items are ultimately incorporated into an exported product.⁹⁹ However, for all other firms under the GOC's VAT export rebate system, the rebate on exported products does not necessarily offset the amount of VAT collected on imported inputs. For example, a firm may not re-export a sufficient quantity of goods to offset the initial duties paid on the imported input. Thus, unlike many other countries, it cannot be said that the program results in the same tax burden with regard to all firms because firms in the PRC who receive the VAT exemption incur no tax burden while firms without an exemption may incur a burden that is not rebated if they do not re-exported the finished product. Thus, we determine that this program constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and confers a benefit under section 771(5)(E) of the Act. We further determine that the program is specific under section 771(5A)(D)(i) of the Act because the VAT exemptions are limited to firms that import qualified seeds (seedlings), breeding stock (poultry), and fingerlings (fry).

Pursuant to 19 CFR 351.510(a) and (b)(1), we find that the benefit is equal to the amount of VAT exemptions received by Guolian and Guolian Fry during the POI.

Based on our review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹⁰⁰ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the "Application of Section 771B of the Act" section of this memorandum.

We then divided the benefit by total sales, as described in the "Attribution of Subsidies" section. On this basis, we determine a countervailable subsidy of 0.08 percent *ad valorem* for the Guolian Companies under this program.

4. VAT Refunds for Foreign Invested Enterprises (FIEs) on Purchases of Chinese-Made Equipment

Under this program, the GOC refunds VAT paid by FIEs for the purchase of domestically produced equipment provided that the equipment does not fall into the non-duty-exemptible catalogue and the value of the equipment does not exceed the total investment limit of an FIE, as provided under the *Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs* (GOUSHUIFA (1999) No. 171).¹⁰¹ According to the GOC, the program is designed to promote the use of domestically produced equipment by FIEs.¹⁰² The Guolian

⁹⁸ See *id.*, at 47.

⁹⁹ See *id.*, at 48 and Exhibit O-IV.A.1.a.

¹⁰⁰ See *id.*, at Exhibit 17, containing Guolian's application under the program.

¹⁰¹ See *id.*, at 56.

¹⁰² See *id.*

Companies reported receiving VAT exemptions under this program in years between the December 11, 2001, “cut-off” date and December 31, 2010.¹⁰³

We determine that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(i) of the Act and confers a benefit under section 771(5)(E) of the Act.¹⁰⁴ We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is consistent with the Department’s practice.¹⁰⁵

The GOC states that the program was discontinued effective January 1, 1999, pursuant to the *Circular of Ministry of Finance and the State Administration of Taxation on the Discontinuation of the Rebate Policy on the Purchase of Domestically Manufactured Equipment by Foreign Invested Enterprises* (CAISHUI (2008) No. 176).¹⁰⁶ However, consistent with *Wind Towers from the PRC*, we find that the program still provides for residual benefits because import tariff and VAT exemptions were provided for the importation of capital equipment and, thus, those exemptions are treated as non-recurring subsidies pursuant to 19 CFR 351.524(c)(2)(iii).¹⁰⁷

Normally, we treat exemptions from VAT as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when a VAT exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.¹⁰⁸ Since the VAT exemptions under this program are tied to production equipment, we find that they are tied to the Guolian Companies’ capital assets. Therefore, we are examining the import tariff exemptions that the Guolian Companies received under the program from December 11, 2001 (the “cut-off” period) through the end of the POI.

To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment by the VAT rate that would have been levied absent the program. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. Next we performed the “0.5 percent test” on the sum of the VAT exemptions received in each year. Exemption amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. For exemption amounts that exceeded the 0.5 percent threshold, we allocated the benefits over the 12-year AUL using the methodology described under 19 CFR 351.524(d)(1).

¹⁰³ See *id.*, at 37.

¹⁰⁴ China’s VAT regime was transformed from a “production-based” VAT system into a “consumption-based” VAT system effective 2009, which is the world-norm for countries that have a VAT. Prior to the transformation into a consumption-based VAT regime, China did not allow VAT paid on purchases of capital goods and fixed assets to be credited against the VAT collected when remitting VAT to the government tax authorities. Therefore, programs that provided a VAT exemption on capital goods during the period when China had a “production-based” VAT system relieved firms from a tax they otherwise would have paid absent the exemption.

¹⁰⁵ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 14.

¹⁰⁶ See GOC Initial QNR Response, at 56 and Exhibit O-IV.B.1.b.

¹⁰⁷ See *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at 14 – 15.

¹⁰⁸ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

Based on our review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹⁰⁹ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Application of Section 771B of the Act” section of this memorandum.

We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section. On this basis, we determine a countervailable subsidy of 0.27 percent *ad valorem* for the Guolian Companies under this program.

5. VAT and Import Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (Guofa No. 37) (*Circular 37*) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. Guolian, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment prior to and during the POI.¹¹⁰

We determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and confer a benefit in the amount of the VAT and tariff savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program; therefore, we further determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. Our findings in this regard are consistent with the Department’s prior decisions.¹¹¹

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the

¹⁰⁹ See Guolian Initial QNR Response, at Exhibit 20, containing Guolian’s application under the program.

¹¹⁰ See *id.*, at 40.

¹¹¹ See, e.g., *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 16; see also *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at “VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.”

AUL.¹¹² Therefore, because these exemptions are for capital equipment, we have examined the VAT and tariff exemptions that Guolian received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases.¹¹³ Next, we summed the amount of duty and VAT exemptions received in each year. We then divided the total amount of annual VAT and tariff exemptions by the corresponding total sales for the year in which the exemptions were received. Those exemptions that were less than 0.5 percent of total sales were expensed to the year of receipt. Those exemptions that were greater than 0.5 percent of total sales were allocated over the AUL using the methodology described under 19 CFR 351.524(d)(2).

Based on our review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹¹⁴ Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the "Application of Section 771B of the Act" section of this memorandum.

We then divided the benefit, allocated to the POI, by total sales, as described in the "Attribution of Subsidies" section. On this basis, we determine the countervailable subsidy to be 0.13 percent *ad valorem* for the Guolian Companies.

6. Enterprise Income Tax Reduction for High and New Technology Enterprises (HNTEs)

Under Article 28.2 of the *EITL* (Decree No. 63), the income tax that a firm pays is reduced to 15 percent if an enterprise is recognized as a High and New Technology Enterprise (HNTE).¹¹⁵ The *Administrative Measures for Certification of New and High Technology Enterprises (New and High-Technology Administrative Measures)*, in turn, specify the new and high technology products that are eligible to receive the tax benefit provided under Article 28.2 of the *EITL*.¹¹⁶ Specifically, Article 10, item 2 of the *New and High-Technology Administrative Measures* indicate that only firms whose products are designated as being in "hi-tech fields with state support" are eligible to receive the tax benefit.¹¹⁷

¹¹² See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1).

¹¹³ See, e.g., *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008), and accompanying Issues and Decision Memorandum at Comment 8 ("... we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties.").

¹¹⁴ See Guolian Initial QNR Response, at Exhibit 23, containing Guolian's application under the program.

¹¹⁵ See GOC NSA QNR Response, at 2.

¹¹⁶ See *id.*, at Exhibit N-B.1.a.

¹¹⁷ See *id.*

The Guolian Companies state that Guolian paid a reduced income tax rate on the tax return it filed during the POI, in accordance with Article 28.2 of the *EITL*. Specifically, Guolian paid an income tax rate of 15 percent rather than the standard rate of 25 percent.¹¹⁸

We determine that this program constitutes a financial contribution in the form of revenue forgone by the GOC and confers a benefit in the amount of the tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, firms whose products are designated as being in “high-tech fields with state support,” and, hence, is specific under section 771(5A)(D)(i) of the Act.¹¹⁹ Our findings in this regard are consistent with the Department’s practice.¹²⁰

We calculated the benefit as the difference between the taxes Guolian would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return filed during the POI, as provided under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

Based on our review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are provided exclusively to corporate entities. Information in the Supplier QNR indicates that all of the Guolian Companies unaffiliated farmers are household entities.¹²¹ Therefore, we find that the farmers could not have received benefits under this program and have not applied the methodology described under section 771B of the Act.

We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section. On this basis, we calculated a net subsidy rate of 0.27 percent *ad valorem* for the Guolian Companies.

7. Tax Incentives for Enterprises Engaged in Aquaculture and Processing

Under Article 27.1 of the *EITL*, “income from engaging in projects of agriculture, forestry, animal husbandry, and fisheries may be subject to exempted or reduced income tax.”¹²² There is a companion regulation issued by the GOC that implements the policies in Article 27.1 of the *EITL*.¹²³ The Guolian Companies state that Guolian and Guolian Fry paid a reduced income tax rate on the tax return it filed during the POI, in accordance with Article 27.1 of the *EITL*.¹²⁴

¹¹⁸ See Guolian NSA QNR Response, at 5-6.

¹¹⁹ See GOC NSA QNR Response, at Exhibit N-B.1.a.

¹²⁰ See *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) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum at “Income Tax Reductions under Article 28 of the Enterprise Income Tax Law.”

¹²¹ See Supplier QNR, at Attachment I.

¹²² See GOC Initial QNR Response, at 32.

¹²³ See GOC’s 1st Supp QNR Response Part 2, at 3 and Exhibit S1-B-8, which contains the *Notice on the Scope of the Agricultural Products Preliminary Processing Eligible for Enterprise Income Tax Preferential Policies* (Cai Shui (2008) No. 149) (November 20, 2008) (*Implementing Regulations of Article 27.1*).

¹²⁴ See GOC Initial QNR Response, at 33-34; see also Guolian Supp QNR Response Part 1, at 2.

We determine that this program constitutes a financial contribution in the form of revenue forgone by the GOC and confers a benefit in the amount of the tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. Concerning specificity, we note that the *Implementing Regulations of Article 27.1* indicate that only certain subsets of various “processed” agricultural products are eligible to receive benefits under the program. For example, concerning the aquaculture industry, the *Implementing Regulations of Article 27.1* state that only the following are eligible for benefits:

The primary products of aquatic made through such simple processing of aquatic (fish, shrimp, crab, turtle, shellfish, echinoderm, mollusk, coelenterate, amphibian, marine animal, etc.) of the whole or parts (after removing the head, scale, skin, shell, viscera, bone or fishbone, kneading or cutting into blocks or slices) as preserving and embalming (e.g., chilling, freezing, refrigerating), and packaging.¹²⁵

The *Implementing Regulations of Article 27.1* further indicate that “Cooked aquatic products, various canned aquatic products and the aquatic food after being flavored and roasted” are “not included the scope of primary processing,” and, thus, not eligible for benefits under the program.¹²⁶ Therefore, based on the information in the *Implementing Regulations of Article 27.1*, we determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, a subset of firms engaged in certain agricultural processing activities, and, hence, is specific under section 771(5A)(D)(i) of the Act.

We calculated the benefit as the difference between the taxes Guolian and Guolian Fry would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the program, as reflected on the tax return filed during the POI, as provided under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

Based on our review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are solely contingent upon processing of aquatic products.¹²⁷ Therefore, we determine that the methodology described under section 771B of the Act does not apply with regard to this program.

We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section. On this basis, we calculated a net subsidy rate of 1.06 percent *ad valorem* for the Guolian Companies.

8. Central Government Grants in Connection With the Zhanjiang Guolian’s *Penaeus Vannamei* Boone (aka White Shrimp) Processing Project

The GOC states that it provides funds under this program to develop agricultural resources and support agricultural development. At the national level the program is administered by the

¹²⁵ See GOC 1st Supp QNR Response Part 2, at Exhibit S1-B-8, Category III.1 of the *Implementing Regulations of Article 27.1*.

¹²⁶ See *id.*

¹²⁷ See *id.*

National Agricultural Development Office while the Agricultural Development Office of Zhanjiang Bureau of Finance administers the program at the local level.¹²⁸ The two measures that govern the program are the *Interim Measure for the Administration of National Agricultural Comprehensive Development Projects and Funds (Interim Measures for Agricultural Development)* and the *Measures for the Administration of National Agricultural Comprehensive Development Funds and Projects (Measures for Agricultural Development)*.¹²⁹ The Guolian Companies report that Guolian received funds under this program in years prior to the POI.¹³⁰

We determine that the grants Guolian received under the program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

Concerning specificity, in its initial questionnaire response, the GOC did not provide data concerning the manner in which grants under the program were provided, stating that it “does not maintain such statistics.”¹³¹ As noted above in “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC failed to adequately explain why it was unable to provide aggregated benefit disbursement data for grant recipients under the program. As a result, we determine that the GOC has failed to cooperate by not acting to the best of its ability and, therefore, pursuant to section 776(b) of the Act we find as AFA that the grants provided to Guolian Companies are *de facto* specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit from the grants, we first applied the “0.5 percent expense test” as described in the “Allocation Period” section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. For grant amounts that exceeded the 0.5 percent threshold, we allocated the benefits over the 12-year AUL using the methodology described under 19 CFR 351.524(d)(1). We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section.

Based on our review of the application forms Guolian submitted to the GOC under this program, we find that the benefits provided are not solely contingent upon aquatic processing or farming activities.¹³² Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the “Application of Section 771B of the Act” section of this memorandum.

On this basis, we determine a countervailable subsidy of 0.21 percent *ad valorem* for the Guolian Companies under this program.

¹²⁸ See GOC NSA QNR Response, at 23-24.

¹²⁹ See *id.*, at Exhibit ND.1.a and Exhibit ND.1.b, respectively.

¹³⁰ See Guolian NSA QNR Response, at 12.

¹³¹ See *id.*, at 30 – 31.

¹³² See *id.*, at Exhibit N5, containing the application form Guolian submitted under the program.

9. Additional Grants Received by the Guolian Companies Not Addressed by the Department in the *Preliminary Determination*

The Guolian Companies reported that Guolian received numerous grants from the GOC as well as from provincial and local governments, which were not previously disclose to the Department.¹³³ We found there was insufficient time to incorporate the Guolian Companies' receipt of these grants into the *Preliminary Determination* and explained that we would address these grant programs in the final determination.¹³⁴

In a supplemental questionnaire, we instructed the GOC to provide information concerning each of the additional grant programs listed in the Guolian 2nd Supp QNR Response.¹³⁵ However, the GOC failed to provide the requested information.¹³⁶ As a result of the GOC's refusal to respond to our questionnaire, we find the GOC withheld requested information and significantly impeded this proceeding within the meaning of sections 776(a)(2)(A) and (C) of the Act. We further find that by not providing the requested information, the GOC failed to cooperate by not acting to the best of its ability and, thus, pursuant to section 776(b) of the Act, we are applying AFA. As AFA, we find that each of the additional grant programs at issue constitute a financial contribution and are specific under sections 771(5)(D) and 771(5A) of the Act, respectively.

For purposes of calculating the benefit under each program, we have relied on the benefit information provided by the Guolian Companies.¹³⁷ Because we lack information from the GOC concerning the manner in which these programs operate and in accordance with section 776(a)(2)(A) of the Act, we have utilized the facts available on the record regarding these programs and, thus, based the denominator used in the "0.5 percent expense test" based on the name of the grant program at issue (*e.g.*, for program names that reference export activities we used a total export sales denominator, for programs that do not reference export activities we used a total sales denominator).

Furthermore, pursuant to section 776(b) of the Act, we determine that the benefits provided are not solely contingent upon aquatic processing or farming activities and, thus, we find that section 771B of the Act applies with regard to each of these grants. Therefore, in applying the methodology described under section 771B of the Act, we have apportioned the benefit in the manner described in the "Application of Section 771B of the Act" section of this memorandum.

The programs listed below constitute those whose benefits were large enough to be allocated to or expensed in the POI:¹³⁸

- a. Grant under 2010 Industry Transferring of Enterprises located in Industrial Zone (Processing)

¹³³ See Guolian 1st Supp QNR Response Part 2, at 7-8 and at Exhibits S1-4a – S1-4d.

¹³⁴ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 3.

¹³⁵ See Third Supp QNR, at 3.

¹³⁶ See GOC 3rd Supp QNR Response, at 4.

¹³⁷ See Guolian 2nd Supp QNR Response Part 2, at 7-8 and at Exhibits S1-4a – S1-4d.

¹³⁸ For a complete listing of the additional subsidy programs reported by the Guolian Companies, see Guolian 1st Supp QNR Response Part 2, at 7-8 and at Exhibits S1-4a – S1-4d; see also the Final Calculation Memorandum.

- Grant under 2010 Industry Transferring of Enterprises located in Industrial Zone (Farming)
Sub-Total 0.2600%
- b. Grant under 2006 Agricultural Comprehensive Industrialization Project Funds (Tilapia Export Base Construction Project) (Processing)
Grant under 2006 Agricultural Comprehensive Industrialization Project Funds (Tilapia Export Base Construction Project) (Farming)
Sub-Total 0.3000%
- c. Grant under Zhanjiang Development Zone 2010 International Markets Development Reward (Processing)
Grant under Zhanjiang Development Zone 2010 International Markets Development Reward (Farming)
Sub-Total 0.3600%
- d. 2010 Discount Interest for Leading Enterprises (Processing)
2010 Discount Interest for Leading Enterprises (Farming)
Sub-Total 0.2400%
- e. Grant under Modern Agricultural Technology System Construction Funds (Shrimp) (Processing)
Grant under Modern Agricultural Technology System Construction Funds (Shrimp) (Farming)
Sub-Total 0.1400%
- f. 2008 2nd Industrialization Technology Research Development Fund (Guangdong Provincial Aquatic Products Deep-Processing Engineering Technology Research and Development Center) (Processing)
2008 2nd Industrialization Technology Research Development Fund (Guangdong Provincial Aquatic Products Deep-Processing Engineering Technology Research and Development Center) (Farming)
Sub-Total 0.0600%
- g. Grant under 2011 1st Export Sellers's Credits Insurance Special Fund (Processing)
Grant under 2011 1st Export Sellers's Credits Insurance Special Fund (Farming)
Sub-Total 0.0200%
- h. Grant under 2009 Zhanjiang 1st Science Plan Program (Development of popcorn shrimp) (Processing)
Grant under 2009 Zhanjiang 1st Science Plan Program (Development of popcorn shrimp) (Farming)
Sub-Total 0.0100%
- i. Grant under 2010 Guangdong Province International Development Funds+B50 (Processing)

- Grant under 2010 Guangdong Province International Development Funds+B50 (Farming)
Sub-Total 0.0100%

- j. Subsidy for Patent (Processing)
Subsidy for Patent (Farming)
Sub-Total 0.0100%

- k. Subsidy for Exhibition Charge of 2010 Hong Kong Food Expo (Processing)
Subsidy for Exhibition Charge of 2010 Hong Kong Food Expo (Farming)
Sub-Total 0.0000%

- l. Grant under Guangdong Province 2010 Foreign Trade Enterprise E-business Application Fund (Processing)
Grant under Guangdong Province 2010 Foreign Trade Enterprise E-business Application Fund (Farming)
Sub-Total 0.0000%

Contained within the 43 grants were two in 2011 that were included in the Department’s Famous Brands calculations for that year; the Grant under 2011 Zhanjiang City Advanced Foreign Trade Company Reward (Export Famous Brand, Development of the ASEAN Markets, Export Enterprises) and the Grant under Two-new Products Funds (2009-2011) focused on the development of Guangdong Province export brand name.

B. Program Determined Not To Confer a Benefit During the POI

- 1. Grants under the Guangdong Province Coastal Region Fishermen’s Job Transferring Bill Fishery Industry Development Project Fund

The GOC states that it established this program after agreement between the PRC and Vietnam in 2000 regarding the delimitation of the territorial seas between the two countries in the Beibu Gulf area. The GOC states that under this agreement, 32 thousand square kilometers of fishing area, formerly within the PRC’s territory, were eliminated, which in turn, displaced several thousand Chinese fisherman that traditionally operated in the Beibu Gulf area. Thus, in November 2003, the GOC enacted a program that would provide financing incentives for fishing enterprises to employ fishermen whose livelihoods were affected by the 2000 agreement reached between the PRC and Vietnam.¹³⁹ The program is administered by the Administration of Ocean and Fisheries of Guangdong Province, Administration of Ocean and Fisheries of Zhanjiang City, and Zhanjiang Bureau of Finance.¹⁴⁰ The GOC provided the relevant legislation in its NSA

¹³⁹ See GOC NSA QNR Response, at 13-14.

¹⁴⁰ See *id.*

QNR Response.¹⁴¹ The Guolian Companies reported that Guolian received grants under this program in years prior to the POI.¹⁴²

We applied the “0.5 percent expense test,” as described in the “Allocation Period” section above, to the grants that Guolian received under this program. In conducting the “0.5 percent” test, we used Guolian’s total sales. Further, we conducted the “0.5 percent” test based on our finding that benefits under the program are solely contingent upon processing of aquatic products. Our finding in this regard was based on our review of the legislation for the program.¹⁴³ Therefore, we determine that the methodology described under section 771B of the Act does not apply with regard to this program.

