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:  James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT:  Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam

April 4, 2019

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of laminated woven sacks (LWS) from the Socialist Republic of Vietnam (Vietnam), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents are Duong Vinh Hoa Packaging Company Limited (DVH Packaging) and Xinsheng Plastic Industry Co. Ltd. (Xinsheng). As a result of our analysis, and based on our findings at verification, we made changes to the subsidy rate calculations for DVH Packaging and Xinsheng. Below is the complete list of issues in this investigation for which we received comments from interested parties.

II. LIST OF ISSUES

Comment 1:  The Adverse Facts Available (AFA) Rate Applicable to Xinsheng  
Comment 2:  Whether the GOV’s Administration of Import Duty Exemptions for Raw Materials Is Not Excessive, and Therefore Not Countervailable

1 See section 701(f) of the Act.  
Comment 3: Whether Commerce Should Include Imports Reported by Vinh Hoa Plastic Corporation (Vinh Hoa) in Calculating DVH Packaging’s Benefit for Import Duty Exemptions on Spare Parts and Accessories for Companies in Industrial Zones

Comment 4: Whether Commerce Should Apply a Two Percent De Minimis Standard to the Respondent Companies

Comment 5: Whether Commerce Should Calculate a Subsidy Rate for TKMB Joint Stock Company (TKMB) Based on the Evidence on the Record

Comment 6: Whether Commerce Should Countervail Loans Received from State-Owned Commercial Banks (SOCBs)

Comment 7: Whether Commerce Should Use External Market-Based Benchmark Interest Rates in the Final Determination

III. BACKGROUND

A. Case History

On August 6, 2018, Commerce published the Preliminary Determination in this proceeding. Between September 24 and September 28, 2018, we conducted verification of the questionnaire responses submitted by the Government of Vietnam (the GOV) and DVH Packaging.3 Interested parties submitted case briefs and rebuttal briefs between November 7 and November 13, 2018.4 Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.5 If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day. The revised deadline for the final determination decision is now April 4, 2019.

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5 See Memorandum to the Record from 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, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
B. Period of Investigation

The period of investigation (POI) is January 1, 2017, through December 31, 2017.\(^6\)

IV. SCOPE COMMENTS

In Commerce’s *Preliminary Determination Memorandum*, we set aside a period of time for parties to raise issues regarding product coverage (i.e., scope) in scope case briefs or other written comment on scope issues.\(^7\) Certain interested parties commented on the scope of the investigation as it appeared in the *Preliminary Scope Determination Memorandum*.\(^8\) For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, see the *Final Scope Determination Memorandum*.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP), polyester (PET), polyethylene (PE), nylon, or any film suitable for printing, or to an exterior ply of paper; printed; displaying, containing, or comprising three or more visible colors (e.g., laminated woven sacks printed with three different shades of blue would be covered by the scope), not including the color of the woven fabric; regardless of the type of printing process used; with or without lining; with or without handles; with or without special closing features (including, but not limited to, closures that are sewn, glued, easy-open (e.g., tape or thread), re-closable (e.g., slider, hook and loop, zipper), hot-welded, adhesive-welded, or press- to-close); whether finished or unfinished (e.g., whether or not closed on one end and whether or not in roll form, including, but not limited to, sheets, lay-flat, or formed in tubes); not exceeding one kilogram in actual weight. Laminated woven sacks produced in the Vietnam are subject to the scope regardless of the country of origin of the fabric used to make the sack.

The scope of this investigation excludes laminated woven sacks having each of the following physical characteristics: (1) no side greater than 24 inches, (2) weight less than 100 grams, (3) an open top that is neither sealable nor closable, the rim of which is hemmed or sewn around the entire circumference, (4) carry handles sewn on the open end, (5) side gussets, and (6) either a bottom gusset or a square or rectangular bottom. The excluded items with the above-mentioned physical characteristics may be referred to as reusable shopping bags.

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\(^7\) See PDM at 5.

\(^8\) See PDM.
Subject laminated woven sacks are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0040 and 6305.33.0080. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including, but not limited to, sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings, including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period/methodology used in the Preliminary Determination and no issues were raised by interested parties in briefs regarding these topics. For a description of the allocation period and the methodology used for this final determination, see the Preliminary Determination.9

B. Attribution of Subsidies

Commerce has made no changes to the attribution of subsidies methodology applied in the Preliminary Determination. The domestic industry, the GOV, and DVH Packaging submitted comments in either their case or rebuttal briefs regarding whether Commerce should attribute benefits to the imports reported by Vinh Hoa Plastic Corporation (Vinh Hoa) for the import duty exemptions on spare parts and accessories for companies in industrial zones program, as discussed at Comment 3 below. For descriptions of the methodologies used for all programs in this final determination, see the Preliminary Determination.10

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for respondents’ receipt of benefits under each program when attributing subsidies, e.g., to a respondent’s export or total sales, or portions thereof. As a result of Commerce’s determination to rely on information submitted with the Petition on the GOV’s plastics industry planning decision – the 2020 Plastics Plan – concerning the GOV’s intention to provide preferential lending to the plastic packaging sector, we have revised the denominator used for the calculation of DVH Packaging’s benefit under the Preferential Lending to Exporters program from export sales to total sales.11

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9 Id. at 6.
10 Id.
11 See Petition, Volume III, Exhibit III-5, “Decision Approving the Planning on Development of Vietnam’s Plastics Industry up to 2020, with a vision toward 2025, No.2992/QD-BCT (June 17, 2011) (the 2020 Plastics Plan) at 3-4 (regarding preferential loans from the GOV, and efforts to strengthen trade promotion in foreign countries).
VII. BENCHMARKS AND INTEREST RATES

Commerce has made no change to the interest rate benchmarks for DVH Packaging. For a description of the benchmarks and interest rates used for this final determination, see the Preliminary Determination.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCEs

A. Legal Standard

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, select from among the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested; (B) fails to provide information within the established deadlines or in the form and manner requested by Commerce, 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.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

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

12 See 19 CFR 351.308(c).
interested party would have provided if the interested party had complied with the request for information.  

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, 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, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Furthermore, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use. When selecting facts available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.

For this final determination, we are applying AFA to Xinsheng and to the GOV as outlined below.

**B. Application of AFA: Xinsheng**

On August 31, 2018, Xinsheng informed Commerce that it was withdrawing from this investigation. As a result, we have no verified record information on Xinsheng, such as Xinsheng’s corporate structure, cross-owned companies with subsidies attributable to Xinsheng under 19 CFR 351.525(b)(6), the locations of Xinsheng and any of these cross-owned companies, and their use of subsidy programs. For the reasons explained below, Commerce determines that selection from among the facts otherwise available is warranted because necessary information is missing from the record, and because Xinsheng withheld necessary requested information and significantly impeded the proceeding because it withdrew from the investigation, pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act. We further find that the use of an adverse inference in so doing is warranted pursuant to section 776(b) of the Act because, by withdrawing from the investigation and refusing verification of its responses,

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15 See section 776(b)(1)(B) of the Act.
16 See section 776(c) of the Act; see also section 19 CFR 351.308(d) of the Act.
18 See section 776(c)(2) of the Act.
19 See section 776(d)(1) of the Act.
20 See section 776(d)(3) of the Act.
Xinsheng failed to cooperate by not acting to the best of its ability to comply with Commerce’s requests for information. We find that application of AFA is warranted to ensure that Xinsheng does not obtain a more favorable result by failing to cooperate than if it had fully complied with our requests for information.

Accordingly, we find, using an adverse inference in selecting from among the facts otherwise available on the record, that Xinsheng used and benefited from all programs under investigation.

C. Selection of the AFA Rate

As noted above and explained in further detail below, Xinsheng withheld requested information and significantly impeded the proceeding because it withdrew from the investigation, pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act, and further, Xinsheng failed to cooperate by not acting to the best of its ability in this investigation, pursuant to section 776(b) of the Act. Consequently, we used an adverse inference in selecting from the facts available that Xinsheng benefited from all programs under investigation. Thus, we have selected certain rates as AFA to apply to Xinsheng for these programs.

It is our practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country. When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Accordingly, when selecting AFA rates, if we have cooperating respondents, as in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program for which we calculated a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for

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23 See also Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 50391 (August 19, 2013) (Shrimp from China) and accompanying IDM at 13; see also Essar Steel Ltd. v. United States, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).
the identical program (excluding de minimis rates).\textsuperscript{24} If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country, and apply the highest calculated above-de minimis rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-de minimis rate from any non-company specific program in a CVD case involving the same country that the company’s industry could conceivably use.\textsuperscript{25}

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that we “may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.”\textsuperscript{26} No legislative history accompanied this provision of the statute. Accordingly, we are left to interpret this “evaluation by the administering authority of the situation” language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

The Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: 1) Commerce may apply its hierarchy methodology, and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.\textsuperscript{27}

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, we seek to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”\textsuperscript{28} Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable

\textsuperscript{24} For purposes of selecting AFA program rates, we normally treat rates of less than 0.5 percent to be de minimis. See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) and accompanying IDM at “1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “2. Grant Under the Elimination of Backward Production Capacity Award Fund.”

\textsuperscript{25} See Shrimp from China and accompanying IDM at 13-14.

\textsuperscript{26} See section 776(d)(2) of the Act.

\textsuperscript{27} This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

\textsuperscript{28} See SAA at 870; see also Essar Steel, 678 at 1276 (citing F. Li l De Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that “[t]he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.’”) (De Cecco).
margin.” It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.

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

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

Under the first step of Commerce’s investigation hierarchy, we apply the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a de minimis rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

However, if there is no identical program match within the investigation, or if the rate is zero, then we will shift to the second step of its investigation hierarchy, and either apply the highest non-de minimis rate calculated for a cooperating company in another countervailing duty proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above de minimis rate of any other company using the identical program.

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29 See De Cecco, 216 F.3d at 1032.
30 We have adopted a practice of applying this hierarchy in CVD cases. See e.g., Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination, 82 FR 29479 (June 29, 2017) and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012, 80 FR 41003 (July 14, 2015) and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. See e.g., Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 81 FR 3104 (January 20, 2016) and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).
Finally, if no such rate exists, under the third step of Commerce’s investigation hierarchy, we apply the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.31

In all three steps of Commerce’s AFA investigation hierarchy, if we were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, future producers and exporters would be “rewarded” for current producers’ and exporters’ lack of cooperation. Thus, in selecting the highest rate available in each step of Commerce’s investigation AFA hierarchy (which is different from selecting the highest possible rate in the “pool” of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.32

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

With respect to the AFA rates for the lending programs, the CVD AFA hierarchy requires that we first determine that there is an identical program in this investigation. We find that DVH Packaging used the “Preferential Lending to Exporters” program (see below). Thus, we have selected DVH Packaging’s rate as the AFA rate for Xinsheng for this program. Commerce has not calculated subsidy rates for the remaining lending programs in this investigation (i.e., “Preferential Lending and Export Credits from the Vietnam Development Bank,”33 “Export

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

32 It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) and accompanying IDM at 2, dated October 17, 2007 (“As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed…”). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

33 The “Preferential lending and export credits from the Vietnam Development Bank” program was previously investigated in Certain Steel Nails from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 80 FR 28962 (May 20, 2015) and accompanying IDM (Steel Nails from Vietnam) at the “10. Export Credits from the VDB” section. However, the calculated net subsidy rate of 0.21 percent ad valorem calculated in Steel Nails from Vietnam, was not an above-de minimis subsidy rate, and thus it cannot be used as AFA pursuant to the CVD AFA hierarchy.
Factoring,” the “Interest Rate Support Program,”34 and “Financial Guarantees for Export Activities”) in this or any prior Vietnam proceeding. Because we determine that there are no identical programs in this investigation or from another Vietnam CVD proceeding, we are applying the highest rate calculated for a similar program in a CVD proceeding involving Vietnam, i.e., the rate of 1.38 percent ad valorem calculated for DVH Packaging under the “Preferential Lending to Exporters” program.

