MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: Scot Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination of Citric Acid and Certain Citrate Salts from Thailand

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are not being provided to producers and exporters of citric acid and certain citrate salts (citric acid) from Thailand within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act). Additionally, Commerce determines that critical circumstances do not exist with regard to imports of citric acid from Thailand. The period of investigation (POI) is January 1, 2016, through December 31, 2016.

After analyzing the comments submitted by interested parties, we have made changes to the Preliminary Determination.1 We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

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Comment 1: Whether Commerce Should Include Respondents’ Imports of Chinese-Origin Machinery and Equipment Made Pursuant to the Association of Southeast Asian Nations (ASEAN)-China Free Trade Area (FTA) in the Benefit Calculation of the IPA Section 28 Program

Comment 2: Whether Subsidies Received by COFCO Biochemical (Thailand) Co., Ltd.’s (COFCO) Predecessor, World Best Biochemical (Thailand) Co., Ltd., (World Best), Are Countervailable

Comment 3: Whether Commerce Should Find Duty Exemptions on Imports of Raw Materials Under the Section 36 IPA Program to be Countervailable

II. BACKGROUND

The mandatory company respondents in this investigation are COFCO, Niran (Thailand) Co., Ltd. (Niran), and Sunshine Biotech International Co., Ltd. (Sunshine).

On September 20, 2017, the petitioners\(^2\) timely filed a new subsidy allegation (NSA submission),\(^3\) on which we initiated an investigation on October 30, 2017.\(^4\)

On November 3, 2017, we published the *Preliminary Determination* and aligned this final CVD determination with the final determination in the companion antidumping duty (AD) investigation, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).\(^5\)

On November 13, 2017, we issued an NSA questionnaire to the Royal Thai Government (RTG), COFCO, Niran, and Sunshine.\(^6\) Sunshine submitted its NSA questionnaire response on November 20, 2017.\(^7\) The RTG, COFCO, and Niran submitted their NSA questionnaire

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\(^2\) The petitioners are Archer Daniels Midland Company, Cargill Incorporated, and Tate & Lyle Ingredients Americas LLC (collectively, the petitioners).


responses on November 21, 2017.\(^8\)

On November 20, 2017, we issued verification outlines to the RTG and Sunshine.\(^9\) On November 21, 2017, we issued verification outlines to COFCO and Niran.\(^10\) On December 1, 2017, we issued the Preliminary Scope Decision Memorandum.\(^11\) In accordance with section 782(i) of the Act, from November 30, 2017, through December 14, 2017, we conducted verification of the questionnaire responses of COFCO, Niran, Sunshine, and the RTG. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by COFCO, Niran, Sunshine, and RTG. On January 18, 2018, we released the COFCO and Niran Verification Reports.\(^12\) On January 19, 2018, we issued the Sunshine Verification Report.\(^13\) On January 26, 2018, we issued the RTG Verification Report.\(^14\)

On February 23, 2018, we issued a Post-Preliminary Decision Memorandum\(^15\) regarding the NSA submitted by the petitioners.


\(^11\) See Memorandum to James Maeder, Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Preliminary Scope Memorandum,” dated December 1, 2017 (Preliminary Scope Memorandum).


\(^15\) See Memorandum, “Post-Preliminary Results Decision Memorandum Regarding New Subsidy Allegations,” dated February 23, 2018 (Post-Preliminary Decision Memorandum).
On March 2, 2018, the petitioners, COFCO and the RTG submitted timely case briefs.\(^{16}\) On March 8, 2018, the petitioners, COFCO, Niran, Sunshine, and the RTG filed timely rebuttal briefs.\(^{17}\)

Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination in this investigation was set to May 29, 2018.\(^{18}\)

### III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is citric acid from Thailand. Prior to the *Preliminary Determination*, Commerce issued a Preliminary Scope Decision Memorandum\(^{19}\) in which Commerce determined that citric acid that would qualify for non-GMO Project Verified labeling is included in the scope of the investigations. We invited parties to comment on this preliminary finding in their case briefs but no comments were filed on the record of this investigation or the companion investigations of citric acid from Belgium and Colombia. Therefore, our preliminary findings concerning the scope of the investigation remain unchanged in the final determination. For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

### IV. NEW SUBSIDY ALLEGATION

In the NSA Submission, the petitioners alleged that companies granted “promoted company” status by the Thailand Board of Investment (BOI) are exempted, at the time of importation, from the value added tax (VAT) on machinery and materials, while non-BOI-promoted companies must pay VAT upon importation and wait up to three years to receive their reimbursement from the government.\(^{20}\) The petitioners argued that we should initiate an investigation to determine whether the VAT exemptions confer a time-value-of-money benefit to the BOI-promoted

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\(^{18}\) See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum) dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

\(^{19}\) See Memorandum, “Preliminary Scope Memorandum,” dated December 1, 2017 (Preliminary Scope Memorandum).

\(^{20}\) See NSA Submission at 3.
companies by relieving them of the burden of otherwise having to wait years to recoup VAT payments on those inputs or equipment, if such VAT payments are recouped at all.\textsuperscript{21}

Based on the information in the NSA Submission, we initiated an investigation of the petitioners’ allegation.\textsuperscript{22} On February 23, 2018, we issued a Post-Preliminary Decision Memorandum in which it determined that the VAT exemptions under Section 28 and Section 36 of the RTG’s Investment Promotion Act (IPA) do not confer a time-value-of-money benefit to BOI-promoted firms.

V. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.\textsuperscript{23} We find the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.\textsuperscript{24} We notified the respondents of the AUL in the Initial Questionnaire\textsuperscript{25} and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

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

\textsuperscript{21} Id.

\textsuperscript{22} See Memorandum to Erin Begnal, Director, Office III, AD/CVD Operations, “New Subsidy Allegation Memorandum,” dated October 30, 2017 (NSA Memorandum).

\textsuperscript{23} See 19 CFR 351.524(b).

\textsuperscript{24} See IRS Publication 946 (dated February 27, 2017) at asset class 37.2, which was placed on the record in a memorandum to the file dated concurrently with this decision memorandum.

\textsuperscript{25} See Countervailing Duty Questionnaire, dated July 21, 2017 (Initial Questionnaire). The initial questionnaire was reissued July 26, 2017, and corrected by Memorandum to File dated July 31, 2017.
producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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 Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.26

1. COFCO

Information from COFCO indicates that it is a foreign-owned enterprise involved in the production of citric acid in Thailand. During the POI, all COFCO-produced subject merchandise exported from Thailand to the United States was exported by COFCO. COFCO reported that it did not have any affiliates that produced subject merchandise or supplied inputs used in the production of citric acid during the POI.27 The predecessor of COFCO was World Best, which was established by Huayuan Group in Thailand on August 15, 2001, then subsequently acquired by China Resources Group in April 2007.28 In April 2012, World Best was acquired and renamed to COFCO by the foreign entities that own COFCO.29 At our request, COFCO reported non-recurring subsidies it received as well as non-recurring subsidies received by World Best during the years covered by the AUL.

Pursuant to 19 CFR 351.525(b)(6)(i), for purposes of our benefit calculation we attributed subsidies received by COFCO or its predecessor, World Best, to the sales of COFCO or World Best, as applicable. Interested parties commented on the issue of whether to attribute subsidies received by World Best to COFCO. See Comment 2 below.