The Grants amounts approved under the program did not exceed the 0.5 percent threshold and, thus, we expensed the grant amounts received in the years of receipt, all of which were prior to the POI. As a result, we determine that grants under this program did not confer a benefit during the POI.¹⁴⁴

C. Programs Determined To Be Not Used

1. Central Government Provision of Loan Guarantees at the Zhanjiang City Seafood Center
2. Export Sellers Credits from China Ex-Im Bank
3. Guangdong Province Funds for Enterprise Outward Expansion
4. State Key Renovation Project Fund Program
5. Grants under the Healthy Development of the Aquaculture Industry Program
6. Grants by the Central Government and the Zuzhou District Government in Connection with Construction of Fishery Industry Zones and Farms
7. Grants from the Huanhua City Government for Fry Breeding
8. Central Government Grants under the 2010 Aquatic Products Quality and Safety Supervision Program
9. Government Grants for Fishery Machinery and Equipment Purchases

¹⁴¹ See GOC NSA QNR Response, at Exhibit NC.1.a, which contains the *Circulation for Forwarding the Resolution of the Standing Committee of Guangdong Provincial People’s Congress Concerning the Proposal on Supporting Fisherman Fishing Job and Industrial Production Transfer of Coastal Areas and Maintaining Fishing Area Stability* (Yeu Fu (2003) No. 97) (*Circulation for Fishing Job and Industrial Production Transfer*); see also Exhibit NC.1.b, containing the *Notification of the General Office of Guangdong Provincial People’s Government on Forwarding the Methods of Implementation of the Proposal of the Provincial Administration of Ocean and Fisheries Concerning Supporting Fishing Job and Industrial Production Transfer of Fishermen Along the Coastal Areas and Maintaining Fishing Zone Stability* (Yeu Fu Ban (2004) No. 85) (*Notification for Fishing Job and Industrial Production Transfer*).

¹⁴² See Guolian NSA QNR Response, at 8.

¹⁴³ See GOC NSA QNR Response, at Exhibit NC.1.a, containing the *Circulation for Fishing Job and Industrial Production Transfer*; see also Exhibit NC.1.b, containing the *Notification for Fishing Job and Industrial Production Transfer*.

¹⁴⁴ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 73 FR 79791, 79800 (December 30, 2008); in which the Department refrained from determining whether a subsidy benefit constituted a financial contribution or was specific under the statute when the resulting net subsidy rate was less than 0.005 percent *ad valorem*; unchanged in *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) and accompanying Issues and Decision Memorandum at “Programs Found Not To Confer a Countervailable Benefit During the POR.”

10. Grants from Banfu County Government for Development of Breeding Stock
11. Two Free, Three Half Program
12. Export Oriented FIEs
13. Tax Refund for Profit Reinvestment in Export-Oriented Enterprises
14. Tax Incentives for FIEs in Special Economic Zones
15. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment
16. Central Government Provision of Rent for Less than Adequate Remuneration (LTAR) and Waiver of Management Fees at the Zhanjiang City Seafood Center
17. Central Government Provision of Cold Storage Services at the Zhanjiang City Seafood Center for LTAR
18. Export Credit Insurance from Sinosure

VII. Analysis of Comments

Comment 1: Application of the CVD Law to the PRC

Case Brief of the GOC

- The retroactive application of Public Law 112-99 raises constitutional issues.
- Public Law 112-99 violates the *ex post facto* clause of the Constitution, due process guaranteed by the Fifth Amendment to the Constitution, and equal protection of the laws also guaranteed by the Fifth Amendment.
- Because of the constitutional deficiencies, this investigation should be terminated.

Rebuttal Brief of Petitioner

- The Court in *GPX* ruled that the U.S. trade laws are remedial in nature and so any retroactive application does not constitute an *ex post facto* law.¹⁴⁵

Department's Position: Public Law 112-99 clarifies that the Department has the authority to apply the CVD law to imports from NME countries, such as China. We disagree that Public Law 112-99 violates equal protection of the law as guaranteed by the Fifth Amendment's due process clause. Section 1 of Public Law 112-99 imposes no new obligation on parties, but merely reaffirms the Department's authority to apply the CVD law to NME countries. Thus, section 1 does not single out one group of companies and deny them the "protections" of section 2. Rather, section 1 simply confirms that existing law, to which all companies already were subject, applies. Further, the distinction between section 1 and section 2 of the legislation serves a rational purpose. As evidenced by the legislative history, section 2 of Public Law 112-99 was adopted, in part, to bring the United States into compliance with its WTO obligations.¹⁴⁶ Given the statutory scheme for prospective implementation of adverse WTO decisions,¹⁴⁷ it was entirely reasonable for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings

¹⁴⁵ See *GPX Int'l Tire Corp. v. United States*, 678 F.3d 1308 (CAFC 2012) (*GPX*).

¹⁴⁶ See, e.g., 158 Cong. Rec. at H1167-68, H1171 (daily ed. March 6, 2012) (statements of Representatives Camp, Brady, and Jackson Lee).

¹⁴⁷ See 19 U.S.C. 3533, 3538.

already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Further, we disagree that the “retroactivity” of the legislation violates the Fifth Amendment’s due process clause. Section 1 of Public Law 112-99 is not retroactive. Rather, it clarifies existing law by ensuring that the Department will continue to apply the CVD law to NME countries. Congress enacted the legislation to prevent the Court’s holding in *GPX* – a decision that would have changed existing law – from becoming final and taking effect.¹⁴⁸ In any event, even if section 1 of Public Law 112-99 were considered retroactive, it does not violate the due process clause. This is because the legislation has a rational basis, which is to correct what was perceived by Congress to be an erroneous decision in *GPX* by confirming and clarifying the existing law.¹⁴⁹

Lastly, we disagree that Public Law 112-99 is a prohibited *ex post facto* law. The *ex post facto* clause of the Constitution bars retroactive application of penal legislation, but, as just described, section 1 of Public Law 112-99 is not retroactive. Even if that section were considered retroactive, it is not penal, because it merely clarifies that the government can collect duties proportional to the harm caused by unfair foreign subsidization. In this regard, the CVD law is remedial in nature.

Comment 2: Simultaneous Application of CVD and NME Measures

Case Brief of the GOC

- WTO Appellate Body found that “{t}he amount of countervailing duty cannot be ‘appropriate’ in situations where that duty represents the full amount of the subsidy, and where antidumping duties, calculated at least to some extent on the basis of the same subsidization, are imposed concurrently to remove the same injury to the domestic industry.”¹⁵⁰
- This proceeding is unlawful given the Department has no mechanism to account for double-counting of duties when a CVD remedy is applied in conjunction with a NME AD remedy as required under the *WTO AB Decision*.
- The Department initiated the instant investigation on January 17, 2013, after the expiration of the reasonable period of time to comply with the *WTO AB Decision*, which was February 25, 2012.¹⁵¹ Thus, the Department is in violation of its WTO commitments.
- Public Law 112-99 calls for the Department to make adjustments to avoid including subsidies provided to Chinese producers in both the antidumping margins and CVD rates.¹⁵² Congress intended the change in law to bring the United States into compliance

¹⁴⁸ See, e.g., 158 Cong. Rec. at H1167–68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrabacher, and Boustany).

¹⁴⁹ See, e.g., *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) (upholding retroactive legislation that corrected unexpected results of judicial opinion).

¹⁵⁰ See *Appellate Body Report, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (*WTO AB Decision*) at para 582.

¹⁵¹ See Agreement Under Article 21.3(b) of the DSU, U.S. – CVDs, WT/Ds379/11 (July 8, 2011).

¹⁵² See 19 U.S.C. 1677f-1(f)(1).

with its WTO obligations.¹⁵³ Thus, Public Law 112-99 should be interpreted consistently with the *WTO AB Decision* given Congressional intent to comply with the WTO dispute.

- The Department should adjust the CVD rates in order to implement Public Law 112-99 in accordance with Congressional intent and to comply with the *WTO AB Decision*. Alternatively, the Department could terminate the investigation or find the PRC to be a market economy under the antidumping statute.

Rebuttal Brief of Petitioner

- Under the amended U.S. law, it is antidumping margins that are to be adjusted to reflect amounts of certain subsidies. Thus, any adjustment to be made is to be made to antidumping duties that are not at issue in this proceeding.

Department's Position: The Department can simultaneously apply CVD measures in this final determination while at the same time treating the PRC as an NME in ongoing AD reviews. Section 1 of Public Law 112-99 makes clear that the CVD law applies to products from NME countries, and therefore applies to this investigation. Further, section 2 of Public Law 112-99, relating to an adjustment in certain instances of simultaneous application of CVD remedies and NME AD remedies, does not impact this CVD investigation. Rather, under these unique circumstances, section 2 can only impact AD proceedings.¹⁵⁴

Moreover, the legislative history for Public Law 112-99 makes clear that Congress had a rational basis for confirming the Department's authority to apply the CVD law to products from NME countries while ensuring that, for WTO compliance purposes, the Department could, going forward, make adjustments to AD duties to account for any overlap in AD and CVD remedies demonstrated to exist.¹⁵⁵ Given the statutory scheme for prospective implementation of adverse WTO decisions,¹⁵⁶ it was entirely reasonable for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Regarding reference to the *WTO AB Decision*, that decision involved an "as applied" challenge to the eight AD and CVD determinations at issue in that case, and the Department's implementation applied only to those eight AD and CVD determinations.¹⁵⁷ Neither the decision nor the implementation applies to this investigation. The Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.¹⁵⁸

¹⁵³ See *GPX*, 678 F.3d 1308, 1311.

¹⁵⁴ See 19 U.S.C. 1677f-1(f)(2).

¹⁵⁵ See, e.g., 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Rep. Camp).

¹⁵⁶ See 19 U.S.C. 3533, 3538.

¹⁵⁷ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683 (August 30, 2012).

¹⁵⁸ See *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (*Corus I*); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus II*); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007) (*NSK Fed. Cir.*).

The Department notes that no party has placed any evidence on the record to demonstrate that double-counting has occurred or will occur in this proceeding. Without any factual basis to support its claim of a “double remedy,” the GOC’s argument is without merit. Lastly, as noted above and by Petitioner, under the amended U.S. law, it is antidumping margins that are to be adjusted to reflect amounts of certain subsidies. Thus, any adjustment to be made is to be made to antidumping duties, which are not at issue in this proceeding. Accordingly, there is no basis for the Department to adjust the final calculated CVD amounts in this proceeding, and we have not done so.¹⁵⁹

Comment 3: Proper “Cut-Off” Date to Apply in the Investigation

Case Brief of the GOC

- Section one of Public Law 112-99 precludes the Department from countervailing subsidies received prior to the date in which it could measure subsidies received by the government of a NME. Only as of January 1, 2005, the beginning date of the POI of *CFS from the PRC* (the first CVD investigation conducted with regard to the PRC), did the Department ““believe that it is possible to determine whether the PRC Government has bestowed a benefit upon a Chinese producer.””¹⁶⁰ Thus, the date of *CFS from the PRC* constitutes the proper “cut-off” date that should be applied by the Department.¹⁶¹
- The current “cut-off” date subjects Chinese exports to the CVD law with respect to alleged subsidies received prior to when the PRC had a reasonable expectation that the CVD law applied.
- The current “cut-off” date violates the Department precedent of not countervailing alleged subsidies received prior to when the Department determines that the CVD law applies to a particular country.¹⁶²

Rebuttal Brief of Petitioner

- The GOC misinterprets section one of the Public Law 112-99. The Department has treated numerous entities within the PRC as separate from any single entity by providing them with separate dumping margins. Thus, this section of Public Law 112-99 is not applicable and provides no grounds for the Department to ignore subsidies granted to a company in the PRC after December 11, 2001.

¹⁵⁹ See, e.g., *Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶⁰ Quoting *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy*, at 10 (March 29, 2007).

¹⁶¹ See *Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17485 (April 9, 2007) (*Preliminary Determination of CFS from the PRC*); see also *CFS from the PRC*, and accompanying Issues and Decision Memorandum at “Period of Investigation.”

¹⁶² See *Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary*, 67 FR 60221 (September 25, 2002) (*Sulfanilic Acid from Hungary*), and accompanying Issues and Decision Memorandum at 8, 14.

- The PRC committed itself to a regime in which foreign countries could apply the CVD with regard to subsidies it provides to its manufacturers. Thus, as of December 11, 2001, the time of the PRC's accession to the WTO, the GOC should have had a reasonable expectation that its subsidies would be subject to the CVD law.

Department's Position: The Department has addressed the GOC's arguments several times in the past. Most recently, in *Solar Cells from the PRC*, we responded to these same arguments as follows:

We have selected December 11, 2001, because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership. The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (*e.g.*, CVDs) were meaningful.

We disagree with the notion that adoption of the December 11, 2001, date is unfair because parties did not have adequate notice that the CVD law would be applied to the PRC prior to January 1, 2005 (the start of the POI in the investigation of *CFS from the PRC*). Initiation of CVD investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001, date. For example, in 1992, the Department initiated a CVD investigation on lug nuts from the PRC. *See Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China*, 57 FR 877 (January 9, 1992). In 2000, Congress passed PNTR Legislation (as discussed in Comment 1) which authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."

Thus, the GOC and PRC importers were on notice that CVDs were possible well before January 1, 2005.

We further disagree that *Sulfanilic Acid from Hungary* is controlling in this case. The Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a

case-by-case basis to determine whether the Department can identify subsidies in that country.¹⁶³

For the same reasons expressed in our prior determinations (*e.g.*, *Solar Cells from the PRC*), we continue to find that December 11, 2001, is the appropriate cut-off date for measuring subsidies in the PRC. Moreover, we note that despite the GOC's claim that Public Law 112-99 "precludes" imposing a countervailing duty where subsidies are not measurable because the country is essentially comprised of single entity, section 1 actually states that the imposition of a duty "is not *required*" in that case.¹⁶⁴

Comment 4: Whether the Department's Application of Section 771B of the Act Improperly Attributes Subsidy Benefits to Shrimp Suppliers

Case Brief of the GOC

- The Department made no lawful finding that subsidies were, in fact, provided to the Guolian's fresh shrimp suppliers. As a result, the Department improperly concluded in the *Preliminary Determination* that Guolian's fresh shrimp suppliers received countervailable subsidies under the following programs: VAT Exemptions on Imports of Shrimp Broodstock, Famous Brands Program, White Shrimp Grant Program, VAT and Tariff Exemptions for Using Imported Equipment, VAT Refund for FIEs on Purchases of PRC-Made Equipment, Tax Incentives for Enterprises Engaged in Aquaculture and Processing, Enterprise Income Tax Reduction for High-Tech Enterprises, and Policy Lending.
- Record evidence demonstrates that subsidies pursuant to each of these programs are available only to entities and not to individuals.¹⁶⁵
- Guolian's fresh shrimp suppliers certified that they are individual, household farmers and not entities.¹⁶⁶ Guolian's fresh shrimp suppliers further certified that they did not receive any subsidies from the alleged programs and did not engage in any behavior that would have made them eligible.¹⁶⁷
- The Department expressly found that Guolian "did not receive any subsidies that were solely contingent upon its farming operations."¹⁶⁸
- The Department's attribution of subsidies to Guolian's fresh shrimp suppliers in the *Preliminary Determination* violates due process because the Department did not investigate the shrimp suppliers and opted not to verify the suppliers' claims of non-use

¹⁶³ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶⁴ Emphasis added.

¹⁶⁵ On this point, the GOC provides citations for each of the programs listed above. The GOC's citations reference the GOC Initial QNR, the GOC NSA QNR, and the GOC Verification Report. For more information on these citations, see pages 23-26 of the GOC's case brief.

¹⁶⁶ See Guolian Companies' June 3, 2013, factual submission (Guolian Companies' Factual Submission), at Attachment 4; see also Supplier QNR, at Attachment 1.

¹⁶⁷ See Guolian Companies' Factual Submission, at Attachment 4.

¹⁶⁸ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 13.

of the alleged subsidy programs. The Department conducted examinations and verification of fresh shrimp suppliers in the companion investigation involving Thailand and should have done so in the instant investigation. Under the SCM Agreement, the Department may not make assumptions regarding 771B about the purported receipt of subsidies by Guolian's fresh shrimp suppliers without having first collected substantial evidence, which it has failed to collect in the instant investigation.

Case Brief of the Guolian Companies

- The Guolian Companies made clear that Guolian's unaffiliated farmers were prepared to submit any necessary information and subject themselves to verification.¹⁶⁹ However, the Department refused to provide the unaffiliated farmers with an opportunity to respond to departmental questionnaires or participate in the verification process as a means of demonstrating their non-use of the alleged subsidy programs.
- Despite this, the Guolian Companies provided the Department with signed certifications from each of its unaffiliated suppliers of fresh shrimp.¹⁷⁰ These certifications serve as definitive evidence that the farmers operate as individual farmers and that they received no subsidies. As such, there is no basis on which the Department can lawfully impute subsidies to Guolian's unaffiliated farmers pursuant to section 771B of the Act.
- The Department's interpretation of section 771B of the Act improperly attributes subsidies received by a processor to unaffiliated raw product farmers. Section 771B of the Act only permits the attribution of subsidies received by a raw product producer to the later stage processor. The Department's approach in the *Preliminary Determination* imputes subsidies received by the processor downward to its unaffiliated farmers and, thus, turns the statutory provision on its head.
- Guolian is a fully integrated shrimp processor/exporter whose primary operation consists of processing. Guolian's experience is not equivalent to that of a local fresh shrimp farmer. In fact, Guolian's farming operations account for only a very minor portion of its business. The farmers that supply the vast majority of Guolian's shrimp are household operations that have neither legal corporate status nor financial statements.¹⁷¹
- There is a difference in status between Guolian and its farmers with regard to the types of subsidies that can be received. Guolian's receipt of any alleged subsidies was due to its massive shrimp processing operations, not because of its relatively small farming operations. In fact, Guolian did not receive any subsidies that were solely contingent upon its farming operations. Thus, there is no basis to assume that subsidies received by Guolian could also be received by individual farmers.
- The Department failed to take into account that the unaffiliated farmers are individuals, not corporate entities, and thus certain subsidy programs Guolian qualified for, as an enterprise, would be unavailable to the farmers as individuals.
- Given that record evidence demonstrates that the unaffiliated farmers that supplied Guolian with fresh shrimp operate as individuals and not corporate entities, it follows that the farmers could not have received subsidies under the following programs: VAT/Tariff Exemptions for Imported and Domestic Equipment, VAT Exemptions for Broodstock,

¹⁶⁹ See Guolian Companies' May 31, 2013, submission.

¹⁷⁰ See Guolian Companies Factual Submission, at Attachment 4.

¹⁷¹ See *id.*

Enterprise Income Tax Reduction for High and New Technology Enterprises, Policy Lending, Famous Brand Grants, and additional grants reported in the second supplemental questionnaire submitted by the Guolian Companies.¹⁷²

- To the extent that a subsidy benefitted Guolian's entire operation, the subsidy, by definition, benefit's Guolian's processing; and if the subsidy is for Guolian's processing, even partially, attributing Guolian's processing subsidies to the farmers is not permitted by the statute.
- The assumption that subsidies whose purpose is unclear results in benefits to Guolian's processing and farming operations equally (or even unequally) is not supported by the record evidence. The vast majority of fresh shrimp processed by Guolian was obtained from unaffiliated farmers, thereby rendering Guolian a processor, not a farmer. Thus, the only reasonable assumption is that where the intended purpose of the subsidy is unclear, the subsidy is presumed to be for Guolian's processing operations unless expressly stated otherwise.
- Pursuant to 19 CFR 351.511(c) the Department should delay its analysis of the applicability of section 771B of the Act until the first period of review. As evidence by its refusal to investigate Guolian's unaffiliated farmers and its refusal to subject the farmers to verification, the Department lacked adequate time to adequately examine issues concerning section 771B of the Act.
- The methodology from the *Preliminary Determination* improperly assumes that all unaffiliated farmers import shrimp fry and, thus, received subsidies under the Shrimp Fry VAT Exemptions program when, in fact, there is no evidence the unaffiliated farmers used the program.
- The methodology assumes that the unaffiliated farmers are as profitable as Guolian and, thus, benefited from the High Tech Tax Incentives program at the same level as Guolian.

Rebuttal Brief of Petitioner

- Whether Guolian's unaffiliated shrimp suppliers could have benefited or did benefit from the same subsidies found to benefit Guolian's in-house farming is irrelevant.
- The Department had insufficient resources to individually investigate each individual unaffiliated shrimp supplier. Thus, the appropriate result is to assign an all others rate to the shrimp suppliers based on the raw shrimp production undertaken by Guolian that was investigated, rather than to assume that the uninvestigated suppliers had no suppliers.
- The Department should not rely on information contained in the Guolian Companies' Factual Submission, information that was submitted late in the proceeding and that was selected by the Guolian Companies to support its position, when the Department has not fully investigated and verified such information.
- The Department's approach in the *Preliminary Determination* mirrors the method prescribed in the statute for calculating the all others rate for all uninvestigated respondents.¹⁷³

¹⁷² See Guolian 1st Supp QNR Response Part 2, at Exhibits S1-4a – S1-4d, in which the Guolian companies indicate receipt of additional grant programs.

¹⁷³ See section 735(c)(5)(A) of the Act.

- The Guolian Companies wrongly argue that in the *Preliminary Determination* the Department’s attributed subsidies received by a later stage processor to a raw product producer, rather than attributing subsidies received by a raw product producer to a later stage processor as permitted by section 771B of the Act.
- In the *Preliminary Determination* the Department properly calculated subsidies that benefited Guolian’s in-house farming operations based on subsidies received by Guolian, calculated a per-unit fresh shrimp subsidization amount for the in-house farming operations, and then used this per-unit amount to calculate the all others subsidy amount attributed to Guolian’s unaffiliated farmers. The Department then attributed this subsidy amount to Guolian, the later stage processor.
- Given the Department’s limited resources, this was a reasonable methodology to employ.