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<thead>
<tr>
<th>Program</th>
<th>AFA Subsidy Rate (Percent)</th>
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<tbody>
<tr>
<td>Preferential lending and export credits from the Vietnam Development Bank</td>
<td>1.38</td>
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<tr>
<td>Preferential lending to exporters</td>
<td>1.38</td>
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<tr>
<td>Interest rate support program</td>
<td>1.38</td>
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<tr>
<td>Export factoring</td>
<td>1.38</td>
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<tr>
<td>Financial guarantees for export activities</td>
<td>1.38</td>
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With respect to the AFA rates for the Less Than Adequate Remuneration (LTAR) programs (i.e., “Land Rent Reductions or Exemptions for Plastic Producers,” “Land Rent Exemptions for Exporters,” “Land Rent Exemptions for Foreign-Invested Enterprises,” “Land Rent Exemptions for Enterprises Located in Special Zones,” and the “Provision of Utilities for LTAR”), we determine that there are no identical programs in this investigation or from another Vietnam CVD proceeding, under section 776(d)(1)(A) of the Act. Thus, we are applying the 25.41 percent ad valorem subsidy rate calculated for a similar program, i.e., the rate calculated for the Hamico Companies in Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 75973 (December 26, 2012) and the accompanying IDM (Hangers from Vietnam) for the “Land Preferences for Enterprises in Encouraged Industries or Industrial Zones” program. This program provided land and surface water to recipients for LTAR through rent exemptions and is similar to the LTAR programs in this investigation.35

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<tr>
<th>Program</th>
<th>AFA Subsidy Rate (Percent)</th>
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<tr>
<td>Land rent reductions or exemptions for plastic producers</td>
<td>25.41</td>
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<tr>
<td>Land rent exemptions for exporters</td>
<td>25.41</td>
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34 The “Interest Rate Support Program” was previously investigated in Shrimp from Vietnam. See Shrimp from Vietnam and accompanying IDM at the “Interest Rate Support Program Under the State Bank of Vietnam (SBV)” section. However, the calculated net subsidy rate of 0.05 percent ad valorem calculated in Shrimp from Vietnam, was not an above-de minimis subsidy rate, and thus it cannot be used as AFA pursuant to the CVD AFA hierarchy.
35 See Hangers from Vietnam and accompanying IDM at the “Land Preferences for Enterprises in Encouraged Industries or Industrial Zones” section.
Land rent exemptions for foreign-invested enterprises 25.41
Land rent exemptions for enterprises located in special zones 25.41
Provision of utilities for LTAR in industrial zones 25.41

With respect to the AFA rates for the income tax programs (“Income Tax Preferences for Exporters,” “Income Tax Preferences for Small and Medium-Sized Enterprises,” “Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment,” and “Preferential Income Tax Programs for Foreign Invested Entities”), because we do not have tax information on the record for Xinsheng, we are using an adverse inference in selecting from among the facts otherwise available and finding that that Xinsheng paid no income tax during the POI. The standard income tax rate for corporations in Vietnam in effect during the POI was 25 percent.\[36\] Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying a 25 percent AFA rate for these income tax programs on a combined basis, (i.e., that the five programs, combined, provide a 25 percent benefit). Consistent with Commerce’s practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.\[37\]

<table>
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<tbody>
<tr>
<td>Income tax preferences for exporters;</td>
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<td>Income tax preferences for companies in special zones;</td>
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<tr>
<td>Income tax preferences for small and medium sized enterprises;</td>
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<tr>
<td>Income tax exemptions and reductions for business expansion and intensive investment; and Preferential income tax programs for foreign invested entities[38]</td>
<td>25.00</td>
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With respect to the AFA rates for the import duty programs, the CVD AFA hierarchy requires that we first determine whether there is an identical program in this investigation. We are making no change from the Preliminary Determination with respect to the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program and continue to find that DVH Packaging used this program (see below). Thus, we have selected DVH Packaging’s

\[36\] See GOV Verification Report at 3 (“The standard tax rate without the benefit of the program is 25 percent.”).

\[37\] See, e.g., Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 81 FR 3104 (January 20, 2016) and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia); see also, e.g., Aluminum Extrusions Final and accompanying IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

\[38\] The GOV claimed in its original questionnaire response that it terminated the “Income Tax Preferences for Small and Medium Sized Enterprises” and “Preferential Income Tax Programs for Foreign Invested Entities” programs prior to the POI. See GOV IQR at 18-19. The inclusion or exclusion of these programs has no effect on the AFA rate for income tax programs for Xinsheng because, as explained above, we are assigning a combined AFA rate for all income tax programs to Xinsheng, and regardless of our treatment of these programs, the rate would remain the same. Thus, we have not addressed the GOV’s claims in this memorandum because these programs have no effect on Xinsheng’s AFA rate for income tax programs.
calculated rate as the AFA rate for Xinsheng for this program, under section 776(d)(1)(A)(i) of the Act. For the remaining import duty programs (i.e., “Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones,” “Import Duty Exemptions for Foreign-Invested Entities,” and “Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones”\textsuperscript{39}), Commerce has not calculated rates above \textit{de minimis} in this or any prior Vietnam proceeding. Because we determine that there are no identical programs in this investigation or from another Vietnam CVD proceeding, under section 776(d)(1)(A)(i) of the Act, we are applying the 4.46 percent \textit{ad valorem} subsidy rate calculated for a similar program (i.e., the rate calculated for the Hamico Companies in \textit{Hangers from Vietnam} for the “Import Duty Exemptions or Reimbursements for Raw Materials” program) for the remaining three import duty exemption programs.\textsuperscript{40} This program provided import duty exemptions to recipients that import raw materials and supplies used for manufacture of equipment and machinery and is similar to the import duty exemption programs in this investigation.

For our analysis on the GOV’s contention that the DVH Packaging’s rate should be applied because it demonstrates that the rate for the Hamico Companies in \textit{Hangers from Vietnam} for the identical program is no longer reliable or relevant, see Comment 1, below.

<table>
<thead>
<tr>
<th>Program</th>
<th>AFA Subsidy Rate (Percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Import duty exemptions on imports of raw materials for exporting goods</td>
<td>1.13</td>
</tr>
<tr>
<td>Import duty exemption on imports of spare parts and accessories for companies in industrial zones</td>
<td>4.46</td>
</tr>
<tr>
<td>Import duty exemptions for foreign-invested entities</td>
<td>4.46</td>
</tr>
<tr>
<td>Import duty exemptions on imported raw materials for export processing enterprises and export processing zones</td>
<td>4.46</td>
</tr>
</tbody>
</table>

With respect to the AFA rates for the Export Promotion Program, we determine that there are no identical programs in this investigation or from another Vietnam CVD proceeding from which to select a rate under section 776(d)(1)(A) of the Act. Thus, we are applying the 25.41 percent \textit{ad valorem} subsidy rate calculated for a similar program (i.e., the rate calculated for the Hamico Companies in \textit{Hangers from Vietnam}) for the “Land Preferences for Enterprises in Encouraged

\textsuperscript{39} The “Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones” was previously investigated in \textit{Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 75 FR 16428 (April 1, 2010) (PRCB from Vietnam)} at the “Exemption of Import Duties on Imports of Spare Parts and Accessories for Industrial Zone Enterprises” section. However, the calculated net subsidy rate of 0.02 percent \textit{ad valorem} calculated in \textit{PRCB from Vietnam}, was not an above-\textit{de minimis} subsidy rate, and thus it cannot be used as AFA pursuant to the CVD AFA hierarchy.

\textsuperscript{40} See \textit{Hangers from Vietnam} and accompanying IDM at the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” section.
Industries or Industrial Zones” program. This program provided rent exemptions as a targeted investment similar to the export promotion program in this investigation. We applied the same rate for this program as AFA in *Steel Nails from Vietnam.*

<table>
<thead>
<tr>
<th>Program</th>
<th>AFA Subsidy Rate (Percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Export promotion program</td>
<td>25.41</td>
</tr>
</tbody>
</table>

### D. Corroboration of Secondary Information

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information, rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is 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.” The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.

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

With regard to the reliability aspect of corroboration of the AFA rates for Xinsheng, as discussed above, we note that the rates on which we are relying are subsidy rates calculated in other Vietnam CVD proceedings for similar programs: five LTAR programs (i.e., “Land Rent Reductions or Exemptions for Plastic Producers,” “Land Rent Exemptions for Exporters,” “Land Rent Exemptions for Foreign-Invested Enterprises,” “Land Rent Exemptions for Enterprises Located in Special Zones,” and the “Provision of Utilities for LTAR”); three import duty exemption programs (i.e., “Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones,” “Import Duty Exemptions for Foreign-Invested Entities,” and “Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones”); and the “Export Promotion” program. In addition, as noted above with respect to four lending programs (i.e., “Preferential Lending to Exporters,” “Preferential Lending and Export Credits from the Vietnam Development Bank,” “Export Factoring,” and

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41 *Id.* at the “Land Preferences for Enterprises in Encouraged Industries or Industrial Zones” section.
42 See SAA at 870.
43 *Id.*
44 *Id.* at 869 - 870.
45 See section 776(d) of the Act.
“Financial Guarantees for Export Activities”), one income tax program (i.e., “Income Tax Preferences for Companies in Special Zones”), and one import duty exemption program (i.e., “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods”), we are relying on subsidy rates calculated in this proceeding for DVH Packaging. Thus, the calculated rates relied upon herein reflect the actual behavior of Vietnamese respondents with respect to these similar and identical subsidy programs. Moreover, no information has been presented that calls into question the reliability of the calculated rates that we are applying as AFA for these programs. Finally, 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 corroborating the rates selected, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, Commerce will not use it.

In the absence of record evidence concerning Xinsheng’s usage of the subsidy programs at issue due to its decision not to participate in the investigation, we have reviewed the information concerning Vietnamese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Vietnamese programs, from which Xinsheng could actually receive a benefit. Due to Xinsheng’s lack of participation and the resulting lack of record information concerning the usage of these programs, we have corroborated the AFA rates we have selected to the extent practicable pursuant to section 776(c)(1) for this final determination.

D. Application of AFA: GOV - Preferential Lending to Exporters

The GOV failed to cooperate by not acting to the best of its ability to comply with a request for information regarding DVH Packaging’s largest outstanding loan during the POI pursuant to section 776(b) of the Act, as explained below. In our initial questionnaire, we asked the GOV to provide translated copies of all the internal bank documentation for the loan in question:

Coordinating with each mandatory respondent identified in this questionnaire, please identify the largest loan outstanding for each respondent during the POI (in terms of principal outstanding) from State-Owned Commercial Banks (SOCBs) . . . . Please provide translated copies of all the internal bank documentation for the loan in question. Please include in the response all the relevant documentation pertaining to this loan, including the original loan application, all of the banks’ internal appraisals of the loan requests, the executed loan approval documents, and any evaluations of the loans that were conducted after issuance, and any other pertinent documentation. These documents

46 Regarding the GOV’s contention that the DVH Packaging’s rate should be applied because it demonstrates that the rate for the Hamico Companies in Hangers from Vietnam for the identical program is no longer reliable or relevant, see Comment 1, below.
47 See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996) and accompanying IDM.
should cover all steps of the loan underwriting process.48

In response to the loans and credit section of the questionnaire, the GOV provided DVH Packaging’s credit appraisal for its largest loan from an SOCB during the POI. However, the exhibit that the GOV cited to did not contain English translations for the following pages of the original Vietnamese-language DVH Packaging credit appraisal in Exhibit A-7 of the GOV’s initial questionnaire response: 3-6, 10-13, 15-16, 20-22, 26-27.49 Because necessary information was missing from the record within the meaning of section 776(a)(1) of the Act, Commerce notified the GOV of the deficiency and provided an opportunity for the GOV to remedy its deficient response, pursuant to section 782(d) of the Act, in its supplemental questionnaire, in which we asked it to ensure that all submitted Vietnamese language documents are translated into English and to include a header on each page that cites to the pages of the original Vietnamese document translated on the page, in reference to preferential lending programs.50 The GOV failed to provide translations of these missing pages in response to this supplemental questionnaire at Exhibit A-11 (Revised Exhibit A-7) of the GOV’s first supplemental questionnaire response.51 Consequently, necessary information is missing from the record of this investigation concerning the specificity of this program because the GOV failed to cooperate by not acting to the best of its ability regarding our requests for information for the “Preferential Lending to Exporters” program, pursuant to section 776(b) of the Act.

The GOV’s failure to provide the requested information by the deadline means that necessary information is not on the record. Further, despite having been given an opportunity to remedy its deficient response, the GOV did not timely provide the information as requested. Thus, in accordance with section 776(a)(1) and (2)(A) & (B) of the Act, we find that the selection of facts available is warranted. Further, we find that the GOV did not cooperate by failing to act to the best of its ability to comply with our requests for information by not providing the information despite having had an opportunity to remedy its response. Therefore, pursuant to section 776(b) of the Act, we find that it is appropriate to use an adverse inference in selecting from among the facts otherwise available on the record in determining whether the loans are specific under section 771(5A) of the Act. Pursuant to this AFA determination, we are relying on information in the Petition on the GOV’s plastics industry planning decision – the 2020 Plastics Plan – concerning the GOV’s intention to provide preferential lending to the plastic packaging sector.52 Because LWS is produced by the Vietnamese plastics packaging industry, based on this information, we find, as AFA, that the “Preferential Lending to Exporters” program is specific within the meaning of section 771(5A)(D)(i) of the Act.

52 See Petition, Volume III, at 3-4 and Exhibit III-5.
IX. ANALYSIS OF PROGRAMS

With the exceptions explained below, Commerce made no changes to its Preliminary Determination with regard to the methodology used to calculate the subsidy rates for the programs listed below. For the descriptions, analyses, and calculation methodologies of these programs, see the Preliminary Determination. Except where noted, no issues were raised by interested parties in briefs regarding these programs. The final program rates for the mandatory respondents are identified below.