2. Niran

Niran reported that it is a foreign-owned company,30 and that it is the sole entity involved in its production and sale of subject merchandise in Thailand. The company reported that it does not have any affiliates that produced subject merchandise during the POI.31 Niran reported that during the POI it exported subject merchandise to the United States through an affiliated U.S. importer, Zhong Ya Chemical USA Ltd. (Zhong Ya).32 Niran reported that it has an affiliate that

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28 Id. at 2.
29 Id.
31 Id. at 2.
32 Id.
supplied it with material inputs used in the production of citric acid; however, the company is a foreign entity located outside of Thailand. Accordingly, Niran responded to the Initial Questionnaire only with regard to itself.

Consistent with 19 CFR 351.527, we have not included the affiliated foreign input supplier that is located outside of Thailand, as referenced above, in our subsidy analysis. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Niran to the sales of Niran.

3. Sunshine

Sunshine reported that it is a foreign-owned company that produces and exports subject merchandise in Thailand. According to Sunshine, a cross-owned affiliate, Bengbu Sunshine Investment Co. Ltd. (Bengbu Sunshine), supplied inputs into its production process during the POI; however, Bengbu Sunshine is a foreign entity registered and located outside of Thailand. Accordingly, Sunshine responded to the Initial Questionnaire only with regard to itself.

Consistent with 19 CFR 351.527, we have not included Bengbu Sunshine in our subsidy analysis. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Sunshine to the sales of Sunshine.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents’ receipt of benefits under each program. As discussed in further detail below in the “Program Determined to be Countervailable” section, where a program has been found to be countervailable as a domestic subsidy, we use the recipient’s total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Similarly, where a program has been found to be countervailable as an export subsidy, we use the recipient’s total export sales as the denominator (or the total export sales of the cross-owned affiliates, as described above).

VI. BENCHMARKS AND DISCOUNT RATES

A. Loan Benchmarks and Discount Rates

As discussed below and in accordance with 19 CFR 351.524(d)(3), we require the use of long-term discount benchmark rates corresponding to the year in which the RTG provided subsidies to the mandatory respondents under Section 28 of the Industrial Promotion Act (IPA). Under 19 CFR 351.524(d)(3)(A)-(C), Commerce will use as a discount rate the following in an order of preference: (1) The cost of long-term, fixed-rate loans of the firm in question, excluding any

33 Id. at 6.
35 Id. at 2-3.
loans that Commerce has determined to be countervailable; (2) The average cost of long-term, fixed-rate loans in the country in question, or (3) A rate that Commerce considers to be most appropriate. Thus, where available, as our benchmark discount rate, we relied on company-specific long-term interest rates on commercial loans that were taken out in the year in which the subsidy was received. In the absence of such information, we relied on national average interest rates from the RTG for purposes of the discount rate.

VII. ANALYSIS OF PROGRAMS

Based on minor corrections noted at verification, we made minor revisions to the benefit calculation for COFCO and Niran for the countervailable program discussed below. However, these changes have not resulted in the calculation of an above de minimis rate for COFCO and Niran. Additionally, no comments were raised by interested parties that has resulted in Commerce revising its approach from the Preliminary Determination with regard to the programs discussed below.

A. Program Determined To Be Countervailable

1. Investment Promotion Act Section 28 Exemption from Payment of Import Duties on Machinery

The RTG enacted the Investment Promotion Act B.E. 2520 (1977) (IPA) in 1977, pursuant to which the RTG authorized the BOI to grant investment promotion incentives, including exemptions for payment of import duties on machinery and equipment used in BOI-promoted projects under Section 28. The current IPA reflects amendments under the Investment Promotion Act (No. 2) B.E. 2534 (1991) and the Investment Promotion Act (No. 3) B.E. 2544 (2001). Activities promoted under the IPA are segregated by economic sector, including the chemical sector, which encompasses citric acid.

To receive benefits under the IPA for an investment project, a company must apply to the BOI for a promotion certificate, which specifies the goods to be produced, production requirements, and the IPA benefits for which the company is approved. The RTG indicates that the BOI does not grant IPA benefits on a program-by-program basis, but rather as a package of benefits that recipients are entitled to receive. The promotion certificates provided under the program specify the particular sections of the IPA and the related rights and privileges for which an applicant is approved, and they detail the general and specific conditions that the applicant is required to observe in order to maintain its eligibility for promoted status.

36 See Memorandum to the File, “Final Calculations for COFCO Biochemical (Thailand) Co., Ltd.”; (COFCO Final Calculation Memorandum); See also Memorandum to the File, “Final Calculations for Niran (Thailand) Co., Ltd. (Niran),” (Niran Final Calculation Memorandum) dated concurrently with this memorandum.
37 See Letter from RTG, “CVD Questionnaire Response,” dated September 8, 2017 (RTG Primary QNR Response) at 7 and Exhibit 10.
38 Id. at Exhibit 19 at 29 and Exhibit 20.
39 See RTG Primary QNR Response at 7.
40 Id. at Exhibits 14-16, which contains the BOI certificates issues to the three mandatory respondents.
Under Section 28 of the IPA, companies holding promotion certificates from the BOI may submit a claim for an exemption from import duties applicable to imported machinery if: 1) the imported machinery cannot be sourced domestically, (2) the machinery is consistent with the machinery types and functions outlined in the applicant company’s BOI eligibility certificate, or in any modified machinery lists provided to and approved by the BOI, and (3) the machinery must be used for the promoted project only. In order to receive the duty exemptions, participants in the program must submit to the RTG for approval a master list of machinery to be used for producing products under the BOI-promoted project. Once the BOI confirms that the imported machinery is eligible for the import duty exemptions, it notifies the Thai Customs Service to grant the duty exemptions on the applicable imported items. COFCO, Niran, and Sunshine received duty exemptions on machinery and equipment under Section 28 of the IPA during the AUL period.

In the Preliminary Determination, we found that the duty exemptions on imports of machinery and equipment provided under Section 28 of the IPA constitute a financial contribution in the form of revenue foregone under section 771(5)(D)(iii) of Act and confer a benefit under section 771(5)(E) of the Act and 19 CFR 351.510(a) to the extent that recipients pay less in import duties than they would otherwise pay absent the program. No interested parties commented on this aspect of our preliminary findings and, thus, our findings concerning financial contribution and benefit are unchanged in the final determination.

Concerning specificity, 19 CFR 351.514(a) states that Commerce:

will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance. In applying this section, the Secretary will consider a subsidy to be contingent upon export performance if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.