Department’s Position: We disagree with the arguments of the GOC and the Guolian Companies that in light of evidence on the record the Department’s application of section 771B of the Act improperly assumes the unaffiliated farmers that supplied Guolian with fresh shrimp during the POI received countervailable subsidies. As discussed in the *Preliminary Determination*, Guolian had numerous suppliers of fresh shrimp during the POI.¹⁷⁴ The Department recognized that it lacked the resources to examine each fresh shrimp supplier individually and so, when applying section 771B of the Act, the Department did not attempt to ascertain the amount of raw product subsidization by examining the extent to which each of Guolian’s numerous unaffiliated shrimp suppliers used the subsidy programs at issue. Rather, in light of the statute’s silence as to the applicable methodology, the Department selected Guolian’s in-house shrimp supplier as a proxy to assist the Department in determining the level of subsidization provided to shrimp processing via shrimp farming operations. For additional discussion on this issue, see Comment 7. Accordingly, we do not find it necessary for the Department to analyze on an individual basis whether Guolian’s unaffiliated farmers used the various subsidy programs at issue.¹⁷⁵

Further, we have not incorporated the certifications of non-use from Guolian’s unaffiliated farmers into our analysis of the applicability of section 771B of the Act.¹⁷⁶ In this sense, our approach is no different from a situation involving a CVD investigation in which the Department eschews unsolicited information from non-selected firms.¹⁷⁷ Comments from non-selected firms that are not subject to individual investigation, while permitted, do not provide the same value as information from the parties directly being investigated and whose responses are subject to rigorous testing and analysis. As a general matter, unsolicited information must be analyzed with a view to the fact that it may be self-selected.

¹⁷⁴ See Supplier QNR.

¹⁷⁵ As noted in “Application of Section 771B of the Act,” section of this memorandum, the only exception to this approach involves two tax programs in which we find that the eligibility requirements of the program precluded farmers from receiving benefits under the program.

¹⁷⁶ See Guolian Companies Factual Submission, at Attachment 4.

¹⁷⁷ Indeed, in antidumping and CVD proceedings, the Department refrains from examining voluntary questionnaire responses in instances in which it finds it does not have the time or resources to accommodate voluntary respondents. See, e.g., *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40574 (July 10, 2012), and accompanying Issues and Decision Memorandum at Comment 2.

Further, the certifications have several evidentiary weaknesses. First, the several hundred certifications are nearly identical, pro forma statements, attesting in conclusory fashion that no subsidies were received. It is difficult to comprehend how Guolian's counsel could provide each of the several hundred farmers with an understanding of the countervailing duty law such that each of those several hundred farmers could meaningfully self-report whether they had received countervailable benefits in the form of a financial contribution from the government, much less a "public body." For example, each farmer states: "I . . . was not eligible for the tax exemptions enjoyed by Guolian;" "I . . . was not eligible for VAT refunds on domestic equipment purchases;" and, more incredibly, attests that "I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. Government." The probative value of several hundred such recitations is slight. Second, although the certifications ostensibly invite verification, the certifications were, in reality, provided so close in time to the beginning of verification that any real risk of further inquiry had, in practical terms, already been foreclosed. Third, the certifications conclude with each farmer stating that he or she "prepared or otherwise supervised the preparation of this certification." This statement by itself exemplifies the insubstantial probative value that can be accorded to these certifications. Put another way, Guolian's counsel provided several hundred copies of at that point unverifiable form letters on the record while Guolian's farmers each provided his or her name and signature. This evidence does not weigh heavily in the Department's calculus.

As noted throughout this memorandum, the Department is countervailing several subsidy programs whose legislation, application, and approval forms do not distinguish between processing and farming operations. In such instances, we have found that section 771B of the Act applies and, thus, have apportioned subsidies under such programs to Guolian's unaffiliated farmers based on the level of subsidies deemed to have been provided to Guolian's in-house farming operations. That none of the programs were contingent on farming operations means that the subsidies apply to a broader scope of activity beyond shrimp farming. It does not render application of these programs to farming operations and others, where appropriate, erroneous. We disagree with the Guolian Companies' argument that, where the purpose of the program is unclear, the Department should assume that the subsidies Guolian received under the program were contingent solely upon its processing operations. While we acknowledge the fact that Guolian is primarily a processing entity, there is no question that Guolian has farming operations as well. With the exception of the two income tax programs mentioned in the "Application of Section 771B of the Act" section above, we find there is simply no factual evidence to conclude that Guolian's receipt of subsidies under programs for which the eligibility criteria do not distinguish between processing and farming activities were contingent solely on the basis of Guolian's processing operations. Nothing in the description of the other programs themselves, including the legislation, demonstrate that individual farmers could not qualify to participate in the programs. Absent guiding language from section 771B, we have determined to employ the reasonable approach outlined herein.

Notwithstanding our disagreement with the Guolian Companies in this regard, as explained in further detail below in Comment 7, our revised methodology apportions subsidies to Guolian's processing and farming operations in a manner that reflects the fact that Guolian is primarily a processing entity. For example, under the revised approach described in Comment 7, we

apportioned the subsidy amount attributable to Guolian’s farming operations based on a ratio of the value of in-house shrimp (after processing) to the value of Guolian’s sales of subject merchandise. As reflected in our final calculations, the numerator of the ratio is significantly smaller than the denominator and, thus, results in a proportionate amount of the subsidy received under the subsidy program at issue being attributed to Guolian’s farming operations. In this manner, we find that the revised methodology described in Comment 7 below accounts for the concerns expressed by the Guolian Companies.

We disagree with the Guolian Companies that pursuant to 19 CFR 351.511 the Department should delay its analysis of the applicability of section 771B of the Act until the first administrative review. As explained Comment 5 and 6 we have determined that there is sufficient evidence to conclude that the criteria under section 771B of the Act apply.

We also disagree with the arguments of the Guolian Companies that the Department’s interpretation of section 771B of the Act “turns the provision on its head” by improperly attributing subsidies received by a processor to unaffiliated raw product farmers. To the contrary, as discussed above, we have used Guolian’s in-house shrimp farming operation as a proxy for purposes of determining the level of subsidization provided to Guolian’s purchases of fresh shrimp. Having determined the level of subsidization provided to the raw product, we then attributed these raw product subsidies to Guolian’s sales of subject merchandise. This approach is consistent with our past practice. For example, in *Rice from Thailand*, we found that both prongs of 771B were satisfied, and thus “determine{d} that subsidies found to be provided to paddy rice are deemed to be provided with respect to the manufacture, production, or exportation of milled rice in accordance with Department's practice as codified in section 771B of the Tariff Act.”¹⁷⁸. Thus, applying this same approach here, we have deemed subsidies provided to the raw product as provided to the processor of the downstream product in accordance with section 771B of the Act.

Put simply, the statute instructs us to deem countervailable subsidies found to be provided to raw product producers to be provided with respect to the manufacture, production or exportation of the processed product. Here, we have found countervailable subsidies provided to the raw product producer who we examined. Using that raw product producer as a proxy, we are deeming the level of subsidization found with respect to the raw product producer to be provided in connection with respect to the manufacture, production, or exportation of the processed product. In their attempt to muddy the water by introducing extraneous variables, Guolian and the GOC overlook the straightforward application of the statute. While the Department takes into account all reasonable considerations put forth by the parties, the record demonstrates subsidization of the raw agricultural product and the statute instructs us to deem such subsidies as provided to the downstream product processor, which is what we have done.

Comment 5: Whether the “Substantially Dependent” Criterion under Section 771B(1) of the Act is Satisfied

Case Brief of the GOC

¹⁷⁸ See *Rice From Thailand; Final Results of Countervailing Duty Administrative Review*, 56 FR 68 (January 2, 1991) (*Rice from Thailand* 1986 Review) at Comment 2.

- The record demonstrates that fresh shrimp demand in the PRC is not “substantially dependent” upon the demand for frozen shrimp and, thus, the first necessary condition described under section 771B(1) of the Act has not been met.
- Only a small fraction of farmed shrimp in the PRC (25.26 percent) is circulated to the downstream aquatics processing industry.¹⁷⁹ The record further demonstrates that most farmed shrimp in the PRC is sold to the wholesaler in the form of fresh and chilled shrimp, which in turn is sold through retail channels to the consumers directly.¹⁸⁰
- Information from the United States Department of Agriculture (USDA) supports the claims made by the GOC. USDA data clearly support the GOC’s claim that the vast majority of fresh shrimp is sold as fresh and chilled shrimp in the PRC.¹⁸¹
- Thus, information from the GOC and the USDA demonstrate that PRC demand for fresh shrimp is clearly not dependent, much less “substantially dependent,” on the demand for processed frozen shrimp.
- Further, the Department erred in the *Preliminary Determination* when it concluded that data from GOC understated the actual proportion, by volume, of raw shrimp that was processed and frozen in in the PRC.¹⁸² The Department’s finding assumes that all shrimp are processed in the same way when, in fact, shrimp may undergo minimal processing.¹⁸³
- The findings of the ITC cited by the Department in the *Preliminary Determination* concern domestic like product in the United States, not the shrimp industry in the PRC.¹⁸⁴ The information from the ITC provide no description and no evidence of the demand for fresh shrimp and frozen shrimp in the PRC and, thus, are entirely irrelevant to the analysis described under section 771B(1) of the Act.
- In the *Preliminary Determination*, the Department concluded that even if the it were to accept the GOC’s claim that 25 percent of fresh shrimp is ultimately used for processing, the Department would, nonetheless, determine that the criterion under section 771B(1) of the Act was met on the grounds that a ratio of 25 percent constitutes a demand that is substantially dependent upon the demand for the latter stage (processed) product.¹⁸⁵ A reasonable interpretation of this ratio is that 75 percent represents a demand that is not dependent on the demand for the processed product, thus the demand for fresh shrimp generated by processed shrimp is not substantial.
- The Department’s analysis in the *Preliminary Determination* ignores the key qualitative factor in both of the Department’s previous analyses of section 771B(1) of the Act, that the upstream product in those proceedings was subject to a continuous line of production.¹⁸⁶ In cases such as the *Rice from Thailand 1990 Review* and *Pork from*

¹⁷⁹ See GOC Initial QNR, at 6-7; see also GOC 1st Supp QNR Response Part 2, at 2 and Exhibit S1-B-2.

¹⁸⁰ See GOC 1st Supp QNR, at 2 and Exhibit S1-B-2.

¹⁸¹ See GOC’s June 2, 2013, factual submission (GOC Factual Submission), which contain 2011 and 2012 reports from the USDA that, according to the GOC, state that “Chinese consumers prefer to purchase live and fresh aquatic products” and that “processed aquatic products using domestic raw material. . .are primarily export focused.”

¹⁸² See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 11.

¹⁸³ See GOC 1st Supp QNR Part 2, at Exhibit S1-B-1.

¹⁸⁴ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 11.

¹⁸⁵ See *id.*

¹⁸⁶ See *Rice From Thailand; Final Results of Countervailing Duty Administrative Review*, 59 FR 8906 (February 24, 1994) (*Rice from Thailand 1990 Review*), citing *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Rice from Thailand*, 51 FR 12356 (April 10, 1986) (*Rice from Thailand Investigation*);

Canada, the continual line of production from the raw product almost invariably resulted in the processed product, such that the demand for each was inextricably linked.

- The facts of the instant investigation indicate that there is a substantial demand for fresh shrimp in the PRC which should lead the Department to conclude that there is not a continuous line of production that leads to a substantially dependent demand. Rather, the demand for fresh shrimp in the PRC is overwhelming and not substantially dependent on the demand for processed shrimp.

Case Brief of the Guolian Companies

- Proprietary production data of the Guolian Companies may be used to derive a yield loss rate. In fact, when the Guolian Companies' yield loss rate is used as a proxy for the PRC's shrimp industry and is applied to the aggregate production data supplied by the GOC, the resulting percentage of fresh shrimp used for processing is 44.7 percent. Thus, the proprietary production data of the Guolian Companies supports the GOC's contention that only 25 percent of fresh shrimp production in the PRC was used for processing. As such, it cannot be said that demand for raw shrimp is substantially dependent upon the processed shrimp market or that there is a single continuous line of production from fresh shrimp to processed shrimp.¹⁸⁷
- Evidence from the USDA demonstrates that a significant percentage of fresh shrimp is destined for non-processed segments of the PRC market.¹⁸⁸
- The Department's reliance in the *Preliminary Determination* upon previous findings of the ITC is misplaced because the ITC's findings pertain to the domestic like product in the United States, not the PRC.
- The Department's practice concerning section 771B(1) of the Act requires it to examine market conditions in the target industry, not a global analysis or analysis of the U.S. industry.¹⁸⁹

Rebuttal Brief of Petitioner

- Based in part on its own data and aggregate data from the GOC's *Statistical Yearbook*, the Guolian Companies argue that only 44.7 percent of the total fresh shrimp production in the PRC is dedicated to processed shrimp. It is not clear from the record whether the production and processing figures in the *Statistical Yearbook* are complete.
- The total production data from the *Statistical Yearbook* includes freshwater and marine shrimp.¹⁹⁰ The Guolian Companies then compared this total shrimp production figure with the allegedly total amount of processed shrimp in the PRC. However, it is not clear from the *Statistical Yearbook* what is included in the figure for processed shrimp, as it is only designated as prawns.¹⁹¹ Thus, it is unclear whether the production figures are the

see also Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada, 54 FR 30774, 30775 (July 24, 1989) (*Pork from Canada*).

¹⁸⁷ See *Rice from Thailand Investigation*, 51 FR at 12356.

¹⁸⁸ See GOC Factual Submission, which contain 2011 and 2012 reports from the USDA.

¹⁸⁹ See *Rice from Thailand 1990 Review*, 59 FR at 8906.

¹⁹⁰ See GOC Initial QNR, at 7; *see also* GOC 1st Supp QNR Response Part 2, at Exhibit S1-B-1.

¹⁹¹ See GOC 1st Supp QNR Response Part 2, at Exhibit S1-B-1 at 89.

same types of shrimp included in the processed figure to ensure there is an “apples-to-apples” comparison.

- Even if one assumes that the derive 44.7 percent figure derived by the Guolian Companies is accurate, the section 771B(1) of the Act is met because the Department has found that a lower ratio of 25 percent constitutes a raw product demand that is substantially dependent upon the demand for the latter stage product.¹⁹²
- The Guolian Companies have failed to substantiate their claims concerning the lack of a continuous line of production. The USDA report cited by the Guolian Companies only states that Chinese consumers have a preference for fresh aquatic goods. Whether Chinese consumers can actually purchase fresh shrimp is a completely different matter.
- Further, it is doubtful that large percentage of fresh shrimp could be destined for sale as fresh or chilled shrimp due to the highly perishable nature of the product.

Department’s Position: We continue to find that the facts of the instant investigation meet the criterion under section 771B(1) of the Act. We agree with Petitioner that the aggregate data from the GOC’s *Statistical Yearbook* lack the necessary level of detail to ensure that the 25 percent ratio cited by the GOC is, in fact, derived on a consistent basis. Specifically, we find that there is no way to ascertain whether the numerator of the ratio (the total amount of shrimp processed in the PRC) reflects fresh and marine water shrimp and, thus, is comparable to the denominator, which reflects the total volume of fresh and marine shrimp produced in the PRC.¹⁹³

In addition, we continue to find that the 25 percent ratio referenced by the GOC refers to an output ratio (*i.e.*, the volume of shrimp that remains after processing, which, according to the GOC, typically involves the removal of the head, shell, and/or tail, as well as the cleaning and deveining of the shrimp) whereas the 75 percent ratio cited by the GOC refers to the volume of unprocessed fresh/chilled shrimp.¹⁹⁴ On this point, the GOC disagrees, arguing that our finding assumes that all shrimp are processed in the same way when, in fact, some shrimp may undergo more minimal processing.¹⁹⁵ However, we find that the GOC has not provided any data that specifies the magnitude of such “minimal” activities.

Further, as in the *Preliminary Determination*, we continue to find that even if the Department were to accept the GOC’s claim that 25 percent of fresh shrimp is ultimately used for processing into frozen shrimp, the Department would, nonetheless, determine that the criterion under section 771B(1) of the Act is met on the grounds that a ratio of 25 percent constitutes a demand that is substantially dependent upon the demand for the latter stage (processed) product. Given the market conditions in this case, where one quarter of the market depends upon the demand for frozen shrimp, we find it reasonable to consider this “substantial.” Similarly, we consider this proportion to demonstrate that the market for fresh shrimp is “dependent” upon demand for frozen shrimp in the sense that, were the demand for frozen shrimp to cease, one quarter of the fresh shrimp market would collapse. This analysis is amplified when using Guolian’s company-specific yield loss rate, which the Guolian Companies claim may be used as a more accurate proxy for the PRC’s shrimp processing industry. Using Guolian’s company specific yield loss

¹⁹² See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 14.

¹⁹³ See GOC 1st Supp QNR Response Part 2, at Exhibit S1-B-1 at 89.

¹⁹⁴ See *id.*, at S1-B-2 at 1 – 2.

¹⁹⁵ See *id.*, at Exhibit S1-B-1.

rate, the percentage of fresh shrimp used for processing into frozen shrimp is 44.7 percent. Where 44.7 percent of the market depends upon the demand for frozen shrimp, we find it reasonable to consider this “substantial.” Similarly, we consider this proportion to demonstrate that the market for fresh shrimp is “dependent” upon demand for frozen shrimp in the sense that, were the demand for frozen shrimp to cease, nearly 45 percent of the fresh shrimp market would collapse. Thus, we find it reasonable to consider the demand for fresh shrimp “substantially dependent” on the demand for frozen shrimp and the criterion of section 771B(1) of the Act to be satisfied.¹⁹⁶

We disagree with the argument that evidence from the USDA demonstrates that a significant percentage of fresh shrimp is destined for non-processed segments of the PRC market. The evidence from the USDA reports cited by the GOC and the Guolian Companies refers to the preferences of Chinese consumers of the shrimp. However, the cited USDA reports do not speak to whether Chinese processors have the ability to deliver such large quantities of fresh shrimp to consumers of shrimp in the PRC.¹⁹⁷ At most, this evidence is consistent with the fact that demand for fresh shrimp exists as well. The evidence does not, however, contradict our finding that the demand for fresh shrimp “substantially dependent” on the demand for frozen shrimp.

In addition, we continue to find that the prior findings of the ITC are relevant to our analysis. We acknowledge that the ITC based its findings on data pertaining to U.S. producers and the U.S. market. However, the ITC’s findings speak to the nature of the shrimp industry in terms that are, to some extent, universal to shrimp. Respondents have not provided any information to contradict the conclusion that the perishability of the raw material, fresh shrimp, is the same in the United States as in the PRC. Thus, we continue to find that the ITC’s determination that the fresh shrimp market faces a built-in constraint given its high degree of perishability and that, as a result, (1) there is only a minimal market for fresh shrimp in the United States and (2) over 90 percent of fresh warmwater shrimp are processed into frozen shrimp, informs our analysis as to whether section 771B of the Act applies with regard to shrimp production in the PRC.¹⁹⁸

We also acknowledge that the “continuous line of production” concept can contribute to our analysis of whether section 771B of the Act applies. However, we do not find that the concept is a necessary condition of our analysis under section 771B of the Act. Instead, the “continuous line of production” phrase from the Act cited by respondents relates to the definition of “industry” in the Act¹⁹⁹ and refers to one aspect of the analysis concerning whether “the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product.”²⁰⁰

¹⁹⁶ See Guolian Companies Verification Report, at VE-9; see also Guolian Companies Case Brief, at 7.

¹⁹⁷ See GOC Factual Submission, which contain 2011 and 2012 reports from the U.S. Department of Agriculture (USDA) that, according to the GOC, state that “Chinese consumers prefer to purchase live and fresh aquatic products.”

¹⁹⁸ See U.S. International Trade Commission, *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 73I-TA-I063-I068 (Preliminary), USITC Pub. 3672 (February 2004) at I-3.

¹⁹⁹ See section 771(4) of the Act.

²⁰⁰ See section 771(4)(E)(i) of the Act.

Because, as discussed in this Comment and Comment 6, we determine that the statutory criteria of section 771B of the Act are satisfied, we determine that it is appropriate to deem subsidies provided to the producers of the raw product to be provided with respect to the manufacture, production, or exportation of the processed product.