A. Programs Determined to Be Countervailable

We have made no changes to the Preliminary Determination with respect to the methodology used to calculate the subsidy rates for certain programs used by DVH Packaging. For further details, see the specific program section below and DVH Packaging’s Final Calculation Memorandum. For descriptions, analyses, and calculation methodologies for these programs, see the Preliminary Determination. Except where noted below, no other issues were raised regarding these programs in the parties’ case briefs. The final program rates are as follows:

1. Lending Programs

** Preferential Lending and Export Credits from the Vietnam Development Bank (VDB) **

The GOV reported that the VDB grants loans and credits for exports under this program. Further, the GOV reported that the VDB is an SOCB. Therefore, as we determined in Shrimp from Vietnam for this program, export loans and credits from the VDB are a financial contribution pursuant to section 771(5)(D)(i) of the Act. Because the loans and credits from

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54 See GOV IQR at 7-8, Exhibit A-1 (Decree No. 32/2011/ND-CP).
55 Id.
VDB under this program are for exports, we also determine that this program is specific under sections 771(5A)(A) and (B) of the Act because it is contingent upon export performance.\(^5^8\)

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act, demonstrating that it did not benefit from this program during the POI. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 1.38 percent \textit{ad valorem}, which corresponds to the highest above-\textit{de minimis} subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

\textit{Preferential Lending to Exporters}

As discussed in the Use of Facts Otherwise Available and Adverse Inferences section above and in Comment 1, we have made certain changes to our analysis of this program since the \textit{Preliminary Determination}.

We determine that loans from SOCBs under this program constitute financial contributions pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.” Further, as described above, we find as AFA that the Preferential Lending to Exporters program is specific within the meaning of section 771(5A)(D)(i) of the Act.

The loans provide a benefit equal to the difference between what the recipients paid on their loans and what they would have paid on comparable commercial loans.\(^5^9\) In this final determination, as a result of Commerce’s determination to rely on information submitted with the Petition on the 2020 Plastics Plan concerning the GOV’s intention to provide preferential lending to the plastic packaging sector, we have revised the denominator used for the calculation of DVH Packaging’s benefit under the above program from DVH Packaging’s export sales to total sales.\(^6^0\) Accordingly, we have calculated a final countervailable subsidy rate of 1.38 percent \textit{ad valorem} for DVH Packaging for this program.\(^6^1\)

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 1.38 percent \textit{ad valorem}, which corresponds to the highest non-zero rate calculated for a cooperating company for the identical program in this investigation (\textit{i.e.}, DVH Packaging’s subsidy rate).

\(^{58}\) See GOV IQR at 7-8, Exhibit A-1 (Decree No. 32/2011/ND-CP).
\(^{59}\) See section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a).
\(^{60}\) See 19 CFR 351.525(b)(2) and (3).
\(^{61}\) See DVH Packaging Final Calculation Memorandum.
The domestic industry, the GOV, and DVH Packaging submitted comments in either their case or rebuttal briefs regarding this program and the calculation methodology. This is addressed in Comment 6. Additionally, DVH Packaging submitted minor corrections regarding this program at verification, which did not affect the subsidy calculation.\textsuperscript{62}

\textit{Interest Rate Support Program}

Commerce determined in \textit{Shrimp from Vietnam} that interest rate support from the State Bank of Vietnam constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act.\textsuperscript{63} In \textit{Shrimp from Vietnam}, we also determined, based on Circular 21/2009/TT-NHNN of October 9, 2009,\textsuperscript{64} that interest rate support\textsuperscript{65} “is specific within the meaning of section 771(5A)(A) and (C) of the Act” based on our finding that “recipients are prohibited from using interest-supported loans to purchase foreign exchange to pay for imports and that only Vietnamese dong-denominated loans are eligible for support.”\textsuperscript{66} We note that the provisions in Circular 21/2009/TT-NHNN of October 9, 2009 related to the use of loans to import raw materials at issue in \textit{Shrimp from Vietnam} are also in Decision 131/QD-TTg on the record of this investigation.\textsuperscript{67} There is no information on the record calling into question our previous findings with respect to financial contribution and specificity for this program. Thus, consistent with \textit{Shrimp from Vietnam}, we determine that the program involves loans from a state bank which constitutes a financial contribution from an SOCB, pursuant to section 771(5)(D)(i) of the Act, and that the program is specific within the meaning of sections 771(5A)(A) and (C) of the Act because receipt of the interest support is contingent upon the use of domestic goods over imported goods, alone or as one of two or more conditions.

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 1.38 percent \textit{ad valorem}, which corresponds to the highest above-\textit{de minimis} subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.


\textsuperscript{63} See Petition, Volume III, at 9-10, citing \textit{Shrimp from Vietnam}.


\textsuperscript{65} See GOV IQR at 11-12, Exhibit A-6; see also Petition, Volume III, at 9-10.

\textsuperscript{66} See \textit{Shrimp from Vietnam} and accompanying IDM at the “Interest Rate Support Program under the State Bank of Vietnam (SBV)” section.

\textsuperscript{67} See GOV IQR at Exhibit A-6, Appendix, “11. Import of consumer goods.”
Export Factoring

We note that the GOV submitted no information regarding this loan program. Because necessary information is missing from the record pursuant to section 776(a)(1) of the Act, as facts available, we have relied on information in the Petition. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition shows that this program provides direct transfers of funds via, e.g., advance payments and financing. The Petition also states that export factoring from an SOCB is contingent on export performance. Therefore, this program constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act because it involves a direct transfer of funds from an SOCB to the recipient, and the program is also specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters meeting the program criteria.

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 1.38 percent ad valorem, which corresponds to the highest above-de minimis subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

Financial Guarantees for Export Activities

We note that the GOV submitted no information regarding this loan program. Because necessary information is missing from the record pursuant to section 776(a)(1) of the Act and the GOV withheld requested information pursuant to 776(a)(2)(A) of the Act, as facts available, we have relied on information in the Petition. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition states that financial guarantees for export activities are foreign currency guarantee obligations from an SOCB that are contingent on export performance. Therefore, this program constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act because it involves loan guarantees from an SOCB; the program is also specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters meeting the program criteria.

68 Id. at 12. The GOV stated that this program was “not applicable,” and made a non-specific reference to its responses with respect to other programs.
69 See Petition, Volume III, at 11 and Exhibit III-12.
70 Id. at 10-11.
71 See GOV IQR at 12. The GOV stated that this program was “not applicable,” and made a non-specific reference to its responses with respect to other programs.
Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 1.38 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

2. Land and LTAR Programs

*Land Rent Reductions or Exemptions for Plastic Producers*

We note that the GOV submitted no information regarding this rent reduction/exemption program.\(^73\) Because necessary information is missing from the record pursuant to section 776(a)(1) of the Act and the GOV withheld requested information pursuant to 776(a)(2)(A) of the Act, as facts available, we have relied on information in the Petition. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition states that the GOV provides land rent reductions and exemptions to certain recipients, including plastics producers in key programs and projects relocated from cities.\(^74\) Thus, the available facts on the record demonstrate that this program constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone because the GOV provides land rent reductions and exemptions. It is also specific under section 771(5A)(D)(i) of the Act because it is limited to certain recipients, including plastics producers in key programs.

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

*Land Rent Exemptions for Exporters*

We note that the GOV submitted no information regarding this rent exemption program.\(^75\) Because necessary information is missing from the record pursuant to section 776(a)(1) of the Act and the GOV withheld requested information pursuant to 776(a)(2)(A) of the Act, as facts available, we have relied on information in the Petition. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition states that the GOV provides land rent exemptions to exporters. Thus, the available facts on the record demonstrate that this program constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone because the GOV provides land rent reductions and exemptions. It is also specific under section 771(5A)(D)(i) of the Act because it is limited to certain recipients, including plastics producers in key programs.

\(^73\) *See* GOV IQR at 12-13. The GOV stated that this program was “not applicable.”
\(^74\) *See* Petition, Volume III, at 13-14.
\(^75\) *See* GOV IQR at 13. The GOV stated that this program was “not applicable.”
available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition states that the GOV provides land rent reductions and exemptions to exporting companies that process 80 percent or more of their products for export.\(^76\) Thus, the available facts on the record demonstrate that this program constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone because the GOV provides land rent reductions and exemptions, and is also specific under section 771(5A)(A) and (B) of the Act because it is limited to exporting companies that process 80 percent or more of their products for export.

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 25.41 percent \textit{ad valorem}, which corresponds to the highest above-	extit{de minimis} subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

\textit{Land Rent Exemptions for Foreign-Invested Enterprises}

We note that the GOV submitted no information regarding this rent exemption program.\(^77\) Because necessary information is missing from the record pursuant to section 776(a)(1) of the Act and the GOV withheld requested information pursuant to 776(a)(2)(A) of the Act, as facts available we have relied on information in the Petition. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition states that the GOV exempts foreign-invested projects in Vietnam from land rent for seven to eleven years.\(^78\) Thus, the available facts on the record demonstrate that this program is specific under section 771(5A)(D)(i) of the Act because it is limited to foreign-invested enterprises in Vietnam, and the program also constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone because the GOV provides land rent exemptions for seven to eleven years.

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 25.41 percent \textit{ad valorem},

\(^76\) See Petition, Volume III, at 15-16.
\(^77\) See GOV IQR at 13. The GOV stated that this program was “not applicable.”
\(^78\) See Petition, Volume III, at 16-17.
which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

*Land Rent Exemptions for Enterprises Located in Special Zones*

We note that the GOV submitted no information regarding this rent exemption program. Because necessary information is missing from the record pursuant to section 776(a)(1) of the Act and the GOV withheld requested information pursuant to 776(a)(2)(A) of the Act, as facts available we have relied on information in the Petition. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition states that the GOV provides a land rent exemption for companies in industrial zones and parks. Thus, the available facts on the record demonstrate that this program constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone because the GOV provides a land rent exemption, and is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies in industrial zones and parks.

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 25.41 percent *ad valorem*, which corresponds to the highest above-*de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

*Provision of Utilities for LTAR in Industrial Zones*

We note that the GOV submitted no information regarding this utility LTAR program, but rather limited its response to information regarding other, different programs which it claimed the respondents used. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. As facts available, we have relied on information in the Petition. Based on this information, the “Provision of Utilities for LTAR in Industrial Zones” involves the provision of water, power, and other utilities at preferential rates for LTAR, to recipients in industrial zones in designated geographic regions. Thus, the available facts on the record demonstrate that this program constitutes a financial contribution pursuant to section 771(5)(D)(iii) of the Act because it involves the provision of water, power, and other utilities,

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79 See GOV IQR at 13. The GOV stated that this program was “not applicable.”

80 See Petition, Volume III, at 17-19.

81 See GOV IQR at 14-16. The GOV stated that this program was “not applicable.”

and is specific under section 771(5A)(D)(iv) of the Act because it is limited to recipients in industrial zones in designated geographic regions.

Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 25.41 percent ad valorem, which corresponds to the highest above-de minimis subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

3. Income Tax Programs

Income Tax Preferences to Companies in Special Zones

No parties commented on this program, and we have made no changes to our determinations regarding financial contribution and specificity from the Preliminary Determination. We have calculated a final countervailable subsidy rate of 0.51 percent ad valorem for DVH Packaging for income tax preferences to companies in special zones, which is unchanged from the Preliminary Determination.

Absent the cooperation of Xinsheng, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Xinsheng failed to provide requested information pursuant to 776(a)(2)(A) of the Act. Accordingly, we have determined that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, as AFA, pursuant to section 776(b) of the Act, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (i.e., the income tax programs combined provided a 25 percent benefit).

Income Tax Preferences for Exporters

The GOV reported that the “Income Tax Preferences for Exporters” program was introduced under Decree No. 164/2003/ND-CP, dated December 22, 2003, but was terminated by Decree No. 24/2007/ND-CP, dated February 14, 2007. However, in Steel Nails from Vietnam, we noted that certain provisions of Decree No. 164/2003/ND-CP were grandfathered, and we note the same provisions in Decree No. 24/2007/ND-CP on the record of this investigation. Decree No. 164/2003/ND-CP and Decree No. 24/2007/ND-CP were administrated by the Ministry of

83 See PDM at 14.
84 Id.
85 See GOV IQR at 16.
86 See Steel Nails from Vietnam and accompanying IDM, Analysis of Programs, item 15, “Income Tax Preferences under Chapter V of Decree 164.”
87 See GOV IQR at Exhibit C-2, Articles 46.3 and 46.4.
Finance; thus, this program constitutes a financial contribution under section 771(5)(D)(ii) of the Act, because it represents revenue foregone by the GOV. The programs included export-contingent criteria. Therefore, this program is also specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters meeting program criteria.