In Shrimp from Thailand, Commerce found that export performance was among a number of conditions that the BOI considered in granting promoted status to applicants under the IPA programs. Commerce’s finding was based on several factors, including language in the IPA which lists “export of products or commodities produced or assembled” among the conditions that may be stipulated by the BOI when issuing a promotion certificate. In addition, in Shrimp from Thailand, we considered the application form used by the BOI to solicit information from applicants. We found that the form required applicants to provide information regarding many

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42 See RTG Primary QNR Response at 17.
43 Id. at 10.
44 See Preliminary Decision Memorandum at 11.
45 See Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013) (Shrimp from Thailand) and accompanying Decision Memorandum (Shrimp from Thailand IDM) at Comment 1.
aspects of the planned investment for which the applicant is seeking promoted status, including, among other things, the anticipated markets for their products, identifying the percentages of the company’s production that will be exported and sold domestically, as well as the particular countries to which the products will be exported.\textsuperscript{46} Further, in \textit{Shrimp from Thailand} we noted that investment projects of 80 million Thai Baht or more required the completion of a feasibility study which was to be considered by the BOI, and that in analyzing this feasibility study, the BOI considered demand for the goods produced as a result of the promoted investment, including major export markets and future trends in these markets.\textsuperscript{47} Lastly, in \textit{Shrimp from Thailand} Commerce noted that the language of the \textit{CVD Preamble} states that Commerce will not treat a subsidy as an export subsidy where “the firm in question can clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria.”\textsuperscript{48} However, based on the evidence on the record, Commerce found in \textit{Shrimp from Thailand} that the RTG and respondents had not clearly demonstrated that eligibility under the program was based solely on non-export criteria.\textsuperscript{49} Thus, based on the language in the IPA, the program’s application forms, and BOI certificates as well as the absence of information from the RTG indicating that eligibility under IPA was based solely on non-export criteria, Commerce determined in \textit{Shrimp from Thailand} that export activity was among the factors considered in granting promoted status under IPA programs. As a result, Commerce found benefits provided under the IPA, including those conferred under Section 28 of the IPA, were specific under section 771(5A)(B) of the Act.\textsuperscript{50}

Consistent with the \textit{Preliminary Determination}, we continue to find export activity to be among the factors the RTG considers in granting promoted status under IPA programs and, thus, that the program is specific under section 771(5A)(B) of the Act. For example, under the heading “Applying for and Granting of Promotion,” Chapter 2, Section 16 of the version of the IPA in effect during the POI and AUL period states:

The activities which are eligible for investment promotion by the Board are those which are important and beneficial to the economic and social development, and security of the country, activities which involve production for export, activities which have high content of capital, labor or service or activities which utilize agricultural produce or natural resources as raw materials, provided that in the opinion of the Board, they are non-existent in the Kingdom, or existent but inadequate, or use out-of-date production processes.\textsuperscript{51}

Similarly, under Section 20, item (18), the IPA specifies “export of products or commodities produced or assembled” as among the “conditions in the promotion certificate for the compliance by the promoted person” that the {BOI} “may stipulate” in granting promotion to an applicant.\textsuperscript{52} Additionally, we find that the application form used by the RTG under the program solicits

\textsuperscript{46} See Shrimp from Thailand IDM at Comment 1.
\textsuperscript{47} Id.
\textsuperscript{48} Id., citing to \textit{Countervailing Duty Regulations}, 63 FR 65347, 65381 (November 25, 1998) (\textit{CVD Preamble}).
\textsuperscript{49} See Shrimp from Thailand IDM at Comment 1.
\textsuperscript{50} Id.
\textsuperscript{51} See RTG Primary QNR Response at Exhibit 10 at 5.
\textsuperscript{52} Id. at 7.
export information. For example, section 4.7 of the BOI Application for Promotion form solicits historical information concerning the applicant’s export performance by product, section 7 solicits information on the applicant’s share of export sales, and section 8 of the application form solicits historical information on overall export performance. Furthermore, the application forms completed by Sunshine, COFCO, and Niran demonstrate that they provided information on export activities in the sections of the form where such information was solicited.

In the narrative of its supplemental questionnaire response, the RTG claims that it merely sought export information to establish the applicants’ business conditions. However, given that the RTG solicits export information in the application form and that the mandatory respondents’ completed application forms contain specific export-related information, we find it reasonable to find that the BOI takes such information into consideration in approving the application, given that as noted above, Sections 16 and 20(18) of the IPA specify “activities which involve production for export” and “export of products or commodities produced or assembled,” respectively, as among the criteria for eligibility under the program. Accordingly, absent clear evidence that the BOI approved the application based on non-export criteria, in keeping with the guidance in the CVD Preamble, consistent with the approach in Shrimp from Thailand, and in the absence of any comments from interested parties that warrant reconsideration of our preliminarily findings, we continue to determine that the import duty exemptions the respondent firms received under Section 28 of the IPA were contingent upon export performance as one of several conditions and, thus, that the program is specific under section 771(5A)(B) of the Act. Our finding in this regard is consistent with Commerce’s approach in other CVD proceedings.

All three respondents reported importing certain machinery and equipment during the AUL period from the People’s Republic of China (PRC), which entered duty-free pursuant to the ASEAN-China Free Trade Area. Because the duty rate on imports of machinery made pursuant to the ASEAN-China Free Trade Area would have been zero absent the respondents’ participation under Section 28 of the IPA, we find that such duty-free imports do not confer a benefit. However, we find that all other importations of machinery and equipment on which duty exemptions were received by the respondent firms during the AUL period under Section 28 of the IPA conferred a benefit in an amount equal to the duties saved. We received comments from interested parties regarding our treatment of respondents’ imports of Chinese-origin equipment and machinery under the ASEAN-China Free Trade Area. See Comment 1 below.

53 See RTG Primary QNR Response at Exhibit 17.
55 See RTG First Supp QNR Response at 17.
56 See e.g., Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007) (CFS from Korea) and IDM at Comment 24.
57 See RTG Primary QNR Response at 10, Niran Primary QNR Response at Exhibit 13; Sunshine Primary QNR Response at Exhibit 19, and COFCO Primary QNR Response at Exhibit 11.
58 See RTG Primary QNR Response at 10.
We find that benefits provided under this program are non-recurring within the meaning of 19 CFR 351.524(b). Although import duty exemptions are identified as recurring in the illustrative list of recurring benefits in 19 CFR 351.524(c)(1), it is Commerce’s long-standing practice to treat import duty exemptions tied to the purchase of capital assets as non-recurring in accordance with 19 CFR 351.524(c)(2)(iii). Accordingly, for each respondent company, we examined the import duty exemptions reported for each year of the AUL period to determine whether they exceeded 0.5 percent of the company’s export sales in the year of approval to determine whether the benefits should be allocated over time or to the year of receipt. The exemptions received (which, in this case, we are treating as the year of approval) by each company in a given year that did not meet the 0.5 percent test were expensed in the year of receipt while exemptions in a given year that met the 0.5 percent test were allocated to the POI using Commerce’s allocation formula provided under 19 CFR 351.524(d) and the discount rates described in the “Loan Benchmarks and Interest Rates” section of this memorandum.

To calculate the net subsidy rate, we divided the benefit amounts allocable to the POI by the respondents’ total export sales during the POI. On this basis, we determine the net subsidy rates under this program to be 0.00 percent ad valorem for COFCO, 0.00 percent ad valorem for Niran, and 0.21 percent ad valorem for Sunshine.

B. Program Determined To Be Not Countervailable

1. Import Duty Exemptions on Raw Materials Under IPA Section 36

Under Section 36 of the IPA, the RTG authorizes the BOI to grant import duty reductions on raw or essential materials used in the BOI-promoted projects. According to the RTG, companies that wish to apply for BOI investment promotion must submit one application form for each project. Further, eligible companies under Section 36 must submit to the RTG-run Office of the Board of Investment (OBOI) stock production formulas (e.g., input/output formulas) of raw and essential materials to be used for producing products under the BOI-promoted project. The mandatory respondents provided information that they submitted to and received from the RTG regarding their respective stock production formulas. The RTG states that the OBOI will then verify that the types and quantities listed in the company-specific stock production formulas fall within the company’s approved capacity.