Comment 6: Whether the “Limited Value” Criterion Under Section 771B(2) of the Act is Satisfied

Case Brief of the GOC

- In the *Preliminary Determination* the Department explained that it has found the criterion under section 771B(2) of the Act to be satisfied where processing operations did not change the essential character of the raw product and where such operations added limited value to the product, such as 20 to 30 percent of the final product value. It further concluded that the proprietary cost of production data supplied by the Guolian Companies fall within the percentages examined by the Department in such cases as the *Rice from Thailand 1986 Review*.²⁰¹
- In such cases as the *Rice from Thailand 1986 Review*, the Department employed a two-step analysis. Under the first step the Department compared the difference in price between the raw commodity and the processed commodity. Under the second step the Department determined how much the processing operation itself contributes to the increased value percentage.
- In the *Preliminary Determination*, the Department misconstrued the analysis undertaken in such cases as the *Rice from Thailand 1986 Review*.
- The ratios from such cases as the *Rice from Thailand 1986 Review* are not based on the cost of production but rather a price-to-price or value-to-value comparison of the raw commodity to the processed commodity. Thus, the Department’s assumption in the *Preliminary Determination* that ratios from such cases as the *Rice from Thailand 1986 Review* represent the value of processing itself to the cost of production is simply wrong.
- Rather, the ratios referenced in the *Rice from Thailand 1986 Review* and *Pork from Canada* do not reflect the value added by the actual processing operations but were actually a comparison of the market value of the raw and processed commodities.
- Undertaking the correct two-step analysis conducted in such cases as the *Rice from Thailand 1986 Review* demonstrates that the percentage resulting from a comparison of the value of the raw commodity, fresh shrimp, and the value of the processed commodity, processes shrimp, as contained in the submissions of the Guolian Companies, is substantially greater than 20 to 30 percent threshold referenced in such cases as the *Rice from Thailand 1986 Review*. Further, the high percentage figure submitted by the Guolian Companies demonstrating the significant difference in value indicates that the processing operations of the Guolian Companies add more than limited value. As such, the second criterion under section 771B(2) of the Act does not apply.
- Further, section 771B(2) of the Act does not apply because the processing operations of the Guolian Companies changed the essential character of the raw product in the PRC.²⁰²

²⁰¹ See *Preliminary Determination*, and accompanying Issues and Decision at 12; see also *Rice From Thailand; 1986 Review*, 56 FR at 69.

²⁰² See GOC Factual Submission, citing to 2011 and 2012 USDA reports.

Case Brief of the Guolian Companies

- In the *Preliminary Determination* the Department misinterprets the analysis undertaken in *Rice from Thailand 1986 Review* and *Pork from Canada*. The analysis in those cases focused on the value between the raw product and the processed product. However, in the *Preliminary Determination*, the Department improperly contends that *Rice from Thailand 1986 Review* and *Pork from Canada* analyzed the differences in cost of production.
- If the Department correctly follows its precedent and focuses on the value difference between the raw product and the processed product it will find that that processing adds substantial value to the raw product. In which case, the facts should compel the Department to conclude that section 771B(2) of the Act does not apply.
- Proprietary data of the Guolian Companies indicate that the per-unit value of fresh shrimp is greatly exceeded by the per unit value of subject merchandise. As these data demonstrate, it cannot be said that processing of shrimp adds only limited value. Thus, the Department must conclude that section 771B(2) of the Act does not apply.

Rebuttal Brief of Petitioner

- The Department has previously determined the criterion under section 771B(2) of the Act to be met where processing operations did not change the “essential nature” of the raw product and where such operations added limited value to the product, such as 20 to 30 percent of the final product value.²⁰³ The ITC has reached a similar conclusion.²⁰⁴
- The findings of the ITC are relevant because the experience of domestic producers and the Guolian Companies are very similar since they engage in largely the same production activities in processing raw shrimp into subject merchandise.
- Petitioner calculates the Guolian Companies’ yield ratio utilizing the following formula: (value of subject merchandise sold during the POI - the value of fresh shrimp acquired during the POI) / the value of fresh shrimp acquired during the POI.²⁰⁵ According to Petitioner, the proprietary production data from the Guolian Companies result in a yield ratio that falls within the thresholds established in the *Rice from Thailand 1986 Review* and *Pork from Canada*.
- The ITC has previously concluded that processing does not change the essential nature of raw shrimp.²⁰⁶
- The Department found the criterion under section 771B(2) of the Act to be met in *Pork from Canada*. The processing steps that processors engaged in to produce subject

²⁰³ See, e.g., *Rice from Thailand 1986 Review*, 56 FR at 69; see also *Pork from Canada*, 54 FR at 30775.

²⁰⁴ See *U.S. International Trade Commission, Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Pub. 4221 (March 2011) at Table III-11.

²⁰⁵ See Petitioner’s Rebuttal Brief at 12.

²⁰⁶ See *U.S. International Trade Commission, Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, Inv. Nos. 701-TA-491-497 (Preliminary), USITC Pub. 4380 (February 2013) at 10.

merchandise in *Pork from Canada* are very similar to those utilized in the instant investigation.²⁰⁷

Department’s Position: We continue to find that criterion under section 771B(2) of the Act is satisfied in the instant investigation. Proprietary data from the Guolian Companies demonstrates that Guolian’s processing operation adds limited value to the raw commodity. Specifically, we find that Guolian’s yield ratio (*e.g.*, (value of subject merchandise sold during the POI - the pre-processed value of fresh shrimp inputs acquired during the POI) / the pre-processed value of fresh shrimp inputs acquired during the POI) results in a rate that is on par with the 20 – 30 percent ratios examined in the *Rice from Thailand 1986 Review* and *Pork from Canada*.²⁰⁸

Furthermore, we note that the yield ratio mentioned above is a function of shrimp values and not cost data. As such, we find that the arguments of the GOC and the Guolian Companies that the Department failed to conduct its analysis of the applicability of section 771B(2) using a value-based analysis do not apply.

Further, we continue to determine that the ITC’s findings on this issue are relevant and that they support our conclusion that the criterion under section 771B(2) of the Act applies in the instant investigation. The ITC’s conclusions are relevant because we find the experience of domestic producers and the Guolian Companies are very similar since they engage in largely the same production activities in processing raw shrimp into subject merchandise.

We disagree with the Guolian Companies that the Department should evaluate the applicability of section 771B(2) of the Act based on an analysis of the per-unit values of Guolian’s fresh shrimp inputs and processed shrimp. As Petitioner notes, such a comparison would not be on the correct basis due to the fact that it requires more than one unit of fresh shrimp to make one unit of subject merchandise. Rather, as discussed above, we find that conducting the value comparison using the value of Guolian’s pre-processed fresh shrimp inputs and the value of its processed shrimp is the most informative means of analyzing the applicability of section 771B(2) of the Act.

We note that in *Pork from Canada* we stated that “{w}hile a percentage figure for value added helps focus our evaluation of the second element of section 771B, it does not resolve the question of whether the processing operation adds only limited value to the raw commodity.”²⁰⁹ Thus, in that case we turned to the nature of the processing operation itself, observing that “{f}or example, we verified that, in some cases, a flick of the knife transformed a primal cut into a more expensive, trimmed cut.”²¹⁰ Taking this kind of low-cost, value-increasing step into account, we determined that it was reasonable to find that “the processing operation adds only limited value to the raw commodity because the processing represented by the figure of 20 percent has not changed the essential character of the live swine.”²¹¹ Similarly here, irrespective of the

²⁰⁷ See *Pork from Canada*, 54 FR at 30775.

²⁰⁸ For Guolian’s sales of subject merchandise (*e.g.*, processed shrimp), see Guolian Companies Initial QNR Response, at Exhibit 8. For the pre-processed value of Guolian’s shrimp inputs, see Guolian Companies Verification Report, at VE-9.

²⁰⁹ See *Pork from Canada*, 54 FR at 30775

²¹⁰ See *id.*

²¹¹ See *id.*

relationship between cost and value, the processing operation does not change the essential character of the shrimp. As in *Rice from Thailand*, processing activities such as “{m}illing operations, consisting primarily of parboiling, removing the rice hulls, and removing the bran layer, do not change the essential character of the rice.”²¹² Not surprisingly, these three cases have in common the fact that in processing a raw agricultural product into a processed product, the essential character of the raw product does not change.

Comment 7: Whether the Department Applied Section 771B of the Act in a Manner that Was Flawed

Case Brief of the GOC

- In the *Preliminary Determination*, the Department applied section 771B of the Act by 1) calculating the ratio of the 2011 in-house volume of fresh shrimp to the 2011 volume of subject merchandise; 2) for each program that applied to both processors and farmers, the Department applied the ratio in step one to the value of the subsidy to apportion the subsidy between Guolian’s in-house farming operation and its processing operation; 3) the Department divided the subsidy amount applicable to Guolian’s in-house farming operation by the 2011 in-house volume of fresh shrimp to derive a per-kg subsidy amount applicable to fresh shrimp; 4) the Department multiplied the per-kg subsidy amount applicable to fresh shrimp by the 2011 volume of fresh shrimp sourced from unaffiliated suppliers to derive the amount of subsidy attributable to the unaffiliated fresh shrimp suppliers; and 5) the Department added the subsidy amount in step 4 to the subsidy amount received by Guolian.
- The approach undertaken by the Department in the *Preliminary Determination*, as described above, is flawed.
- In step 1, the Department overstates the ratio of the value of fresh shrimp as a percentage of the value of subject merchandise by assuming that the value of the processed shrimp is equivalent to the value of fresh shrimp.
- The in-house volume of fresh shrimp reported by Guolian in the Supplier QNR includes fresh shrimp that is resold as non-subject merchandise. As a result the ratio calculated in step 1 is overstated. Thus, the per-kg subsidy amount calculated for each program is also overstated.

Case Brief of the Guolian Companies

- The methodology employed by the Department in the *Preliminary Determination* requires revision and contains several errors. The Department must revise the figure used for the quantity of Guolian’s self-produced shrimp to match the figure reviewed at verification.²¹³
- By comparing the quantity of total fresh shrimp production to the sales of subject merchandise only, the Department is not making an apples-to-apples comparison and is inflating the value of the in-house shrimp used in the production of processed shrimp. To

²¹² See *Rice from Thailand 1986 Review*, 56 FR at 69.

²¹³ See Guolian Companies Verification Report, at VE-9; see also Guolian Companies’ Case Brief, at 20, which references the proprietary quantity of Guolian’s self-produced shrimp.

balance the Department's equation the Department should use Guolian's total sales in its calculation rather than only the value of subject merchandise.

- As part of its calculation methodology, the Department derived a ratio of in-house value to total value of subject merchandise sold by Guolian during the POI. Since the Department did not have the value of the fresh shrimp Guolian self-produced, the Department calculated a per-unit value for fresh shrimp using Guolian's subject merchandise figures. This approach overstated the value of Guolian's fresh shrimp which, in turn, overstated the subsidies amounts attributed to its unaffiliated farmers. Instead, the Department should revise this aspect of its methodology using the actual value of fresh shrimp used in Guolian's processing.²¹⁴

Rebuttal Brief of Petitioner

- Guolian correctly argues that the value of in-house shrimp, as examined at verification, and the total sales value of processed shrimp should be used; however, the full volume of in-house production should be used and not just that which was processed by Guolian to produce subject merchandise. This approach is required because the Department is measuring subsidies attributable to shrimp production activity.
- However, the value-based ratio utilized by the Department in the *Preliminary Determination* as well as the ratio proposed by the Guolian Companies used to apportion benefits attributable to the unaffiliated farmers are flawed because they result in ratios that attribute benefits to both value-adding economic activity (the farming and processing of in-house shrimp) and non-value adding activity (the purchase of shrimp from unrelated suppliers).
- None of the subsidies were provided to reduce the price of shrimp. Thus, subsidy benefits should be allocated to actual economic activity, the in-house farming of shrimp and processing of shrimp. Thus, in deriving the denominator of the ratio used to apportion benefits to the unaffiliated farmers, the value of purchased shrimp should be subtracted from the value of Guolian's processed shrimp sales.²¹⁵

Department's Position: During the POI, Guolian processed fresh shrimp into subject merchandise. It obtained its fresh shrimp from unaffiliated farmers as well as from its in-house farming operation. The Department sought to use Guolian's in-house farming operation as a proxy for determining the level of subsidization provided to Guolian's unaffiliated farmers when applying section 771B of the Act.

In the *Preliminary Determination*, the Department did not invoke section 771B of the Act in instances in which it determined that the criteria of the subsidy program at issue specifically rendered farmers ineligible to receive benefits under the program. However, in instances in which the legislation and application forms of the program at issue did not appear to distinguish between processing and farming operations, the Department applied section 771B of the Act.

In terms of its corporate structure, Guolian does not distinguish its processing activities from its farming activities and, as a result, the Guolian Companies submitted a single questionnaire

²¹⁴ See Guolian Companies Verification Report, at VE-9; see also Guolian Companies' Case Brief, at 23.

²¹⁵ See Petitioner's Rebuttal Brief, at 19.

response with regard to Guolian. This fact complicated the Department's efforts to apportion the amount of subsidies Guolian received as a result of processing activities versus its farming activities, particularly in instances in which the legislation and application forms of the program at issue does not appear to distinguish between processing and farming operations. Thus, in the *Preliminary Determination*, for subsidy programs used by Guolian whose eligibility requirements did not distinguish between processing and farming operations, the Department devised a methodology to apply section 771B of the Act in which it apportioned subsidy amounts to Guolian's processing and farming operations. Essentially, the methodology sought to derive the share of revenue from sales of processed shrimp that were attributable to Guolian's in-house farming operations. The Department then used that ratio as a means of determining the amount of the subsidy benefit attributable to Guolian's in-house farming operations. We then used the amount of the subsidy benefit attributable to Guolian's in-house farming operations as a means of deriving the amount of subsidies attributable to Guolian's unaffiliated farmers under section 771B of the Act.

In the final determination, we have continued to calculate a ratio for purposes of apportioning subsidies to Guolian's unaffiliated farmers. However, we have revised the methodology used in the *Preliminary Determination*. At verification, as part of its regular examination procedures, the Department obtained information concerning the value of fresh shrimp used in Guolian's processing operations, from both unaffiliated farmers and its in-house operations.²¹⁶ We have used this information to revise the methodology used when attributing subsidies to Guolian's unaffiliated farmers under section 771B of the Act.

Specifically, we have used Guolian's sales of subject merchandise relative to the value of the fresh shrimp used in Guolian's processing operations to determine the "mark-up" that Guolian charges on its processed shrimp. We then used this mark-up ratio to derive the processed value attributable to fresh shrimp that Guolian farmed in-house. We then divided this value (the processed value attributable to fresh shrimp that Guolian farmed in-house) by Guolian's sales of subject merchandise. The resulting ratio represents the percentage of sales revenue on processed shrimp attributable to Guolian's in-house farming operations. In instances which we find section 771B of the Act applies, we used this ratio to apportion the subsidy amounts to Guolian's processing and farming operations.

We then used the amount of the subsidy apportioned to Guolian's in-house farming operations as the basis for determining the amount of subsidies attributable to Guolian's unaffiliated farmers, as provided under section 771B of the Act. Specifically, we divided the amount of the subsidy apportioned to Guolian's in-house farming operations by the volume of fresh shrimp Guolian produced in-house to arrive at the unit benefit under the subsidy program at issue that is attributable to Guolian's in-house operations. Next, we determined the subsidy amount attributable to Guolian's unaffiliated farmers under the program at issue by multiplying the unit benefit by the total volume of fresh shrimp supplied by the unaffiliated farmers that Guolian used in its processing operations.

We find that our revised approach addresses the GOC's concern that the Department cannot assume that the value of unprocessed fresh shrimp is equivalent to the value of processed shrimp.

²¹⁶ See Guolian Companies Verification Report, at VE-9.

As indicated above, we have derived a mark-up ratio that is based on the value Guolian's sales of subject merchandise (which we are using as facts otherwise available pursuant to section 776(a) of the Act where information about Guolian's total sales of processed shrimp is not on the record) relative to the value of Guolian's fresh shrimp that it used in its processing operation. We then used this mark-up ratio to derive the processed value of the shrimp that Guolian produced in-house. We then divided the processed value of the shrimp that Guolian produced in-house by Guolian's sales of subject merchandise to derive the ratio used to apportion subsidies to Guolian's in-house farming operations. Thus, under this approach, the ratio used to apportion subsidies accounts for the value added to Guolian's in-house shrimp as a result of its processing operation.

We agree with the Guolian Companies that when apportioning subsidy benefits to the unaffiliated farmers the Department should use the volume of Guolian's in-house shrimp that Guolian used in its processing operations. The use of the volume of processed in-house shrimp is consistent with our decision to base our apportioning methodology on processed volumes.

We disagree with Petitioner that the Department should modify its methodology for apportioning subsidies when applying section 771B of the Act so that it limits the attribution of subsidies to "value-adding economic activity." As explained in the *Preliminary Determination*, section 771B of the Act directs 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 the conditions under sub-paragraphs (1) and (2) are met.²¹⁷ Thus, we find there is no basis under section 771B of the Act by which the Department may limit the attribution of the subsidies apportioned to farmers to the "value-adding activity" represented by Guolian's processing operations.

Comment 8: Denominator Used in Calculating the Net Subsidy Rate for Programs in Which the Department Attributed Benefits to Unaffiliated Farmers under Section 771B of the Act

Case Brief of the Guolian Companies

- Under 19 CFR 351.525(b)(5)(ii) and (b)(6)(iv), where subsidies are received by input suppliers, the benefit is attributed to the combined sales of the input product and the downstream product. Thus, by using only Guolian's sales in the denominator, the Department failed to follow its own attribution regulations. The Department can derive the sales of the unaffiliated farmers by multiplying the unit value for fresh shrimp used in processing²¹⁸ by the total quantity purchase from unaffiliated suppliers.²¹⁹ In the absence of this revision, the Department should defer its analysis of subsidies allegedly received under section 771B of the Act until the first review, as accorded under 19 CFR 351.311.

²¹⁷ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 10.

²¹⁸ The unit value for fresh shrimp used in processing is a proprietary figure. See Guolian Companies Verification Report, at VE-9; see also Guolian Companies' Case Brief, at 25.

²¹⁹ The total quantity purchase from unaffiliated suppliers is a proprietary figure. See Supplier QNR at Attachment 1; see also Guolian Companies' Case Brief, at 25.

Case Brief of Petitioner

- Section 771B of the Act requires the benefit to raw shrimp purchased from unaffiliated suppliers to be attributed to Guolian’s sales of the processed product (*i.e.*, processed shrimp). The Department has interpreted this aspect of section 771B of the Act in prior proceedings.²²⁰
- Thus, in the final determination, the Department should ensure the sales denominator used for subsidies attributed under section 771B of the Act is limited to sales of processed shrimp or total export sales of processed shrimp, as applicable.

Rebuttal Brief of the GOC

- Section 771B of the Act states that 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.” Thus, the statute does not require that subsidies be “attributed” only to sales of the processed product.
- Further, Petitioner’s arguments concerning the attribution of subsidies under section 771B of the Act to do not conform to the attribution methodology set forth under 19 CFR 351.525. Under 19 CFR 351.525(b)(3), the Department attributes domestic subsidies to “all products sold by the firm.” Further, under 19 CFR 351.525(b)(5)(iii), the Department attributes subsidies to input producers to the combined sales of the input producer and the downstream producer of subject merchandise.

Rebuttal Brief of the Guolian Companies

- Section 771B of the Act contains no provision that requires the Department to attribute the benefit to raw shrimp purchased from unaffiliated suppliers to Guolian’s sales of processes shrimp.
- Rather, section 771B of the Act merely dictates that subsidies received by the unaffiliated farmers will be attributed to the later stage products.
- Petitioner’s reliance upon the *Rice from Thailand 1986 Review* is misplaced. The proceeding involved an aggregate analysis. In such instances, the Department uses a sales denominator that consists of subject merchandise, as opposed to a denominator that consists of the country’s total sales.
- None of the programs at issue in the instant investigation are tied to sales of subject merchandise, and thus the use of such a denominator consisting solely of subject merchandise is not appropriate.

Rebuttal Brief of Petitioner

- The Guolian Companies’ are wrong to argue that the Department should have included an estimate of the total sales value of the unaffiliated farmers in the sales denominator

²²⁰ See *Rice from Thailand 1986 Review*, 56 FR at 69.

when attributing subsidies under section 771B of the Act.²²¹ Under the Guolian Companies method, the Department would presume that the total sales value for the unaffiliated farmers (both to Guolian and to other customers) was double that which they sold to Guolian. There is no information on the record to support such an assumption.

- Further the amounts sold to customers other than Guolian are irrelevant. The Department's allocation of subsidies to the unaffiliated farmers is a per-unit rate. The Department has attributed to the unaffiliated farmers a subsidy amount based on the amount of shrimp they have sold to Guolian. If the unaffiliated farmers sold to any other customers, an equivalent amount would be attributed to them and the resulting subsidy rate would be the same.

Department's Position: In applying section 771B of the Act in the *Preliminary Determination*, the Department determined the amount of benefits received by Guolian and its unaffiliated farmers and then calculated the net subsidy rate for the program at issue by dividing the benefit by Guolian's total sales. For the reasons explained below, we have modified this aspect our approach in the final determination.

Section 771B of the Act states that, "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." Upon further review, we find that phrase "deemed to be provided with respect to the . . . processed product" directs the Department to limit the attribution of farmer subsidies to the sales of all processed shrimp. Accordingly, in this instance, we are not looking to 19 CFR 351.525 for guidance on attributing subsidies under section 771B of the Act. This reading of section 771B of the Act is supported by the plain text of that provision. In particular, the subject of section 771B of the Act concerns "an agricultural product processed from a raw agricultural product . . ." This passage demonstrates that the import of section 771B of the Act centers on the processed product derived from the "raw agricultural product."