Absent the cooperation of Xinsheng, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Xinsheng failed to provide requested information pursuant to 776(a)(2)(A) of the Act. Accordingly, we have determined that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, as AFA, pursuant to section 776(b) of the Act, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (i.e., the income tax programs combined provided a 25 percent benefit)

_Income Tax Preferences for Small and Medium-Sized Enterprises_

The GOV reported that the “Income Tax Preferences for Small and Medium-Sized Enterprises” program was an income tax program which related to the 2012 tax year, prior to the POI. Because Commerce’s AFA practice in CVD proceedings for income tax programs is to apply the standard corporate tax rate as AFA covering all programs on a combined basis, it is not necessary to address the GOV’s claim (see Selection of the AFA Rate, above).

_Income Tax Exemptions and Reductions for Business Expansion and Intensive Investment_

The GOV reported that income tax programs are administered by the Ministry of Finance. Thus, this tax exemption program constitutes a financial contribution under section 771(5)(D)(ii) of the Act, because it represents revenue foregone by the GOV. The GOV reported that during the POI, Decree No. 218/2013/ND-CP provided income tax preferences to enterprises that increased the value of their fixed assets and increased production capacity under Article 16.5. Thus, this program is also specific under section 771(5A)(D)(i) of the Act because it is limited to enterprises that increased the value of their fixed assets and increased production capacity.

Absent the cooperation of Xinsheng, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Xinsheng failed to provide requested information pursuant to 776(a)(2)(A) of the Act. Accordingly, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find as AFA, pursuant to section 776(b) of the Act, that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (i.e., the income tax programs combined provided a 25 percent benefit.)

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88 Id.; see also Petition, Volume III, at 20-21.
89 See Petition at Exhibit III-23, “Decree No. 60/2012/ND-CP dated July 30, 2012” at Article 2.
90 See GOV IQR at Exhibit C-4 at 2.
91 Id. at 19 (The GOV reported that Decree No.29-CP, dated May 12, 1995 was repealed and replaced by Decree No. 218/2013/ND-CP); see also Petition, Volume III, at 24-25.
income tax rates or the payment of no income tax, we are applying the 25 percent AFA rate on a combined basis (i.e., the income tax programs combined provided a 25 percent benefit).

**Preferential Income Tax Programs for Foreign Invested Entities**

The GOV reported that the “Preferential Income Tax Programs for Foreign Invested Entities” program was terminated by the Law on Investment (2005), effective January 1, 2006. Because Commerce’s AFA practice in CVD proceedings for income tax programs is a single application of the standard corporate tax rate as AFA covering all programs on a combined basis, it is not necessary to address the GOV’s claim (see Selection of the AFA Rate, above).

4. Import Duty Programs

**Import Duty Exemptions on Imports of Raw Materials for Exporting Goods**

We have calculated a final countervailable subsidy rate of 1.13 percent *ad valorem* for DVH Packaging for the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program. We have made no changes to the calculation from the *Preliminary Determination*. However, as discussed in the Use of Facts Otherwise Available and Adverse Inferences section above, Commerce has made changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*, consequent to the application of AFA to Xinsheng’s import duty exemption programs. The domestic industry and the GOV submitted comments in either their case or rebuttal briefs regarding this program and the calculation methodology. This is addressed in Comment 2, below.

**Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones**

The GOV reported that the “Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones” program is administered by the Ministry of Finance, and that it is an import duty exemption program for companies in geographic locations in areas with difficult socioeconomic conditions. Thus, this program constitutes a financial contribution under section 771(5)(D)(ii) of the Act, because it represents revenue foregone by the GOV, and is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies in geographic locations in areas with difficult socioeconomic conditions.

In the *Preliminary Determination*, we determined that DVH Packaging did not receive a measurable benefit under this program during the POI. The GOV and DVH Packaging submitted minor corrections regarding this program at their respective verifications, which did

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93 See PDM at 17.

94 See GOV IQR at 23-24, and Exhibit D-5.

95 See PDM at 21.
not affect the subsidy calculation.\textsuperscript{96} Additionally, the domestic industry, the GOV, and DVH Packaging submitted comments in either their case or rebuttal briefs regarding this program and the calculation methodology. This is addressed in Comment 3.

As discussed in the Use of Facts Otherwise Available and Adverse Inferences section above, Commerce has made changes to the methodology used to calculate or attribute subsidies under this program since the Preliminary Determination, consequent to the application of AFA to Xinsheng’s import duty exemption programs. Absent the cooperation of Xinsheng, we determine that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 4.46 percent \textit{ad valorem}, which corresponds to the highest above-\textit{de minimis} subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

\textit{Import Duty Exemptions for Foreign-Invested Entities}

We note that the GOV submitted no information regarding this import duty exemption program,\textsuperscript{97} and necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Xinsheng failed to provide requested information pursuant to 776(a)(2)(A) of the Act. Accordingly, as facts available we have relied on information in the Petition. The Petition provides the only information on the record concerning this program. While public information reasonably available to the petitioners pursuant to section 702(b)(1) of the Act may not be complete information, it is directly relevant information regarding this program which is a reasonable proxy for a complete questionnaire response regarding the program from the GOV. The Petition states that the “Import Duty Exemptions for Foreign-Invested Entities” program is a duty exemption program administered by the Ministry of Finance to foreign-owned companies in Vietnam.\textsuperscript{98} Pursuant to Decree 24, the program exempts foreign-invested enterprises in Vietnam from certain duties for imports.\textsuperscript{99} Thus, this program constitutes a financial contribution under section 771(5)(D)(ii) of the Act, because it represents revenue foregone by the GOV, and is also specific under section 771(5A)(D)(i) of the Act because it is limited by law to foreign-owned companies in Vietnam.

Absent the cooperation of Xinsheng, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Xinsheng failed to provide requested information pursuant to 776(a)(2)(A) of the Act. Accordingly, as AFA, pursuant to section 776(b) of the Act, we have determined that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng

\textsuperscript{96} See DVH Packaging Minor Corrections; see also Letter from the GOV, “Laminated Woven Sacks from Vietnam, Case No. C-552-824: Government of Vietnam’s Minor Corrections Presented at Verification,” dated September 26, 2018; see also DVH Packaging Verification Report at 2; see also GOV Verification Report at 2.

\textsuperscript{97} See GOV IQR at 24-25. The GOV stated that this program was “not applicable,” and made a non-specific reference to its responses with respect to other programs.

\textsuperscript{98} See Petition, Volume III, at 29-30.

\textsuperscript{99} Id. at 29-30 and Exhibit 25 (Decree No. 24/2000/ND-CP of July 31, 2000 Detailing the Implementation of the Law on Foreign Investment in Vietnam (Decree 24), at Arts. 57.1 and 57.7., Appendix I).
used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 4.46 percent \textit{ad valorem}, which corresponds to the highest above-de minimis subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

\textit{Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones}

The GOV reported that Vietnam’s Customs Authority administers the “Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones” program.\textsuperscript{100} Consistent with our analysis in the \textit{Preliminary Determination}, we determine that the exemptions constitute a financial contribution in the form of revenue foregone, as described under section 771(5)(D)(ii) of the Act, and that the duty exemptions are specific in accordance with section 771(5A)(A) and (B) of the Act because they are contingent upon export performance.\textsuperscript{101}

Absent the cooperation of Xinsheng, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Xinsheng failed to provide requested information pursuant to 776(a)(2)(A) of the Act. Accordingly, as AFA, pursuant to section 776(b) of the Act, we have determined that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 4.46 percent \textit{ad valorem}, which corresponds to the highest above-de minimis subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

5. Export Promotion Programs

\textit{Export promotion pursuant to Decision No. 279/2005/QD-TTg, dated November 3, 2005 and Decision 137/QD-BCT, dated January 16, 2017}

The GOV reported that this export promotion program is administrated by the Ministry of Industry and Trade, and is targeted at companies based on export performance.\textsuperscript{102} Therefore, this program constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act because it is a direct transfer of funds, and the program is also specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters meeting the program criteria.

Absent the cooperation of Xinsheng, necessary information is missing from the record pursuant to section 776(a)(1) of the Act. Further, Xinsheng failed to provide requested information pursuant to 776(a)(2)(A) of the Act. Accordingly, as AFA, pursuant to section 776(b) of the Act,

\textsuperscript{100} See GOV SQR3 at 2-4.
\textsuperscript{101} See PDM at 20.
\textsuperscript{102} See GOV IQR at 26-27 and Exhibit E-1, Annex 1 (list of approved trade promotion programs) see also Petition, Volume III, at 30-31.
we have determined that its submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(2) and (3) of the Act. Therefore, we find that Xinsheng used and benefitted from this program within the meaning of section 771(5)(E) of the Act. As described above under the “Use of AFA and Adverse Inferences” section, we are assigning Xinsheng a net subsidy rate of 25.41 percent ad valorem, which corresponds to the highest above-de minimis subsidy rate calculated for a similar program in any segment of any proceeding involving Vietnam.

X. ANALYSIS OF COMMENTS

Comment 1: The AFA Rate Applicable to Xinsheng

Petitioners

- Xinsheng withdrew from participating in this investigation. Commerce should apply total AFA to Xinsheng because Xinsheng has significantly impeded this investigation, failed to cooperate to the best of its ability, and provided information that cannot be verified, as provided by section 782(i) of the Act. Commerce has applied total AFA to respondents that formally withdrew from a countervailing duty investigation following the Preliminary Determination. Commerce should follow its practice in this investigation.103

- The statute permits Commerce to include all programs at issue in this investigation when calculating the AFA rate for Xinsheng in the final determination. Consistent with this established practice, because Xinsheng failed to cooperate in this investigation, Commerce should select the highest calculated rate for the same or similar program as AFA for each of the programs under investigation.104

GOV Rebuttal

- Commerce is obligated to corroborate AFA rates to the extent practicable when AFA rates are based on secondary information rather than on information obtained in the course of an investigation or a prior segment of the same proceeding. In order for a rate to be corroborated, Commerce must try to corroborate that the respondent could have conceivably used the program; and that the respondent could have conceivably used all of the programs contained in the AFA rate simultaneously. Commerce found at verification that “the choice of the program (i.e., (1) duty-free export processing or (2) import raw material to produce goods) is completely at the discretion of the company seeking the duty exemption.” If Xinsheng was eligible to receive import duty exemptions for raw materials because it was a foreign-invested enterprise, it would not have been able to also receive import duty exemptions under other programs.105

103 See Petitioners Case Brief at 2-4.
104 Id. at 4-12.
105 See GOV Rebuttal Brief at 3-5.
- The 4.46 percent rate calculated in *Certain Steel Wire Garment Hangers from Vietnam* for the “Import Duty Exemptions on Imports for Raw Materials for Exporting Goods” program is significantly different than the rate calculated for the same program in the instant investigation. The reliability and relevance of the older rate, even when used as a surrogate, is seriously undermined such that it can no longer be corroborated. Therefore, Commerce should use the 1.13 percent rate calculated for DVH Packaging in this investigation for all applicable import duty exemption programs.\(^{106}\)

- Petitioners include in their list of programs to which Commerce should apply AFA two separate programs administered by the Vietnam Development Bank. However, Commerce should calculate a single AFA rate for the program identified in the Initiation Checklist\(^ {107}\) and the PDM as the “Preferential Lending and Export Credits from the Vietnam Development Bank” program.\(^ {108}\)

**Commerce’s Position:** We agree with the petitioners generally, and have applied an AFA rate to Xinsheng for each of the programs under investigation, as explained above.

Regarding the import duty exemption programs which the GOV argues Xinsheng cannot be eligible for, we find that the record does not support limiting the application of AFA to only find a benefit for one of the three raw material import duty exemption programs at issue. In the *Preliminary Determination*, we noted that the GOV and Xinsheng initially reported that Xinsheng used the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program,\(^ {109}\) and the “Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones” program.\(^ {110}\) However, in subsequent responses, the GOV and Xinsheng reported that Xinsheng is ineligible for both of these programs because Xinsheng is an “export-oriented enterprise located in an export processing zone” which is a “non-tariff zone.”\(^ {111}\) As noted above, Xinsheng withdrew from participating in the proceeding after the *Preliminary Determination*, and prior to the verification of its questionnaire responses.\(^ {112}\) Due to Xinsheng’s withdrawal from the proceeding, Commerce’s verification agenda for the GOV\(^ {113}\) excluded the program that the GOV ultimately claimed that Xinsheng used, the “Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones”

\(^ {106}\) *Id.* at 6-7.

\(^ {107}\) *See* Countervailing Duty Investigation Initiation Checklist: Laminated Woven Sacks from the Socialist Republic of Vietnam, dated March 27, 2018 (Initiation Checklist).

\(^ {108}\) *See* GOV Rebuttal Brief at 7-8.