59 See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001) (Hot-Rolled Steel from Thailand) and IDM at 6 (“There can be no question that machinery is a capital asset.”).
60 Id.
61 See RTG First Supp QNR Response Part 1 at 10.
63 See RTG Primary QNR Response at 33 and Exhibit 26.
companies will be able to receive import duty reductions by submitting a list of raw and essential materials to be imported for each shipment to the OBOI. The RTG provided the lists of approved raw materials for each mandatory respondent. Next, the OBOI checks the submitted list against the approved stock production formulas before granting approval and sending a letter to the Thai Customs Service informing it that the company should receive import duty reductions for the specified raw materials. The RTG provided a copy of the letter for one of the mandatory respondents. The RTG explains that after the OBOI sends the letter to the Thai Customs Service, the BOI maintains a list of approved raw and essential materials for its records. The RTG provided the list of approved raw and essential materials applicable to the three respondent firms. After the raw materials have been released by the Thai Customs Service, the BOI maintains a record of the import transactions. The RTG states that duty reductions provided under the program are only permitted for use specifically in producing, mixing, or assembling products or commodities for export.

The RTG explained that to verify compliance, participating companies are required to submit to the OBOI a copy of the export entry form and invoice of the exported products within one year from the first importation. The OBOI then updates and adjusts each participating company’s raw and essential stock balance sheet accordingly. The RTG provided the raw and essential stock balance sheets for the three mandatory respondents as well as the import transaction report and export transaction report for one of the mandatory respondents.

The RTG reported that COFCO, Niran, and Sunshine received duty reductions on imports of raw materials under section 36 of the IPA during the POI. Likewise, each of the respondent firms reported using the program during the POI, and provided a table of the imported materials.

In *Bottle-Grade Resin from Thailand*, Commerce determined that duty exemptions on imports of raw and essential materials under section 36 of the IPA, which it described as a duty drawback program, were not countervailable under 19 CFR 351.519(a)(4) because how the RTG administered the program and the system the RTG used to monitor and track the consumption and/or re-export of goods imported, making normal allowance for waste, was reasonable and effective.

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64 Id. at 34.
65 Id. at Exhibits 33-35.
66 Id.
67 Id. at Exhibit 27.
68 Id.
69 Id. at 34 and Exhibits 33-35.
70 Id. at 34.
71 See RTG Primary QNR Response at 34.
72 Id.
73 Id. at Exhibits 31-32 and 36-38.
74 Id. at 38.
75 See COFCO Primary QNR Response at 12-16 and Exhibit 14; Sunshine Primary QNR Response at 15-23 and Exhibit 22; Niran Primary QNR Response at 13-17 and Exhibit 16.
76 See Final Negative Countervailing Duty Determination: *Bottle-Grade Polylethylene Terephthalate (PET) Resin from Thailand*, 70 FR 13462 (March 21, 2005) (*Bottle-Grade Resin from Thailand*) and accompanying IDM at 9.

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Based on information from the RTG and the respondent firms, Commerce preliminarily determined that the program operates in the same manner as the program examined in *Bottle-Grade Resin from Thailand*. We have reached the same conclusion in the final determination. As noted above, the RTG relies on company-specific production formulas when determining the amount of the imported product that is incorporated into the re-exported product. Additionally, as noted above, the RTG has a system in place that: (1) specifies the materials that may be imported under the program, (2) tracks imported raw materials as well as the re-exported products that incorporated those imported materials, (3) verifies the accuracy of companies’ stock production formulas, and (4) requires participating companies to submit relevant import and export documentation to the OBOI for purposes of verifying compliance.

Thus, consistent with Commerce’s finding in *Bottle-Grade Resin from Thailand*, and based on our review of the information supplied by the RTG and the mandatory respondents, we determine that the duty exemptions provided on imports of raw materials under this program are not countervailable under 19 CFR 351.519(a)(4). We received comments from interested parties regarding our decision to find import duty exemptions on raw materials under IPA Section 36 not countervailable. *See* Comment 3 below.

2. VAT Exemptions under IPA Section 28 and Section 36

In the Post-Preliminary Decision Memorandum issued on February 23, 2018, we determined that the VAT exemptions for machinery imports under IPA Section 28 and Section 36 do not confer a time-value-of-money benefit to the BOI-promoted companies. No parties submitted comments regarding that determination. For the reasons discussed in the Post-Preliminary Decision Memorandum, we continue to find that the VAT exemptions under this program do not confer any benefit and are, thus, not countervailable.

C. Programs Determined To Be Not Used

We determine that respondents did not apply for or receive benefits during the POI under the following programs:

- IPA Section 31 Income Tax Exemption on Net Profit from Promoted Activity
- IPA Section 35 Income Tax Deductions and Rate Reductions in Specified Locations or Zones
- IPA Section 30 Import Duty Reduction on Raw or Essential Materials Used in Promoted Production Activity

77 *See* Preliminary Decision Memorandum at 15.
• Thai BOI Measures to Promote Investment in Food Innovation, Including the “Food
    Innopolis”
• Measures to Promote Improvement of Production Efficiency
• Thailand Export-Import Bank Medium- and Long-Term Loan and Buyer's Credit
    Programs
• Grants for Electricity Generation from Biogas and Biomass

VIII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Include Respondents’ Imports of Chinese-Origin
    Machinery and Equipment Made Pursuant to the ASEAN-China Free Trade Area
    in the Benefit Calculation of the IPA Section 28 Program

Petitioners Case Brief

• Commerce correctly countervailed the duty exemptions provided on imports of machinery
    and equipment under the IPA Section 28 program in the Preliminary Determination as export
    subsidies; however, it should modify its calculation methodology in the final determination.
• Specifically, Commerce should include in its final benefit calculation all imports of
    machinery and equipment that were identified by respondents as having been imported from
    China.
• Commerce’s decision not to countervail respondents’ duty-free imports of machinery and
    equipment from China is inconsistent with the CVD Preamble as well as with Commerce’s
    preliminary finding that duty exemptions provided under the IPA Section 28 program are
    contingent upon export performance as one of several conditions and, thus, specific under
    section 771(5A)(B) of the Act.
• The CVD Preamble states that if Commerce finds a program to be contingent upon exports, it
    will consider “. . . any benefits provided under the program to the firm to be export subsidies
    . . .”78 By opting not to include duty exemptions the respondents received on imports of
    Chinese-origin machinery and equipment in the benefit calculation, Commerce failed to
    capture all “benefits provided under the program.”
• The record indicates that merely importing machinery and equipment from China to ASEAN
    countries (such as Thailand) does not automatically qualify such imports for preferential
    tariff treatment. Rather, ASEAN-China FTA preferential tariff treatment may only be
    obtained upon application for and issuance of specific Certificates of Origin.
• Further, the ASEAN-China FTA rules of origin require Operational Certification Procedures
    that detail the requirements that must be followed to receive a Certificate of Origin that, in
    turn, allows for duty-free importation of eligible goods.
• None of respondents’ imports from China qualified for such treatment. Rather, the record
    evidence indicates that the respondents qualified for their duty-free importation of Chinese-
    origin machinery and equipment based on their eligibility under the Section 28 IPA program
    and not on the basis of the duty-free rates offered under the ASEAN-China FTA.
• To find that import duty-exemptions provided under the Section 28 IPA program are not
    countervailable export subsidies because the beneficiaries might, in theory, be eligible for

78 See CVD Preamble, 63 FR at 65381.
duty-free treatment through some other provision contradicts Commerce’s CVD practice.