Other reasons support the Department's interpretation. The subsections of section 771B of the Act provide two criteria the Department must consider in determining whether the facts of the particular case support its application. Section 771B(1) of the Act instructs the Department to evaluate the dependency of demand for the raw product on demand for the processed product. Section 771B(2) of the Act instructs the Department to evaluate whether processing adds only limited value to the raw product. Taken together, section 771B of the Act contemplates the foreign government subsidizing the processed product by subsidizing the raw product.

Thus, as explained in the "Denominators" section above, for those subsidies apportioned to Guolian's farmers under section 771B of the Act, we attributed subsidies to Guolian's sales of subject merchandise, which we are using as a proxy for Guolian's processed sales (which we are using as facts otherwise available pursuant to section 776(a) of the Act where information about Guolian's total sales of processed shrimp is not on the record). However, as explained in Comment 13, for untied subsidies received by Guolian for which we find section 771B of the Act does not apply, we have attributed subsidies to Guolian's total consolidated sales.

²²¹ See Guolian Companies' Case Brief, at 23-25.

We disagree with the Guolian Companies that, in instances involving the application of section 771B of the Act, 19 CFR 351.525(b)(5)(ii) and (b)(6)(iv) require the Department to include the sales of the unaffiliated farmers in the denominator used to calculate the net subsidy rate. As discussed above, given our interpretation of 771B of the Act, we are not looking to 19 CFR 351.525 for guidance on attributing subsidies in the context of 771B of the Act. In any case, such sales data from the unaffiliated farmers (*e.g.*, farmers' sales to Guolian and sales made to processors other than Guolian) are not on the record of the instant investigation. Second, to the extent that it was able consider such data, the Department would not include the value of fresh shrimp that the unaffiliated farmers sold to Guolian in the sales denominator because to do so would result in the Department double counting those sales values when it allocated the subsidy benefit over Guolian's total sales value.²²²

Comment 9: Manner in Which the Department Conducted the 0.5 Percent Test When Attributing Benefits to Unaffiliated Farmers under Section 771B of the Act

Case Brief of the GOC

- For programs involving allocable subsidies, the Department overstated prior year grants because it multiplied each year's per-kg subsidy amount by the 2011 volume of fresh shrimp from unaffiliated suppliers. It is unlikely that Guolian purchased the same absolute volume of fresh shrimp from unaffiliated suppliers as it purchased in 2011, because prior years sales (*e.g.*, Guolian's 2007 sales) were much less than 2011 sales. The Department should attribute the subsidy to the fresh shrimp suppliers as the last step in its calculation.
- The methodology overstates the subsidy calculated for the VAT Exemption on Imported Equipment and VAT Exemption on Domestic Equipment because the Department conducted the 0.5 test by dividing the total subsidy attributed to both Guolian and its fresh shrimp suppliers by only Guolian's sales, rather than the total sales of Guolian and its fresh shrimp suppliers. This error resulted in the Department improperly allocating grant amounts to the POI.

Case Brief of the Guolian Companies

- The Department improperly conducted the 0.5 percent test with regard to subsidies attributed to Guolian and its unaffiliated farmers. The Department analyzed the 0.5 percent test using Guolian's approval amount only and then calculated the *ad valorem* rate on the combined benefit received by Guolian and imputed to the unaffiliated farmers.
- The Department should have conducted a separate 0.5 percent test for each the grants imputed to each unaffiliated farmer. Conducting the test in this manner would have resulted in subsidy amounts attributed to the farmers being fully expensed prior to the POI.

²²² Indeed, the Department, as part of its practice, removes intra-company sales when allocating subsidies received by input suppliers that are cross-owned with the producer of subject merchandise. *See, e.g., Wind Towers from the PRC*, and accompanying Issues Decision Memorandum at "Attribution of Subsidies – Titan Companies," in which the Department did not include sales the input supplier made to the producer of subject merchandise in the sales denominator.

- The Department has conducted the 0.5 percent test separately for cross-owned affiliates in other PRC CVD proceedings involving programs conferring allocable subsidies. Thus, the Department should follow its practice in the instant investigation.²²³

Rebuttal Brief of Petitioner

- The Guolian Companies are wrong to argue that the Department should conduct the 0.5 percent test to each individual unaffiliated farmer. In the instant investigation, the Department is relying on what it determines for Guolian's in-house shrimp product to estimate benefits to unaffiliated shrimp farmers that it has not individually investigated. Because it does not have the data on the total sales of the individual suppliers, the Department has reasonably applied the 0.5 percent test to the aggregate benefit bestowed upon Guolian and its unaffiliated farmers.

Department's Position: In the *Preliminary Determination*, for subsidy programs for which we found section 771B of the Act applied and for which the GOC disbursed subsidies prior to the POI, we apportioned subsidies to Guolian's unaffiliated farmers using the ratio of the processed value attributable to in-house shrimp to the total value of subject merchandise sold by Guolian during the POI. As explained in Comment 7, we have revised the manner in which we have apportioned subsidies to Guolian's unaffiliated farmers. Nonetheless, we have continued to use data from the POI for purposes of apportioning subsidies to the unaffiliated farmers that were disbursed prior to the POI.

The GOC argues that the use of POI data to apportion subsidies disbursed prior to the POI overstates the subsidy amount ultimately attributed to Guolian's farmers because the approach assumes that the volume of fresh shrimp acquired from unaffiliated farmers (on which the apportionment methodology is partially based) is constant over time. We agree that contemporaneous data is preferable; however, the volumes of fresh shrimp that Guolian acquired in the relevant years prior to the POI are not available on the record. Thus, the Department has implemented the revised methodology described in Comment 7 using the only sales volume data of the unaffiliated farmers that are available on the record of the proceeding.

The GOC also argues that the Department should attribute the subsidy to the fresh shrimp suppliers as the last step of its calculation. In its comments, the GOC does not explain how this modification would increase the accuracy of the Department's calculations, nor does the GOC explain how the Department exactly should implement its suggested revision.²²⁴ Therefore, we have not incorporated this aspect of the GOC's comments into the methodology used to apportion subsidies under 771B of the Act.

We disagree with the Guolian Companies that the Department should have included the sales of the unaffiliated farmers along with the sales of Guolian when it conducted the 0.5 percent test. As explained in Comment 8, any sales made by the unaffiliated farmers to Guolian would not be

²²³ See *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Cylinders from the PRC*), and accompanying Issues and Decision Memorandum at 17.

²²⁴ See GOC Case Brief, at 42.

included in the sales denominator used in the 0.5 percent test because their inclusion would result in the double counting of such sales. Furthermore, we lack sales information for the unaffiliated farmers. For this reason we also disagree with the Guolian Companies that the Department should have conducted a separate 0.5 percent test for each the grants imputed to each unaffiliated farmer.

We also disagree with the Guolian Companies' argument that the Department should have conducted the 0.5 percent test separately for each farmer as well as for each cross-owned affiliate comprising the Guolian Companies. The Guolian Companies mischaracterize *Cylinders from the PRC*. In *Cylinders from the PRC*, the Department stated the following concerning its application of the 0.5 percent test to the cross-owned affiliates examined in the investigation:

We determine that, for each year in which BTIC and Langfang Tianhai received benefits under this program, the amount received did not exceed 0.5 percent of relevant sales for that year.²²⁵

Thus, there is nothing in the language cited above to indicate that the Department used two separate sales denominators for the two cross-owned affiliates when conducting the 0.5 percent test. Our interpretation in this regard is further supported by language from the "Attribution" section of Issues and Decision Memorandum issued in conjunction with *Cylinders from the PRC*:

BTIC, Tianjin Tianhai, and Langfang Tianhai are cross-owned producers of subject merchandise. Accordingly, we are attributing subsidies received by BTIC, Tianjin Tianhai, and Langfang Tianhai to the combined sales of the three companies, excluding sales to other cross-owned companies.²²⁶

Comment 10: Whether the Guolian Companies Benefited from Subsidies Received in Connection with the Zhanjiang City Seafood Center

Case Brief of Petitioner

- In the *Preliminary Determination*, the Department determined that the Guolian Companies did not use the following alleged subsidy programs associated with the Zhanjiang City Seafood Center: Central Government Provision of Loan Guarantees, Central Government Provision of Rent for LTAR and Waiver of Management Fees, and Central Government Provision of Cold Storage Fees.
- The Guolian Companies state that they did not conduct any business in the Zhanjiang City Seafood Center during the POI and, thus, did not use the program.
- However, the business registration documents of one of the cross-owned affiliates of the Guolian Companies indicate that it shares the same address as Zhanjiang City Seafood Center.²²⁷
- In light of this contradictory information and the fact that record evidence indicates that the GOC provides benefits to firms located in the Zhanjiang City Seafood Center, the

²²⁵ See *Cylinders from the PRC*, and accompany Issues and Decision Memorandum at 17.

²²⁶ See *id.*, at 3.

²²⁷ See GOC Initial QNR, at Exhibits O-I.B.4.a and O-I.B.4.b.

Department should resort to the use of AFA and determine that the Guolian Companies received subsidies in connection with the three subsidies programs associated with the Zhanjiang City Seafood Center.

Rebuttal Brief of the GOC

- Record evidence establishes that only a government entity or lending business could guarantee loans under the Central Provision of Loan Guarantees. The Zhanjiang City Seafood Center is not a government entity or lending business and, thus, could not guarantee loans under the program.²²⁸
- The Department verified that the Zhanjiang City Seafood Center is not owned by the GOC.²²⁹
- The Department further verified that none of the Guolian Companies conducted business with the Zhanjiang City Seafood Center during the POI.²³⁰ Thus, there is no basis to find that the Guolian Companies benefited from the alleged provision of rent for LTAR, the waiver of management fees, and or provision of cold storage fees for LTAR.
- The GOC and Guolian Companies have cooperated to the best of their abilities and have diligently answered all questions concerning the Zhangjiang City Seafood Center. Therefore, there is no basis for the application of AFA.

Rebuttal Brief of the Guolian Companies

- To the extent Petitioner's allegations rest on the premise that the Zhangjiang City Seafood Center is government-owned, the GOC and the Guolian Companies have demonstrated that it is wholly-owned by a cross-owned affiliate of the Guolian Companies.²³¹
- Guolian has demonstrated that it has not used any of the alleged subsidy programs purportedly associated with the Zhangjiang City Seafood Center and did not conduct operations in the center during the POI.²³²
- The application of AFA in regard to the Zhangjiang City Seafood Center is not warranted because there is no evidence of the GOC or Chinese government entity providing support to the Guolian Companies under this alleged program.

Department's Position: At verification, the Department confirmed that that the Zhanjiang City Seafood Center is not owned by the GOC²³³ and that none of the Guolian Companies conducted business with the Zhanjiang City Seafood Center during the POI.²³⁴ Further, at verification, the Department did not find any evidence indicating that any of the cross-owned companies that comprise the Guolian Companies used any of the alleged subsidy programs associated with the Zhangjiang City Seafood Center.²³⁵ Therefore, we continue to find that the Guolian Companies

²²⁸ See GOC Initial QNR, at Exhibits O-I.B.4.a and O-I.B.4.b.

²²⁹ See Guolian Companies Verification Report, at 22 and VE-22.

²³⁰ See *id.*, at 4.

²³¹ See Guolian Companies' Initial QNR, at 20; see also Guolian Companies Verification Report, at 18.

²³² See Guolian Companies Verification Report, at 3 and 18.

²³³ See *id.*, at 22 and Exhibit VE-22.

²³⁴ See *id.*, at 4.

²³⁵ See *id.*, at 3 and 18.

did not benefit from any of the alleged subsidies provided in connection with the Zhangjiang City Seafood Center.

Comment 11: Whether the Department Should Initiate Investigations of Petitioner’s Second Round of New Subsidy Allegations

Case Brief of Petitioner

- The Department has a legal duty to consider new subsidy allegations that are filed on a timely basis.
- The CIT has found that timely filed allegations must be considered in accordance with 19 CFR 351.301(d)(4)(i)(A).²³⁶
- The regulatory deadline for filing new subsidy allegations exists “to ensure that the agency has sufficient time to investigate the allegation.”²³⁷
- The Department itself has stated that the deadline is “intended to ensure that the Department is informed of any allegation that it must include in its investigation.”²³⁸
- The Department has also stated that new subsidy allegations that are made before the submission deadline “provide Commerce with sufficient time to investigate the allegation.”²³⁹
- Only when new subsidy allegations are made on a non-timely basis, or when the Department discovers a program in the course of an investigation, may the Department consider time and resource constraints in deciding not to investigate a program.
- The Department acknowledged that timely allegations are not covered by 19 CFR 351.311(b), which permits deferral of an investigation into subsidy programs discovered in the course of an investigation.²⁴⁰
- Time and resource constraints do not justify the Department’s departure from its legal obligation to consider timely filed new subsidy allegations.
- The Department’s regulation regarding the filing deadline for new submissions is the only procedural protection available to petitioners to ensure that allegations will be considered; absent this deadline, petitioners have no basis for knowing the factors that determine the Department’s ability to investigate allegations, including resource and time constraints.
- The only notification available to a petitioner regarding the impact of those constraints on the Department’s ability to consider new subsidy allegations is the deadline set out in the regulation; if the Department determined it could not comply with the regulation in this case, it could have advised Petitioner ahead of time of a different deadline by which such allegations would have been accepted. This would have given Petitioner fair warning that the regulations were not going to be followed and prevented the Petitioner from relying on those regulations to its ultimate detriment.

²³⁶ See e.g., *Bethlehem Steel Corp v. United States*, 140 F. Supp. 2d 1354, 1361 (CIT 2001) (*Bethlehem I*).

²³⁷ See *Bethlehem Steel Corp. v. United States*, 162 F. Supp. 2d 639, 642 (CIT 2001) (*Bethlehem II*).

²³⁸ See *Countervailing Duties, Final Rule*, 53 FR 52306 (December 27, 1988) (the current version of 19 CFR 351.301(d)(4) is unchanged from the 1988 regulations).

²³⁹ See *Bethlehem Steel I*, 140 F. Supp. 2d at 1359.

²⁴⁰ See *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 72 FR 7015 (February 14, 2007) (*DRAMS from Korea*), and accompanying Issues and Decision Memorandum at Comment 4.

- In the case of the Department’s procedural regulations, compliance with a regulation intended to provide important procedural benefits is required; the only exception is if noncompliance would constitute harmless error.²⁴¹
- The Department’s decision caused a serious and harmful loss of a procedural benefit to Petitioner, and will cause substantial prejudice to Petitioner.
- The Department’s refusal to consider timely filed new subsidy allegations has deprived the Petitioner of the possibility of obtaining effective relief from those subsidies.
- Even if the Department does issue an affirmative final determination for all respondents, deferral of consideration of the timely alleged new subsidies to an administrative review will not make Petitioner whole.
- Pursuit of an administrative review requires the commitment of additional resources and efforts on behalf of Petitioner that should not be necessary to achieve accurate margins based on information timely submitted in the investigation.
- Corrected margins achieved in an administrative review would only cover entries since the imposition of the order. Other duties which rightly should be due on entries made will never be collected, even if an administrative review ultimately corrects the subsidy margins.
- The Department’s consistent practice is to defer the investigation of subsidies only where those subsidies have not been alleged by the regulatory deadline or where they were discovered by the Department after that deadline; the Department’s actions in this investigation violate this long-standing practice.²⁴²
- In only one case, *OCTG from the PRC*, has the Department deferred the investigation of timely filed subsidy allegations;²⁴³ the appeal of the Department’s decision in that investigation is still pending.²⁴⁴
- The facts in *OCTG from the PRC* are distinguishable from those in this case.
- The new subsidy allegations in *OCTG from the PRC* were more complicated than those filed in this investigation because debt-for-equity swaps would require the Department to make an equityworthiness determination.

²⁴¹ See *Guangdong Chemicals Import & Export Corp. v. United States*, 414 F. Supp. 2d 1300, 1309 (CIT 2006).

²⁴² See, e.g., *Final Affirmative Countervailing Duty Determination; Certain Granite Products From Spain*, 53 FR 24,340, 24,350 (June 28, 1988) (allegation after verification); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37,315, 37,326 (July 9, 1993) (discovered at verification); *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40,474, 40,502 (July 29, 1998) (same); *Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 63 FR 64,050, 64,060 (November 18, 1998) (same); *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy*, 64 FR 15,508, 15,517-15,518 (March 31, 1999) (same); *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34,905 (May 16, 2002) and the accompanying IDM at “Capital Subsidy” (same); *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15,545 (April 2, 2002) and the accompanying IDM at “Timber Damage Compensation in Alberta” (alleged four months after the preliminary determination); *Narrow Woven Ribbons with Woven Selvage from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 41,801 (July 19, 2010) and the accompanying IDM at Comment 3 (discovered at verification).

²⁴³ See *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*), and the accompanying Issues and Decision Memorandum at Comment 28.

²⁴⁴ See *TMK IPSCO et al. v. United States*, CIT Consol. Court No. 10-00055.

- The petitioners in *OCTG from the PRC* did not seek to align the deadlines for the final countervailing duty and antidumping investigations; in this case, Petitioner has requested all extensions available to it under the statute and the regulations, providing the Department with as much time as possible to consider the timely filed new subsidy allegations.

Rebuttal Brief of the GOC

- Petitioner has failed to adequately allege the three purported subsidy programs at issue.
- Petitioner’s case brief arguments constitute their third attempt to get the Department to initiate on the non-existent electricity for LTAR program.
- Even if Petitioner had sufficiently alleged the programs at issue, the Department, pursuant to 19 CFR 351.311(c), correctly used its discretion not to initiate on the new allegations and Petitioner cannot strong arm the Department out of this discretion.
- The Department correctly noted the complexity of the programs at issue, which distinguish the facts of the instant investigation from the “straightforward” programs addressed by the Court in *Bethlehem I.*²⁴⁵
- The Department’s decision not to initiate conforms to its practice.²⁴⁶

Rebuttal Briefs of the Guolian Companies

- The Department and interested parties lack sufficient time to address the new subsidy allegations at issue.
- Any abbreviated examination of these programs would significantly prejudice the Guolian Companies.
- The Department properly exercised its discretion to defer examination of these allegations pursuant to 19 CFR 351.311(c).

Department’s Position: Prior to the *Preliminary Determination*, the Department deferred examination of Petitioner’s new subsidy allegations, pursuant to 19 CFR 351.311(c)(2).²⁴⁷ While we acknowledge that the allegations were timely filed under 19 CFR 351.301(d)(4)(i)(A), we were unable to conduct an adequate investigation of these programs given the extraordinarily complex nature of these allegations, the amount of time left in our investigation, and the constraints on our resources, which were already devoted to investigating the numerous subsidy programs alleged by Petitioner and on which we initiated this investigation.

On April 18, 2013, Petitioner submitted additional new subsidy allegations with respect to the provision of water for less than adequate remuneration (LTAR) to enterprises designated as Agricultural Dragon Head Enterprises and the provision of electricity for LTAR. The Department decided to defer its examination of such programs due to the extraordinarily complex nature of these allegations, the amount of time left in our investigation, and the constraints on our resources.²⁴⁸

²⁴⁵ See *Bethlehem I*, 140 F. Supp 2d at 1361.

²⁴⁶ See, e.g., *OCTG from the PRC*.

²⁴⁷ See Memorandum to Melissa G. Skinner, Director, Office 8, Operations, “Second Decision Memorandum on New Subsidy Allegations” (May 8, 2013) (Second New Subsidy Allegation Memorandum).

²⁴⁸ See *id.*

Section 775 of the Act provides, in relevant part, that if, during the course of a countervailing duty proceeding, the Department “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition,” then the Department “shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” The relevant legislative history explains that this provision was meant to avoid “unnecessary separate” investigations and “increased expenses and burdens” by “including such practices within the scope of any current investigation, . . . However, {t}he inclusion of such a practice should not delay the conclusion of any current investigation any more than absolutely necessary.”²⁴⁹ Within this statutory framework, and to ensure timely consideration of those allegations not originally included in a petition, the Department promulgated the deadline set out in the current version of its regulations, 19 CFR 351.301(d)(4)(i)(A), that a petitioner must file new subsidy allegations no later than 40 days before the preliminary determination. At the same time, the Department promulgated what is now 19 CFR 351.311 to address the time frame for considering countervailable subsidy practices discovered during the course of a proceeding. Petitioner argues that the Department has previously acknowledged that timely filed new subsidy allegations are only governed by 19 CFR 351.301(d)(4)(i)(A), and that 19 CFR 351.311 is explicitly limited to subsidy practices that were “not alleged” in the proceeding.²⁵⁰

In the past the Department has read 19 CFR 351.311 to apply to later discovered subsidy practices not originally alleged in the proceeding; however, we consider that the general concept of deferring investigation of subsidy programs, explicitly referenced in 19 CFR 351.311(c)(2), is not necessarily limited to that provision. Moreover, the courts have acknowledged that in conjunction with petitioner’s obligation arising from 19 CFR 351.304(d)(4)(i)(A) to allege new subsidies at least 40 days prior to the preliminary determination to ensure that the agency has sufficient time to investigate the allegation, there exists an “independent obligation” on behalf of the Department to investigate newly discovered practices that reasonably appear to be countervailable if sufficient time remains before the final determination. Thus, regardless of the timeliness of the allegations under 19 CFR 351.301(d)(4)(i)(A), the courts have held that “Commerce must investigate only those allegations that reasonably appear to be countervailable and are discovered within a reasonable time prior to the completion of the investigation.”²⁵¹

The courts have also recognized that, while the Department has a general duty to investigate subsidy allegations that arise during the course of an investigation, that duty is tempered by the acknowledgment that investigating subsidies takes time, and that the Department may not always have sufficient time or resources before the final determination to investigate a newly alleged subsidy. Thus, “{b}ased upon the plain meaning of th{e} statute and regulation, it is clear that Commerce has an affirmative duty to investigate subsidies discovered during the course of an investigation, even if (for practical reasons) the investigation of the newly discovered subsidies

²⁴⁹ See *Trade Agreements Act of 1979*, Sen. Rep. No. 96-249, at 98 (1979).