\(^ {109}\) *See* PDM at 17; *see also* GOV IQR at 20; *see also* Xinsheng IQR at Exhibit D-1.

\(^ {110}\) *See* PDM at 21; *see also* GOV IQR at 23-24; *see also* Xinsheng IQR at 24-25.

\(^ {111}\) *See* Xinsheng SQR1 at 13-14 (“Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program; *see also* Letter from the GOV, “Laminated Woven sacks from Vietnam, Case No. C-552-824: Government of Vietnam’s Third Supplemental Questionnaire Response,” dated July 18, 2018 (GOV SQR3) at 2-3; Xinsheng SQR1 at 15-16 “Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones” program.


program.\textsuperscript{114} Commerce determined that, due to Xinsheng’s withdrawal from the proceeding, the information concerning the use of these programs by Xinsheng could not be verified without verifying the facts of their actual use at the company’s site.

The GOV argued that if Xinsheng was eligible to receive import duty exemptions for raw materials because it was a foreign-invested enterprise, it would not have been able to receive import duty exemptions under the other two duty exemption programs for raw materials under investigation.\textsuperscript{115} As we explain above, however, because Xinsheng withdrew from the investigation, we have no verified information on Xinsheng’s corporate structure, including information on cross-owned companies of Xinsheng with subsidies attributable to Xinsheng under section 351.525(b)(6) of our regulations. Regardless of the GOV’s argument that the import duty exemption programs for raw materials are mutually exclusive within a single company,\textsuperscript{116} different cross-owned companies could have used the programs at the same time. Thus, we have no basis to conclude that Xinsheng did not benefit from all three import duty exemption programs for raw materials under investigation because we have no verified information on cross-owned companies of Xinsheng, each of which might have benefitted from a different import duty exemption program.\textsuperscript{117}

Commerce has an established practice for selecting AFA rates for programs for which no verified usage information was provided.\textsuperscript{118} The aim of verification is to verify the reliability and accuracy of information submitted by a respondent. Without verified or verifiable data with respect to the use of any of these three programs, the potential benefits received under these programs, or cross-owned companies with subsidies attributable to Xinsheng, Commerce has resorted to the use of AFA to determine the benefit Xinsheng received under these programs, as explained in the AFA section above. Therefore, we have applied our CVD AFA hierarchy to assign a net subsidy rate to Xinsheng for all three raw material duty exemption programs.

With regard to our CVD AFA hierarchy, we agree with the GOV regarding the applicable rate for the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program but disagree that this rate should be applied to all import duty programs. Pursuant to our practice,\textsuperscript{119} we will apply the highest calculated rate for the identical program in the same proceeding if another responding company used the identical program. If no other company

\textsuperscript{114} See PDM at 17.
\textsuperscript{115} See GOV Rebuttal Brief at 3-5.
\textsuperscript{116} Id.
\textsuperscript{117} See, e.g., Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) and accompanying IDM at Comment 5.
\textsuperscript{118} When the AFA determination applies solely to the financial contribution and specificity prongs of the countervailability determination, Commerce may still calculate a rate using information supplied by the company respondents.
\textsuperscript{119} See, e.g., Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 82 FR 16341 (April 4, 2017) and accompanying IDM at Comment 3; Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review: 2012, 79 FR 78799 (December 31, 2014) and accompanying IDM at Comment 6; Galvanized Steel Wire from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012) and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences.”
used the identical program within the proceeding, we will use the rate from the identical program in another CVD proceeding involving the country under investigation, unless the rate is *de minimis*. If there is no identical program match in any CVD proceeding involving the country under investigation, we will use the highest rate calculated for a similar program in another CVD proceeding involving the same country. In this instance, DVH Packaging used the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program; thus, Commerce will apply DVH Packaging’s rate for this program to Xinsheng pursuant to our AFA rate selection hierarchy. However, for the “Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones” program, and the “Import Duty Exemptions for Foreign-Invested Entities” program, the highest rate calculated for a similar program is 4.46 percent calculated for the Hamico Companies in *Hangers from Vietnam*\(^{120}\) for the “Import Duty Exemptions or Reimbursements for Raw Materials” program.

We disagree with the GOV’s claim that the rate from *Hangers from Vietnam* is no longer reliable or relevant because DVH Packaging’s rate for the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program is lower. If the program is identical, the difference between the rates must only be attributable to the difference in the total value and the rate of duty applicable to the imported merchandise (numerator), and the total sales value (denominator) making up the rate. Inevitably these facts will differ between different companies in different industries. As described above under the “Corroboration of Secondary Information” section, the relevance of these rates is that they are actual calculated subsidy rates for Vietnamese programs for which Xinsheng could actually receive a benefit. Due to Xinsheng’s lack of participation and the resulting lack of record information concerning these programs, we have corroborated the AFA rates to the extent practicable pursuant to section 776(c)(1) of the Act. Further, the “Import Duty Exemptions on Imports of Raw Materials for Exporting Goods” program is not identical to the other two programs for which we are applying AFA to Xinsheng. We are selecting a rate for a similar program and have also corroborated that rate to the extent practicable under the statute as explained above in the “Corroboration of Secondary Information” section.

We also agree with the GOV that Commerce initiated an investigation on an export credit program specifically administered by the VDB, and export loan programs administered by all Vietnamese state-owned commercial banks.\(^{121}\) Commerce did not initiate an investigation of an additional export loan program specifically administered by the VDB.

**Comment 2: Whether the GOV’s Administration of Import Duty Exemptions for Raw Materials Is Not Excessive, and Therefore Not Countervailable**

**GOV**

- In the *Preliminary Determination*, Commerce found that the GOV’s administration of import duty exemptions did not meet the requirements of 19 C.F.R. 351.519(a)(a)(i) because “the GOV’s system does not account for resalable waste, because such waste is

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\(^{120}\) See *Hangers from Vietnam* and accompanying IDM, Analysis of Programs, item 3. “Import Duty Exemptions of Reimbursements for Raw Materials.”

\(^{121}\) See Initiation Checklist at 7-9.
exempt from duties.” Commerce has no basis to find that the exception contained in 19 C.F.R. 351.519(a)(a)(i) applies, and therefore, has no basis to countervail the entirety of the exemption that DVH Packaging received.122

- In the Preliminary Determination, Commerce did not address the reasonableness and effectiveness of the GOV’s monitoring procedures to ensure that waste, whether resold or not, is within the production norms of the companies claiming the exemption. In Hot-Rolled Steel from Thailand,123 Commerce compared the yield factor submitted by the respondent company to the government with two other sources that showed a yield factor that differed significantly from the government-approved one. Commerce found that the reason for this discrepancy was that the yield factor approved by the Thai government did not include any provision for recoverable and salable scrap. As reported by the GOV and verified by Commerce, the GOV allows companies to sell waste generated from raw materials used to produce exports. Companies are only entitled to import duty exemptions if the waste that is resold is within the production norm, i.e., the acceptable loss rate. The fact that the GOV does not track what amount of waste is sold in the domestic market is not a legal basis to countervail import duty exemptions.124

- In the Preliminary Determination, Commerce did not address the consistency of GOV customs monitoring procedures with Vietnamese accounting standards (GAAP). In order to monitor waste allowances, including waste that might be sold in the domestic market, companies receiving import duty exemptions are required to submit production norms to Vietnamese Customs, that detail how much raw material is required to produce how much finished product, accounting for yield losses. These norms are subject to corroboration by Vietnamese Customs, which will compare the reported norms to those reported by comparable companies in the same or similar industry. In the absence of a comparable company, Vietnamese Customs may perform a physical inspection of the company and request a sample production to compare with the company’s production and inventory records. At the end of each calendar year, companies are required to submit annual reports that detail “stock-in, stock-out, leftover raw materials, and finished products produced from raw materials.” The reports are subject to inspection by Vietnamese Customs, which reserves the right within five years after entry of the raw materials on the report to conduct a physical inspection of the company’s books and records and physical inventory to determine the report’s veracity. Vietnamese Customs conducted a post-clearance examination of DVH Packaging in the year prior to the POI and concluded that DVH Packaging was in compliance.125

Petitioners Rebuttal

- In Steel Nails from Vietnam, Commerce explained that “the GOV’s system does not account for resalable waste, because such waste is exempt from duties.” Commerce

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122 See GOV Case Brief at 12-13.
124 See GOV Case Brief at 13-15.
125 Id. at 16-19.
determined that “regardless of what the loss rate is (unless it was zero) . . . the fact remains that the portion of imported inputs that become waste from a company’s production process is allowed to be sold by the producer without the application of import duties.” Commerce concluded that “because the duty exemption applied to waste and not just the exported merchandise, we countervailed the exemption in full.” Thus, the fact of resalable waste that is within the production norm has already been considered and rejected by Commerce in determining whether there is a countervailable benefit.  

- Commerce’s verification exercises confirm that “information regarding generated waste and consumption norms are industry-specific” and that the GOV relies on information provided by the companies themselves “and not from any outside source.” Commerce’s verification exercises also confirm that absent “inspection at the company’s site,” there is no way for customs officials to corroborate reported loss norms. The GOV also confirmed that DVH Packaging “has never been subjected to this type of inspection.”

- The discrepancy between the percentage rate of loss that DVH Packaging reported to the GOV, and the percentage of DVH Packaging’s scrap costs to raw material costs, confirms that the GOV does not have in place and apply a procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, or that the system or procedure is reasonable and/or effective for the purposes intended, within the meaning of Commerce’s regulations.

- Whether the GOV “administers import duty exemptions in a reasonable and effective manner that is consistent with Vietnamese accounting standards” is irrelevant. The verification report confirms that the GOV admitted that DVH Packaging has “never had an inspection to track raw materials consumed to exports” and that “companies do not make Customs entry for waste and scrap sold into Vietnam, and Customs does not monitor this.”

**Commerce’s Position:** We disagree with the GOV and agree with the petitioners that Vietnam’s raw materials program does not account for resalable waste sold into Vietnam, and this it is countervailable, as we found in *Steel Nails from Vietnam.*

Under 19 CFR 351.519(a)(l)(ii), in the case of exemptions of import charges upon export, “...a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste...” Under 19 CFR 351.519(a)(4)(i), the entire amount of such exemptions will confer a benefit unless Commerce determines that the government applies a system to confirm which inputs are consumed in the production of the exported products and in what amounts.

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126 See Petitioners Rebuttal Brief at 20-22.
127 Id. at 22-23.
128 Id. at 23.
129 Id. at 23-24.
As we have stated in past cases, we consider whether the production process produces resalable scrap to be essential to the calculation of a normal allowance for waste.\textsuperscript{131} Consistent with these cases, we preliminarily determined that the GOV does not have in place a system to confirm which inputs are consumed in the production of the exported products and in what amounts, including a normal allowance for waste. Specifically, we found that the GOV’s system does not account for resalable waste, because such waste is exempt from duties.\textsuperscript{132} We stated that the GOV reported that “waste or scrap that is generated while producing products intended for export and that is within the production norm can be resold in the domestic market without the payment of import duties” pursuant to Article 71 of Circular 38.\textsuperscript{133} Article 71 of Circular 38 states that “whene rejects and waste within the norm for manufacture of goods for export (such as peanut shells) are sold domestically, customs procedures are exempt. However, taxes must be declared and paid to inland tax authorities in accordance with regulations of law on taxation.”\textsuperscript{134} Therefore, producers may recover and sell “waste” material from imported inputs without paying duties on that waste. Because the duty exemption applied to waste and not just the exported merchandise, we countervailed the exemption in full.\textsuperscript{135} The GOV did not address this finding except to claim that it accounts for resalable scrap in the calculation of the loss rate. Regardless of what the loss rate is (unless it were zero), however, the fact remains that the portion of the imported inputs that become waste from a company’s production process is allowed to be sold by the producer without the application of import duties.

At the verification of the GOV, the GOV confirmed that companies participating in this program do not have entries into Vietnam of waste and scrap sold into Vietnam, and Customs does not monitor this.\textsuperscript{136} Further, the verification report noted that the GOV stated the following:

“As the law (Circular 38) indicates, a company selling scrap into Vietnam must only pay sales tax with the local tax authority at the district level. Sales of raw materials scrap must be approved by the local tax authority or otherwise the scrap must be destroyed. There is no regulation limiting sales of scrap. There are no GOV ranges for the norms limiting scrap that can be sold. Information regarding generated waste and consumption norms are industry-specific, and as a practical matter, Customs obtains the information from the company itself, and not from any outside source.”\textsuperscript{137}

In sum, the verification of the GOV supported the information in the GOV responses, which Commerce relied upon in the Preliminary Determination. Producers may recover and sell

\textsuperscript{131} See, e.g., Steel Nails from Vietnam and accompanying IDM at Comment 3; Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 78 FR 50387 (August 19, 2013) (Shrimp from Vietnam) and accompanying IDM at “Import Duty Exemptions for Imported Raw Materials for Exported Goods.”