- In determining whether a program is countervailable, Commerce bases its analysis on the terms of the program at issue, and it does not compare the benefits provided under the program at issue to those provided under another program that is not being examined and that was not used by any respondent firm.
- Commerce should therefore determine that none of the respondents’ imports of machinery and equipment that were reported under the Section 28 IPA program would have qualified for preferential treatment under the ASEAN-China FTA and, thus, that all Chinese-origin items imported duty-free under the program provided countervailable benefits.
- Lastly, carving out any portion of duty exemptions received under Section 28 IPA program from the benefit calculation also would countenance the conduct that led to the CVD investigation in the first place. For example, as noted in the Petition, COFCO decided to commence production of citric acid in Thailand to avoid tariff barriers that were imposed on citric acid produced in China.  
- Thus, in the final determination, Commerce should include all import duty-exemptions reported by the respondents under the Section 28 IPA program in their respective benefit calculations.

RTG Rebuttal Brief

- The purpose of the CVD law is “to offset the unfair competitive advantages created by the foreign subsidies.” To achieve this purpose, Commerce must approximate the value that the foreign subsidy provides. To gauge the value of a countervailable import duty exemption, as is the case in the instant investigation, Commerce must determine the import duty rate the respondent would have paid absent the program.
- Thus, in the Preliminary Determination, Commerce followed its standard methodology that is fundamental to the CVD law, which was to use the import duty rate the respondents would have paid absent participation under the Section IPA 28 program.
- The petitioners characterize the import duty rate that respondents would have paid absent the program (e.g., the duty-free rate under the ASEAN-China FTA) as “another program.” The petitioners might have a point if the import duty rate absent the program was, itself, countervailable. However, the petitioners do not and cannot argue that duty-free treatment under the ASEAN-China FTA constitutes a countervailable program. Thus, the petitioners’ characterization of the duty-free rates provided under the ASEAN-China FTA as “another program” are inapposite.
- The petitioners cite to various requirements under the ASEAN-China FTA for the proposition that the respondents “should not get the benefit of preferential tariff treatment that they never applied for or were never granted by the appropriate authorities in the first

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82 Id.
83 See RTG Rebuttal Brief at 4, citing to Petitioners Case Brief at 13.
place.”

- Commerce should reject this argument and continue to find that for purposes of determining whether a benefit was conferred the appropriate comparison is with what the respondents would have paid absent the use of the Section 28 IPA program. Such an approach is necessarily counterfactual since the respondents used the Section 28 IPA program and therefore had no reason to be subject to duty rates applicable under the ASEAN-China FTA. For example, the Sunshine Verification Report states that “Company officials explained that the company does not normally duplicate applications under the Section 28 IPA program and the FTA, because it would be already exempt from the duty under one or the other.”

- At verification, Commerce conducted ample inquiries of the respondent firms’ imports of machinery and equipment, to verify that, in fact, China was the country of origin of the imported machinery and equipment, thereby confirming that, absent the program, the duty rates would have been zero under the ASEAN-China FTA.

- The petitioners’ citations to the procedures under the ASEAN-China FTA are irrelevant to Commerce’s benefit analysis. The respondents did not provide the documentation required under the ASEAN-China FTA because it was not necessary given that the respondents were already exempt from import duties under the Section 28 IPA program.

- The petitioners miss the point that Commerce makes a counterfactual inquiry to establish a benchmark. Commerce examined the import documentation indicating the machinery and equipment were of Chinese origin under official Thai import declarations, and there is no evidence on the record that Thai authorities would have denied requests by respondents to enter merchandise under the ASEAN-China FTA if the respondents had chosen to do so.

- The petitioners’ argument, that respondents must somehow prove that they would have filed the necessary certifications and other paperwork under the ASEAN-China FTA if Section 28 IPA program benefits were unavailable, is absurd.

- The petitioners’ statement that “COFCO and other producers of subject merchandise chose to escape Chinese AD and CVD duties by shifting production operation from China to Thailand” is inappropriate. The petitioners’ request that Commerce treat respondents that are majority-owned by Chinese individuals/entities differently than wholly-owned Thai companies has no legal basis and should be rejected.

**COFCO and Niran Joint Rebuttal Brief**

- Commerce correctly measured the benefits under the Section 28 IPA program in the Preliminary Determination and should continue to make this finding in the final determination

**Sunshine Rebuttal Brief**

- Sunshine supports the comments made by the RTG in its case brief.

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84 See RTG Rebuttal Brief at 5, citing to Petitioners Case Brief at 12.
85 See RTG Rebuttal Brief at 5, citing to Sunshine Verification Report at 6.
86 See RTG Rebuttal Brief at 6, citing to Sunshine Verification Report at 6, COFCO Verification Report at 7, and Niran Verification Report at 7.
87 See RTG Rebuttal Brief at 7, citing to Petitioners Case Brief at 14-15.
Commerce’s Position: In this investigation, as discussed in the Preliminary Results and later confirmed at the verifications of the RTG’s and the respondents’ information, we found that pursuant to the ASEAN-China FTA, Chinese-origin imports of equipment and machinery into Thailand are exempt from import duty. The respondent firms have demonstrated, by means of import documentation verified by Commerce, that the imports in question were, in fact, Chinese-origin and that, accordingly, the duty payable on the machinery and equipment in question would have been zero absent eligibility under Section 28 IPA program. Thus, based on the record, as verified, we find that had the respondent firms entered the machinery and equipment in question under the ASEAN-China FTA and submitted the requisite forms to demonstrate Chinese origin under that arrangement instead of under the Section 28 IPA program, the duty rates applied would have been zero. Accordingly, the amount of duty paid pursuant to the Section 28 IPA program and the amount of duty respondents would have paid on the Chinese-origin machinery and equipment absent the Section 28 IPA program are the same. Thus, there is no countervailable benefit for this program for the imports of Chinese-origin and machinery.

In arguing that absent Section 28 IPA program the applicable duty rates for the respondents would not have been zero, the petitioners claim that the respondents would not have qualified for duty-free treatment under the ASEAN-China FTA, because they failed to submit an application under that program. However, we disagree, as this would imply that the respondents would need to enter the same Chinese-origin goods under both the ASEAN-China FTA and the Section 28 IPA program for Commerce to determine whether a benefit existed under the program. There is no support for this approach in our regulations or practice. Based on the submitted information and the verification results, we find sufficient support in the case record to determine that the alternative tariff otherwise applicable to respondents’ imports of Chinese-origin equipment is the zero-rate tariff under the ASEAN-China FTA.