²⁵⁰ See Petitioner Case Brief, at 17 (citing *DRAMS from Korea*, and accompanying Issues and Decision Memorandum at Comment 4).

²⁵¹ See *Bethlehem II*, 162 F. Supp. 2d at 642-43 (internal quotations omitted) (quoting *Bethlehem I*, 140 F. Supp. 2d at 1361).

must wait for an administrative review.”²⁵² In *Allegheny Ludlum*, the CIT noted that “a petitioner who does not timely make a subsidy allegation, even though it could, risks having Commerce defer its investigation to a subsequent administrative review.... Thus, it is always in a petitioner's interest to expeditiously make {Commerce} aware of potential subsidies.”²⁵³

The CIT has also recognized that when the Department is faced with unreasonably late or extraordinarily complex subsidy allegations it may “lack the resources or time necessary to investigate” the new allegations. In *Bethlehem I*, the CIT found:

...Commerce was made aware of the subsidy allegation in July 1999. The Final Determination was not issued until December 1999 thus providing Commerce with at least four full months in which to conduct its investigation. Although the Court recognizes that when Commerce is faced with unreasonably late or extraordinarily complex subsidy allegations it may “lack the resources or time to investigate” the new allegations, the present case does not implicate these concerns. The fact that Commerce had over four months to investigate what appeared to be a straightforward subsidy allegation forces the Court to conclude that Commerce’s failure to so investigate was simply legal error.²⁵⁴

Thus, while the CIT found that the Department should have investigated the newly alleged “straightforward” subsidy allegation in the administrative proceeding underlying *Bethlehem I*, the Court also acknowledged that limited time and lack of resources might prevent the Department from conducting such an investigation. It is noteworthy that the single, straightforward subsidy allegation addressed in *Bethlehem I* was identified to the Department on July 8, 1999, and the final determination in the underlying investigation dated to December 29, 1999. In other words, in that case the Department had more than five months to investigate a single allegation.

A later CIT decision further elaborated on the need for time to investigate complex subsidy allegations.²⁵⁵ Quoting the above-cited passage from *Bethlehem I*, in *RTG* the CIT stated that equity infusion allegations “implicate[d] precisely” that concern:

Thus, although four months may have been sufficient time in *Bethlehem Steel* where a straightforward subsidy allegation was at issue, the five months that Commerce had in this case was not sufficient time to investigate U.S. Steel’s complex equity infusion allegations.²⁵⁶

Admittedly, in the administrative determinations underlying both the *Bethlehem I* and *RTG* decisions, the petitioners’ allegations were untimely filed according to the deadline established in 19 CFR 351.301(d)(4)(i)(A). Nevertheless, neither decision recognized the Department’s deadline as a determinative factor but, instead, focused on the complexity of the allegations and

²⁵² See *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150 (CIT 2000) (*Allegheny Ludlum*).

²⁵³ See *id.*, 112 F. Supp. 2d at 1150 n.12 (citing 19 CFR351.311(c)(2)).

²⁵⁴ See *Bethlehem I*, 140 F. Supp. 2d at 1361.

²⁵⁵ See *Royal Thai Government v. United States*, 341 F. Supp. 2d 1315 (CIT 2004) (*RTG*).

²⁵⁶ See *id.*, 341 F. Supp. 2d at 1320.

the amount of time the Department had to investigate them. The *Bethlehem I* decision also specifically acknowledged resource constraints as a factor in the Court's consideration of whether the Department is required to investigate newly alleged subsidies that arise near the end of an investigation. Contrary to the Petitioner's assertion, none of these cases hold that the Department may consider time and resource constraints only when new subsidy allegations are made on a non-timely basis, or when the Department discovers a program in the course of an investigation.

In the instant case, in making its determination to defer consideration of the new subsidy allegations, the Department noted that at the time of its consideration of the new subsidy allegations, it was already experiencing intense resource constraints to complete the investigation by the final determination due date of August 12, 2013:

{t}he Department was analyzing questionnaire responses from the Government of China (GOC) and the Guolian Companies. To have adequate information upon which to make a preliminary determination within the statutory deadlines, the Department has prepared and issued supplemental questionnaires regarding the original programs which the Department is investigating and the Department prepared and issued a questionnaire regarding the newly alleged subsidy programs on which the Department initiated an investigation. Additionally, while in the process of analyzing the new subsidy allegations submitted on April 18th, the Department has received supplemental questionnaire responses from the GOC and the Guolian Companies, all of which the Department will fully analyze in preparation for the preliminary determination, for which the statutory due date is May 28, 2013.

As it stands, extensive resource commitments will be required to complete this investigation by August 12, 2013, even without investigating the newly alleged subsidies. Verification is set to begin shortly after the preliminary determination. Prior to that, the Department will have to disclose its preliminary calculations (*see* 19 CFR 351.224(b)), prepare verification outlines, and review new submissions by the parties in preparation for verification. Verification will be conducted over an approximate two week period. In the remaining time before the final determination, we will prepare verification reports, provide an opportunity for the parties to file briefs and rebuttal briefs, hold a hearing (if requested), analyze the parties' comments and prepare a final determination. We will have less than two months to do this before the final determination on August 12, 2013.²⁵⁷

The Department further emphasized that in the current investigation, unlike in *Bethlehem I* and *RTG*, the Department faced even less time and at least two new subsidy allegations. In those cases, and as is typical in CVD investigations, the Department had aligned its CVD final determination with companion AD final determination, which extended the overall deadlines for the CVD final determination.²⁵⁸ Here, there are no companion AD investigations; thus, the

²⁵⁷ See Second New Subsidy Allegation Memorandum at 2 – 3.

²⁵⁸ See *id.*; see also *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy*, 64 FR 40416 (July 26, 1999); *Notice of Preliminary Affirmative Countervailing Duty*

Department is operating under much shorter deadlines and extensive resource commitments were required to complete the investigation in this shorter timeframe (in the cases underlying *Bethlehem I* and *RTG*, there were 5 months between the preliminary determination and the final determination; in this case, there are merely 75 days).²⁵⁹ In short, the submission of the new subsidy allegations on April 18, 2013, with the final determination date of August 12, 2013 (which could not be extended) left the Department with fewer than four months to complete its analysis of the programs already under investigation, some of which were quite complex, as well as to begin and complete its analysis of the newly alleged subsidy programs, which were also quite complex.

In deferring an investigation of the LTAR programs, the Department noted that investigation of such programs is particularly time-consuming because it requires gathering detailed information regarding the market for the provision of water and electricity, and research into possible benchmarks, which includes gathering market and pricing data—are particularly time consuming and would be difficult to complete at this late stage in an investigation.²⁶⁰ The Department also noted that such information typically requires at least one supplemental questionnaire, and typically amounts to several hundred pages of documents that must be analyzed once all questionnaires responses have been provided.²⁶¹ The Department further explained that the analyses required to investigate the newly alleged programs would be in addition to the analyses already ongoing, and the calculations, conduct of verification and issuance of reports that must be completed before the final determination.²⁶² With fewer than four months to complete the investigation, the Department lacked the time and or resources necessary to complete the required examination of the newly alleged subsidy programs.²⁶³

In making this determination, the Department also looked to its recent practice in similar cases in which the Department found it appropriate to defer investigation of extraordinarily complex subsidy allegations, given the limitations on time and other resources in the proceeding.²⁶⁴ In *OCTG from the PRC*, along with finding debt-for-equity swap allegations to be extraordinarily complex, the Department also found LTAR allegations to be similarly complex.²⁶⁵ Even for those seemingly more straightforward subsidy allegations, the Department noted that those programs represented various types of assistance provided by different levels of the government (e.g., national, regional, municipal) adding to the time it would take to develop a proper

Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 20251 (April 20, 2001).

²⁵⁹ See also *OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 28 (noting that “{b}ecause the CVD deadline was not aligned with the AD deadline, the Department schedule was compressed and extensive resources had to be committed in order to complete this investigation by November 23, 2009, even without investigating the newly alleged subsidies.”).

²⁶⁰ See Second New Subsidy Allegation Memorandum at 4.

²⁶¹ See *id.* (citing to *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10).

²⁶² See *id.*, at 4.

²⁶³ See *id.*

²⁶⁴ See *id.*, at 5.

²⁶⁵ See *OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 28 (where the Department determined that with less than four months until the final determination, it could not investigate certain complex and timely-filed new subsidy allegations, given its limited time and resources, and deferred such examination until the first review).

investigative record.²⁶⁶ Likewise, as noted above, the Department was similarly faced with two complex LTAR allegations in this case, and the Department determined that it did not have sufficient time or resources to investigate those allegations. In contrast, we note that in the countervailing duty investigations on certain frozen warmwater shrimp from India and Vietnam, the Department determined that it had the time and resources to initiate an investigation of certain straightforward new subsidy allegations.²⁶⁷

Lastly, we disagree with the notion that 19 CFR 351.301(d)(4)(i)(A) is meant to confer important procedural benefits upon petitioners. Rather, this regulation is meant to aid the Department in the “orderly transaction of business,” *i.e.*, the orderly administration of countervailing duty investigations.²⁶⁸ This provision states that a countervailable subsidy allegation made by the petitioner is due no later than 40 days before the preliminary determination. It does not provide that the Department shall investigate all timely filed allegations. The primary intent of this regulation is to aid the Department in providing it, generally, with sufficient time to investigate such allegations if time and resources permit, and it is not meant to require the Department to do so or to confer important procedural benefits upon petitioners. Here, the Department determined that the time provided for in the regulation generally was insufficient for purposes of investigating the new subsidy allegations in this case, given the extraordinarily complex subsidy programs already under investigation along with the lack of time and resources it was then experiencing.

While we acknowledge that there are consequences to our decision that affect Petitioner, the Department must consider these consequences in light of the deadlines provided for in the Act and the impact on all parties in this proceeding. In this case these deadlines did not allow us sufficient time to investigate the additional subsidies, which would include giving the GOC and respondent companies an opportunity to respond to the allegations. Even if the Department had initiated its investigation of these new subsidy allegations in this proceeding, it is only speculation that the Department would have been able to complete its investigation of those subsidies by the final determination,²⁶⁹ and that the Department would have reached an affirmative finding of countervailable subsidies as a result of investigating the additional alleged

²⁶⁶ *See id.*

²⁶⁷ *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013) and accompanying Issues and Decision Memorandum at 4; *Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) and accompanying Issues and Decision Memorandum at 3.

²⁶⁸ *See American Farm Line vs. Black Ball Freight Service*, 397 U.S. 532, 539 (1970) (“{I}t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.”).

²⁶⁹ Even assuming we had initiated on these allegations within one week of receiving the allegations, we might have issued the necessary questionnaires as early as April 25, 2013. If we were to allow the respondent government and companies 37 days to respond, the responses would have been due on June 3, 2013 (assuming no extensions of the deadline to respond), nearly one week after the preliminary determination was due and a mere week before verification was scheduled to begin. In the unlikely event that there was no need to follow-up with supplemental questionnaires, there was still no flexibility for scheduling verification later to allow time to analyze the information and determine an appropriate approach for verification and then briefing of and a possible hearing on the issues, because the final determination was due on August 12, 2013. The Department simply recognized that there was insufficient time to conduct any investigation, much less a thorough and meaningful one, and reach a decision on these newly alleged subsidy programs by the final determination.

subsidies. As explained above, as neither the statute nor the regulations require the Department to initiate an investigation of extraordinarily complex subsidy programs not originally alleged in the petition in the face of time and resource constraints, we do not agree that the Petitioner has been prejudiced as a result of our deferral.²⁷⁰

Comment 12: Calculation of Guolian’s Tax Exemption Benefit Using Tax Payments Made During the POI

Case Brief of the Guolian Companies

- The company receives the benefit on the date on which the recipient firm would otherwise pay the taxes associated with the exemption or remission, which corresponds to the date a company files its return.
- The Guolian Companies are required to file tax returns on a quarterly basis pursuant to Article 128 of the *Regulation on the Implementation of the Income Tax Law of the People’s Republic of China*
- The Department has argued in the past that an income tax benefit does not become final until the annual return is filed.²⁷¹
- The Department should revise the methodology to calculate the benefit based upon actual tax payments made during the POI.
- In the instant investigation, the Department should equate the date of receipt with the dates in which Guolian filed its quarterly return during the POI. The quarterly returns reflect Guolian’s profit for that particular quarter. And, moreover, Guolian is required by the GOC to file quarterly returns.

Rebuttal Brief of Petitioner

- Under 19 CFR 351.509, the Department will find benefits under income tax programs to have been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission, which the Department has determined is associated with the final annual return filed during the POI.
- The Department has rejected similar arguments concerning quarterly returns made the GOC in other cases.²⁷² Because the tax benefits do not become final until the annual tax return is filed and, thus, the Department has used the annual tax return filed during the PIO for purposes of determining the benefit under income tax programs.
- The Department verified Guolian’s 2010 annual tax return filed during the POI, not the 2011 quarterly tax returns filed during the POI. The Department should not rely on unverified information.

²⁷⁰ See *Intercargo Insurance Co. v. United States*, 83 F.3d 391, 396 (Fed. Cir 1996) (explaining that “prejudice...means injury to an interest that the statute, regulation or rule in question was designed to protect.”).

²⁷¹ See, e.g., *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 26.

²⁷² 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) (*Drill Pipe from the PRC*), and accompanying Issues and Decision Memorandum at Comment 12.

Department's Position: We disagree with the Guolian Companies' argument that the Department erred when it used the annual return filed during the POI for purposes of determining the benefit under the alleged income tax programs. Under 19 CFR 351.509(b)(1), the Department will consider the benefit as having been received:

. . . on the date on which the firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

As further discussed in the *Preamble*,²⁷³ the Department's goal is to equate the timing of receipt of the benefit with the date the firm knew the amount of its tax liability.²⁷⁴ The Department further explains that, based on its experience, the date in which a firm knows its tax liability is normally the date on which it files its tax return.²⁷⁵ The Department applied the approach described under 19 CFR 351.509(b)(1) in *Wire Decking from the PRC* when it calculated the benefit using the 2008 annual tax return respondent filed during the 2009 POI and not the 2009 annual tax return the respondent filed in 2010:

. . . the tax savings that DHMP ultimately realizes under the two free, three half program for tax year 2009, will not be finalized until the firm files its 2009 tax return, which will occur during calendar year 2010. It is for this reason that the Department normally equates the timing of receipt of income tax benefits with the date on which the recipient firm files its tax return because it is at that time that savings under income tax subsidy programs are definitively known.²⁷⁶

Thus, the Department's approach in the *Preliminary Determination* was consistent with its regulations and practice.

The Guolian Companies' argue that the date of receipt on which the benefit under the tax program was known and realized (*i.e.*, the date on which it would have otherwise had to pay the taxes associated with the tax exemption) coincided with the date the 2011 quarterly tax returns were filed. However, the Department addressed this very argument in *Drill Pipe from the PRC*.²⁷⁷ On this point, we note that the final quarterly filing for tax year 2011 was filed in 2012, which is outside of the POI, and, therefore is not suitable for use in the benefit calculations. Further, the Department has previously determined that tax liabilities in the PRC are adjusted at the time companies file their annual tax returns in the next year where it could owe or receive a refund.²⁷⁸ Thus, the Department has concluded that the final benefit to the company under the

²⁷³ See *Preamble to Countervailing Duty Regulations*, 63 FR 65348, 65376 (November 25, 1998) (*Preamble*).

²⁷⁴ Further, 19 CFR 351.509(c) indicates that, for purposes of expensing the tax benefit, the Department will expense the tax exemption, remission, or deferral to the year in which the benefit is considered to have been received, which is the date on which the firm filed its tax return during the period of review or investigation.

²⁷⁵ See *Preamble*, 63 FR at 65376.

²⁷⁶ See *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) (*Wire Decking from the PRC*), and accompanying Issues and Decision Memorandum at Comment 21; see also *Drill Pipe from the PRC*, and accompanying Issues and Decision Memorandum at Comment 12.

²⁷⁷ See *Drill Pipe from the PRC*, and accompanying Issues and Decision Memorandum at Comment 12.

²⁷⁸ See *id.*

alleged income tax program during the POI is not known and finalized until the filing of the annual return during the POI.

Therefore, we determine that the Department correctly calculated the tax benefit to the Guolian Companies as described under 19 CFR 351.509(b)(1).

Comment 13: Whether the Department Made Ministerial Errors in the *Preliminary Determination* That Should be Corrected for the Final Determination

Case Brief of the Guolian Companies

- Under 19 CFR 351.525(b)(6)(iii), subsidies received by the parent company are also attributable to its subsidiary companies.
- Thus, for programs used by Guolian, the Department should use the Guolian's consolidated sales denominator, as opposed to just Guolian's unconsolidated sales.
- The Department's approach in *Coated Graphic Paper from the PRC* supports this approach.²⁷⁹
- The Guolian Companies argue that the Department should use the year of 2007, when the purchases of imported equipment were made, not 2009 to begin the 12 year allocation period.
- The Guolian Companies argue that the Department miscalculated the benefit for one of its loans from Guotong, a subsidiary of the Guolian Companies, and it should be corrected for the final. Specifically, the Department's calculations failed to acknowledge that Guotong's total interest payments for the year exceed the total benchmark payments for the year, thus demonstrating that Guotong did not benefit from the subsidy program at issue.
- The Department failed to take into account certain principal payments that Guolian made on its short-term interest/factoring loans. The Department's failure to take these payments into account led it to overstate the benefits.
- The Department failed to take into account the account fees paid by the Guolian Companies on their loans.
- In the benefit calculation for the second reported short-term loan for Guolian Feed, the Department calculated a benefit for an interest payment that was not made. The Department should revise its calculations accordingly.
- At verification, the Guolian Companies presented a minor correction regarding the second grant that was reported in the Guolian 1st Supp QNR Response Part 2.²⁸⁰ Specifically, the Guolian Companies reported a revised approval amount under the grant program in question. The Department should use the revised approval amount when conducting the 0.5 percent test.

²⁷⁹ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination*, 75 FR 59212 (September 27, 2010) (*Coated Graphic Paper from the PRC*), and accompanying Issues and Decision Memorandum at Comment 35.

²⁸⁰ See Guolian Companies Verification Report, at 2, which corrects the second grant reported in the Guolian 1st Supp QNR Response Part 2, at 7 – 8 and at Exhibits S1-4a – S1-4d.

Department's Position: For programs under which we find Guolian, as a processor, received an untied subsidy, we agree that the Department should use Guolian's total consolidated sales. This approach is consistent with the Department's decision in *Coated Graphic Paper from the PRC*.²⁸¹ Thus, we have revised our calculations accordingly.²⁸²

We agree with the Guolian Companies that the Department should revise the manner in which it allocates benefits under the VAT and Import Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries program. Specifically, for allocable benefits that Guolian received under the program in 2007, the Department has started the allocation stream in 2007, not 2009.

We disagree with the Guolian Companies' arguments that the Department erred in calculating the benefit with regard to long-term loans that Guotong had outstanding during the POI. The Guolian Companies attempt to argue that the *total* interest payments made on the loan in question sum to an amount larger than the *total* interest benchmark interest payments paid on the loan during the POI. The Guolian Companies argument does not follow the Department's calculation methodology for loans. In implementing 19 CFR 351.505(a)(1), the Department compares each outstanding interest payment to the benchmark interest rate. It does not, as the Guolian Companies contend, compare the sum of total interest payments made during the POI to the total interest payments made during the POI under the benchmark interest rate:

Additionally, the Department only examines loans received under programs that may potentially be countervailable if the interest rate is preferential when compared with the benchmark interest rate. We do not consolidate these preferential loans with non-countervailable commercial loans to examine whether the aggregate interest rate paid on a series of loans is preferential. It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan. The Department will continue to analyze each individual loan in the RF-153 pre-export loan program separately.²⁸³

The Department reached the same conclusion in *Second Review of Softwood Lumber from Canada*:

. . . when the Department compares the interest rate paid on government loans to a commercial benchmark interest rate, it does not offset the benefit calculated on the government loans that are below the market rate with any interest paid on government loans that are above the market rate, or for penalties paid on the subsidized government loans.²⁸⁴

²⁸¹ See *Coated Graphic Paper from the PRC*, and accompanying Issues and Decision Memorandum at Comment 35.

²⁸² See Guolian Companies Final Calculation Memorandum for further information.

²⁸³ See *Oil Country Tubular Goods from Argentina: Final Results of Countervailing Duty Administrative Reviews*, 56 FR 38116, 38117.

²⁸⁴ See *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005) (*Second Review of Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at Comment 43.

We agree that we did not take into account certain principle payments that Guolian made on its short-term interest/factoring loans and that this omission overstated the benefit. We have revised our final calculations to take any such principal payments made during the POI into account.

We agree with the Guolian Companies that we did not account for fees that Guotong, Guolian, and Guolian Feed paid on its long-term and short-term and factoring loans. In prior CVD cases, the Department has subtracted bank fees from the benefit calculation and we will do so here.²⁸⁵

We agree with the Guolian Companies that in the benefit calculation for the second reported short-term loan for Guolian Feed, the Department calculated a benefit for an interest payment that was not made. The Department has revised its calculations accordingly.

We agree with the Guolian Companies that the Department should use the revised approval amount presented during the minor corrections phase of verification for the second grant program that was originally presented in the Guolian 1st Supp QNR Response Part 2.²⁸⁶

Comment 14: Whether the Department Should Countervail the Three Grants Reported at Verification and Whether the Department's Refusal to Collect Benefit Information Regarding the Grants is Contrary to Past Practice

Case Brief of the Guolian Companies

- At verification the Department discovered that Guolian received three previously unreported grants, none of which were related to any of the programs alleged or to any of the questions asked by the Department in its initial and supplemental questionnaires.
- The Department refused to take any further information on these programs other than the names of the program and refused to note the amount of the grants.
- Having refused to accept any information relating to the grants the Department has insufficient information to countervail these programs.
- Absent any information on these programs the Department must defer any investigation of these programs pursuant to 19 CFR 351.311(c)(2).
- Because the Department did not previously solicit information regarding these three programs in its questionnaires, the Guolian Companies were not required to report the grants. Rather, the Department asked the Guolian Companies to provide information concerning a specific line item in Guolian's financial statement, to which the Guolian Companies provided a complete response.
- Specifically, in the Guolian 1st Supp QNR Response Part 2, the Guolian Companies provided information regarding every grant received that was reflected (either as an allocation or full amount) in the line in question. Importantly, at no point in the Department's supplemental questionnaire did the Guolian Companies represent or state that it was providing the Department with all non-recurring grants Guolian received during the AUL period.

²⁸⁵ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

²⁸⁶ See Guolian 1st Supp QNR Response Part 2, at 7 – 8 and, at Exhibits S1-4a – S1-4d

- At verification, the Guolian Companies reconciled the grant programs contained in the line item and reported in the Guolian 1st Supp QNR Response Part 2.²⁸⁷
- In order to fully reconcile the grants reported in the Guolian 1st Supp QNR Response Part 2, the Guolian Companies also had to provide information regarding the three grant programs at issue, grant programs for which the Department never sought information in its Initial QNR or supplemental questionnaires.
- The Department’s “Other Subsidies” question in the Initial QNR, in which it asks the Guolian Companies and the GOC to report any other additional subsidy programs not already under investigation in the proceeding, may not be used as a basis for applying AFA.²⁸⁸ Under Article 11.2 and 11.6 of the SCM, the GOC and the Guolian Companies are not required to respond to such a line of questioning.
- The decision to apply AFA with regard to the three grant programs in question would run contrary to the Department’s long-standing practice of either accepting newly discovered information at verification or deferring investigation of the information until a later review.²⁸⁹
- The Department has interpreted its own regulations as expressly requiring it to review subsidies discovered during the course of CVD proceeding, as evidenced by the Department’s determination in *Thermal Paper from the PRC*:

Where the Department discovers an apparent subsidy in the course of the CVD investigation, the Department’s regulations *require* that we examine the subsidy if the Department concludes that sufficient time remains before the final determination. See 19 CFR 351.311(b).²⁹⁰

- Thus, the Department’s decision not to accept information concerning the grants in question during the verification violates its long-standing practice. Further, for the Department to change its practice “in mid-stream” in this regard runs counter to the Court’s prior holding that the Department must first provide interested parties fair notice of the intended change.²⁹¹
- The Guolian Companies have fully cooperated with the investigation, provided complete responses to the Initial QNR and supplemental questionnaires, and did not withhold any information requested by the Department. Therefore, the facts of the investigation do not warrant application of AFA.

Case Brief of the GOC

²⁸⁷ See Guolian Companies Verification Report, at 18.

²⁸⁸ See Initial QNR, at 48.

²⁸⁹ The Guolian Companies cite to ten prior CVD proceedings to support its contention. See e.g., *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying Issues and Decision Memorandum. See Guolian Companies’ Case Brief, at 55 – 56 for additional citations.

²⁹⁰ See *Thermal Paper from the PRC*, and accompanying Issues Decision Memorandum at Comment 13.

²⁹¹ See *Habas Sinai Ve Tibbi Istihsal Endustrisi A.S. v. United States*, 625 F.Supp. 2d 1339, 1351-1356 (*Habas Sinai*) (CIT 2009).

- If during the course of an investigation the Department discovers a practice that appears to provide a countervailable subsidy that was not alleged, the Department’s regulations require it to notify the parties whether the practice will be included in the investigation, as required under 19 CFR 351.311.
- The Guolian Companies were not required to report the three grant programs at issue pursuant to Article 11.2 and 11.6 of the SCM.
- The Guolian Companies’ response was responsive to the Department’s supplemental questionnaire and does not cast doubt upon its initial questionnaire response. The Guolian Companies had no obligation to provide information on purported programs that were never initiated in a petition or a new subsidy allegation.
- The minor amounts of these three items were relevant only as part of a seven-year reconciliation that the Department required for the first time at verification. The Guolian Companies were not required to report these minor items because they were not properly initiated in a petition or a new subsidy allegation.

Case Brief of Petitioner

- The Guolian Companies’ failure to report the grants in question in its initial and supplemental questionnaire responses warrant the application of AFA.
- Under 19 CFR 351.311(b), the Department is required to examine subsidies discovered during the course of a CVD proceeding.
- Thus, the Department should apply AFA and, thus, include the grant programs in question in its final calculations.

Rebuttal Brief of the GOC

- The GOC reiterates arguments from its Case Brief.

Rebuttal brief of the Guolian Companies

- The Department did not issue any questionnaires regarding the three grant programs at issue. Thus, the Department has not adequately investigated the programs and therefore must defer its analysis of the subsidy programs until the next administrative review.

Rebuttal Brief of Petitioner

- The Department should reject Guolian’s argument and should not accept its arguments and include all the discovered and later reported grants in Guolian’s final subsidy margin consistent with prior practice.

Department’s Position: In our initial questionnaire, the Department included the following question, which is part of the “standard” questionnaire issued at the outset of every CVD investigation and review:

Did the GOC (or entities owned directly, in whole or in part, by the GOC or any municipal, provincial or local government) provide, directly or indirectly, any other

forms of assistance to your company (including cross-owned companies)? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in *Standard Questions Appendix* and other relevant appendices as appropriate.²⁹²

To this question, the Guolian companies responded that an answer to this question was not warranted because the question was inconsistent with Article 11.2 of the SCM agreement.²⁹³ The GOC similarly refused to respond to this line of questioning.²⁹⁴

After reviewing the questionnaire responses, the Department issued a supplemental questionnaire in which it requested information concerning a line item in Guolian's 2011, financial statement.²⁹⁵ In response to the Department's questions, the Guolian Companies submitted information concerning the receipt of an additional 43 grant programs.²⁹⁶ We issued a supplemental questionnaire to the GOC in which the Department instructed the GOC to provide information concerning each of the additional grant programs listed in the Guolian Companies' supplemental questionnaire response.²⁹⁷ However, the GOC failed to provide the requested information.²⁹⁸

In our verification outline the Department instructed the Guolian Companies to provide a reconciliation of all of the grants provided in their supplemental questionnaire response.²⁹⁹ On the first day of verification we asked if Guolian had any minor corrections to present to their response before commencing verification. Guolian presented five corrections but none referenced the three grants in question referenced above.³⁰⁰ Nevertheless, on the third day of verification, before commencing their presentation on the requested grants reconciliation Guolian:

company officials stated that there are two accounts in which non-operational income, or grants, are booked; non-operational and special payables. In 2010 and 2011 grants were booked in both accounts which showed both the grant and the allocated amounts of different grants over time.³⁰¹

The Department noted that:

Guolian reported that two 2006 grants were not included in its supplemental questionnaire response to the DOC because both had not been included in either non-operational income or special payables when Guolian was preparing its supplemental response; (1) The 2006 Fund for Agricultural Industrialization Project by the Ministry of Agriculture and (2) was the

²⁹² See Initial QNR, at 68.

²⁹³ See Guolian Initial QNR Response, at 48.

²⁹⁴ See GOC Initial QNR Response, at 82.

²⁹⁵ See Department's April 11, 2013, supplemental questionnaire, at 6.

²⁹⁶ See Guolian 1st Supp QNR Response Part 2, at 7 – 8 and at Exhibits S1-4a – S1-4d.

²⁹⁷ See Department's May 9, 2013, supplemental questionnaire to the GOC (Third Supp QNR), at 3.

²⁹⁸ See GOC's May 22, 2013, supplemental questionnaire response (GOC 3rd Supp QNR Response), at 4.

²⁹⁹ See Guolian Companies' Verification Outline, at 12.

³⁰⁰ See Guolian Companies Verification Report, at 1-2.

³⁰¹ See *id.*, at 17.

Granting of Bidding for Shrimp Cake Project. Guolian also failed to report a 2007 grant for the same reasons as above, the Notice of Science and Technology Fund. *See* Guolian’s April 25, 2013, supplemental questionnaire at 7 through 9 and Exhibit S1-4b of the April 25, 2013, supplemental response. We noted the omission of the three grants in question; however, we did not collect the corresponding grant amounts.³⁰²

Despite the Department’s questions concerning “Other Subsidy Programs” in the Initial QNR, the GOC and the Guolian Companies did not report the existence of these three grants in their initial and supplemental questionnaires. Instead of providing responses to the Department’s questions, respondents challenged the relevancy of the Department’s inquiry.³⁰³ Consistent with *Solar Cells from the PRC*, we find these responses reflect an unwillingness to respond to the Department’s Initial QNR.³⁰⁴

Furthermore, the Guolian Companies failed to report the three additional grants during the “Minor Corrections” phase of verification despite the Department’s instructions in the verification outline to reconcile the grants contained in the Guolian 1st Supp QNR Part 2, which was issued seven days prior to the commencement of verification. It is important to note that the Guolian Companies made no attempt to provide the information requested by the deadline for submission of the information. They also gave no indication that they needed more time to provide the information requested, despite having done so in responding to questions on other topics.

As explained above, we find the Guolian Companies failed to provide information regarding the three grant programs at issue by the deadlines established by the Department and, thus, section 776(a)(2)(B) of the Act applies. We further find that by not divulging the receipt of these three additional grants prior to the commencement of verification or during the “Minor Corrections” phase of verification, the Guolian Companies failed to cooperate by not acting to the best of their ability and precluded the Department from adequately examining these grants. Thus, pursuant to section 776(b) of the Act, we are determining as AFA that the three grants in question are countervailable.

We disagree with the arguments of the GOC and the Guolian Companies that they did not have to respond to the “Other Subsidy Program” questions in the Initial QNR and that we should never have investigated the three grants at issue in the first place. Consistent with *Solar Cells from the PRC*, we find the refusal of the GOC and the Guolian Companies to respond to the “Other Subsidy Program” questions reflects an unwillingness to respond to the Department’s Initial QNR.³⁰⁵ Further, section 775 of the Act and 19 CFR 351.311(b) direct the Department to examine apparent subsidy practices discovered during the course of a proceeding and not alleged in the petition (if the Department “concludes that sufficient time remains”). The information contained in the Guolian Companies supplemental questionnaire response contains numerous references to “Grants” and “Rewards.”³⁰⁶ As noted, the financial statements and 20-Fs of the

³⁰² *See id.*, at 17.

³⁰³ *See* Guolian Initial QNR, at 48.

³⁰⁴ *See Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 23.

³⁰⁵ *See id.*

³⁰⁶ *See* Guolian 1st Supp QNR Response Part 2, at 7 – 8 and at Exhibits S1-4a – S1-4d.

company respondents made numerous references to the receipt of various “subsidies” and “government grants;” many of these items were booked into accounts used for recording subsidies under the PRC GAAP. Thus, the documents of the Guolian Companies indicated practices that appeared to provide countervailable subsidies, and, thus, the Department properly examined these programs under section 775 of the Act and 19 CFR 351.311(b).³⁰⁷ On this point, we note the grants contained Guolian’s financial statements are distinct from the LTAR allegations contained in Petitioner’s second round of new subsidy allegations in that they are relatively “straightforward.”³⁰⁸

We acknowledge that the Department’s practice regarding grant programs discovered at verification has varied in past cases. However, we find that the facts of this particular case merit the application of AFA. For example, in *Washers from Korea*, the respondent reported a previously unreported grant at verification. However, in doing so, the respondent demonstrated that the grant in question was not tied to subject merchandise, and thus was not relevant to the investigation at hand. Thus, the Department concluded that the grant in question was not tied to subject merchandise and was not countervailable.³⁰⁹ In the instant investigation, the Guolian Companies provided no demonstration that the apparent subsidies did not benefit the subject merchandise that would justify their failure to report.

Further, we agree that 19 CFR 351.311(d) provides that the Department will notify the parties to the proceeding of any subsidy discovered during an ongoing proceeding, and whether or not it will be included in the ongoing proceeding. The parties were notified of the discovery of these grants and their inclusion in this proceeding when the Department released the Guolian Companies Verification Report. Such notice is evident in the fact that interested parties extensively commented on the issues surrounding these subsidies prior to this final determination.

Comment 15: Treatment of Additional Grants Received by the Guolian Companies Not Addressed by the Department in the *Preliminary Determination*

Case Brief of Petitioner

- At a late stage in this investigation Guolian Companies reported Guolian received an additional 43 grant programs in a supplemental questionnaire response that were not reported by Guolian or the GOC in prior submissions.³¹⁰
- At verification, during the reconciliation process for these programs, the Department examined information concerning several of the 43 grant programs. The information examined at verification indicates that Guolian received three grants in connection with the Famous Brands Program and two grants in connection with the White Shrimp Grant Program.

³⁰⁷ The Department has addressed these same arguments with nearly identical fact patterns in prior CVD proceedings involving the PRC. See, e.g., *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at 45-46, *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at Comment 30; and *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 23.

³⁰⁸ See Comment 11, above.

³⁰⁹ See *Washers from Korea*, and accompanying Issues and Decision Memorandum at Comment 18.

³¹⁰ See Guolian 1st Supp QNR Response Part 2, at 7 and Exhibit S1-4b.

- The Department should find all the grants reported in the Guolian 1st Supp QNR Response Part 2 countervailable.

Rebuttal Brief of the GOC

- For the reasons specified in Comment 21, there is no basis to find the White Shrimp Grant Program countervailable.
- Concerning the additional grants purportedly received under the Famous Brands Program, the grants in question were received under a separate and independent program administered by the Government of Guangdong Province. Petitioner did not submit any allegations regarding this program and, thus, pursuant to Articles 11.2 and 11.9 of the SCM, the GOC and the Guolian Companies were under no obligation to report the receipt of grants under this provincially-administered program.

Department’s Position: The Department was able to reconcile all of the 43 grants in question at verification as stated in the verification report.

Using the reconciliation worksheet and reviewing the non-operational and special payables accounts, we were able to reconcile the amounts and year of receipt of the 43 grants reported.³¹¹

Thus, the Department will include the benefit amounts the Guolian Companies reported regarding these programs in the final calculations.³¹²

We address the GOC’s argument that there is no basis to find the White Shrimp Grant Program countervailable in Comment 21, below. With respect to the Famous Brands Program, we note that Petitioner alleged and the Department initiated an investigation of the Famous Brand program as administered at the central, provincial, and municipal government level.³¹³

Comment 16: Whether to Apply AFA With Regard to the Export Buyer’s Credits from the China Ex-Im Bank Program

Case Brief of Petitioner

- During verification the GOC stated that the Ex-Im Bank keeps complete records of all loans issued to buyers under the programs. The Department asked the GOC official to confirm its statement by reviewing the relevant database. The GOC official refused stating that the database contained confidential information.
- The GOC’s refusal to allow the Department to query the databases and records of the database deprived the Department the “most probative” information to verify the non-use claims of the GOC and the Guolian Companies.

³¹¹ See Guolian Companies Verification Report, at 12.

³¹² See Guolian 1st Supp QNR Response Part 2, at Exhibit S1-4b.

³¹³ See “Countervailing Duty Initiation Checklist: Certain Frozen Warmwater Shrimp from the People’s Republic of China” (January 17, 2013).

- Because the GOC refused to cooperate with the Department and did not allow it to verify the information contained in the bank's database, the Department should AFA with respect to the Export Buyer's Credits Program.
- In accordance with its practice in *Wind Towers from the PRC*, the Department should follow its CVD AFA hierarchy and assign an AFA rate of 10.54 percent for this program.³¹⁴

Rebuttal Brief of the Guolian Companies

- The record of this case demonstrates that regardless of the GOC's actions in this case, the customers of the Guolian Companies did not use this program.
- Unlike in *Solar Cells from the PRC*, the Department has the *Implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China (Export Buyer's Implementing Rules)*, the program's regulations, on the record.³¹⁵ These regulations indicate that Chinese companies are required to perform certain actions and retain certain documentation when they use the program.³¹⁶ The Department found no evidence that the Guolian Companies submitted or had in its possession any such documentation. For example, the *Implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China* require that participating companies in the PRC purchase an export credit insurance policy from the China Export Credit Insurance Program. The Guolian Companies reported that they did not obtain any such insurance policy for any of its U.S. sales and there is nothing on the record of the investigation that contradicts this statement.³¹⁷
- Further, for the buyers of Chinese goods to qualify for loans under the program, the sale amount for a given contract must be a minimum of USD two million.³¹⁸ Guolian submitted copies of its entire sales contract with U.S. customers during the POI which reconciled to Guolian's exports of subject merchandise sold during the POI. This information demonstrates that no single contract issued by Guolian Companies in connection with subject merchandise to the United States during the POI exceed the USD two million threshold.³¹⁹
- The Guolian Companies submitted certifications signed by its U.S. consumers attesting to the fact that they did not participate in the export buyer's credit program during the POI.³²⁰
- If the Department does apply AFA to the GOC or finds that the GOC's information regarding this program deficient in any way, these adverse inferences or deficiencies cannot be imputed to the Guolian Companies or its customers with respect to this program.

³¹⁴ See *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at 14 and Comment 7.

³¹⁵ See Guolian Initial QNR Response at CVD-12, which contains the *Export Buyer's Implementing Rules*.

³¹⁶ See *id.*

³¹⁷ See *id.*

³¹⁸ See *id.*

³¹⁹ See Guolian Companies Verification Report, at 18.

³²⁰ See Guolian Initial QNR Response, at CVD-13.

- The court recently explained that the Department may not apply AFA to a cooperating respondent by virtue of the government’s actions “if relevant information exists elsewhere on the record: that permits the Department to make its determination.”³²¹
- If the Department applies AFA, it should not use the 10.54 percent AFA rate applied to this program in *Solar Cells from the PRC*. The AFA from *Solar Cells from the PRC*, in turn, corresponds to the rate calculated in the *Amended Final Determination of Coated Graphic Paper from the PRC* for an uncreditworthy company in connection with a preferential policy program.
- None of the Guolian Companies have been found uncreditworthy and, thus, the rate from the *Amended Final Determination of Coated Graphic Paper from the PRC* cannot serve as the basis for AFA.
- If the Department applies AFA, it should use the policy lending rates calculated in the instant investigation as the source for the AFA rate.

Rebuttal Briefs of the GOC

- The Department verified that none of Guolian’s customers could have qualified for the export buyer’s program because the loans were available only for contracts valued above US \$2 million and none of Guolian’s U.S. customers had contracts valued above this mandatory limit.³²²
- The Department also verified with the GOC the relevant portions of the *Administrative Measures of Export Buyer’s Credit of the EXIM Bank* and the *Implementing Rules for the Export Buyer’s Credit of the Export-Import Bank of China* to confirm the information in the GOC’s initial and supplemental questionnaire responses.³²³
- An official with the China Ex-Im Bank testified that no loans had been issued to Guolian’s U.S. customers.³²⁴
- Guolian has placed on the record signed certifications from each of its U.S. customers confirming that none of them had used the Export Buyer’s Credit program during the POI.³²⁵
- The seller is involved in the process and would have a record of information regarding use of the program. Neither the GOC nor Guolian had any information in their records which would suggest that any of Guolian’s customers used the program during the POI.

Department’s Position: The Guolian Companies have claimed that they did not use this program during the POI and refer to various factors that purportedly support their claim, including a statement that their customers did not use the program as evidenced by the lack of requisite paperwork and records the Ex-Im Bank requires Chinese companies to maintain under the program, the absence of any single contract outstanding during the POI that exceeded USD two million, the absence of export insurance on any sales of subject merchandise to the United States during the POI that would be required for contracts made under the program, and

³²¹ See *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331 (CIT 2013) (May 28, 2013) (*Archer Daniels*).

³²² See Guolian Companies Verification Report, at 18.

³²³ See GOC Initial QNR Response, at 21; see also 1st Supp QNR Response Part 2, at 4.

³²⁴ See GOC Verification Report, at 8.

³²⁵ See Guolian Initial QNR Response, at 22-23 and Exhibit CVD-13.

certifications of non-use by the Guolian Companies' U.S. customers. At the government verification, officials from the China Ex-Im Bank also stated that the Guolian Companies did not use the program during the POI.³²⁶ A GOC official from the Ex-Im Bank stated that the bank maintains records of all loans to buyers and that he had searched those records and found no entry for any of the customers' names given to him by the Guolian Companies.³²⁷ The verifiers attempted to confirm the GOC official's statements by examining the bank's files and searching for the relevant customer names; however the official refused the request asserting that such information was confidential.³²⁸

As explained in prior CVD proceedings, because it is the Ex-Im Bank that provides loans to the customers of Chinese producers under this program, we find that the Ex-Im Bank of the GOC is the primary entity that possesses the supporting records that the Department needs to verify the accuracy of the claimed non-use of the export buyer's credit program.³²⁹ This fact was confirmed at verification when the GOC official from the Ex-Im Bank stated that the bank maintains records of all lending provided under the program.³³⁰ It is for this reason that the verifiers sought to review the information maintained by the Ex-Im Bank.

Thus, notwithstanding the non-use claims of the Guolian Companies and the GOC and despite the information provided by the Guolian Companies purportedly demonstrating non-use, we find that the GOC's refusal to allow the verifiers to examine the Ex-Im database containing the list of foreign buyers that were provided assistance under the program during the POI precluded the Department from verifying the non-use claims made by the Guolian Companies and the GOC. As a result, necessary information is missing from the record. Also, we find that the GOC failed to provide the requested information at verification and also significantly impeded this proceeding in the manner described under 776(a)(1), (2)(A) and (C) of the Act. We further find that by not providing the requested information, the GOC failed to cooperate by not acting to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have applied our CVD AFA methodology and assigned a net subsidy rate of 10.54 percent *ad valorem* to the Guolian Companies under this program. Because we lack information regarding the specifics of the companies that benefit from the program, it would be inappropriate to make speculative adjustments to the AFA hierarchy on the basis of alleged company-specific factors. In other words, assuming for arguments sake that such an adjustment for creditworthiness makes sense, the agency lacks the necessary information on the record regarding the companies that received this credit including, for example, the GOC's analysis of these companies' creditworthiness, to make any adjustment to the rate.

³²⁶ See GOC Verification Report, at 7-8.

³²⁷ See *id.*

³²⁸ See *id.*

³²⁹ See, e.g., *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 7.

³³⁰ See GOC Verification Report, at 8.

Comment 17: Whether the Export Seller's Credits from the China Ex-Im Bank Program is Countervailable

Case Brief of Petitioner

- During verification of the GOC, the China ExIm official stated that the bank maintains complete computer records of every loan they make and had searched these records to confirm that none of the Guolian Companies received this loan.
- When asked by the Department if they could confirm this information the official replied that they were private and would not allow the Department access to them.³³¹
- Because the GOC refused to cooperate with the Department and did not allow it to verify the non-use of this program by querying China ExIm's database, the Department should apply adverse facts available for the same reasons as the Export Buyer's credits.
- The Department should follow this practice and apply an AFA rate of 10.54 percent, as calculated in the *Amended Final Determination of Coated Graphic Paper from the PRC*.

Rebuttal Brief of the GOC

- The record demonstrates that the Guolian Companies did not use the Export Buyer's Credit Program during the POI.
- The unwillingness of an official from the China Ex-Im Bank to divulge confidential customer banking information that would violate privacy laws is no basis for the Department to conclude that a gap exists in the record.
- If the Department does resort to AFA any application should not violate applicable law and counter the tenet that the antidumping duty laws are remedial and not punitive.
- The record of the instant investigation is different from that of *Wind Towers from the PRC*, in which the Department applied AFA with regard to this program.
- If the Department decides to apply AFA, the AFA rate asserted by Petitioner is punitive because the aggregate amount would be more than twice the total subsidy rate for all programs preliminarily determined by the Department in this proceeding would not be remedial but punitive.
- The GOC submits the only relevant benchmark for an AFA rate is the one from the most recent previous proceeding which involved an Export Seller's Credit program of 0.74 percent *ad valorem*, as calculated in the *Citric Acid from the PRC 2010 Review*.³³²

Rebuttal Brief of the Guolian Companies

- The seller's credit program refers to loans provided directly to the respondent itself by the Ex-Im Bank, not the respondent's customers.
- The government-side of the Department's investigation of this program should be limited to specificity and the administration of the program while the company-side of the

³³¹ See *id.*

³³² See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Administrative Review*, 77 FR 72323 (December 5, 2012) (*Citric Acid from the PRC 2010 Review*), and accompanying Issues and Decision Memorandum at 15.

program should be focused on usage while on the government side of the Department's investigation should be limited to specificity.

- To the extent that the GOC failed to act to the best of its ability with regard to this program, the Department should limit any adverse finding to the provision of a “financial contribution to a specific industry.”
- Guolian fully cooperated with regard to this program and reported all financing that was outstanding during the POI in response to the policy lending allegation.
- At verification the Department reconciled both the financing Guolian received and the interest Guolian paid to Guolian's financial statement confirming that Guolian did not receive any financing from any source that was not reported.³³³

Department's Position: The Department preliminarily determined that the Guolian Companies did not use this program during the POI.³³⁴ During the Department's verification of the Guolian Companies, specifically during our reconciliation of all the loans that the Guolian Companies received during the POI we noted no evidence of the use of this program.

As part of a non-use check we examined whether any of the Guolian Companies had used this program during the POI. During our loan reconciliations of Guolian, Guolian Feed and Guotong we could find no evidence that any of the Guolian Companies used this program during the POI.³³⁵

Because an Ex-Im Bank loan under this program would be issued directly to the respondent under this program, we find that we can determine non-use by examining the Guolian Companies' loan information. As noted above, we find no evidence in the financial records of the Guolian Companies that they used this program during the POI.

Comment 18: Whether the GOC Provided Preferential Lending to the Aquaculture Industry

Case Brief of the GOC

- Chinese commercial banks are not “government authorities” that provide a financial contribution.
- The Department failed to show how the shrimp industry was singled out for preferential treatment.
- The Department's conclusion that the shrimp industry is a preferred industry is at odds with the USDA's findings on the Chinese shrimp industry, which indicate that investment in facility expansion in the PRC is slowing.³³⁶
- The GOC calls for market principles to guide investment decisions. Commercial banks in China must base their lending decisions on market principles, such as the creditworthiness of the recipient, competitiveness, past operating performance, profits and prospects for future development. Similarly, interest rates are determined according to commercial considerations.

³³³ See Guolian Companies Verification Report, at 14 – 17.

³³⁴ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 30.

³³⁵ See Guolian Companies Verification Report, at 18.

³³⁶ See GOC Factual Submission, at 26.

- The record fails to show that the shrimp industry has been encouraged through preferential lending and the Department should reverse its finding that there is a GOC policy to provide preferential lending to the shrimp industry.
- The Department’s reference to *CFS Paper from China* fails to satisfy U.S. obligations under the WTO SCM agreement because of the six year gap between the period of investigation in *CFS Paper from China* and the investigation period here which was in the calendar year of 2011 and the GOC reiterates that its banks operate on commercial principles.

Rebuttal Brief of Petitioner

- The USDA report cited by the GOC fails to support its contentions. The mere fact that expansion is slowing does not mean the GOC is not providing an industry with preferential lending.
- The GOC ignores its own statements in the *General Principles of Loans* that its goal is of “promoting the sustainable development of the economy.”³³⁷
- The Fisheries and aquaculture sector is a sub-sector within the broad category of agriculture such that the subsidies provided to the industry are specific within the meaning of section 771(5A) of the Act.
- In this investigation, the Department has identified several industry-specific plans and directives that designate the aquaculture industry for preferable treatment and financing and has properly concluded that the GOC has a policy to “encourage the development of the production of frozen shrimp through policy lending.”
- Under such direction, the Chinese banks have become an instrument of the GOC and benefits flowing from preferential loans from such banks are countervailable.

Department’s Position: The Department continues to find that loans received by producers of frozen shrimp from state-owned or controlled banks and policy banks were made pursuant to government directives.

The Department explained in *CFS from the PRC* why SOCBs are “authorities” within the meaning of section 771(5)(B) of the Act. In *CFS from the PRC*, we stated that contrary to the GOC’s arguments, our findings were not, and are not, based upon government ownership alone. For example, we stated:

... information on the record indicates that the PRC’s banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.³³⁸

³³⁷ See GOC Initial QNR Response, at Exhibit O-I.A.6.

³³⁸ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8.

In order to revisit the determination in *CFS from the PRC*, there must be evidence warranting reconsideration. However, there is no such evidence on the record of this investigation. While the GOC has made similar claims in other recent investigations, it has never provided any evidence suggesting that even the most basic facts of the *CFS from the PRC* analysis have changed. For example, in *OCTG from the PRC*, we noted:

{T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the CFS from the PRC investigation}.³³⁹

Similarly, the GOC never provided a factual basis for reconsidering the *CFS from the PRC* decision in this instant investigation.

The Department provided numerous citations to industrial plans that indicate that the aquatics industry is an “encouraged” industry for which “financial institutions shall provide credit support.”³⁴⁰ For example, the 11th and 12th Five Year Development Plans for the National Fishery discuss financial support that is to be provided to aquaculture producers. Further, concerning the 12th Five Year Fishery Plan, under the heading “Improving Industrial Supporting Policies,” it states:

The state will increase the financial support to the construction of modern fishery; try to ensure that financial investment growth in fishery is not less than that of agriculture; motivate all social parts to provide investment to fishery and enhance the support to offer microfinance to fishery; explore the mortgage, pledge and circulation of certificate of culture rights and fishing rights; increase the support to offer credit to fishing operator and promote the formation of pluralistic, multi-channel investment and financing pattern for fishery; broaden categories of fishery machinery products which are eligible for subsidies and intensify such subsidies; promote the inclusion of fishery insurance in the scope of national agricultural policy insurance; establish a stable security system against fishery risk as quickly as possible; promote fishery to enjoy comprehensive agricultural preferential policies, inter alia, in terms of taxation, water, electricity and land, etc.; to include fisheries infrastructure construction is included in the overall planning of agricultural and rural development as well as quality and efficient agricultural production bases land improvement, irrigation and water conservancy facilities renovation project. Actively promote the fishermen using boat for home to make ashore settle and help to make allowance to the fishermen for their difficulties during the fishing moratorium and

³³⁹ See *OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 20.

³⁴⁰ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 17-19; see also GOC Initial QNR Response, at Exhibit O-I.A.2.b; see also GOC Supp QNR Response Part 2, at Exhibit S1-B-9.

fishing ban period, and to promote the development of social undertakings in the field of fisheries.³⁴¹

Based on the above as well as the discussion in the *Preliminary Determination*, we find the GOC has not provided any information that warrants reconsideration of our finding that the GOC provides preferential lending to the aquaculture industry. Thus, we continue to find that this program is specific under 771(5A)(D)(i) of the Act, constitutes a financial contribution under section 771(5)(D)(i) of the Act, and confers a benefit under section 771(5)(E)(ii) of the Act to the extent that the interest the Guolian Companies paid on loans received under the program during the POI are less than what would have been paid on a comparable commercial loan.

We disagree that information from USDA reports, as referenced by the GOC, demonstrates that there is no preferential lending. As Petitioner notes, the mere fact that expansion is slowing does not mean the GOC is not providing an industry with preferential lending.

Comment 19: Whether the Benchmark Used to Measure Benefits under the Preferential Lending to the Aquaculture Industry Program is Flawed

Case Brief of the GOC

- The multi-country short-term interest rate benchmark computations in the *Preliminary Determination* rely on a regression analysis based on World Bank governance indicators and lending rates as published by the IMF for dozens of upper and lower middle income countries, are flawed.
- In some cases the rates do not even reflect business loans and excluded negative inflation-adjusted rates from its calculations and used an invalid regression analysis to determine a short-term interest rate for China based on a composite governance indicator factor.
- Additionally the Department calculated an adjustment spread or factor between short-and long-term rates using United States dollar “BB” bond rates.
- In the final determination the Department should abandon its attempt to construct a third-country basket benchmark interest rate for China and use instead the actual interest rates on comparable bank loans in China as it regulations require.

Rebuttal Brief of Petitioner

- The Department has no choice but to look outside of China for a benchmark rate because the banking sector does not reflect rates that would be found in a functioning market.
- Thus, the Department should continue to employ the interest benchmarks from the *Preliminary Determination*.

Department’s Position: Concerning the GOC’s first argument, the Department has addressed this point in prior CVD proceedings involving the PRC and rejected it.³⁴² With respect to the

³⁴¹ See GOC Initial QNR Response, at Exhibit O-I.A.3.b, Item VII.2; see also *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 18 – 19.

³⁴² See, e.g., *OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 23.

suitability of using a regression-based methodology that relies on World Bank governance indicators and lending rates to calculate a short-term benchmark interest rate, we disagree that the Department’s methodology was arbitrary. We disagree with the GOC’s argument that the assumptions underlying the benchmark calculation are flawed. The benchmark interest rate is based on several variables, the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC as well as variables that take into account the quality of a country’s institutions (as reflected by World Bank governance indicators). We note that the World Bank governance indicators are factors that are not directly tied to state-imposed distortions in the banking sector. Thus, we have continued to rely on the calculated regression-based benchmark first developed in *CFS from the PRC* and used in recent CVD investigations involving the PRC, such as *OCTG from the PRC*.

Regarding the GOC’s objection to the Department excluding inflation adjusted, negative interest rates from the short-term benchmark, as previously explained, the Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially.³⁴³ Therefore, we have continued to exclude negative real interest rates in calculating our regression-based benchmark rates.

We disagree that the Department should use an “in-country” benchmark to measure the benefit on loan programs. For the reasons set forth in *CFS from the PRC*, the Department continues to find that loan benchmarks must be market-based and that Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC’s intervention in the banking sector.³⁴⁴ We find the GOC has not provided any evidence to indicate that the Department’s findings in *CFS from the PRC* no longer apply.

We disagree with the GOC’s objection to the Department’s derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar “BB” bond rates. The Department has fully addressed the arguments raised by the GOC regarding the use of the U.S. corporate BB bond rate to derive a long-term external benchmark in prior cases.³⁴⁵ The Department explained that 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of AAA to BAA and CAA to C- in deriving a probability of default in the stated formula. However, there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC’s underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy by the Department. As we have received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we are choosing the highest non-investment rate.³⁴⁶

³⁴³ See, e.g., *id.*, at Comment 25.

³⁴⁴ See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

³⁴⁵ See, e.g., *OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 27, *see also Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at Comment 30.

³⁴⁶ See *OCTG from the PRC*, and accompanying Issues Decision Memorandum at Comment 27.

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed.³⁴⁷ In this instant case, we have also not received any suggested alternatives. As no new arguments have been presented, we will continue to use the BB corporate bond rate for the final determination in any long-term loan calculations or discount rate calculations.

Comment 20: Whether Tax Benefits under Article 28 of the *EITL* for High or New Technology Enterprises is Not Countervailable Because It is Not Specific

Case Brief of the GOC

- The scope of the high and new technology fields encouraged by the GOC under this covers eight general categories, and 39 sub-area categories, and more than 200 specific fields. It is far-ranging and diversified rather than limited to selected industries or sectors.
- The high –and new technology areas are primarily supported by the GOC for the purposes of achieving energy efficiency, consumption reduction and sustainable development and are not limited to any particular industry or sector.
- The actual number of recipients are not limited and, thus, the Department cannot find this program specific under section 771(5A) of the Act.

Rebuttal Brief of Petitioner

- Article 93 of the *Regulations for the Implementation of China Enterprise Income Tax* states that “high technology enterprises that are specifically supported by the State,” as prescribed in Paragraph (2) of Article 28 of the *EITL*, refer to enterprises that “own the core proprietary intellectual property rights and fulfills all of the following conditions and list five conditions: (1) its products (services) fall under the prescribed scope of the high technology sectors specifically supported by the State; (2) its research and development expenses shall not be less than the prescribed percentage; (3) its income from its high technology products (services) shall account for not less than the prescribed percentage of its total income; (4) its number of technicians shall account for not less than the prescribed percentage of its total number of employees; and (5) other conditions prescribed in the administrative measures for the assessment of the high technology enterprises.
- Article 10 of the Administrative Measures elaborates on the five conditions set out in Article 93 of the Regulations setting down specific various percentages that the high technology enterprise have to meet and adds a few more conditions as well.
- When the two regulations are combined it is apparent that while many enterprises in many industries and sectors may potentially qualify under this program, they must meet a list of stringent conditions and get certified as “high technology enterprises that are specifically supported by the State before they can enjoy the income tax reduction. Thus,

³⁴⁷ See *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at Comment 13.

this program is *de jure* specific under section 771(5A) of the Act because it is limited by law to a group of enterprise or industries.

- The program is *de facto* under 19 U.S.C. 1677(5A)(D)(iii)(I) because the actual recipients of the subsidy are limited in numbers they must meet these stringent conditions and be certified as high technology enterprises by government authorities.

Department’s Position: The Department found this program specific and countervailable in the *Preliminary Determination*.³⁴⁸ We find that interested parties have not submitted any new information or arguments that warrant reconsideration of preliminary finding.

In the *Preliminary Determination* the Department stated:

. . . We further preliminary determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, firms whose products are designated as being in “high-tech fields with state support,” and, hence, is specific under section 771(5A)(D)(i) of the Act.³⁴⁹

Specifically, under Article 28.2 of the *EITL* (Decree No. 63), the income tax a firm pays is reduced to 15 percent if an enterprise is recognized as a High and New Technology Enterprise (HNTE).³⁵⁰ The *Administrative Measures for Certification of New and High Technology Enterprises (New and High-Technology Administrative Measures)*, in turn, specify the new and high technology products that are eligible to receive the tax benefit provided under Article 28.2 of the *EITL*.³⁵¹ In particular, Article 10, Item 2 of the *New and High-Technology Administrative Measures* indicate that only firms whose products are designated as being in “hi-tech fields with state support” are eligible to receive the tax benefit.³⁵² Thus, we continue to find that the eligibility criteria of this program results in a limited number of recipients and, thus, confers income tax benefits that are specific under section 771(5A)(D)(i) of the Act.

Comment 21: Whether the Grants under the GOC White Shrimp Processing Project are Specific

Case Brief of the GOC

- The Department was able to verify this program and was not hindered by the GOC’s inability to provide the benefit distribution information requested by the Department in questionnaire responses issued prior to verification.
- The information on the record establishes that the grants issued under the National Agriculture Comprehensive Development Fund (NACDF) were established to protect and support agricultural Comprehensive Development Fund, and the overall agricultural production capacity for the sector as a whole. Thus, the grants are not specific under section 771(5A) of the Act.

³⁴⁸ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 25.

³⁴⁹ See GOC NSA QNR Response, at Exhibit N-B.1.a.

³⁵⁰ See *id.*, at 2.

³⁵¹ See *id.*, at Exhibit N-B.1.a.

³⁵² See *id.*

- Further, the Department may not find that the program is *de jure* specific under section 771(5A) of the Act merely because grants are provided to the agricultural sector.³⁵³
- Additionally the record establishes that the NACDF is not otherwise specific under section 771(5A) of the Act because it is domestic program that provides neither export subsidies nor import substitution subsidies 771(5A)(B) and (C) of the Act.

Rebuttal Brief of Petitioner

- The GOC failed to explain why it could provide specific information about benefits given to Guolian but could not provide aggregated benefit data that would allow it to determine whether that program was *de facto* specific.
- The GOC fails to draw a distinction between *de facto* and *de jure* specificity as described under section 771(5A) of the Act. The record does not demonstrate what sectors actually benefitted under the National Agriculture Comprehensive Development Fund.
- Thus, as AFA, the Department should continue to find this program is specific under section 771(5A)(D)(iii) of the Act.

Department’s Position: The Department continues to find this program countervailable as it constitutes a financial contribution, in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Concerning specificity, as noted in the *Preliminary Determination*:

...the GOC has failed to adequately explain why it is unable to provide aggregated benefit disbursement data for grant recipients under the program, data that are in the GOC’s possession, as evidenced by the fact that the GOC “maintained the relevant application and approval documents” of the Guolian Companies and was able to determine the amount of grants provided to the Guolian Companies over the course of several years.³⁵⁴ As a result, we preliminarily determine that the GOC has failed to act to the best of its ability and, therefore, pursuant to section 776(b) of the Act we are assuming as adverse facts available (AFA) that the grants provided to Guolian Companies are *de facto* specific under section 771(5A)(D)(iii) of the Act.³⁵⁵

The Department continues to lack the aggregated benefit distribution data that would allow the Department to determine whether the program was *de facto* specific. Thus, for the reasons set forth in the *Preliminary Determination* and pursuant to section 776(b), of the Act, we have continued to find that Guolian’s receipt of grants under this program is specific under 771(5A)(D)(iii) of the Act.

³⁵³ See 19 CFR 351.502(d).

³⁵⁴ See GOC NSA QNR Response, at 25 and 33.

³⁵⁵ See *Preliminary Determination*, and accompanying Issues and Decision Memorandum at 28.

VIII. Recommendation

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

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

12 AUGUST 2017

Date