\textsuperscript{132} See PDM at “Import Duty Exemptions on Imports of Raw Materials for Exported Goods;” at 14-17.

\textsuperscript{133} See GOV IQR at 22-23.

\textsuperscript{134} Id. at Exhibit D-2.

\textsuperscript{135} See PDM at “Import Duty Exemptions on Imports of Raw Materials for Exported Goods;” at 14-17.

\textsuperscript{136} See GOV Verification Report at 9.

\textsuperscript{137} Id.
“waste” material from imported inputs without paying duties on that waste. Moreover, even if
resalable scrap is accounted for in the calculation of the loss rate, the loss rate is itself provided
by the producer. While GOV also points out that Vietnam customs may, at least in theory,
“request sample production, and compare the sample to the company’s warehouse stock
records,” the GOV has no ranges for the norms limiting scrap that can be sold, i.e. the scrap
recovered and sold can be in any amount so long as the company books the amounts accurately
in its accounting records. Thus, we agree with the petitioners that the compliance of these
accounting records with Vietnamese GAAP is not material to Commerce’s determination.

In specific regard to DVH Packaging, as noted by the petitioners, DVH Packaging’s
consumption norm for the main raw material was equal to the weight of the finished sack
(expressed in kilograms) increased by a standard flat percent rate of loss for all products, which
DVH Packaging developed using production trials. Regarding the petitioners’ contention that
there is a “discrepancy” regarding the percentage rate of loss that DVH Packaging reported to the
GOV, and the percentage of DVH Packaging’s scrap cost to raw material cost, we disagree. The
standard product-specific rate of loss norm used by the company, and the actual product-specific
cost of scrap as a ratio of the actual product-specific cost of raw materials, do not have to be
equal (although they should approximately correspond). Based on the record and our
verification findings, there is no “discrepancy.” Thus, this determination is consistent with Steel
Nails from Vietnam and Shrimp from Vietnam, in which we found this program countervailable
and we recognized the full amount of the exempted duties as the benefit for the same reason.

Comment 3: Whether Commerce Should Include Imports Reported by Vinh Hoa Plastic
Corporation (Vinh Hoa) in Calculating DVH Packaging’s Benefit for Import
Duty Exemptions on Spare Parts and Accessories for Companies in
Industrial Zones

Petitioners

- In the Preliminary Determination, Commerce did not determine whether cross-ownership
  exists between DVH Packaging and the reported affiliated company, Vinh Hoa. DVH
  Packaging reported that Vinh Hoa used the Import Duty Exemption on Imports of Spare
  Parts and Accessories for Companies in Industrial Zones prior to the POI, but during the
  Average Useful Life (AUL). However, Commerce preliminarily found no evidence that
  Vinh Hoa received countervailable subsidies attributable to DVH Packaging during the
  POI. Commerce should reverse this decision.

- Under 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.” DVH Packaging

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138 Id. at 10.
139 See DVH Packaging Verification Report at 9.
140 See e.g., Steel Nails from Vietnam and accompanying IDM at Comment 3; Shrimp from Vietnam and
accompanying IDM at “Import Duty Exemptions for Imported Raw Materials for Exported Goods.”
141 See Petitioners Case Brief at 12-13.
and Vinh Hoa meet these criteria for cross-ownership based on this definition, due to the involvement of Vinh Hoa’s owners in DVH Packaging. Commerce confirmed at verification that Vinh Hoa manufactured subject merchandise.142

- The record of this investigation confirms that the interests of DVH Packaging and Vinh Hoa have merged to such a degree that one corporation can use or direct the individual assets (including subsidy benefits) of the other corporation in essentially the same way that is can use its own assets. The record also contains information in loan documentation that confirms that DVH Packaging and Vinh Hoa were cross-owned during the POI. Based on this evidence, Commerce should determine that cross-ownership exists between DVH Packaging and Vinh Hoa. Thus, Commerce should include subsidies received by Vinh Hoa in its subsidy calculation for DVH Packaging.

- DVH Packaging’s claim at verification that it did not have access to the supporting documentation for the list of assets that DVH Packaging purchased from Vinh Hoa is not plausible or credible.143 The record contains sufficient information for Commerce to include the imports reported by Vinh Hoa in DVH Packaging’s benefit calculation for this program.144

- Vinh Hoa was not officially dissolved as a corporate entity until 2018, during the pendency of this investigation. This confirms that Vinh Hoa remained in existence during the POI. The record also confirms that Vinh Hoa transferred assets to DVH Packaging. Thus, Commerce should include all the reported imports by Vinh Hoa in calculating the benefits from this program.145

GOV Rebuttal

- Participation of now defunct Vinh Hoa’s owners in DVH Packaging does not equal control, and it does not meet the high threshold established under 19 CFR 351.525(b)(6)(vi) for cross-ownership.146

DVH Packaging Rebuttal

- Although DVH Packaging and Vinh Hoa may be affiliated because of a shared family connection, cross-ownership requires a higher threshold of affiliation under 19 CFR 351.525(b)(6)(vi) beyond showing that one of the owners of one company participated in the affairs of the other. The standard is only met “where there is a majority voting ownership interest between corporations or through common ownership of two or more corporations.” Thus, familial relationship may be sufficient to establish affiliation, but cross-ownership requires indicia of control that are not present in the relationship

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142 Id. at 13.
143 Id. at 13-15.
144 Id. at 15.
145 Id. at 15-16.
146 See GOV Rebuttal Brief at 8.
between Vinh Hoa and DVH Packaging. Further, in the instances where Commerce has found cross-ownership without common ownership, as in *Coated Free Sheet Paper from Indonesia*, participation of a company’s owner in the affairs of another company has not provided reason to conclude that the companies are cross-owned.  

- DVH Packaging reported that Vinh Hoa ceased operations in 2015 and was legally dissolved in 2018. During its operation, from 2003 to 2015, Vinh Hoa produced subject merchandise as at facility in a different province than where DVH Packaging operates. DVH Packaging and Vinh Hoa existed as entirely separate corporate entities.

- Even if Commerce was to find that Vinh Hoa and DVH Packaging were cross-owned, Vinh Hoa received only one import duty exemption during the AUL that would have been expensed in the year of receipt. Therefore, Commerce was correct to conclude in its Preliminary Determination that, regardless of cross-ownership, there exists “no evidence that Vinh Hoa received countervailable subsidies attributable to DVH Packaging during the POI.”

- A credit appraisal, on which the petitioners rest their cross-ownership allegation, provides no evidence that DVH Packaging had any ability to use or direct the assets of Vinh Hoa as its own, which would be necessary to establish cross-ownership and attribute benefits received by Vinh Hoa to DVH Packaging. Based on a statement in DVH Packaging’s credit appraisal, the petitioners allege that DVH Packaging was established for Vinh Hoa to receive investment preferences. However, eligibility for these programs is not dependent on company ownership but rather company location in a socioeconomically disadvantaged region. Vinh Hoa could have also been eligible for these benefits if it had opened a facility in a socioeconomically disadvantaged region. Thus, the credit appraisal is not evidence of control sufficient to demonstrate cross-ownership.

- The petitioners cite *Coated Free Sheet Paper from Indonesia*, in which Commerce determined cross-ownership existed between family-owned companies because they could not operate independently of each other. In the case of DVH Packaging and Vinh Hoa, the companies operated independently of one another; as DVH Packaging continued to operate after Vinh Hoa was dissolved, one company’s existence did not depend on the other’s existence. Unlike the companies in *Coated Free Sheet Paper from Indonesia*, DVH Packaging and Vinh Hoa did not share indicia of common control. No evidence on the record indicates that Vinh Hoa could use or direct DVH Packaging’s assets as if it were its own, therefore Commerce should dismiss the petitioners’ argument.

**Commerce’s Position:** We agree with DVH Packaging that regardless of whether cross-ownership exists between DVH Packaging and Vinh Hoa, with respect to the petitioners’

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147 See DVH Packaging Rebuttal Brief at 2-3.
148 *Id.* at 3-4.
149 *Id.* at 1-2.
150 *Id.* at 4-5.
151 *Id.* at 5-6.
argument that Commerce should include subsidies received by Vinh Hoa in its subsidy calculation for DVH Packaging, we do not find evidence on the record that Vinh Hoa received subsidies attributable to DVH Packaging during the POI.

Vinh Hoa filed a complete response to Commerce’s Initial CVD Questionnaire.152 In the Preliminary Determination, we found no evidence that Vinh Hoa received countervailable subsidies attributable to DVH Packaging during the POI.153 We acknowledge that Vinh Hoa produced the subject merchandise and existed as a legal entity during the POI.154 Vinh Hoa reported that it was eligible for, and received, an import duty exemption under the Import Duty Exemption on Imports of Spare Parts and Accessories for Companies in Industrial Zones program for one piece of equipment during the AUL.155 We find no evidence on the record that Vinh Hoa received any other subsidies attributable to DVH Packaging, and the petitioners did not cite any record evidence showing Vinh Hoa received any other subsidies attributable to DVH Packaging.

In its response, Vinh Hoa only reported its sales for 2015, the year in which it ceased operations, and it reported that it does not maintain Vinh Hoa’s sales information for the year in which Vinh Hoa purchased the piece of equipment because the company is dissolved.156 No record evidence contradicts Vinh Hoa’s claim that it does not maintain sales information for the year in which it received the import duty exemption. Thus, we neither have Vinh Hoa’s sales on the record for the year in which this exemption was approved to run the “0.5 percent test” under 19 CFR 351.524(b)(2), nor have the petitioners suggested or provided an alternative source to run this test.

As a result, we are selecting from among the “facts otherwise available” within the meaning of sections 776(a)(1) and (a)(2)(B) of the Act because Vinh Hoa did not provide necessary sales information to perform the “0.5 percent test” under 19 CFR 351.524(b)(2). As facts available, we have used the sales information for Vinh Hoa on the record (i.e., Vinh Hoa’s reported total sales for 2015) as a proxy denominator to perform the “0.5 percent test.” The amount of duty savings Vinh Hoa received for its import duty exemption under the program identified above fails the “0.5 percent test” because when divided by Vinh Hoa’s reported total sales, the resulting benefit is less than 0.5 percent and, thus, the benefit expenses to the year in which Vinh Hoa received the exemption, pursuant to 19 CFR 351.524(b)(2).157 Therefore, regardless of whether cross-ownership exists between DVH Packaging and Vinh Hoa, we find no evidence that Vinh Hoa received subsidies attributable to DVH Packaging during the POI.

153 See PDM at 8.
154 See Vinh Hoa IQR at 5.
155 See Vinh Hoa IQR at 22 and Exhibits D-1 and D-3; see also DVH Packaging Rebuttal Brief at 1.
156 See Vinh Hoa IQR at 9 and Exhibit 8.
157 See DVH Packaging Final Calculation Memorandum.
Comment 4: Whether Commerce Should Apply a Two Percent De Minimis Standard to the Respondent Companies

GOV

- If relevant to the final determination, U.S. law and World Trade Organization (WTO) obligations require that Commerce apply a two percent de minimis standard to the respondent companies.\(^{158}\)

- Article 27 of the Agreement on Subsidies and Countervailing Measures states that “any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that: a. The overall level of subsidies granted upon the product in question does not exceed two per cent of its value calculated on a per unit basis.” Vietnam satisfies these criteria and is entitled to this rate.\(^{159}\)

- Vietnam became a member of the WTO in 2007, after the U.S. Trade Representative’s (USTR) most recent publication of the “Developing and Least-Development Country Designations under the Countervailing Duty Law.” Although the list has not been updated to include developing countries that acceded to the WTO since 1998, Commerce has an obligation to make a WTO-consistent determination, as Vietnam is both a developing country and a WTO member.\(^{160}\)

DVH Packaging

- If relevant to the final determination, U.S. law and WTO obligations require that Commerce apply a two percent de minimis standard to the respondent companies.\(^{161}\)

- Article 27 of the Agreement on Subsidies and Countervailing Measures states that “any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that: a. The overall level of subsidies granted upon the product in question does not exceed two per cent of its value calculated on a per unit basis.” Vietnam satisfies these criteria and is entitled to this rate.\(^{162}\)

- Vietnam became a member of the WTO in 2007, after the USTR’s most recent publication of the “Developing and Least-Development Country Designations under the Countervailing Duty Law.” Although the list has not been updated to include developing countries that acceded to the WTO since 1998, Commerce has an obligation to make a

\(^{158}\) See GOV Case Brief at 19.

\(^{159}\) Id. at 19.

\(^{160}\) Id. at 19-20.

\(^{161}\) See DVH Packaging Case Brief at 9.

\(^{162}\) Id.
WTO-consistent determination, as Vietnam is both a developing country and a WTO member.\textsuperscript{163}

**Petitioners Rebuttal**

- In *Shrimp from Vietnam*, Commerce rejected an identical argument that Commerce was required to apply a two percent *de minimis* standard to the respondent companies. Commerce determined that a two percent *de minimis* rate will be applied only to countries designated as a developing country by the USTR. A one percent *de minimis* rate was applicable to that investigation because the USTR had not designated Vietnam as a developing country.\textsuperscript{164}

- The *de minimis* rates for countervailing duty investigations are set forth in section 703(b)(4) of the Act. The *de minimis* rate under section 703(b)(4)(A) of the Act is one percent. Thus, Commerce should reject the argument to apply a two percent *de minimis* rate in the final determination.\textsuperscript{165}

- The GOV’s and DVH Packaging’s arguments to apply a two percent *de minimis* rate are moot in this case because the respondent companies will be subject to CVD rates that are greater than two percent.\textsuperscript{166}

**Commerce’s Position:** We agree with the petitioners that a one percent *de minimis* rate is applicable to the respondents in this investigation, as we found in *Shrimp from Vietnam*.\textsuperscript{167}

Pursuant to sections 703(b)(4)(A) and 705(a)(3) of the Act, a countervailable subsidy is *de minimis* if Commerce determines that the aggregate of the net countervailable subsidies is less than one percent *ad valorem* or the equivalent specific rate for the subject merchandise. As an exception, in accordance with section 703(b)(4)(B) of the Act, Commerce will apply a *de minimis* threshold of two percent to a country designated by the USTR to be a developing country. The statute and the SAA clarify that this exception applies only when the USTR has issued a developing country designation for purposes of the CVD law.\textsuperscript{168} Specifically, the SAA states:

Section 267 of the implementing bill provides guidance for designating both least developed and developing countries for purposes of the CVD law. It makes clear that this designation is solely for purposes of the CVD law and has no force or effect for any other purpose. In other words, designation for purposes of the CVD law has no particular

\textsuperscript{163} Id.

\textsuperscript{164} See Petitioners Rebuttal Brief at 24-25.

\textsuperscript{165} Id. at 25.

\textsuperscript{166} Id.

\textsuperscript{167} See *Shrimp from Vietnam* and accompanying IDM at Comment 11.

\textsuperscript{168} See section 703(b)(4)(B) of the Act; see also SAA at 940 (“{The law} makes clear that this {developing country} designation is solely for purposes of the countervailing duty law and has no force or effect for any other purpose. In other words, designation for purposes of the CVD law has no particular weight in determining which countries are developing countries under other Uruguay Round agreements or under other provisions of U.S. law.”).
weight in determining which countries are developing countries under other Uruguay Round agreements or under other provisions of U.S. law. Section 267 adds a new paragraph 771(36) to the Act, authorizing USTR to designate which countries are developing and least developed countries for purposes of the CVD law. 169

The USTR has not designated Vietnam to be a developing country under the CVD law pursuant to section 771(36)(A) of the Act and, therefore, the two percent \textit{de minimis} threshold exception does not apply. 170 Consistent with Commerce’s finding in \textit{Shrimp from Vietnam} and in accordance with sections 703(b)(4)(A) and 705(a)(3) of the Act, the \textit{de minimis} threshold of one percent will be used in the final determination.

Comment 5: Whether Commerce Should Calculate a Subsidy Rate for TKMB Based on the Evidence on the Record

TKMB

- **In the Preliminary Determination**, Commerce rejected TKMB’s responses to Commerce’s Initial CVD Questionnaire on the basis that TKMB failed to submit an affiliated companies response by the deadline set for the mandatory respondents. As a result, Commerce did not consider any of the questionnaire responses submitted by TKMB and instead subjected it to the all-others rate. 171

- TKMB informed Commerce that its previous counsel’s failure to inform TKMB of the requirement to meet all the deadlines applicable to mandatory respondents for Commerce to accept TKMB as a voluntary respondent caused the untimely submission of its affiliated companies response. TKMB’s failure to submit an affiliated companies response was clearly not caused by a shortcoming on the part of TKMB, but by erroneous advice from its prior counsel. For this reason, Commerce should treat TKMB as a voluntary respondent and calculate a subsidy margin based on the evidence that TKMB submitted. 172

- TKMB submitted a full questionnaire response and used only one program. Thus, an analysis and calculation of the subsidy benefits does not require Commerce to devote significant additional resources to the investigation. 173 TKMB would have received a \textit{de minimis} subsidy margin because its use of the alleged programs during the POI was negligible. Commerce’s refusal to investigate it as a voluntary respondent based on the failure of TKMB’s previous counsel is therefore particularly unfair. 174

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169 See SAA at 940.
170 See \textit{Developing and Least-Developed Country Designations under the Countervailing Duty Law}, 63 FR 29945 (Office of the U.S. Trade Representative June 2, 1998) (\textit{Designation List}).
171 See TKMB Case Brief at 1-2.
172 \textit{Id.} at 2.
173 \textit{Id.}
174 \textit{Id.} at 3.
Petitioners Rebuttal

- Commerce previously determined that TKMB failed to meet the required criteria for consideration as a voluntary respondent. TKMB offers no basis for Commerce to reverse its decision in the final determination, and therefore Commerce should reject TKMB’s argument.\textsuperscript{175}

**Commerce’s Position:** We disagree with TKMB and agree with the petitioners that TKMB failed to meet the criteria required for consideration to be a voluntary respondent in this investigation.

Although TKMB was not selected as a mandatory respondent, section 782(a) of the Act and 19 CFR 351.204(d) establish that any company wishing to be considered as a voluntary respondent must meet certain criteria. Section 351.204(d) of Commerce’s regulations establishes that, among other requirements, any voluntary questionnaire response must comply with section 782(a) of the Act. By extension, section 782(a)(1)(A) of the Act states that Commerce will only consider information submitted by a potential voluntary respondent for examination if such information is so submitted by the date specified “for exporters and producers that were initially selected for examination.”

In the Respondent Selection Memorandum, Commerce stated that it would consider whether to examine a voluntary respondent if a company seeking treatment as a voluntary respondent met the filing deadlines for all requests for information and otherwise complied with all other regulatory deadlines.\textsuperscript{176} On April 3, 2018, TKMB requested that Commerce investigate it as a voluntary respondent.\textsuperscript{177} Therefore, TKMB was aware of the criteria that any company wishing to be considered as a voluntary respondent must meet. The deadline for the mandatory respondents to respond to the affiliated companies section of the Initial CVD Questionnaire was May 9, 2018. Neither the mandatory respondents nor TKMB requested an extension. However, TKMB did not file a response to the affiliated companies section until May 21, 2018. Commerce subsequently rejected TKMB’s untimely filed affiliated companies response.\textsuperscript{178} On June 11, 2018, TKMB submitted a response to the remainder of the Initial CVD Questionnaire. Because TKMB did not meet the stated deadline for the affiliated companies response, Commerce found that its June 11, 2018 submission was untimely filed and unsolicited new factual information, and thus Commerce rejected TKMB’s entire June 11, 2018, submission.\textsuperscript{179} Consistent with Commerce’s regulations, we find that because TKMB failed to meet the applicable deadlines for respondents in this investigation, Commerce will not consider information submitted by TKMB for examination.

\textsuperscript{175} See Petitioners Rebuttal Brief at 25-26.
\textsuperscript{176} See Respondent Selection Memorandum at 7.
Comment 6: Whether Commerce Should Countervail Loans Received from SOCBs

**GOV**

- In the *Preliminary Determination*, based on the GOV’s 2020 Plastics Plan, Commerce found that an SOCB’s financing to DVH Packaging was contingent on export performance. However, the language in the 2020 Plastics Plan provides no evidence that these loans were contingent on export performance. Further, there is no other evidence on the record that supports Commerce’s export contingency finding, but there is evidence on the record that demonstrates that these loans are not export-contingent.\(^{180}\) The GOV stated that lending decisions are made by SOCBs based on ordinary commercial considerations, and that the GOV “does not have any discretion to weigh-in on these decisions nor can it interfere with the lending process undertaken by” SOCBs.\(^{181}\) DVH Packaging stated that the loans were provided because of the SOCB’s assessment of the company’s financials and provided its applications and contracts with SOCBs that did not demonstrate that the loans were export-contingent. Commerce did not report on the specificity of the loans it examined at DVH Packaging’s verification.\(^{182}\)

- Commerce cannot entirely ignore all of DVH Packaging’s loan documentation placed on the record. Commerce remains obligated to support its specificity finding with record evidence and explain how such evidence fairly detracts from the reasonableness of its conclusions. Although the GOV inadvertently did not translate all the pages of DVH Packaging’s credit appraisal requested, Commerce declined to accept those pages or verify the loan program at the GOV verification. As the 2020 Plastics Plan and record evidence contradict Commerce’s export-contingency specificity finding, that determination is not supported by substantial evidence and is therefore contrary to law.\(^{183}\)

- There is no evidence on the record to demonstrate that the loans provided to DVH Packaging are specific to the LWS industry. The 2020 Plastics Plan has no reference to the LWS industry, the GOV has no plans to develop that industry, and being a LWS producer has never been a criterion for a producer to receive any benefit under Vietnamese law.\(^{184}\) In *PRCB from Vietnam*, Commerce considered a prior version of the Plastics Plan for the retail carrier bag industry and preferential lending, and found that the plan does not evidence a GOV effort to support low-tech industries such as the LWS industry.\(^{185}\) Further, in *PRCB from Vietnam*, the 2011 Plastics Plan did not authorize lending to the PRCB industry and Commerce determined that the PRCB industry was not a high-tech industry, whereas the industries targeted for development by the 2011 Plastics Plan appeared to be high-tech plastic products. The LWS industry also does not “qualify as ‘high-tech,’” therefore Commerce should not countervail lending from SOCBs to the

\(^{180}\) See GOV Case Brief at 4-6.

\(^{181}\) Id. at 6 citing the GOV IQR at Exhibit A-2 at 7 and 9.

\(^{182}\) Id. at 6-7.

\(^{183}\) Id. at 7-8.

\(^{184}\) Id. at 8.

\(^{185}\) See *PRCB from Vietnam* and accompanying IDM at Comment 4.
LWS industry based on the 2020 Plastics Plan. The 2020 plan contains language about high-tech industries that expresses similar intent as the language in the 2011 plan cited by Commerce.186

DVH Packaging

- In the Preliminary Determination, Commerce found that loans to DVH Packaging from the SOCB were specific because they were contingent on export performance. However, the 2020 Plastics Plan, on which Commerce bases this finding, does not provide evidence that these loans were export-contingent. Commerce therefore has no authority to countervail these loans.187 There is no evidence on the record to support Commerce’s conclusion that loans from SOCBs are specific to the LWS industry. Further, there is no language in the 2020 Plastics Plan that discusses export-contingent loans to either plastics or LWS exporters.188

- There is evidence on the record that demonstrates that the loans to DVH Packaging are not export-contingent. The GOV reported that none of the loans from SOCBs to the respondents were made “under any of the programs under investigation” and that “[t]here is no specific eligibility criteria for receiving loans from SOCBs.” The application and credit appraisal for DVH Packaging’s largest loan demonstrate that loans received by DVH Packaging were not export-contingent.189 DVH Packaging also reported that its loans were not contingent on exports and provided its applications and contracts with SOCBs to support this claim. Further, Commerce examined loan documentation at DVH Packaging’s verification and did not conclude in its verification report that those loans were export-contingent.190

- Commerce cannot entirely ignore all of DVH Packaging’s loan documentation placed on the record. Commerce remains obligated to support its specificity finding with record evidence and explain how such evidence fairly detracts from the reasonableness of its conclusions. Although the GOV inadvertently did not translate all the pages of DVH Packaging’s credit appraisal requested, Commerce declined to accept those pages or verify the loan program at the GOV verification. As the 2020 Plastics Plan and record evidence contradict Commerce’s export-contingency specificity finding, that determination is not supported by substantial evidence and is therefore contrary to law.191

- There is no evidence on the record to demonstrate that the loans provided to DVH Packaging are specific to the LWS industry. The 2020 Plastics Plan has no reference to the LWS industry, the GOV has no plans to develop that industry, and being an LWS producer has never been a criterion for a producer to receive any benefits under Vietnamese law. Further, in PRCB from Vietnam, Commerce found that a prior version

186 See GOV Case Brief at 8-10.
187 See DVH Packaging Case Brief at 2-3.
188 Id. at 3-4.
189 Id. at 4-5.
190 Id. at 5-6.
191 Id. at 6.
of the Plastics Plan targeted recognized industries for development and did not authorize lending to the PRCB industry. Commerce determined that because the PRCB industry was not a high-tech industry, it could not have benefited from any program targeted at the high-tech plastics industry, identified as key industries in the Plastics Plan. The LWS industry also is not a high-tech industry, therefore it is consistent with Commerce’s determination in *PRCB from Vietnam* that Commerce cannot countervail lending from SOCBs to the LWS industry based on the 2020 Plastics Plan. The 2020 plan contains language about high-tech industries that expresses similar intent as the language in the 2011 plan cited by Commerce.192

**Petitioners Rebuttal**

- In the *Preliminary Determination*, Commerce found that the SOCB’s financing to DVH Packaging was contingent on export performance. This finding was consistent with a GOV sectoral development plan for the plastic industry in effect during the POI, and with the GOV’s plans to focus on increasing production for exports. Commerce determined that the Preferential Lending to Exporters program was therefore contingent on export performance and specific under sections 771(5A)(A) and (B) of the Act.193

- The GOV’s plans confirm that the GOV has significant power to set the development objectives for Vietnam and mobilize preferential loans from the GOV to ensure the achievement of these objectives. The plan also mandates the establishment and maintenance of “interaction between state agencies and enterprises and plastic association closely and more actively {sic} to create the institutional environment, policies to support production and business in the key development fields of Vietnam plastics industry in each specific period.”194 The plastic packaging sector, including LWS, is slated by the GOV for development and support through preferential loans to achieve export goals. It is irrelevant that the GOV and DVH Packaging claim the plastic industry development plan does not reference the LWS industry, because the GOV designated the plastic packaging sector, which the GOV admitted includes LWS, to benefit from the plan’s new construction and capacity expansion targets.195

- The GOV failed to provide complete loan documentation for DVH Packaging, despite being provided multiple attempts to comply with Commerce’s request for internal bank documentation. Thus, Commerce could not rely on the GOV’s evidence to determine whether the SOCB’s decisions to grant DVH Packaging loans were contingent upon the company’s export performance.196

- Information in the incomplete loan documentation submitted by the GOV clearly shows that loans disbursed to DVH Packaging were contingent on its status as an exporter. This

192 Id. at 6-9.
193 See Petitioners Rebuttal Brief at 4-5.
194 Id. at 8 citing the GOV Initial Questionnaire Response at Exhibit 5 at 3.
195 Id. at 7.
196 Id. at 9-11.
information demonstrates that the loans follow the GOV’s clear policy to promote and support the plastic packaging industry through preferential lending to increase exports.\(^{197}\)

Further, the record does not support the GOV’s and DVH Packaging’s assertions that the GOV has no plans to encourage investment in the LWS industry because it is a low-tech industry. Commerce’s analysis of a different plastic plan and distinct program in *PRCB from Vietnam* is irrelevant to the LWS case, as the record of the instant investigation confirms that the loans DVH Packaging received from the SOCB were designed to target plastic packaging for intensive investment solutions including preferential loans to grow exports.\(^{198}\)

- Commerce’s decision that it could not rely on the information provided by DVH Packaging was in accordance with its longstanding practice in assessing the countervailability of subsidy programs administered by government authorities.\(^{199}\)

**Commerce’s Position:** We have determined to use an adverse inference for the final determination in selecting from among the facts otherwise available on the record because the GOV failed to provide translated versions of certain sections of the SOCB’s credit appraisal for DVH Packaging, as explained in more detail below.

While DVH Packaging did provide fully translated copies and Vietnamese-language original pages of requests for credit from, and contracts with, the SOCB,\(^{200}\) to analyze the countervailability of an alleged subsidy, Commerce requires additional information from the foreign government, which, as explained above, we did not receive in full.\(^{201}\) Thus, in response to DVH Packaging’s argument, consistent with Commerce’s practice in assessing the countervailability of subsidy programs administered by government authorities, we find that we cannot rely only on information submitted by DVH Packaging alone to determine whether its loans from an SOCB received during the POI are countervailable.

Regarding the completeness of the loan documentation submitted by the GOV, we find that the record does not support the GOV’s and DVH Packaging’s arguments that there is evidence on the record demonstrating that lending to DVH Packaging is not export-contingent. In the *Preliminary Determination*, we noted that at page 12 of the GOV’s initial questionnaire response, the GOV claimed that it “coordinated with the respondents and the relevant SOCBs to identify the largest loan outstanding for each respondent in the investigation and is providing translated copies of all internal bank documentation regarding these loans,” including DVH Packaging’s lending bank.\(^{202}\) The exhibit that the GOV cited, however, did not contain English translations for the following pages of the original Vietnamese-language DVH Packaging credit

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\(^{197}\) *Id.* at 12-13.

\(^{198}\) *Id.* at 14-16.

\(^{199}\) *Id.* at 16.


\(^{201}\) See *Essar Steel Ltd. v. United States*, 721 F.Supp.2d 1285, 1296-97 (Ct. Int’l Trade 2010), reversed on other grounds by 678 F.3d 1268 (Fed.Cir.2012); see also *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d at 1370.

\(^{202}\) See GOV IQR at 12.
appraisal in Exhibit A-7 of the GOV’s first supplemental questionnaire response: 3-6, 10-13, 15-16, 20-22, 26-27. Although Commerce requested twice (in the Initial CVD Questionnaire and the GOV First Supplemental Questionnaire) that the GOV translate all documents into English and ensure that those translated pages also be submitted in original form, the GOV’s Exhibit A-11 (Revised Exhibit A-7) that includes DVH Packaging’s credit appraisal did not comply with that request. Therefore, because the GOV failed to provide necessary information pursuant to section 776(a)(1) of the Act, and withheld requested information and did not provide the information in the manner and form requested, pursuant to sections 776(a)(2)(A) and (B) of the Act, we find that we may select from among the facts otherwise available on the record. Further, we have satisfied our obligation under section 782(d) of the Act by providing the GOV with an opportunity to remedy its deficient submission. Despite having been provided the opportunity to remedy the deficiency, the GOV failed to provide this information, and we find that such failure to provide complete loan documentation for DVH Packaging constitutes a failure to cooperate by not acting to the best of its ability, pursuant to section 776(b) of the Act. Therefore, for the final determination, we find that it is appropriate to use an adverse inference when selecting from among the facts otherwise available on the record, pursuant to section 776(b) of the Act.

As a result, we have determined to rely on information submitted with the Petition on the 2020 Plastics Plan, concerning the GOV’s intention to provide preferential lending to the plastic packaging sector, to determine that the LWS industry is an industry identified to benefit from the 2020 Plastics Plan. We therefore further find that the subsidy is specific within the meaning of section 771(5A)(D)(i) because it is specific to an industry (plastic packaging) that includes the producers of the subject merchandise. Commerce has previously determined that DVH Packaging’s lender is an SOCB. This finding is consistent with the record in the instant proceeding, in which the GOV identifies DVH Packaging’s lender as an SOCB. As explained above, the 2020 Plastics Plan stated that the GOV intends to provide investment, including preferential loans, to the plastic packaging sector during the POI and AUL.

We find that with respect to the 2020 Plastics Plan, Commerce cannot rely on information provided about a prior version of the plan (i.e., the 2011 Plastics Plan) in determining whether the GOV’s plastics industry development plan designates LWS as a priority industry for export. In PRCB from Vietnam, Commerce found that “the central objective of the {2011} Plastics Plan, which is the primary document at issue, appears to be to encourage the production of high-tech

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203 Id. at Exhibit A-7.
204 See Initial CVD Questionnaire at II-6. See also GOV SQ1 at 3.
205 See GOV SQR1 at Exhibit A-11, 3-6 10-13, 15-16, 20-22, 26-27.
206 See GOV SQ1 at 3.
207 See Petition, Volume III, at 3-4 and Exhibit III-5.
208 See Steel Nails from Vietnam and accompanying IDM at 20.
210 See GOV IQR at Exhibit 5 at 3-4 and 6.
plastic products for domestic consumption and export demand. … Information from verification reinforces the conclusion that the {2011} Plastics Plan is targeted at high-tech products that do not include PRCBs.”211 However, the fact that the 2011 Plastics Plan in *PRCB from Vietnam*, cited by the GOV and DVH Packaging, does not reference the development of PRCB or other “low-tech” plastic products as an objective of the plan has no bearing on the designation of LWS by the GOV in the 2020 Plastics Plan. As explained above under the “Application of AFA: GOV - Preferential Lending to Exporters” section, pursuant to our AFA determination, we are relying on the language in the 2020 Plastics Plan concerning the GOV’s intention to provide preferential loans to the plastic packaging sector to find this program specific within the meaning of section 771(5A)(D)(i) of the Act.

**Comment 7: Whether Commerce Should Use External Market-Based Benchmark Interest Rates in the Final Determination**

**GOV**

- In the *Preliminary Determination*, Commerce used external loan benchmarks because it previously found domestic interest rates in Vietnam to be distorted and not market-based “due to the predominant role of the GOV in the banking sector.” This finding was published in 2013 and based on data from 2011, prior to the POI.212

- The GOV requested that Commerce revise these finding because of significant changes to the Vietnamese banking sector. These changes since 2011 include: 1) a decrease in SOCBs from five to four, 2) an increase in the number of wholly foreign-owned banks from five to nine, and 3) liberalization of the lending interest rate and deposit rate. Commerce should reconsider its finding that the banking sector in Vietnam is distorted based on these changes, and therefore not use external loan benchmarks in the final determination.213

**Petitioners Rebuttal**

- In the *Preliminary Determination*, Commerce used an external loan benchmark because it concluded that domestic interest rates in Vietnam are distorted “due to the predominant role of the GOV in the banking sector.” Commerce explained that this selection of an external market-based benchmark interest rate is consistent with its practice in other proceedings.214

- Commerce instructed the GOV to “provide an explanation supported by evidence of significant and fundamental changes to factors identified in {Commerce’s 2013} Vietnam Banking Sector Memorandum” and other similar cases since the memorandum was published. Additionally, Commerce instructed the GOV “to provide citations to the

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211 See PRCB from Vietnam at Comment 4.
212 See GOV Case Brief at 10.
213 Id. at 11.
214 See Petitioners Rebuttal Brief at 17.
relevant laws, regulation, decisions, etc., and provide copies with translations of these cited documents.” The GOV did not follow these instructions to inform Commerce of significant changes to the Vietnamese banking sector. Thus, it would be unreasonable for Commerce to reject its 2013 analysis and use of an external loan benchmark.\(^\text{215}\)

**Commerce’s Position:** We disagree with the GOV that Commerce should reconsider its finding that the banking sector in Vietnam is distorted. The changes to the Vietnamese banking sector noted by the GOV are not substantive and do not undermine the fundamental conclusions of Commerce’s 2013 Vietnam Banking Sector Update Memorandum. As we found in *Shrimp from Vietnam*, we continue to find that the domestic interest rates in Vietnam are distorted due to the predominant role of the GOV in the banking sector.

Regarding the GOV’s request that Commerce analyze “significant changes” to the banking sector in Vietnam since Commerce’s 2013 Vietnam Banking Sector Update Memorandum, we agree with the petitioners’ argument that the GOV failed to provide sufficient evidence of significant changes to the factors identified in Commerce’s 2013 assessment of Vietnam’s banking sector. As explained in the 2013 Vietnam Banking Sector Update Memorandum, Commerce has found domestic interest rates in Vietnam to be distorted and inappropriate for use as benchmarks due to the predominant role of the GOV in the banking sector through its direct and indirect ownership, as well as through other *de jure* and *de facto* means such as interest rate controls, policy, plans, and administrative guidance.\(^\text{216}\) In the instant investigation, changes to the banking sector that the GOV refers to are marginal changes that do not undermine Commerce’s determination in the 2013 Vietnam Banking Sector Update Memorandum that interest rates in Vietnam are fundamentally distorted.

Under 19 CFR 351.505(a)(3)(i), to measure the benefit from countervailable loans, Commerce will select a comparable commercial loan that the recipient “could actually obtain on the market” for both short-term and long-term loans. Further, under 19 CFR 351.505(a)(3)(ii), in the case of a company that did not take out any comparable commercial loans, Commerce may use a national average interest rate for comparable commercial loans. However, as we noted in the Preliminary Determination, the GOV’s direct and indirect ownership of the Vietnamese banking sector, as well as interest rate controls, policies, plans, administrative guidance, and other means of GOV involvement distort domestic interest rates in Vietnam.\(^\text{217}\) In addition, section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. Thus, consistent with Commerce’s practice and in accordance with section 771(5)(E)(ii) of the Act, for the final determination, we have selected external market-based benchmark interest rates because the loans received by respondents from Vietnamese banks are not suitable for use as benchmarks.\(^\text{218}\)

\(^{215}\) *Id.* at 18-19.

\(^{216}\) See 2013 Vietnam Banking Sector Update Memorandum at 18.

\(^{217}\) See PDM at 9-10, citing Vietnam Banking Sector Update Memorandum.

\(^{218}\) See Memorandum, “Duong Vinh Hoa Packaging Company Ltd. Calculations for the Preliminary Determination,” dated August 6, 2018; *see also* DVH Packaging Final Calculation Memorandum.
XI. RECOMMENDATION

We recommend approving all of the above positions. If these Commerce positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

☐ ☐

Agree Disagree

4/4/2019

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