88 See the RTG’s response at 10 where it states that there is zero duty pursuant to the ASEAN-China Free Trade Area.
89 See Sunshine’s Verification Report at 6 where we stated that they examined pre-selected and randomly selected invoices for machinery imports that were brought in from the PRC and VE-8 for a complete list of Customs Declarations in which no discrepancies from machinery that was listed as PRC-origin; see Niran’s Verification Report at 7-8 where we examined all of Niran’s imports under this program and cross-checked with ASEAN China FTA rates and general tariff rates from Thai Integrated Tariff database with Niran’s list of imported machinery and equipment. For these imported items we found no discrepancies with regard to the country of origin; see COFCO Verification Report at 7-8 8 where we performed several announced and unannounced examinations of machinery and equipment that COFCO imported under the Section 28 IPA program and where we “reviewed the tariff schedule to confirm that the reported import tariff that would have been paid absent the program was correctly reported in COFCO’s submission.”
90 See Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2014, 82 Fed. Reg. 18285 (April 18, 2017) and accompanying Issues and Decision Memorandum at 20 (“...the Department did not calculate a benefit for the import duty exemptions because all transactions in the benefit calculation worksheets were imported from Association of Southeast Asian Nations (ASEAN) countries. According to the GOC, the applicable import duty for these imported inputs (i.e., natural rubber and synthetic rubber) from ASEAN countries was zero percent during the POR. In the Preliminary Results, we agreed with the GOC that Guizhou Tyre did not receive any benefit for import duty exemptions for the imports of natural and synthetic rubber from ASEAN countries, and find no basis to change our determination for our final results.”)
Thus, Commerce continues to find that there were no duty savings received in connection with
the respondents’ importation of Chinese-origin machinery and equipment under Section 28 IPA
program because, absent the program, the items would have entered Thailand duty-free pursuant
to the ASEAN-China FTA.

Lastly, Commerce disagrees with the petitioners’ argument that finding no benefit with respect to
the Section 28 IPA program for imports of equipment and machinery from China countenances
conduct that is the subject of the CVD investigation. Whether CVDs imposed on citric acid from
China influence COFCO to produce citric acid in Thailand is not the subject of this investigation
into whether Thai producers of citric acid received countervailable subsidies from the RTG.

**Comment 2: Whether Subsidies Received by COFCO’s Predecessor, World Best, Are
Countervailable**

**COFCO Case Brief**

- Subsidies that Commerce found to have been received by World Best were extinguished by
  the arm’s-length sale of World Best’s shares to COFCO for fair market value, thus, any
  subsidies received by World Best are not countervailable.\(^{91}\)
- Commerce failed to support its preliminary finding that subsidies received by World Best
  should be treated as COFCO’s subsidies.
- Commerce failed to consider the documentation for World Best’s sale that was on the record
  as well as COFCO’s comments on Commerce’s practice to extinguish any pre-sale subsidy
  benefit in private sale transaction.\(^{92}\)
- In the **Preliminary Determination** Commerce failed to take into consideration COFCO’s
  reporting that it did not benefit from any subsidy that might have been granted to World Best
  before COFOC’s April 2012 purchase of World Best.
- At verification Commerce found no inconsistences with the information reported in
  COFCO’s questionnaire responses.\(^{93}\)
- Consistent with the Court’s holding in **GPX International Tire**, Commerce must find that any
  pre-sale subsidies provided to an acquired company are extinguished by means of an arm’s
  length, market-based purchase price.\(^{94}\) Therefore, any such subsidies allegedly received by
  World Best should be considered non-countervailable.

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\(^{91}\) See, e.g., Cert. Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty
Administrative Review, 69 FR 45676 (July 30, 2004) (Pasta from Italy 2002 Preliminary Results), unchanged in
Cert. Certain Pasta from Italy: Final Results of Seventh Countervailing Duty Administrative Review, 69 FR 70657
(December 7, 2004) (Pasta from Italy 2002 Final Results) and accompanying IDM at 2-3.

\(^{92}\) See COFCO Primary QNR Response at 9; see also Letter from COFCO, “Citric Acid and Certain Citrate Salts
from Thailand: 1st Supplemental Questionnaire Response,” dated October 6, 2017 (COFCO First Supp QNR
Response) at 1; see also Letter from COFCO and Niran, “Citric Acid and Certain Citrate Salts from Thailand:
Comments on Petitioners’ Pre-Preliminary Determination Comments,” dated October 24, 2017 (COFCO and Niran
Joint Pre-Preliminary Determination Rebuttal Comments).

\(^{93}\) See Verification Report at 4.

\(^{94}\) See GPX International Tire Corporation et al. v. United States, 893 F. Supp. 2d 1296, 1324 (CIT 2013), citing
Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR
37125, 37130 (June 23, 2003) (Modification Notice).
• In the final determination Commerce should remove all subsidies found for World Best from COFCO’s final benefit calculation.

**RTG Case Brief**
• Any alleged subsidies found by Commerce with respect to World Best should not be attributed to COFCO, because there is evidence that COFCO’s April 2012 purchase of World Best was an arm’s-length, market-based transaction.
• Specifically, COFCO’s Asset Appraisal Report demonstrates that the company acquired World Best in an arm’s length transaction.
• In the Preliminary Determination, Commerce countervailed alleged subsidies received by COFCO’s predecessor, World Best, without addressing the issue of whether the subsidies allegedly received by World Best were extinguished as a result of the arm’s length, market-based purchase priced paid by COFCO.
• U.S. law recognizes that following an arm's-length transaction, subsidies granted to predecessor company are presumed to be extinguished.95
• Consistent with Commerce’s policy, the subsidies that were found to have been received by World Best were extinguished in its entirety by the arm’s-length sale of all World Best’s shares to the COFCO shareholders for fair market value.
• Thus, in the final determination Commerce should remove all subsidies found for Worldbest from COFCO’s final benefit calculation.

**Petitioners’ Rebuttal Brief**
• The arguments of COFCO and the RTG that Commerce should exclude any subsidies received by COFCO’s predecessor, World Best, from the final benefit calculations should be rejected because the record does not support COFCO’s and RTG’s claims.
• The evidence presented by COFCO is insufficient to rebut Commerce’s preliminary finding.
• As indicated in Pasta from Italy 2003 Final Results, Commerce’s long-standing practice in analyzing changes in ownership is based on a rebuttable baseline presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period, which normally corresponds to the average useful life of the industry under examination.96
• Commerce’s practice is that “if the evidence presented does not demonstrate that the change in ownership was at arm’s length and for fair market value, the baseline presumption will not be rebutted and we will find that the ownership benefits were not extinguished.”97
• COFCO and the RTG failed to rebut “baseline presumption,” because they did not demonstrate that “during the allocation period, a change in ownership occurred in which the

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95 See Modification Notice, 68 FR at 37130; see also Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review, 70 FR 17971, 17972 (April 8, 2005) (Pasta from Italy 2003 Preliminary Results), unchanged in Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review, 70 FR 37084 (June 28, 2005) (Pasta from Italy 2003 Final Results).
96 See Pasta from Italy 2003 Preliminary Results, 70 FR 17971, 17972; unchanged in Pasta from Italy 2003 Final Results, 70 FR 37084.
former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm’s length transaction for fair market value. 98

- Contrary to the RTG’s claims, the petitioners provided information to rebut COFCO’s position that the sale of World Best was made at fair market value. 99
- Evidence on the record indicates that COFCO and World Best should not be considered unrelated parties at the time of the acquisition, and the RTG and COFCO failed to address this evidence.
- The record indicates that the World Best acquisition was not at arm’s length, thus Commerce cannot treat subsidies granted to the predecessor company as extinguished.
- Commerce should reject COFCO’s and the RTG’s claims that the World Best acquisition constitutes a private-to-private transaction between unrelated parties because COFCO and the RTG failed to demonstrate that the World Best transaction meets the requirements of Commerce’s change in ownership methodology.
- The Court’s holding in GPX International Tire does not apply in the instant investigation because the Court did not create a rigid rule that prevents Commerce from examining an interested party’s assertions of a private-to-private” transaction on a case-by-case basis. To the contrary, the Court explained that if “a government is a party to the transaction or there are other indications that the transaction is not at arm’s length,” Commerce “looks to the details and circumstances of the transaction to determine whether the subsidies were extinguished. 100
- COFCO’s reliance on the results of COFCO Verification Report is misinterpreted and offers no basis to conclude that Commerce’s findings at verification confirm that the acquisition of World Best met the requirements of Commerce’s change in ownership methodology.
- Thus, in the final determination, Commerce should reject the arguments of COFCO and the RTG and should continue to include all of the subsidies received by COFCO’s predecessor, World Best, in calculating the benefits received under the Section 28 IPA program.

Sunshine Rebuttal Brief

- Sunshine agrees with, and incorporates by reference, the arguments made by the RTG its rebuttal brief.

Commerce’s Position: As the petitioners correctly note, where there is a change in ownership, under Commerce’s longstanding practice, we apply a rebuttable presumption that any subsidies to a prior entity continue to benefit the new entity. 101 In the course of this investigation, we

98 Id.; See also Modification Notice, 68 FR at 37130.
100 See Petitioners’ Rebuttal Brief at 10, citing to GPX International Tire, 893 F. Supp. 2d 1296, 1324.
101 See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act Section 123 Modification, 68 FR 37125, 37130 (June 23, 2003) (Notice of Final Modification); Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 74 FR 57627 (November 9, 2009), and accompanying Issues and Decision Memorandum at 2.
allowed COFCO the opportunity to rebut the presumption by collecting the relevant information (including subsidy program usage by World Best) in our supplemental questionnaire and through our change-in-ownership questionnaire appendix. However, we find that the issue is moot because whether our presumption prevailed and subsidies received by World Best continued to benefit COFCO or COFCO rebutted the presumption, the amount is such that the overall net subsidy calculated for COFCO continues to be *de minimis*.103

**Comment 3:** Whether Commerce Should Find Duty Exemptions on Imports of Raw Materials Under the Section 36 IPA Program to be Countervailable

**Petitioners’ Case Brief**
- Commerce should find the IPA Section 36 Export Promotion Program countervailable in the final determination.
- In *Hot-Rolled Steel from Thailand*, Commerce found that “the RTG’s system for determining which inputs are consumed in the exported product, and in what amounts, is not reasonable or effective for the purposes intended” as required by 19 CFR 351.519(a)(4)(i). As a result, Commerce found that the RTG’s drawback system failed to account for which inputs are consumed in the exported product and, thus, found all exemptions granted to be countervailable export subsidies.105
- In *Royal Thai Government*, the United States Court of Appeals affirmed Commerce’s decision in *Hot-Rolled Steel from Thailand* to countervalue the entire amount of duties exempted under the RTG’s drawback program finding that “the RTG’s system for determining which inputs are consumed in the exported product, and in what amounts, is not reasonable because the system did not isolate and examine what was consumed in the production of the exported products” and “... did not consider in its analysis whether any of the scrap was recoverable and saleable.”106
- Commerce’s Preliminary Determination was not supported by information obtained during the RTG’s verification. The RTG Verification Report indicates that the RTG was unable to make available the production stock formula for one of the mandatory respondents that the RTG purportedly uses to determine the amount of imported inputs that are used to manufacture the re-exported good.107 Consistent with its findings in *Hot-Rolled Steel from Thailand*, Commerce should find that the RTG failed to adequately demonstrate that it has a reasonable and adequate system for determining which inputs and in what amount are incorporated into the re-exported product and, therefore, Commerce should also conclude that all duty exemptions received by the respondent firms are countervailable.

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103 See COFCO Final Calculation Memorandum, which contains the benefit and net subsidy rate calculations for the Section 28 IPA program.
104 See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Affirmative Countervailing Duty Determination, (Hot-Rolled Steel from Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at Section II.A.3.
105 Id.
The RTG Rebuttal Brief

- Consistent with Bottle-Grade Resin from Thailand, Commerce correctly determined in the Preliminary Determination that duty exemptions provided on raw materials under the Section 36 IPA program are not countervailable under 19 CFR 351.519(a)(4).\(^{108}\)
- The petitioners do not argue that Commerce should abandon the analytical precedent it utilized in Bottle-Grade Resin from Thailand to determine that the Section 36 IPA program operated like a drawback program and was not countervailable because “the manner in which the RTG administered the program and the system that the RTG used to monitor and track the consumption and/or re-export of goods imported, making normal allowance for waste, was reasonable and effective.”\(^{109}\)
- Instead, the petitioners seize on a single line from the RTG Verification Report stating that RTG officials did not have COFCO’s production report “available at verification” to contend that Commerce did not satisfactorily verify the reasonability and effectiveness of the RTG’s program to monitor and track participants use of the Section 36 IPA program.\(^{110}\)
- The entire relevant passage from the RTG Verification Report is as follows:

> The exemptions of raw materials operate like a duty drawback system. The exemption of imported raw materials is given to BOI-approved promoted companies. Ms. Anuroj said that the imported quantity cannot exceed maximum production capacity. See VE-3 for an example of the stock calculation for Sunshine Biotech.

We asked for more details on how the BOI determines the production capacity of the three respondents in the investigation. The RTG provided a flowchart of the Raw Materials Tracking Systems (RMTS). Ms. Anuroj stated that a team at the BOI will examine the production capacity and each team must have at least one chemist that will approve the formula that the companies implemented during the POI to create a theoretical inventory. See VE-1 for a flowchart used for Sunshine Biotech during the POI.

We reviewed with the RTG Niran’s actual formula for production of one ton of citric acid during the POI. Ms. Anuroj stated that they also reviewed formulas for the other respondents but they were not available during verification. See VE-2 for Niran’s formula for citric acid production upon which imports of raw materials were allowed during the POI.\(^{111}\)

- The narrative passage from the RTG Verification Report as well as the accompanying flowchart in verification exhibit (VE)-1 indicate that at the RTG verification Commerce

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\(^{108}\) See Preliminary Decision Memorandum at 15, citing Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand, 70 FR 13462 (March 21, 2005) (Bottle-Grade Resin from Thailand) and accompanying IDM (Bottle-Grade Resin from Thailand IDM) at 9.

\(^{109}\) See Bottle-Grade Resin from Thailand IDM at 9.

\(^{110}\) See RTG Verification Report at 4.

\(^{111}\) See RTG Verification Report at 4.
examined how the program operates and that as part of that examination Commerce reviewed the production and formula process that was in effect for Sunshine during the POI.\textsuperscript{112}

- The RTG Verification Report further indicates that Commerce examined Niran’s actual production of one ton of citric acid during the POR to confirm that the RTG uses Niran’s company-specific stock production formula to monitor and track consumption of the input and tie the input to the downstream product that is re-exported.\textsuperscript{113}
- Further, the point of Commerce’s verification exercise was to confirm that the RTG, in fact, has a process for integrating the information in company-specific production stock formulas into a duty drawback system that ties imported raw material inputs to re-exported outputs.
- The RTG’s use of company-specific production stock formulas is the same for all respondents. Thus, the fact that Commerce did not go through the entire detailed verification process for all three respondents does not mean that Commerce was unable to successfully verify that the RTG employs a reasonable and effective duty drawback system that does not provide countervailable benefits.
- Lastly, and most importantly, Commerce already had each of the respondents’ production stock formulas on the record and verified the accuracy of the respondents’ formulas during the firms’ respective verifications.\textsuperscript{114}
- Thus, there is more than sufficient documentation on the record to demonstrate that Commerce examined and successfully verified that the Section 36 IPA program operates like a non-countervailable duty drawback program and that the RTG’s administration and monitoring process for the program is reasonable and effective.

**COFCO and Niran Joint Rebuttal Brief**

- Commerce correctly found that the IPA Section 36 program for duty exemptions on raw or essential materials is not countervailable and should continue to make this finding in its final determination.

**Sunshine Rebuttal Brief**

- Sunshine agrees with, and incorporates by reference, the arguments made by the RTG in its rebuttal brief.

**Commerce’s Position:** We disagree with the petitioners’ claim that Commerce’s decision in *Hot-Rolled Steel from Thailand* to countervail the RTG’s drawback system under the Section 36 IPA program should compel Commerce to countervail the program in the instant investigation.

Each of Commerce’s determinations stands on its own based on the particular evidentiary record developed in each proceeding. As the name implies, the CVD investigation on *Hot-Rolled Steel from Thailand* dealt with alleged subsidies provided to the Thai hot-rolled steel industry. Part of that investigation examined subsidies during the period covering the calendar year 2001. Subsequent to that investigation, Commerce has examined the Section 36 IPA program as it pertains to the bottle-grade resin industry covering the calendar year 2003 and found that the

\textsuperscript{112} See RTG Verification Report at 4 and VE-1.
\textsuperscript{113} See RTG Verification Report at 4 and VE-2.
\textsuperscript{114} See Sunshine Verification Report at 7-9 and VE-4 through VE-6; Niran Verification Report at 8-9 and VE-8; and COFCO Verification Report at 9-10 and VE-10 through VE-11.
RTG had an adequate monitoring system in place that did not result in excessive drawback that would give rise to a countervailable subsidy benefit.

In *Bottle-Grade Resin from Thailand*, Commerce examined the IPA Section 36 program and found that RTG’s method for deriving company-specific production formulas was accurate and that the RTG had a reasonable and effective system in place to monitor and track the consumption and/or re-export of goods imported, making normal allowance for waste.\(^\text{115}\) In the *Preliminary Determination*, Commerce utilized the same analytical framework from *Bottle-Grade Resin from Thailand* to evaluate the system in place during the POI based on the information obtained during this investigation and concluded that the RTG continued to have a drawback system under the Section 36 IPA program that effectively monitored the consumption and re-export of imported goods.\(^\text{116}\)

In their comments the petitioners have not challenged the appropriateness of the analysis utilized in the *Preliminary Determination*. Instead, the petitioners’ basis for arguing that the RTG lacks a reasonable and effective duty drawback system is a citation to the RTG Verification Report which they claim demonstrates that the RTG does not, in fact, rely upon company-specific information when operating the duty drawback system under the Section 36 IPA program.\(^\text{117}\)

We find that the RTG, in fact, provided what was requested of it. In the RTG Verification Outline, we stated in connection with the Section 36 IPA program, that the RTG:

\[
\ldots \text{should be prepared to discuss and review how companies are approved for the receipt of benefits under the program, including:}
\]

1. stock and production formulas (*e.g.*, input/output formulas) of raw and essential materials to be used for producing products under the BOI-promoted project.
2. The verification procedures that the RTG takes to verify that the types and quantities listed in the company-specific stock and production formulas fall within the company’s approved capacity.
3. The stock and production formulas that were approved for the respondents that were able to receive import duty reductions by submitting a list of raw and essential materials to be imported for each shipment to the OBOI.\(^\text{118}\)

Consistent with the instructions in the verification outline, which addressed the program in general terms, the RTG provided source documentation for the production stock formulas applied to two of the mandatory respondents.\(^\text{119}\)

Furthermore, we find that the petitioners have misread the meaning of the single line in the RTG Verification Report and over-interpreted its implications for our findings with regard to the

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\(^\text{115}\) See *Bottle-Grade Resin from Thailand* IDM at 9.
\(^\text{116}\) See *Preliminary Decision Memorandum* at 14-15.
\(^\text{117}\) See Petitioners Case Brief at 16-17, citing the RTG Verification Report at 4.
\(^\text{118}\) See RTG Verification Outline at 7.
\(^\text{119}\) See RTG Verification Report at 4-5 and Exhibits VE-1 through VE-3.
program in this investigation. The aim of the RTG verification was to examine its duty drawback system. In examining certain company-specific documents at that verification, Commerce verifiers were simply conducting spot-checks of the system by reference to the actual documentation that was at hand; it was not intended as an extension of each of the company verifications. Thus, the fact that Commerce’s verifiers examined information for two out of three companies at the RTG verification does not detract from our finding that the drawback system in question satisfied the requirements for non-countervailability under Commerce’s regulations.

As for the three respondent firms, each supplied its stock production formulas to Commerce in their questionnaire responses,\(^\text{120}\) and at the company verifications we confirmed the accuracy of, and found no discrepancies with regard to, the company-specific production formulas the three respondent firms submitted to the RTG under the Section 36 IPA program.\(^\text{121}\) Thus, based on the information examined at the company and government verifications, we find that it successfully completed its objective of confirming that, for citric acid, the RTG, in fact, relies upon company-specific production information in setting the drawback rates applied to participating firms. Thus, we continue to find that the information examined at verification confirms the veracity of the information submitted by the RTG and the respondent firms as it pertains to section 36 of the IPA. We therefore further find that the system the RTG used to monitor and track which inputs, and in what amounts, were consumed in the production of the finished good for export was reasonable and effective and, thus, that the duty exemptions on raw materials used by the respondents in their production of citric acid under the Section 36 IPA program were not excessive and, accordingly, not countervailable.

\(^{120}\) See Niran First Supp QNR Response at 5-6 and Exhibit 6, Sunshine First Supp QNR Response at 5-6 and Exhibit CVD-SQ-7(2), and COFCO Second Supp QNR Response at Exhibit 6.

\(^{121}\) See Sunshine Verification Report at 7-9 and VE-4 through VE-6; Niran Verification Report at 8-9 and VE-8; and COFCO Verification Report at 9-10 and VE-10 through VE-11.
IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final dumping margins in the *Federal Register*.

☑   ☐

Agree   Disagree

5/29/2018

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance