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Investigation
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March 7, 2025

MEMORANDUM TO: Christopher Abbott,
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

FROM: Scot Fullerton
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Thermoformed Molded Fiber Products from the Socialist Republic of Vietnam

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I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

On October 8, 2024, Commerce received a countervailing duty (CVD) petition concerning imports of molded fiber products from Vietnam, filed on behalf of the American Molded Fiber Coalition (the petitioners).[1] On October 28, 2024, Commerce initiated a CVD investigation on molded fiber products from Vietnam.[2]

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[1] *See* Petitioners' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated October 8, 2024 (Petition).

[2] *See* Checklist, "Thermoformed Molded Fiber Products from the Socialist Republic of Vietnam," dated October 28, 2024; *see also Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 89 FR 87556 (November 4, 2024) (*Initiation Notice*); and *Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations; Correction,* 89 FR 91321 (November 19, 2024) (correcting a typographical error in the Harmonized Tariff Schedule of the United States subheadings listed in the scope).

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.[3] We received numerous scope and rebuttal scope comments. We intend to issue our preliminary decision regarding the scope of the less-than-fair-value (LTFV) and CVD investigations on or before the preliminary determination of the companion antidumping duty (AD) investigation, the deadline for which is May 6, 2025.[4] We will incorporate the scope decision from the LTFV investigation into the scope of the final CVD determination for this investigation.

B. Respondent Selection

In the *Initiation Notice*, Commerce stated that it intended to base the selection of mandatory respondents on quantity and value (Q&V) questionnaires issued to the potential respondents.[5] On October 29, 2024, Commerce issued Q&V questionnaires to eight producers/exporters identified by the petitioners for which complete information was provided in the Petition, and also posted it on Enforcement and Compliance's website.[6] On November 19, 2024, we confirmed that six of eight companies to which Commerce issued a Q&V questionnaire had received the questionnaire.[7] Commerce received timely-filed Q&V questionnaire responses from three of the six producers and exporters that received the questionnaires.[8] In addition, Commerce received timely-filed Q&V questionnaire response from one additional company not named in the Petition (*i.e.*, Ningbo Changya Plastic (Vietnam) Co. Ltd.), and one timely-filed Q&V questionnaire response from a company that was named in the Petition, but which did not receive the Q&V questionnaire by FedEx (*i.e.*, Vietnam Yuzhan Packaging Technology Co. Ltd. (Yuzhan)). One company named in the Petition did not receive the Q&V questionnaire by the deadline for filing a response (*i.e.*, Cong Ty TNHH Cong Nghe Bao Bi Yuzhan). Commerce did not receive a response from three of the companies that received the Q&V questionnaire (*i.e.*, HC Packaging Asia (Industrial Park), Honha Eco Pulp Viet Nam Paper Tray, and Pulp Tray, Martin Vietnam Co. Ltd.). On December 2, 2024, pursuant to section 777A(e)(2) of the Act, Commerce selected Yuzhan as the sole mandatory respondent in this investigation.[9]

C. Questionnaires and Responses

On December 2, 2024, Commerce issued the initial questionnaire to the Government of Vietnam (GOV) and instructed the GOV to forward the questionnaire to Yuzhan.[10] In December 2024 and January 2025, the GOV and Yuzhan submitted timely responses to Sections II and III of the

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[3] *Id.*, 89 FR at 87556-87557.
[4] *See Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 90 FR 11153 (March 4, 2025).
[5] *See Initiation Notice*, 89 FR at 87559.
[6] *See* Memorandum, "Quantity and Value Delivery Confirmation," dated November 19, 2024 (Delivery Memorandum); and Commerce's website at: http://trade.gov/enforcement/news.asp.
[7] *See* Delivery Memorandum.
[8] *See* Memorandum, "Respondent Selection," dated December 2, 2024, at 2.
[9] *Id.*
[10] *See* Commerce's Letter, "Countervailing Duty Questionnaire," dated December 2, 2024 (Initial Questionnaire).

Initial Questionnaire.[11] Between January and February 2025, we issued supplemental questionnaires to the GOV and Yuzhan to which we received timely responses.[12] The petitioners filed comments regarding the GOV's and Yuzhan's initial and supplemental questionnaire responses.[13] In January 2025, the petitioners, Yuzhan, and the GOV provided benchmark information and rebuttal benchmark information.[14] In February 2025, the petitioners and Yuzhan submitted pre-preliminary determination comments.[15]

D. Postponement of Preliminary Determination

On December 19, 2024, Commerce postponed the deadline for preliminary determination until March 7, 2025, in accordance with section 703(c)(1)(A) of the Act.[16]

E. Period of Investigation

The period of investigation (POI) is January 1, 2023, through December 31, 2023.

[11] *See* Yuzhan's Letter, "Affiliation Response," dated December 23, 2024; Yuzhan's Letter, "Yuzhan's Initial Countervailing Duty Questionnaire," dated January 15, 2025 (Yuzhan's IQR); GOV's Letter, "GOV's Initial Questionnaire Response," dated January 22, 2025 (GOV's IQR); and Yuzhan's Letter, "Yuzhan's Section F of Initial Countervailing Duty Questionnaire," dated January 27, 2025 (Yuzhan's SFQR);

[12] *See* Commerce's Letter, "First Supplemental Questionnaire for Vietnam Yuzhan Packaging Technology Company Limited regarding Affiliates," dated January 27, 2025; Yuzhan's Letter, "Yuzhan's Response to First Supplemental Affiliation Questionnaire" dated February 13, 2025 (Yuzhan's ASQR); Commerce's Letter, "First Supplemental Questionnaire for the Government of the Socialist Republic of Vietnam regarding Subsidy Programs," dated February 13, 2025; Commerce's Letter, "First Supplemental Questionnaire for the Government of the Socialist Republic of Vietnam regarding Subsidy Programs," dated February 24, 2025; Yuzhan's Letter, "Vietnam YUTO and Yuhua's Initial Countervailing Duty Questionnaire" dated February 25, 2025 (Yuto and Yuhua SQR); Yuzhan's Letter, "Yuzhan's First Supplemental Questionnaire Response" dated February 25, 2025 (Yuzhan's 1SQR); GOV's Letter, "GOV's lst Supplemental Questionnaire Response ," dated March 3, 2025 (GOV's 1SQR);

[13] *See* Petitioners' Letter, "Comments on Yuzhan's Affiliated Companies' Questionnaire Response," dated January 6, 2025; Petitioners' Letter, "Comments on Yuzhan's Initial Questionnaire Response," dated January 31, 2025; Petitioners' Letter, "Comments on Yuzhan's Initial Questionnaire Response," dated January 31, 2025; Petitioners' Letter, "Rebuttal Factual Information in Response to the Government of Vietnam's Initial Questionnaire Response," dated February 5, 2025; Petitioners' Letter, "Comments on the Government of Vietnam's Initial Questionnaire Response," dated February 7, 2025.

[14] *See* Yuzhan's Letter, "Yuzhan's Benchmark Submission," dated February 4, 2025; *see also* Petitioners' Letter, "Petitioners' Benchmark Submission," dated February 4, 2025; Petitioners' Letter, "Petitioners' Rebuttal Benchmark Information Submission," dated February 14, 2025; Yuzhan's Letter, "Yuzhan's Rebuttal Benchmark Submission," dated February 14, 2025.

[15] *See* Petitioner's Letter, "Petitioners' Comments in Advance of the Department's Preliminary Determination," dated February 14, 2025; *see also* Yuzhan's Letter, "Yuzhan's Comment Regarding Preliminary Determination," dated February 27, 2025.

[16] *See Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determination in the Countervailing Duty Investigations,* 89 FR 103778 (December 19, 2024).

F. New Subsidy Allegations

On February 3, 2025, the petitioners timely submitted new subsidy allegations (NSAs) regarding five programs.[17] We are reviewing the alleged programs and will address our treatment of the NSAs after the preliminary determination.

G. Alignment

On February 24, 2025, the petitioners requested that Commerce align the statutory deadline of the final CVD determination with that of the companion final AD determination.[18] Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request, Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent AD investigation of molded fiber products from Vietnam.[19] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 21, 2025, unless postponed.

III. INJURY TEST

Because Vietnam is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Vietnam materially injure, or threaten material injury to, a U.S. industry. On October 25, 2024, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of molded fiber products from Vietnam.[20]

IV. PRELIMINARY AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On February 14, 2025, the petitioners alleged that, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206, critical circumstances exist with respect to imports of molded fiber products from Vietnam.[21] In accordance with 19 CFR 351.206(c)(2)(i), if the petitioner submits a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, Commerce will issue a preliminary critical circumstances determination not later than the date of the preliminary determination.[22]

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[17] *See* Petitioners' Letter, "New Subsidy Allegations," dated February 3, 2025 (NSA Submission).
[18] *See* Petitioners' Letter, "Petitioners' Request for Alignment of the Countervailing Duty Investigations with the Concurrent Antidumping Duty Investigations," dated February 24, 2025.
[19] *See Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 87551 (November 4, 2024); *see also Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations; Correction*; 89 FR 91330 (November 19, 2024).
[20] *See Thermoformed Molded Fiber Products from China and Vietnam*, 89 FR 94762 (November 29, 2024).
[21] *See* Petitioners' Letter, "Petitioners' Allegation of Critical Circumstances," dated February 14, 2025 (Petitioners' Critical Circumstances Letter).
[22] *See*, *e.g.*, *Policy Bulletin 98/4 Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).

The petitioners allege that there have been massive imports of molded fiber products from Vietnam over a relatively short period since the filing of the Petition, and they provided monthly import data comparing a base period of July 2024 through September 2024, to a comparison period of October 2024 through December 2024.[23]

The petitioners' analysis demonstrates that imports of subject merchandise from Vietnam have increased more than 15 percent over a relatively short period required to be considered "massive" under 19 CFR 351.206(h)(2).[24] The petitioners also allege that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) of the World Trade Organization (WTO).[25]

Section 703(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, Commerce will determine whether there is a reasonable basis to believe or suspect that: (A) "the alleged countervailable subsidy" is inconsistent with the SCM Agreement; and (B) there have been massive imports of the subject merchandise over a relatively short period.[26]

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that, if Commerce finds that importers, or exporters or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[27] Additionally, pursuant to 19 CFR 351.206(h)(1), in determining whether imports of the subject merchandise have been massive under section 703(e)(1)(B) of the Act, Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. Imports must increase by at least 15 percent during the comparison period to be considered massive.[28]

On February 18, 2025, Commerce requested from Yuzhan monthly shipment data of subject merchandise to the United States for the period April 2024 through the last day of the month of the publication of the preliminary determination of this investigation.[29] Yuzhan provided the requested information on February 25, 2025.[30]

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[23] *See* Petitioners' Critical Circumstances Letter at Exhibit 1.
[24] *Id.*
[25] *Id.* at 3.
[26] Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See*, *e.g.*, *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).
[27] *See* 19 CFR 351.206(i).
[28] *See* 19 CFR 351.206(h)(1)(iii)(2).
[29] *See* Commerce's Letter, "Request for Monthly Quantity and Value Shipment Data," dated February 18, 2025.
[30] *See* Yuzhan's Letter, "Monthly Quantity and Value Shipment Data," dated February 25, 2025.

As explained further below, Commerce preliminarily determines that Yuzhan has received countervailable benefits under programs that are contingent upon export performance. Specifically, Yuzhan reported use of two programs that are contingent upon export: "Preferential Lending to Exporters by State-Owned Commercial Banks (SOCBs)," and "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones."[31] Therefore, Commerce preliminarily determines that there is a reasonable basis to believe or suspect that Yuzhan has benefitted from programs in this investigation that are inconsistent with the SCM Agreement (*i.e.,* prohibited subsidies) in accordance with section 703(e)(1)(A) of the Act, even if they do not confer a measurable benefit.

Because the Petition was filed on October 8, 2024, to determine whether there was a massive surge in imports shipped by Yuzhan, Commerce compared the total volume of shipments by Yuzhan during the three-month period July 2024 through September 2024 with the volume of shipments during the following three-month period of October 2024 through December 2024.[32] Based on this analysis, we preliminarily determine that there was a massive surge in imports from Yuzhan of more than 15 percent, pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(h)(2). Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of molded fiber products produced or exported by Yuzhan.

Non-Responsive Companies

As discussed below in the "Application of Adverse Facts Available (AFA): Non-Responsive Companies" section: (1) HC Packaging Asia (Industrial Park); Honha Eco Pulp Viet Nam Paper Tray; and Pulp Tray, Martin Vietnam Co. Ltd. failed to respond to Commerce's Q&V questionnaire; (2) the reliance on facts otherwise available is necessary under sections 776(a)(1) and (2) of the Act; and (3) the firms' failure to cooperate requires the application of adverse inferences under section 776(b) of the Act. Accordingly, we preliminarily determine that that these three non-responsive companies used and benefitted from export-contingent subsidy programs (*i.e.*, "Preferential Lending to Exporters by State-Owned Commercial Banks (SOCBs)," and "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones"), and that these programs are countervailable in this preliminary determination and are inconsistent with the SCM Agreement.[33] Therefore, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met.

In addition, for purposes of the "massive imports" analysis, for the same reasons discussed above, we preliminarily determine, pursuant to sections 776(a)(1) and (2) and 776(b) of the Act, that HC Packaging Asia (Industrial Park), Honha Eco Pulp Viet Nam Paper Tray, and Pulp Tray, Martin Vietnam Co. Ltd. shipped molded fiber products in "massive" quantities during a relatively short period, thereby fulfilling the criteria under section 703(e)(1)(B) of the Act, as there is no shipment data for these companies on the record and they failed to cooperate in this

[31] *See* "Analysis of Programs" section, below.
[32] *See* Memorandum, "Analysis of Critical Circumstances," dated concurrently with this memorandum. Commerce has requested that Yuzhan provide additional data through March 2025. Commerce intends to update its analysis of whether a "massive surge" has taken place using this additional data for the final determination.
[33] *See* the appendix to this memorandum.

proceeding. As a result, we preliminarily determine that critical circumstances exist with regard to the three non-responsive companies.

All Other Exporters/Producers

As explained in the accompanying *Federal Register* notice, the rate calculated for Yuzhan is also assigned as the rate for all other producers and exporters. As noted above, we preliminarily determine that Yuzhan received countervailable subsidies that were contingent upon export performance. Use of an export subsidy program is sufficient to meet the criterion of being inconsistent with the SCM Agreement under section 703(e)(1)(A) of the Act. Therefore, for all other exporters/producers, Commerce preliminarily determines that there is a reasonable basis to believe or suspect that there are programs in this investigation that are inconsistent with SCM Agreement.

To determine whether a massive surge of imports occurred with respect to all other producers and/or exporters, we analyzed monthly shipment data from Global Trade Atlas (GTA) for the period July 2024 through December 2024,[34] adjusted to remove Yuzhan's shipment data. Based on our analysis of the adjusted GTA data, we preliminarily find that imports between the base and comparison periods increased by more than 15 percent for all other producers and/or exporters. Therefore, we preliminary determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied and that critical circumstances exist for all other producers and/or exporters.

V. USE OF FACTS AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

[34] We obtained GTA data for Harmonized Tariff Schedule of the United States subheadings 4823.7000.20 and 4823.70.0040. We relied on three-month base and comparison periods in our analysis for all other producers and/or exporters because GTA data for January 2025 was not available.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from 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. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[35] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a prior administrative review, or other information placed on the record.[36] When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[37] 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."[38]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[39] Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[40] The "best of its ability" standard requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of "its ability to do so.[41] Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[42]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[43] 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

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[35] *See* section 776(b)(1)(B) of the Act.
[36] *See* 19 CFR 351.308(c).
[37] *See, e.g.*, *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[38] *See* Statement of Administrative Action Accompanying the Urugay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 870.
[39] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).
[40] *Id.* at 1382.
[41] *Id.*
[42] *Id.* at 1382-83; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).
[43] *See also* 19 CFR 351.308(d).

any previous review under section 751 {of the Act} concerning the subject merchandise."[44] It is Commerce's practice to consider information to be corroborated if it has probative value.[45] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[46] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[47] Furthermore, Commerce is not required to corroborate any countervailable subsidy rate applied in a separate segment of the same proceeding.[48]

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, 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.[49] When selecting an AFA rate, 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.[50]

B. Application of Adverse Facts Available (AFA): Non-Responsive Companies

As noted above, Commerce issued Q&V questionnaires to all eight producers/exporters identified in the Petition via FedEx and confirmed that six Q&V questionnaires were received.[51] Of the six questionnaires delivered, we received timely responses to the questionnaire from three companies.[52] The remaining three companies that received the Q&V questionnaire but did not respond to our request for information were HC Packaging Asia (Industrial Park), Honha Eco Pulp Viet Nam Paper Tray, and Pulp Tray, Martin Vietnam Co. Ltd.

We preliminary determine that these non-responsive companies withheld necessary information that Commerce requested, failed to provide information within the established deadlines, and significantly impeded this proceeding by failing to respond to Commerce's Q&V questionnaire. Thus, we are relying on the facts otherwise available in making our preliminary determination with respect to these companies, pursuant to sections 776(a)(1) and776(a)(2)(A)-(C) of the Act. As noted above, HC Packaging Asia (Industrial Park), Honha Eco Pulp Viet Nam Paper Tray, and Pulp Tray, Martin Vietnam Co. Ltd. did not respond to our Q&V questionnaire and, as a result, Commerce was precluded from obtaining information regarding subsidy programs these companies may have used. Further, we find these companies' failure to comply with our requests for information constitutes a failure of the firms to cooperate to the best of their ability that warrants the application of adverse inferences under section 776(b) of the Act. By our

[44] *See* SAA at 870.
[45] *Id.*
[46] *Id.* at 869.
[47] *Id.* at 869-70.
[48] *See* section 776(c)(2) of the Act.
[49] *See* section 776(d)(1) of the Act.
[50] *See* section 776(d)(3) of the Act.
[51] *See* Delivery Memorandum.
[52] We note that we received an additional response from a company that did not receive the Q&V questionnaire, the mandatory respondent Yuzhan.

application of AFA we ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with Commerce's requests for information.

As facts otherwise available with an adverse inference, we find that these companies used and benefited from all the programs at issue in this proceeding,[53] and that these programs confer a benefit within a meaning of sections 771(5)(B) and (E) of the Act. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice. We summed the program rates to determine the AFA rate applied to each of these companies.

The CVD AFA Hierarchy

It is Commerce's practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country. When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.[54] Accordingly, when selecting AFA rates, if we have cooperating respondents, as there are in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated above zero rate for the identical program. If there is no identical program for which we calculated a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if the identical program was used in another CVD proceeding involving the same country and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[55] If no such rate exits, we then determine whether there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivable use.[56]

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

[53] *See* Appendix.
[54] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying Issues and Decision Memorandum (IDM) at 13; *see also Essar Steel Ltd. V. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate.").
[55] For purposes of selecting AFA program rates, we normally treat rates of less than 0.5 percent to be *de minimis*. *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at 12-13.
[56] *See Shrimp from China* IDM at 13-14.

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

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that we "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rates 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."[57] No legislative history accompanied this particular provision. Accordingly, we are left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

The Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[58]

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."[59] 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 margin."[60] It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.[61]

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[57] *See* section 776(d)(2) of the Act.

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

[59] *See* SAA at 870; *see also Essar Steel Ltd. V. United States*, 678 F.3d 1268, 1270-80 (Fed. Cir. 2012) (citing *F. Lit DeCecco Di Filippo Fara S. Martino S.p.A v. United States*, 216 F. 3d. 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that "the purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.")).

[60] *See De Cecco*, 216 F.3d at 1032.

[61] We have adopted a practice of applying this hierarchy in CVD cases. *See, e.g., Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); *see also Crystalline Silicon Photovoltaic Cells Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD

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

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

Under Commerce's CVD AFA hierarchy, as set forth in 19 CFR 351.308(j), Commerce will normally select the highest (above-*de minimis*) program rate available in accordance with the hierarchical sequence unless Commerce determines that such a rate is otherwise inappropriate.[62] Specifically, for CVD investigations, under the first step of Commerce's investigation hierarchy, pursuant to 19 CFR 351.308(j)(1)(i), we apply the highest above-*de minimis* rate calculated for a cooperating company for the identical program in the investigation. However, if there is no identical program match within the investigation, or if the rate is *de minimis*, then under the second step of the investigation hierarchy, under 19 CFR 351.308(j)(1)(ii), we will apply the highest above-*de minimis* rate calculated in another CVD proceeding involving the same country for the identical program. Furthermore, under the third step of the hierarchy, in accordance with 19 CFR 351.308(j)(1)(iii), if an identical program rate is not available, then Commerce will select an AFA rate based on a comparable or similar program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the same or similar program. Finally, if no such rate exists, under the fourth step of

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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).

[62] *See* 19 CFR 351.308(j)(3)(iii). The regulation codified Commerce's existing practice. *See, e.g., Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); *see also Crystalline Silicon Photovoltaic Cells Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review); and *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (when Commerce determined applying the AFA rate of the CVD hierarchy was not appropriate, and instead applied the highest combined standard income tax rate for corporations in Indonesia).

Commerce's CVD investigation hierarchy, found at 19 CFR 351.308(j)(1)(iv), we apply the highest above-*de minimis* rate calculated from any non-company-specific program from any countervailing duty proceeding involving the same country that the industry subject to the investigation could have possibly used.[63]

In all steps of Commerce's AFA investigation hierarchy, if we were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the result of a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.[64]

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

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

Selection of the AFA Rate

In determining the AFA rate for these companies, we applied Commerce's methodology detailed above. We began by applying, as AFA, the calculated program-specific above-*de minimis* rate we preliminarily calculated for Yuzhan in this investigation. Accordingly, as AFA for these companies, we are applying the applicable subsidy rates calculated for Yuzhan for the following program:

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[63] *See Shrimp from China* IDM at 13; *see also Essar Steel*, 753 F.3d at 1373-74.

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

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

For the following programs,[65] we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving Vietnam.[66] For this preliminary determination, we can match, based on program names, descriptions, and treatment of the benefit, the following programs to the same or comparable programs from other CVD proceedings involving Vietnam:

2. Preferential Lending to Exporters from State-Owned Commercial Banks (SOCBs)
3. Interest Rate Support Program from the State Bank of Vietnam
4. Import Duty Exemptions for Imports Used to Produce Exported Goods
5. Refund for Import Duties on Raw Materials Used to Produce Exports
6. Exemption of Import Duties for Imports into Industrial Zones
7. Exemptions of Import Duties for Foreign-Invested Enterprises
8. Exemption or Reduction of Land Water Rents for Encouraged Industries or Industrial Zones
9. Exemptions of Land-Use Taxes and Levies for Encouraged Industries or Industrial Zones
10. Land Rent Exemptions and Reductions for Enterprises Located in Special Zones Under Decree No. 35/2022
11. Interest Rate Support Program from the State Bank of Vietnam (SBV)
12. Export Factoring by SOCBs
13. Guarantees for Export Activities from SOCBs
14. Investment Credits from the Vietnam Development Bank (VDB)

For the grant programs listed below, we determine that there are no identical or similar programs in this investigation or from another Vietnam CVD proceeding from which to select a rate under section 776(d)(1)(A) of the Act. Thus, we are applying the highest potential *ad valorem* subsidy rate calculated in any Vietnam CVD proceeding:[67]

15. Export Promotion Grants
16. Investment Support Grants

[65] *See* Appendix. We note that we did not include in the calculation of the AFA rate the Accelerated Depreciation and Increases of Deductible Expenses program for which we are postponing our countervailability determination, as noted in the "Programs For Which We Have Requested More Information" section below.
[66] For each program for which the calculated rates were expensed prior to the POI during the average useful life (AUL) period, we applied the highest calculated rate. *See* Appendix.
[67] The highest non-company-specific rate calculated in any Vietnam CVD proceeding is 25.41 percent *ad valorem* for the "Land Preferences for Enterprises in Encouraged Industries or Industrial Zones" program in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 77 FR 75973 (December 24, 2012) (*Wire Hangers from Vietnam*).

In determining an AFA rate for the following income tax reduction programs on which we initiated an investigation, we are finding, as AFA, consistent with Commerce's practice,[68] that these companies paid no Vietnamese income tax during the POI:

17. Income Tax Preferences for Enterprises in Special Zones[69]
18. Income Tax Preferences for Exporters
19. Tax Benefits for New Investments[70]
20. Income Tax Preferences Under Decree No. 24

The standard income tax rate for corporations in Vietnam in effect during the POI was 20 percent.[71] Thus, the highest possible cumulative benefit for income tax programs is 20 percent. Accordingly, we are applying a total combined 20 percent AFA rate to the four tax programs listed above. Consistent with Commerce's practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value added tax exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.[72]

Based on the methodology described above, we preliminarily determine the AFA net countervailable subsidy rate for the non-responsive companies to be 173.51 percent *ad valorem*. The appendix contains a chart summarizing our calculation of this AFA rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise."[73] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[74]

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.[75] Furthermore, Commerce is not

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[68] *See, e.g., Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 84 FR 14647 (April 11, 2019) (*Laminated Sacks from Vietnam*), and accompanying IDM.
[69] While Commerce calculated a rate for this program, we are including the program here as part of the maximum 20 percent calculation that could be applied for all income tax programs.
[70] *Id.*
[71] *See* GOV's IQR at Exhibit A-1.1-SQ (Decree No. 218/2013/ND-CP (Decree 218) at Article 10).
[72] *See, e.g., Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76* FR 18521 (April 4, 2011), and accompanying IDM at the section, "Application of Adverse Inferences: Non-Cooperative Companies."
[73] *See* SAA at 870.
[74] *Id.*
[75] *Id.* at 869-70.

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.[76]

Regarding the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[77]

In the absence of record evidence concerning the non-responsive companies' usage of the subsidy programs at issue due to their 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 the non-responsive companies could receive a benefit. Due to the lack of participation by these companies and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) of the Act for this preliminary determination.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.[78] We find the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[79] We notified the respondents of the AUL in the initial questionnaire and requested data accordingly.[80] No party in this proceeding disputed this allocation period.

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

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[76] *See* section 776(d)(3) of the Act.
[77] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[78] *See* 19 CFR 351.524(b).
[79] *See* U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.
[80] *See* Initial Questionnaire at II-2 and III-21.

B. Attribution of Subsidies

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

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

> {T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) …Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[81]

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade has upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[82]

As discussed above, we selected Yuzhan as a mandatory respondent. Yuzhan, a producer of subject merchandise,[83] provided responses on behalf of itself, and we preliminarily determine that it is appropriate to attribute subsidies received by Yuzhan to its own sales, pursuant to 19 CFR 351.525(b)(6)(i). During the POI, Yuzhan was wholly owned by the China-based Shenzhen

[81] *See Countervailing Duties; Final Rule*, 63 FR 65347, 65401 (November 25, 1998) (*Preamble*).
[82] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[83] *See* Yuzhan's IQR at 3.

YUTO Packaging Technology Company, Ltd. (Shenzhen Yuto).[84] As noted above, the petitioners submitted NSAs that include allegations that Yuzhan benefited from transnational subsidies that involve Shenzhen Yuto. We will address the allegations in the petitioners' NSA Submission after the preliminary determination.

Yuzhan reported that two companies, Vietnam YUTO Printing Packing Co., Ltd. (Vietnam YUTO) and Yuhua Vietnam Packaging Technology Co., Ltd. (Yuhua), are wholly-owned by Shenzhen YUTO.[85] Therefore, as Yuzhan, Yuhua, and Vietnam YUTO are owned by the same parent company, we preliminarily determine that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Further, Yuzhan reported that Vietnam YUTO and Yuhua provided inputs to Yuzhan during the POI.

When determining whether an input is "primarily dedicated," Commerce has previously considered such information as, *e.g.*,: (1) whether an input supplier produced the input; (2) whether the input could be used in the production of downstream products including subject merchandise, regardless of whether the input is actually used for the production of the subject merchandise; (3) whether the input is merely a link in the overall production chain, as stumpage is to lumber production or semolina is to pasta production as described in the *Preamble* of the CVD regulations, or whether the input is a common input among a wide variety of products and industries and it is not the type of input that is merely a link in the overall production chain, as plastic is to automobiles; (4) whether the downstream producers in the overall production chain are the primary users of the inputs produced by the input producer and whether the production of the inputs by the input producers is exclusively for the overall production chain; and (5) examining a company's business activities to assess whether an input supplier's production is "dedicated almost exclusively to the production of a higher value-added product" in the manner suggested by the *Preamble* such that the purpose of any subsidy provided to the company would be "to benefit the production of both the input and downstream products."[86]

Based on the record evidence and consideration of these criteria, we preliminarily determine the provision of inputs by Vietnam YUTO and Yuhua are not primarily dedicated to the production of the downstream product. Specifically, the record as whole indicates that these inputs supplied to Yuzhan represent, overall, an insignificant portion of both the input suppliers' and Yuzhan's overall business operations, and thus, do not meet the criteria under Commerce's "primarily dedicated" analysis.[87] While the inputs that Vietnam YUTO and Yuhua supplied to Yuzhan can be used in one production method of the subject merchandise, additional record evidence does not indicate that these inputs are "primarily dedicated." Specifically, we find that input volumes provided to Yuzhan by Vietnam YUTO and Yuhua indicate that: (1) the business activities of Vietnam YUTO and Yuhua are not focused on supplying these inputs to Yuzhan;[88] (2) Yuzhan is not a primary user of inputs produced by Vietnam YUTO and Yuhua;[89] (3) Vietnam YUTO and

[84] *See* Yuto and Yuhua SQR at Attachment A at 3 and Attachment B at 3.
[85] *Id.*
[86] *See e.g.,Kaptan Demir Celik Endustrisi ve Ticaret A.Ş. v. United States*, 666 F.Supp.3d 1334 (CIT 2023) at 1339-1340.
[87] *See* Yuzhan's ASQR at Exhibits S1-4a(1), S1-4a(2), S1-4a(3), S1-4b, S1-4c(1)-1, and S1-4c(2).
[88] *See* Yuto and Yuhua SQR at Attachment A at 9 and Attachment B at 9.
[89] *See* Yuzhan's SAQR at S1-2 to S1-3 and Exhibit S1-4a.

Yuhua do not reserve their inputs for primary use by Yuzhan;[90] (4) Vietnam YUTO and Yuhua are not dependent on Yuzhan's purchase of their inputs;[91] and (5) Yuzhan is not dependent on the inputs supplied by Vietnam YUTO and Yuhua.[92] Thus, the coordination, nature, and business activities of Vietnam YUTO, Yuhua, and Yuzhan do not otherwise demonstrate that the inputs provided are "primarily dedicated" to the production of the downstream merchandise of Yuzhan. Accordingly, we preliminarily determine that Vietnam YUTO and Yihua do not meet the criteria for attributing subsidies received by input suppliers under 19 CFR 352.525(b)(6)(iv). Therefore, we have not included these two firms in our subsidy analysis.

Further, we preliminarily determine that none of Yuzhan's subsidiaries have attributable subsidies within the meaning of 19 CFR 351.525(b)(6),[93] and, excluding its subsidiaries, we find that no other companies meet the standard for cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vii).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for a respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export sales (where the program is determined to be countervailable as an export subsidy) or total sales (where the program is determined to be countervailable as a domestic subsidy). In the "Programs Preliminarily Determined to Be Countervailable" section below, we describe the denominator used to calculate the subsidy rate. Further, the denominators used to calculate the countervailable subsidy rates are explained in further detail in the preliminary calculation memoranda prepared for this preliminary determination.[94]

VII. INTEREST RATE, DISCOUNT RATE, AND LAND LEASE BENCHMARKS

A. Interest Rate Benchmarks

Section 771(5)(E)(ii) of the Act explains that the benefit for the 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. Normally, Commerce uses comparable commercial loans reported by the company for benchmarking purposes.[95] If the firm does not receive any comparable commercial loans during the relevant periods, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."[96]

In *Shrimp from Vietnam 2013*, we found that "domestic interest rates in Vietnam are distorted due to the predominant role of the GOV in the banking sector through its direct and indirect

[90] *Id.*
[91] *Id.*
[92] *Id.*at S1-6 and Exhibit S1-4c.
[93] *Id.*at Exhibit S1-8.
[94] *See* Memorandum, "Preliminary Determination Calculations for Vietnam Yuzhan Packaging Technology Company Limited," dated concurrently with this memorandum (Yuzhan Preliminary Analysis Memo).
[95] *See* 19 CFR 351.505(a)(3)(i).
[96] *See* 19 CFR 351.505(a)(3)(ii).

ownership as well as through other means such as interest rate controls, policy, plans, and administrative guidance."[97] For the reasons explained in the Financial Sector Memorandum,[98] which is incorporated here by reference, we preliminarily determine that domestic interest rates in Vietnam are distorted due to the predominant role of the GOV in the banking sector through its direct and indirect ownership, as well as through other means such as interest rate controls, policy, plans and administrative guidance. Therefore, we find that any loans received by respondents from private Vietnamese or foreign-owned banks are not suitable for use as benchmarks under 19 CFR 351.505(a)(3)(i). For the same reasons, we cannot use a national interest rate for commercial loans pursuant to 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Vietnamese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate.[99] The use of an external benchmark is consistent with Commerce's practice.[100]

1. Long-Term Vietnamese Dong (VND) Benchmark

For loans denominated in VND, we are calculating the external benchmark following the regression-based methodology first developed in the CVD investigation of *CFS from China*, and updated in several subsequent investigations on exports from China.[101] This methodology bases the benchmark interest rate on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to Vietnam's, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, which is not directly tied to the state-imposed distortions in the banking sector discussed in the Financial Sector Memorandum.

Under this methodology, we first determine which countries are similar to the country in question, in this case Vietnam, in terms of GNI, based on the World Bank's classification of countries as: low income, lower-middle income, upper-middle income, and high income. Based on GNI data for 2018 and previous years for which we require a benchmark, Vietnam falls into the lower middle-income (LMI) category; hence, we selected the countries in the LMI range of the World Bank's GNI rankings for 2018 and previous years.[102]

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[97] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 12-13, unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387 (August 19, 2013) (*Shrimp from Vietnam 2013*).

[98] *See* Memorandum, "Analysis of Vietnam's Financial System," dated February 20, 2025 (Financial Sector Memorandum).

[99] *See* Memorandum, "Loan Interest Rate Benchmarks," dated January 28, 2025.

[100] *See, e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying PDM at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).

[101] *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) (*CFS from China*), and accompanying IDM at "Benchmarks" section; *see also, e.g., Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at "Benchmarks and Discount Rates" section.

[102] *See* World Bank Country Classification, https://data.worldbank.org/about/country-and-lending-groups (World Bank Country Classification).

After identifying the appropriate interest rates for each year, the next step is constructing the benchmark to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance is factored into the analysis by using a statistical regression that relates the interest rates to these governance indicators. As explained in *CFS from China*, the regression captures the broad inverse relationship between income and interest rates.[103] By limiting the analysis to the pool of countries within the GNI range of the country in question, the analysis yields a reasonable estimate of a benchmark interest rate for the country in question.

Many of the countries in the World Bank's LMI categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in the agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "lower middle income" for 2016 and previous year for which we require a benchmark. First, we did not include those economies that Commerce considered to be non-market economies for antidumping purposes for any part of the years in question. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years because we use real interest rates (*i.e.*, nominal interest rates less inflation) in the regression. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign currency-denominated instruments. Finally, for each year we excluded from the regression any countries that had aberrational or negative interest rates for the year in question.

Many of the countries in the World Bank's LMI categories reported lending and inflation rates to the IMF, and they are included in that agency's IFS. The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.

In *Citric Acid from China*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB Bond rate, where "n" equals or approximates the number of years of the term of the loan in question.[104] We are using the revised methodology here. Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

2. Foreign Currency Benchmarks

To calculate benchmark interest rate for foreign currency-denominated loans, Commerce is, again, following the methodology developed over a number of successive China investigations. For any short-term foreign currency loans, Commerce is using as a benchmark the one-year dollar London Inter-Bank Offered Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB-rating. For any long-term foreign currency loans, Commerce is adding the applicable short-term LIBOR rate to a spread which is

[103] *See CFS from China* IDM at the "Benchmarks" section.
[104] *See Citric Acid from China* IDM at the "Benchmarks and Discount Rates" section.

calculated as the difference between the one-year BB bond rate and the n-year BB Bond rate, where "n" equals or approximates the number of years of the term of the loan in question.

3. Discount Rates

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

VIII. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to Be Countervailable

1. Income Tax Preferences for Enterprises in Special Zones

The GOV reported that income tax preferences for enterprises located in special zones are provided for in Articles 16.3 and 16.5 of Decree 218 and Article 1.6 of Decree 91/2014/ND-CP, taxable income from new investment project(s) in industrial zones (except for industrial parks located in areas with advantageous socio-economic conditions) is subject to tax exemption for 2 years and a reduction of 50 percent of tax payable for the next 4 years.[105] Yuzhan reported that it received benefits under this program.[106]

We preliminarily determine that this program is regionally specific under section 771(5A)(D)(iv) of the Act because companies are eligible based on being located in certain designated regions of Vietnam, such as "high technology zones including concentrated information technology zones {} established by decision of the Prime Minister."[107] We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. To determine the benefit that Yuzhan received, we subtracted the tax amount Yuzhan paid from the tax amount due absent the program and divided the benefit by the Yuzhan's total sales for the POI. On this basis, we preliminarily determine that Yuzhan received countervailable subsidies of 0.29 percent *ad valorem*.[108] As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

2. Tax Benefits for New Investments

The GOV reported that this program is provided under Article 15.1 and 16.1 of Decree 218.[109] In relevant part, Article 16.1 of Decree 218 provides a tax exemption for four years and a 50-percent tax reduction for the next nine years for enterprises engaged in new certain investment

[105] *See* GOV's IQR at Exhibit A-1.1.
[106] *See* Yuzhan's IQR at 9.
[107] *See* GOV's IQR Exhibit A-1.1-SQ. at Decree 218, Article 15.1(a).
[108] *See* Yuzhan Preliminary Analysis Memo.
[109] *See* GOV's IQR at Exhibits A-1.1-SQ and A-3.1

projects.[110] Yuzhan reported that it received a benefit under the program in conjunction with the benefit it received pursuant to Income Tax Preferences for Enterprises in Special Zones.[111]

We preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act, because the subsidy is limited to a group of enterprises (*i.e.*, those sectors entitled to special investment incentives in Articles 15 and 16 of Decree 218). We preliminarily determine that these tax benefits provide a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. Yuzhan reported that it received a 50 percent reduction in income tax payable on income generated by its investment in fixed assets up to and including the 2023 tax period,[112] which was the same benefit that it received via the "Income Tax Preferences for Enterprises in Special Zones," program. We divided the benefit Yuzhan received by its total sales for the POI. On this basis we calculated a net subsidy rate of 0.29 percent *ad valorem* for Yuzhan under this program. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

3. Income Tax Preferences for Exporters

The GOV reported that preferential tax rates were provided under Chapter 5 and List A of Decree No. 164/2003/ND-CP (Decree 164) to exporters.[113] Specifically, under Article 35 and List A, enterprises for whom the "production of, and trading in, export goods with the export value exceeding 50% of the total value of goods produced" could receive a reduced tax rate for a maximum duration of 15 years, and, under Article 47, the "time for calculating tax exemption and reduction duration according to the provisions in this Decree shall be the first fiscal year when business establishments earn taxable incomes before subtracting the loss amounts allowed to be transferred."[114] While the GOV states that these preferential tax rates were terminated by Decree 108/2006/ND-CP dated September 22, 2006 (Decree 108), Article 86 of Decree 108 states that domestic investment projects under prior legislation are not affected by Decree 108,[115] and, consequently, we find that companies could still benefit under this program during the POI. Yuzhan reported that it did not receive benefits under this program.[116]

We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because receipt of the tax preferences is contingent upon export performance.[117] We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

[110] *Id.*
[111] *See* Yuzhan's IQR at 9.
[112] *Id.* at 13.
[113] *See* GOV's IQR at Exhibit A-2.1.
[114] *Id*. at Exhibit A-2.1-SQ.
[115] *Id*.; *see also* GOV's 1SQR at 1.
[116] *See* Yuzhan's IQR at 15.
[117] *Id*.

4. Income Tax Preferences Under Decree No. 24

The GOV reported that preferential tax rates were provided under Decree No. 24/2007/ND-CP (Decree 24/2007) to enterprises investing in certain areas.[118] Specifically, enterprises founded in areas with especially difficult socio-economic conditions designated under Articles 34 and 35 of Decree 24/2007 could receive reduced tax rates for a maximum duration of 15 years, and, under Article 43 of Decree 24/2007, the duration "shall be counted from the first fiscal year when business establishments earn taxable incomes before subtracting the loss amounts allowed to be carried forward."[119] While the GOV states that these preferential tax rates were terminated by Law No. 14/2008/QH12 (Law No. 14), Articles 19.3 and 19.4 of Law No. 14 state that enterprises receiving income tax preferences under prior legislation may continue to enjoy those incentives for their remaining duration,[120] and, consequently, we find that companies could still benefit under this program during the POI. Yuzhan reported that it did not receive benefits under this program.[121]

We preliminarily determine that this program is regionally specific under section 771(5A)(D)(iv) of the Act, because enterprises may qualify for tax incentives based on their location in areas with difficult socio-economic conditions. We preliminarily determine that these tax benefits provide a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

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

The GOV reported that Article 12.1 of Decree 134/2016/ND-CP dated September 1, 2016, providing guidelines for the Law on export and import duties, Law 107/2016/QH13 dated April 6, 2016 (Law 107, and Article 1.6 of Decree 18/2021/ND-CP, dated March 11, 2021), regulate this program which allows companies to receive import duty exemptions for imported materials that are used in the production of exported goods.[122] The amount of the exemption is equal to the amount of duty corresponding to the value of the imported materials actually used in the processing of the finished goods that are exported and is declared at the time of reporting to the Customs authority. The GOV maintains that the Customs authority is required to inspect facilities involved with processing goods for export, including the use and inventory of raw materials, machinery, and exports from the facility.[123] In prior CVD investigations, Commerce has concluded that the GOV does not have in place a system to confirm which inputs are consumed in the production of the exported products and in what amounts, including a normal allowance for waste, and when asked to explain when the GOV last conducted a physical

[118] *Id*. at Exhibit A-4.1.
[119] *Id*. at Exhibit A-4.1-SQ.
[120] *Id*.; *see also* GOV's 1SQR at 2.
[121] *See* Yuzhan's IQR at 15.
[122] *Id.* at Exhibits B-1.1 and B-1.1-SQ.
[123] *Id.*

inspection of the company, the GOV responded that it had not conducted an inspection of the facility during the POI.[124] Yuzhan reported receiving no benefits under the program.[125]

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

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

The GOV states that this program was implemented under Article 19 of Law 107/2006, on export and import duties (Law 107) and Article 36 of Decree 134/2016/ND-CP which provides guidelines for Law No. 107.[126] The GOV states that these laws allow for imported goods, for which import duty has already been paid that will eventually be used in the manufacture of exported goods to be subject to an import duty refund. According to the GOV, the amount of the refund is the amount of the duty applied to the value of the import materials used in the processing of the finished goods that are exported. The GOV states that, before issuing a decision on a duty refund, the customs authority must issue an inspection decision and conduct the inspection at the company's facilities. In prior CVD investigations, we have not found record evidence that the GOV tracks the amount of waste or scrap produced during the production process.[127] Under 19 CFR 351.519(a)(4)(i), we find that a benefit exists to the extent that inputs that are not consumed in the production of product, allowing a normal allowance for waste are not tracked. In previous investigation, the GOV did not provide a report showing the amount of waste or scrap produced in the manufacture of a product or a report detailing where the scrap was sold.[128] Yuzhan reported receiving no benefits under the program.[129]

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

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[124] *See Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 89 FR 85500 (October 28, 2024) (*Shrimp from Vietnam 2024*), and accompanying IDM at Comment 5.
[125] *See* Yuzhan's IQR at 17.
[126] *See* GOV's IQR at Exhibit B-2.1.
[127] *See Shrimp from Vietnam 2024* IDM at Comment 5.
[128] *Id*.
[129] *See* Yuzhan's IQR at 17-18.

7. Exemption of Import Duties for Imports into Industrial Zones

The GOV reported that Article 12.6 of Decree 87/2010/ND-CP dated August 13, 2010, and Article 14 of Decree 134/2016/ND-CP dated September 1, 2016, grant duty exemptions for equipment and machinery imported to create fixed assets of investment projects carried out in areas subject to investment preferences.[130] Yuzhan reported receiving no benefits under the program.[131]

We preliminarily determine that this program is regionally specific under section 771(5A)(D)(iv) of the Act because the import duty exemptions are only available to enterprises in designated geographic regions, including industrial zones. We preliminarily determine that this program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

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

Yuzhan reported that it is an is an export processing enterprise pursuant to this program.[132] Pursuant to the program, Yuzhan pays no duties on either raw materials or capital goods imported into its production facilities.[133] The GOV stated that, in Article 26.3 of Decree 35/200/ND-CP, export processing enterprises are entitled to tax policies applied to free trade zones from the date when the objectives of establishment of export processing enterprises are specified in the investment registration certificate, the amended investment registration certificate or the export processing enterprise certificate issued by the competent investment registration agencies.[134] The GOV further reported that, Decree No. 107/2016/QH13, the Law on Export and Import Duties, regulates non-tariff areas and states that the following goods are not subject to export or import duties: 1) goods exported abroad a free trade zone; 2) goods imported from abroad to a non-tariff zone and used within such a non-tariff zone; and 3) goods transported from one free trade zone to another.[135] Thus, goods imported by export processing enterprises and used within the free-trade zone are not subject to import duty. [136]

In addition, the GOV explained that imports of materials into export processing enterprises must adhere to follow procedures identified in Circular 38/2015/TT-BTC and Circular 39/2018/TT-BTC (*i.e.*, customs inspections, customs procedures).[137] According to the GOV, Circular 38/2015/TT-BTC and Circular 39/2018/TT-BTC outline that companies operating an export processing enterprise are required to maintain reports demonstrating the movement of imported

[130] *See* GOV's IQR at Exhibits B-3.1 and B-3.1-SQ.
[131] *See* Yuzhan's IQR at 18; *see also* GOV's 1SQR at 2.
[132] *See* Yuzhan's IQR at 20-27
[133] *Id.* at 24-26.
[134] *See* GOV's IQR at 15-16 and Exhibit B-5.1-SQ.
[135] *Id.*
[136] *Id.*
[137] *Id.* at 19 and Exhibit B-5.1-SQ.

materials, movement of finished goods, and the consumption norm.[138] Additionally, under Decree 18/2021/ND-CP, the GOV stated the export processing enterprise is required to maintain a software or management of the goods not subject to duties of the Export Processing Enterprise serving preparation of reports on receipt, withdrawal, leftover inventory and use of imports required by customs laws.[139] Thus, the fiscal year report allows the customs authority to correctly identify the amount of materials consumed in production of exported goods production during the fiscal year and to ensure that redundant materials (*i.e.*, recovered materials or in progress on production line) will be consumed for the production of exported goods for the following fiscal year.[140]

The GOV stated that scrap and discarded products do not include the recovered raw materials or materials in-progress on the production line which can be used for the production of the exported goods.[141] The GOV explained that when an export processing enterprise sells scrap or discarded products into the domestic market, it is required to perform export procedures, and its buyer is required to perform import procedures as provided in Chapter II of Circular 38/2015/TT-BTC, which triggers the obligation of tax and duty payments on the buyer.[142]

The GOV provided Yuzhan's contracts with its waste and scrap buyers, sample customs clearance documents for such sales, and screenshots from the customs management system which it stated showed Yuzhan's withdrawals of waste and scrap for sale to a company with whom it contracts for these sales.[143] Yuzhan also provided supporting sample documentation for its scrap sales with accompanying customs declarations.[144] We examined the screenshots and documentation, and while the documents support that Yuzhan sells waste and scrap from its facilities, there is no indication of how Vietnamese customs accounts for the amount of scrap and waste leaving the site that can be discerned from the submitted screenshots, and there is no reference to the payment of duties in the submitted contracts. Moreover, when we asked the GOV to explain when the last time the GOV conducted a physical inspection of Yuzhan, the GOV provided copies of the inspection reports by local customs authority.[145] However, none of the inspections were completed during the POI.[146]

Under 19 CFR 351.519(a), "the term 'remission or drawback' includes full or partial exemptions and deferrals of import charges." Under 19 CFR 351.519(a)(1)(ii), in the case of exemptions of import charges upon export, "a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste…" Under 19 CFR 351.519(a)(4)(i), the entire amount of such exemptions will confer a benefit, unless Commerce determines that the government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported

[138] *Id.*
[139] *Id.*
[140] *Id.* at 22.
[141] *Id.* at 23.
[142] *Id.*
[143] *See* GOV's 1SQR at Exhibit SQ-1.1.
[144] *See* Yuzhan's SQR at Exhibits Q10-1, Q10-3-1, and Q10-3-2.
[145] *See* GOV's 1SQR at 8 and Exhibits SQ-3.1 and SQ-3.2.
[146] *Id.*

products and in what amounts, and the system is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export."

In prior investigations on products from Vietnam, we considered whether the production process produces resaleable scrap to be essential to the calculation of a normal allowance for waste.[147] Because record evidence demonstrates that the GOV does not track the amount of waste exiting the export processing enterprise, and the Vietnam Customs Authority did not conduct an inspection of Yuzhan's facilities during the POI, we find this system neither meets the regulatory requirements under 19 CFR 351.519(a)(4)(i), nor adheres to the "rigorous customs enforcement" requirement outlined in *CWP from Vietnam*.[148] We preliminarily determine that the program provides a financial contribution under section 771(5A)(D)(ii) of the Act in the form of revenue forgone by the GOV. We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because import duty exemptions on raw materials are contingent upon export performance and the company being an export processing enterprise.

Commerce treats exemptions from import charges on raw materials as recurring benefits, consistent with 19 CFR 351.524(c)(1), and attributes the benefits to the year in which they were received. We also preliminarily found that Yuzhan received non-recurring benefits under this program for imported capital equipment, some of which benefits passed the "0.5 percent test" provided in 19 CFR 351.524(b)(2), and which were allocable to the POI; benefits that did not pass the "0.5 percent test" were expensed in the year of receipt. We summed all benefits that were received during or allocated to the POI to arrive at the total benefit. Next, we divided the total benefit by Yuzhans' total export sales for the POI. On this basis, we preliminarily find the program to confer a benefit of 2.97 percent *ad valorem* to Yuzhan.[149] As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

9. Exemption or Reduction from Land and Water Rents for Encouraged Industries or Selected Areas

The GOV states that, during the POI, this program was provided under Decree No. 46/2014/ND-CP (Decree 46) on collection of land rents and water surface rents.[150] Article 19 of Decree 46 discusses the geographical areas that are eligible for this exemption. According to the GOV, rent exemptions are provided under Decree 46 because their facilities are located in specific economic zones or, generally, in an area with especially difficult socio-economic conditions.[151]

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[147] *See, e.g.*, *Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 39983 (August 13, 2018), and accompanying PDM at 14, unchanged in *Laminated Sacks from Vietnam* IDM at 26.
[148] *See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination,* 77 FR 64471 (October 22, 2012) (*CWP from Vietnam*), and accompanying IDM at Comment 3.
[149] *See* Yuzhan Preliminary Analysis Memo.
[150] *See* GOV's IQR at Exhibit C-1.1.
[151] *Id.*

Yuzhan has four production facilities which are located in the Que Vo Industrial Park, in the Bac Ninh Province of Vietnam.[152] Yuhan subleases land for two of its facilities from a company (Company A) that is the infrastructure manager of Que Vo Industrial Park, and Yuzhan leased two facilities from two companies (Company B and Company C).[153] Yuzhan reports that Companies A, B, and C are all public joint stock companies, and not GOV-owned entities.[154] Yuzhan reported that it does not lease water surfaces at all, and the land and facilities that Yuzhan rents from Companies A, B, and C are paid directly to those companies, and not to the GOV.[155]

We first note that Company B and C do not lease land to Yuzhan but rather the facilities on the land. On this basis, we find that Yuzhan did not use the alleged land rent or land tax exemption programs with respect to these production sites. Regarding Company A, based on Yuzhan's lease contracts,[156] accounting records of its transactions with Company A,[157] and additional documentation regarding Company A, we find that Company A is not a GOV-owned entity and that there is information in its lease contract with Company A or its accounting records involving Company A indicating that Yuzhan received land rent exemptions or land tax exemptions in connection with its lease. Thus, based on the evidence on the record, we preliminarily determine that Company A is not a government authority as defined in section 771(5) of the Act and, therefore, that Yuzhan did not use the exemption or reduction from land and water rents for encouraged industries or selected areas program during the POI.

We preliminarily determine that this program is regionally specific under section 771(5A)(D)(iv) of the Act because a large number of the exemptions are only available to companies located in regions with socio-economic difficulties. We preliminarily find that these rent exemptions for qualifying facilities constitute financial contributions in the form of revenue forgone by the GOV under section 771(5)(D)(ii) of the Act, in which the benefit would be the amount of rent savings to the recipient pursuant to section 771(5)(E) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

10. Land Rent Exemptions and Reductions for Enterprises Located in Special Zones Under Decree No. 35/2022

The GOV reported that the Land Rent Exemptions for Enterprises Located in Special Zones Under Decree No. 35/2022 program is administered under Decree No. 35/2022/ND-CP dated May 28, 2022 (Decree 35), which details regulations and management of industrial parks and other economic zones in Vietnam.[158] According to the GOV, under Articles 32 and 33 of Decree 35, the GOV provides rent exemptions to firms that make investments in the "construction and business of infrastructure facilities of supporting industrial parks, specialized industrial parks and

[152] *See* Yuzhan's IQR at 28-34.
[153] *Id.* The names of the three companies have been bracketed as business proprietary information.
[154] *Id* at Exhibit C-4; *see also* GOV's 1SQR at Exhibit SQ-13.
[155] *See* Yuzhan's 1SQR at 21-24.
[156] *See* Yuzhan's IQR at Exhibits C-2 and C-3.
[157] *See* Yuzhan's 1SQR at Exhibits Q-13-1 (Company A).
[158] *See* GOV's IQR at 26 and Exhibit B-5.1-SQ (submitted in the GOV response regarding the Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones program).

hi-tech industrial parks."[159] To receive this rent exemption or reduction, an applicant must lease land directly from the GOV.[160] As noted above in the discussion of the "Exemption or Reduction from Land and Water Rents for Encouraged Industries or Selected Areas" program, Yuzhan reported that it had four outstanding sub-lease agreements with Companies A, B, and C.[161] Consistent with our preliminary findings concerning the "Exemption or Reduction from Land and Water Rents for Encouraged Industries or Selected Areas" (*e.g.*, evidence indicating that Companies A-C are private entities, Yuzhan's lease agreements lack evidence of GOV or GOV-entity involvement, and no evidence in Yuzhan's accounting records indicating the receipt of tax exemptions in connection with its sub-leases), we preliminarily determine that Yuzhan's did not use the Land Rent Exemptions for Enterprises Located in Special Zones Under Decree No. 35/2022 program.

We preliminarily determine that the land rent exemptions and reductions at issue are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they are limited to enterprises located in special zones like industrial parks or industrial - urban - service zones. We preliminarily find that these rent exemptions for qualifying facilities constitute financial contributions in the form of revenue forgone by the GOV under section 771(5)(D)(ii) of the Act, in which the benefit would be the amount of rent savings to the recipient pursuant to section 771(5)(E) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

11. Exemptions of Land-Use Taxes and Levies for Encouraged Industries or Industrial Zones

The GOV reports that exemptions of land-use taxes were provided under Law No. 48/2010/QH12 (Law 48) on non-agricultural land use tax, guided by Circular No. 153/2011/TT-BTC (Circular 153).[162] Circular 153 provides land use tax exemptions for investors with projects within the list of especially encouraged investment sectors; investment projects in areas with especially socio-economic difficulties; and incentives for investment projects within the list of encouraged investment sectors that are implemented in areas with socio-economic difficulties.[163] The GOV explained that Article 9.1 of Law No. 48 stipulates that investment projects within the list of encouraged investment sectors and projects in areas with difficult socio-economic conditions are eligible for a 50 percent tax reduction in their land-use taxes.[164] Under this program, the GOV provides land tax exemptions only to investors who are directly assigned or leased land by the GOV.[165] As noted above in the discussion of the "Exemption or Reduction from Land and Water Rents for Encouraged Industries or Selected Areas" program, Yuzhan reported that it had four outstanding sub-lease agreements with Companies A, B, and C.[166] Consistent with our preliminary findings concerning the "Exemption or Reduction from Land and Water Rents for Encouraged Industries or Selected Areas" (*e.g.,* evidence indicating that

[159] *Id.*
[160] *Id.*
[161] *See* Yuzhan's IQR at 28-34.
[162] *See* GOV's IQR at Exhibits C-2.1 and C-2.1-SQ.
[163] *Id.*
[164] *Id.* The GOV's citation to Article 11.1 of Law No. 48 appears to be a typographical error.
[165] *See* GOV's 1SQR at 10.
[166] *See* Yuzhan's IQR at 28-34.

Companies A-C are private entities, Yuzhan's lease agreements lack evidence of GOV or GOV-entity involvement, and no evidence in Yuzhan's accounting records indicating the receipt of tax exemptions in connection with its sub-leases), we preliminarily determine that Yuzhan's did not use the Exemptions of Land-Use Taxes and Levies for Encouraged Industries or Industrial Zones program.

We preliminarily determine that this program is regionally specific under section 771(5A)(D)(iv) of the Act because it is limited to enterprises located in designated geographic regions, *i.e.*, those with investments in areas with socio-economic difficulties. We preliminarily determine that the program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOV, in which the benefit would be the amount of tax savings to the recipient pursuant to section 771(5)(E) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

12. Interest Rate Support Program from the SBV

The GOV reports that this program was initially introduced under Decision No. 131/QD-TTG, dated January 23, 2009, to provide interest rate support to individuals and organizations engaged in production-related businesses in borrowing capital. The Appendix identifies industries/borrowers that would be ineligible for the support.[167] The GOV explained that the purpose of this program was to reduce production costs and to create jobs. According to the GOV, interest rate support from the state budget has been provided under Decree No. 31/2022/ND-CP during the POI.[168] The program is eligible for applicants operating in sectors listed in item A, of Article 2.2 of Decree No. 31/2022/ND-CP, including those in "processing and manufacturing industries."[169] Under this program, the GOV, through the SBV, will pay two percent interest of the total interest amount on outstanding VND loan balances directly to the commercial banks and thereby reduce the interest owned by borrowers of these loans.[170] Yuzhan reported that it did not use this program,[171] and provided communications from the banks from which it obtained VND loans indicating that the rates applicable to its loans were not supported by SBV pursuant to the program.[172] Accordingly, we preliminarily determine that Yuzhan did not use this program.

We preliminarily determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because participation in the program is expressly limited by law, to certain industries. We also preliminarily determine that the interest rate support from SBV provides a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

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[167] *See* GOV's IQR at Exhibit D-1.1 and D-1.1-SQ.
[168] *Id.*
[169] *Id.*
[170] *Id* at Exhibit D-1.1-SQ (Article 5 of Decree No. 31/2022/ND-CP.)
[171] *See* Yuzhan's IQR at 43; *see also* GOV's 1SQR at 11.
[172] *See* Yuzhan's 1SQR at Exhibits Q16A-1, Q16A-2, and Q16A-3.

13. Export Factoring by SOCBs

The GOV reported that Vietnamese SOCBs provide export factoring under Article 9.1 of Circular 02/2017/TT-NHNN (Circular 02).[173] Specifically, SOCBs can act as an export factor for buyers and sellers of Vietnamese goods subject to Articles 7 of Circular 02.[174] In the "Standard Questions Appendix" the GOV reported that export performance was taken into account when determining eligibility for this program.[175] Yuzhan reported that it did not use this program.[176]

The GOV provided annual reports for multiple banks, including Vietnam Bank for Agriculture and Rural Development (Agribank), the Bank for Investment and Development of Vietnam JSC (BIDV), Vietcombank Securities Limited Company (Vietcombank), and Vietnam Joint Stock Commercial Bank for Industry and Trade (VietinBank) that indicate the banks are majority state-owned by the GOV.[177] As described in the Financial Sector Memorandum, state ownership and control has been observed at the highest level of SOCBs' corporate structures. This has included many high-ranking government or Communist Party of Vietnam (CPV) officials that serve on the board of directors in an official government capacity to actively manage the banks' daily activities and ensure they are consistent with GOV policies and objectives. Moreover, the Financial Sector Memorandum explains that according to Vietcombank's annual report, these officials are "armed with the confidence and expectations of the Central Party" and, together with the leaders of the SOCBs, work under the guidance and direction of the GOV and the SBV as principal managers of all aspects of the banks' operations.[178] We note that similar statements are included in Agribank, BIDV, and VietinBank's annual reports regarding cooperation with government guidelines and "serving the country's socio-economic development programs."[179]

Given the evidence from the record of this investigation, we find that the GOV is able to control the decisions of these SOCB banks through a CPV-appointed board of members and the banks are vested with government authority. Therefore, we preliminarily find that there is a direct financial contribution by an "authority" under section 771(5)(B) of the Act in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. Moreover, we preliminarily determine that this program is contingent upon export performance and is specific under sections 771(5A)(A) and (B) of the Act, because preferential loans are provided for exports of Vietnamese products. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

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[173] *See* GOV's IQR at Exhibits D-2.1 and D-2.1-SQ.
[174] *Id.*
[175] *Id.* at Exhibit D-3.1.
[176] *See* Yuzhan's IQR at 44.
[177] *Id*. at Exhibits D-2.1.
[178] *See* Financial Sector Memorandum at Attachment 1.
[179] *See* GOV's IQR Exhibit D-2.1.at BIDV's annual report, page 107; *see also, e.g.*, Exhibit D-2.1. at Agribank's annual report, page 4 "Agribank has made great efforts. . . demonstrating the leading role of a big State-owned commercial bank, effectively implementing monetary policy, promoting economic recovery and development…deploying many solutions to promote safe and effective credit growth into production and business, especially priority areas and growth drivers according to the Government's policies" and Exhibit D-5.1.e at VietinBank's annual report, page 20, "VietinBank pays special attention to the Party building work. Given new duties, powers, role, and position, the Party's work does not only go in parallel with, but also directs all aspects of the Bank's operations, aligning the execution of the Party's policies with actual practices."

14. Guarantees for Export Activities from SOCBs

The GOV reported that Vietnamese SOCBs provide guarantees for export activities under Article 14 of Circular 07/2015/TT-NHNN (Circular 07).[180] In the "Standard Question Appendix," the GOV reported that export performance was considered when determining eligibility for this program. Yuzhan reported that it did not use this program.[181]

We preliminarily determine that this program is contingent upon export performance and is specific under sections 771(5A)(A) and (B) of the Act, because preferential loans provided under this program are contingent upon the export of Vietnamese products. As described above with respect to the Exporting Factoring program, we preliminarily determine that SOCBs are state owned and constitute government authorities under section 771(5)(B) of the Act. Therefore, we find this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

15. Preferential Lending to Exporters by SOCBs

The GOV reported that Vietnamese SOCBs provide lending to exporters under Articles 3 and 4 of Circular 39/2016/TT-NHNN (Circular 39).[182] In the "Standard Question Appendix," the GOV reported that export performance was taken into account when determining eligibility for this program.[183] Yuzhan reported that it had outstanding loans from SOCBs during the POI.[184]

We preliminarily determine that this program is contingent upon export performance and is specific under sections 771(5A)(A) and (B) of the Act, because preferential loans under this program are contingent on exports of Vietnamese products. As described above, we preliminarily determine that SOCBs are state owned and constitute government authorities under section 771(5)(B) of the Act. Therefore, we find this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. To determine the benefit that Yuzhan received, we first determined the benchmark interest rate pursuant to the methodology discussed in the "Interest Rate Benchmarks" section above. We then calculated the benchmark interest payment by multiplying the principal balance to which each POI interest payment applied by the benchmark interest rate and then multiplied this amount by the number of days each interest payment covers divided by 360 days in a year. Next, we subtracted the interest payment that Yuzhan paid from the benchmark interest payment and summed the benefits. We divided the total benefit by the total export sales of Yuzhan. On this basis, we preliminarily determine that the net countervailable subsidy rate for this program was 0.13 percent *ad valorem*.[185] As described in the "Use of Facts Otherwise Available and Adverse

[180] *See* GOV's IQR at Exhibit D-3.1.
[181] *See* Yuzhan's IQR at 44.
[182] *Id.* at Exhibit D-4.1
[183] *Id.*
[184] *See* Yuzhan's IQR at 45-49.
[185] *See* Yuzhan Preliminary Analysis Memo.

Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

16. Investment Credits from the VDB

The GOV reports that this program is overseen by the VDB.[186] According to the GOV, this program began under Decree 75 and provided investment credit loans for investors with certain eligible investment projects.[187] The GOV stated that when Decree 75 was replaced by Decree 32, this program continued under the new guidelines established by Decree 32, which was in turn replaced by Decree 78/2023/ND-CP on November 7, 2023.[188] Article 29.1 of Decree 32 stipulates that contracts for borrowing entered before termination of Decree 75 are still valid.[189] As such, because residual benefits can still be received under this program, we continue to find that this program has not been terminated. Further, in reviewing Decree 32, we find that investment incentives are given to companies investing in projects in geographical areas with difficult or particularly difficult socio-economic conditions.[190] Yuzhan reported that it did not use this program.[191]

As described above, we preliminarily determine that the VDB is a state-owned policy bank and is an "authority" under section 771(5)(B) of the Act. Therefore, we find that the investment credit loans provide a financial contribution under section 771(5)(D)(i) of the Act because the export loans were made by the state-owned policy bank. We preliminarily determine that this program is export specific under sections 771(5A)(A) and (B) of the Act because these loans are contingent upon the exportation of goods listed under Decree 75. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

17. Export Promotion Grants

The GOV reported that the National Trade Promotion program was provided for under Decision No. 72/2010/QD-TTG dated November 15, 2010 (Decision 72), which promulgated the regulation on the establishment, management, and implementation of the program.[192] The GOV maintains that the program is state-funded with one of the objectives of the program being to enhance trade promotion and develop export markets.[193] Decision 72 identifies the activities for which trade promotion funds are available and the level of support for each activity.[194] Chapter 2 of the decision identifies activities for which funding is available, including market research, advertising, hiring domestic and foreign experts to give advice on product development,

[186] *See* GOV's IQR at Exhibit D-5.1-SQ.
[187] *Id.*
[188] *Id.*
[189] *Id*.
[190] *Id*. (Decree 32 Appendix).
[191] *See* Yuzhan's IQR at 49.
[192] *Id.* Exhibit E 1.1.
[193] *Id.*
[194] *Id*. at Exhibit E-1.1-SQ.

organizing and participating in overseas trade fairs.[195] Yuzhan reported that it did not use this program.[196]

We preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because it is contingent upon export performance as this program seeks to improve trade promotion and develop export markets. We preliminarily determine that grants from this program provide a financial contribution in the form of a direct transfer of funds from the GOV under section 771(5)(D)(i) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responsive companies benefited from this program during the POI.

18. Investment Support Grants

The GOV contends that the investment support program was provided under Law No. 61/2020/QH14 dated June 17, 2020 (Law No. 61).[197] Article 18 of Law No. 61 identifies the forms of assistance and entities eligible for assistance, which includes hi-tech enterprises, science and technology enterprises, enterprises investing in agriculture and rural areas.[198] Article 16 of the law provides business lines and areas eligible for incentives, including disadvantaged areas and extremely disadvantaged areas and industrial parks, export-processing zones, and economic zones.[199] Yuzhan reported that it did not use this program.[200]

We preliminarily determine that the investment support program is *de jure* specific under section 771(5A)(D)(i) of the Act because the program is limited to entitles in specific sectors (*e.g.*, hi-tech enterprises) and regionally specific under section 771(5A)(D)(iv) because the program is limited to entities located in certain areas, including disadvantaged and extremely disadvantaged areas, industrial parks, hi-tech zones, and economic zones.[201] We preliminarily determine that grants from this program provide a financial contribution in the form of a direct transfer of funds from the GOV under section 771(5)(D)(i) of the Act. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine that the non-responding companies benefited from this program during the POI.

B. Programs Preliminarily Determined to Be Not Countervailable

1. Exemption of Import Duties for Foreign-Invested Enterprises

Consistent with *Shrimp from Vietnam 2024*,[202] we preliminarily find that this program is not countervailable because the program was terminated by the Law on Investment No.

[195] *Id*.
[196] *See* Yuzhan's IQR at 49.
[197] *Id.* at Exhibit E-2.1.
[198] *Id*. at Exhibit E-2.1-SQ.
[199] *Id*.
[200] *See* Yuzhan's IQR at 49-50.
[201] *Id*.
[202] *See Shrimp from Vietnam 2024* IDM at 4.

59/2005/QH11 (Law 59).[203] Specifically, benefits were ceased on July 1, 2006.[204] Thus, any benefits received that would be allocable to the POI would be provided as a non-recurring benefit prior to that date (*i.e.*, the date of importation) and the AUL. Moreover, consistent with *Shrimp from Vietnam 2014*,[205] Commerce's practice is to not countervail subsidies provided by the GOV prior to its accession to the WTO on January 11, 2007. Thus, any deferred benefits would have been provided prior to accession and, consequently, would not be countervailable.

2. Exemptions or Reductions of Rent for Foreign-Invested Enterprises

We preliminarily find that this program is not countervailable because the GOV reported that the program was terminated by Law 59.[206] Land-use rights were granted under the program prior to termination on July 1, 2006, and, as noted above, Commerce's practice is not to countervail subsidies provided by the GOV prior to its accession to the WTO on January 11, 2007.[207] Thus, consistent with our practice and *Shrimp from Vietnam 2014*,[208] any land-use rights provided under this program are not countervailable.

3. Provision of Electricity at Reduced Rats in Industrial and Export Processing Zones

In *Shrimp from Vietnam 2024*, Commerce found this program did not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1) because the GOV does not offer preferential electricity prices to firms located in industrial and export processing zones.[209] Information on the record of this investigation continues to indicate that the electricity rates the GOV charges in the industrial and export processing zones are the same as the rates the GOV charges to firms located outside of the zones. Specifically, we reviewed the electricity rates paid by Yuzhan and noted that the prices are consistent with the national and provincial prices of manufacturing industries.[210] Therefore, consistent with *Shrimp from Vietnam 2024*, we continue to find the program does not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1).

4. Provision of Natural Gas at Reduced Rates in Industrial and Export Processing Zones

In *Shrimp from Vietnam 2024,* Commerce found this program did not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1) because the GOV does not offer preferential natural gas prices to firms located in industrial and export processing

[203] *See* GOV's IQR at Exhibit B-4.1.
[204] *Id*. at Exhibit B-4.1.c.
[205] *See Shrimp from Vietnam 2014* IDM at 3 (stating "In accordance with the {Commerce}s practice, regardless of the AUL, {Commerce} will not countervail subsidies provided by the Government of Vietnam before the date of that country's accession to the {WTO}, January 11, 2007.").
[206] *See* GOV's IQR at C-3.1.
[207] *See Shrimp from Vietnam 2014* IDM at 3 (stating "In accordance with the {Commerce}s practice, regardless of the AUL, {Commerce} will not countervail subsidies provided by the Government of Vietnam before the date of that country's accession to the {WTO}, January 11, 2007.").
[208] *See Shrimp from Vietnam 2014* IDM at 3.
[209] *See Shrimp from Vietnam 2024* IDM at 4, concerning the Provision of Utilities at Reduced Rates in Industrial and Export Processing Zones.
[210] *See* Yuzhan's SFQR at 2 and Exhibits FE-5, FE-6, FE-7, and FE-12.1 Pricing Appendix; *see also* GOV's 1SQR at Exhibit SQ-7.

zones.[211] Information on the record of this investigation continues to indicate that the natural gas rates the GOV charges in the industrial and export processing zones are the same as the rates the GOV charges to firms located outside of the zones.[212] Therefore, consistent with *Shrimp from Vietnam 2024*, we continue to find the program does not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1). Furthermore, Yuzhan reported that it did not use natural gas.[213]

5. Provision of Water at Reduced Rates in Industrial and Export Processing Zones

In *Shrimp from Vietnam 2024,* Commerce found this program did not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1) because the GOV does not offer preferential water prices to firms located in industrial and export processing zones.[214] Information on the record of this investigation continues to indicate that the water rates the GOV charges in the industrial and export processing zones are the same as the rates the GOV charges to firms located outside of the zones.[215] Therefore, consistent with *Shrimp from Vietnam 2024*, we continue to find the program does not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1). To the extent that Yuzhan obtained water from private sources, as detailed in its response,[216] we find the program to be not used.

6. Provision of Sewage Services at Reduced Rates in Industrial and Export Processing Zones

In *Shrimp from Vietnam 2024,* Commerce found this program did not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1) because the GOV does not offer preferential sewer service prices to firms located in industrial and export processing zones.[217] Information on the record of this investigation continues to indicate that the sewage services rates the GOV charges in the industrial and export processing zones are the same as the rates the GOV charges to firms located outside of the zones.[218] Therefore, consistent with *Shrimp from Vietnam 2024*, we continue to find the program does not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1). To the extent that Yuzhan obtained sewage services from private sources, as detailed in its response,[219] we find the program to be not used.

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[211] *See Shrimp from Vietnam 2024* IDM at 4, concerning the Provision of Utilities at Reduced Rates in Industrial and Export Processing Zones.
[212] *See* GOV's IQR at Exhibit F-2.1-SQ1 (Decree No. 83/2014/ND-CP).
[213] *See* Yuzhan's SFQR at 11.
[214] *See Shrimp from Vietnam 2024* IDM at 4, concerning the Provision of Utilities at Reduced Rates in Industrial and Export Processing Zones.
[215] *See* Yuzhan's SFQR at 16 and Exhibits FW-7, FW-8, FW-9, FW-10, FW-11, FW-12, and FW-13; *see also* GOV's 1SQR at Exhibit SQ-12.1.
[216] Yuzhan's SFQR at 12-18 and Exhibits FW-11, FW-12 and FW-13.
[217] *See Shrimp from Vietnam 2024* IDM at 4, concerning the Provision of Utilities at Reduced Rates in Industrial and Export Processing Zones.
[218] *See* Yuzhan's SFQR at 21 and Exhibits FS-2 and FS-3; *see also* GOV's 1SQR at Exhibit SQ-14.1.
[219] *Id*. at 19-21 and Exhibit FS-7.

7. Provision of Telecommunications Services at Reduced Rates in Industrial and Export Processing Zones

In *Shrimp from Vietnam 2024,* Commerce found this program did not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1) because the GOV does not offer preferential gas prices to firms located in industrial and export processing zones.[220] Information on the record of this investigation continues to indicate that the telecommunication service rates the GOV charges in the industrial and export processing zones are the same as the rates the GOV charges to firms located outside of the zones.[221] Therefore, consistent with *Shrimp from Vietnam 2024*, we continue to find the program does not confer countervailable benefits under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1). To the extent that Yuzhan obtained telecommunication services from private sources, as detailed in its response,[222] we find the program to be not used.

C. Programs For Which We Have Requested More Information

We intend to address the Accelerated Depreciation and Increases of Deductible Expenses program in a post-preliminary decision memorandum. Specifically, we will examine whether this program should be included among the programs that were used, pursuant to AFA, by the firms that failed to timely file Q&V questionnaire responses.

IX. RECOMMENDATION

We recommend that you approve the preliminary findings described above. If this recommendation is accepted, Commerce will publish the preliminary determination in the *Federal Register* and notify the ITC.

☒	☐
Agree	Disagree

3/7/2025

X

Signed by: CHRISTOPHER ABBOTT

Christopher Abbott,
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

[220] *See Shrimp from Vietnam 2024* IDM at 4, concerning the Provision of Utilities at Reduced Rates in Industrial and Export Processing Zones.
[221] *See* GOV's IQR at Exhibit F-5.1-SQ1.
[222] *See* Yuzhan's SFQR at Exhibits FT-1 through FT-6.

Appendix

AFA Rate Calculation

Programs	AFA Rate (percent)
Income Tax Programs	20.00[223]
Income Tax Preferences for Enterprises in Special Zones	
Income Tax Preferences for Exporters	
Tax Benefits for New Investments	
Income Tax Preferences Under Decree No. 24	
Preferential Income Tax Program for Foreign-Invested Income	
Other Tax Programs	
Import Duty Exemptions for Imports Used to Produce Exported Goods	5.53[224]
Refund for Import Duties on Raw Materials Used to Produce Exports	5.53[225]
Exemption of Import Duties for Imports into Industrial Zones	5.53[226]
Import Duty Exemptions on Imports of Raw Materials to be Used by an Export Processing Zone and Export Processing Enterprise	2.97[227]
Land Programs	
Exemptions or Reduction of Land Water Rents for Encouraged Industries	25.41[228]
Exemptions of Land-Use Taxes and Levies for Encouraged Industries or Industrial Zones	25.41[229]
Land Rent Exemptions and Reductions for Enterprises Located in Special Zones Under Decree No. 35/2022	25.41[230]
Loan Programs	
Interest Rate Support Program from the SBV	1.38[231]
Export Factoring by SOCBs	1.38[232]
Guarantees for Export Activities from SOCBs	1.38[233]
Preferential Lending to Exporters by SOCBs	1.38[234]
Investment Credits from the VDB	1.38[235]

[223] The standard corporate tax rate in Vietnam is 20 percent. *See* GOV's IQR at Exhibit A-1.1-SQ, Decree 218 at Article 10.
[224] *See Certain Paper Plates from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 90 FR 8258 (January 28, 2025), and accompanying IDM at 15-16.
[225] *Id.*
[226] *Id.*
[227] *See* Yuzhan's *ad valorem* subsidy rate for this program.
[228] *See Wire Hangers from Vietnam* IDM at 12-14.
[229] *Id*.
[230] *Id*.
[231] *See Laminated Sacks from Vietnam* IDM at 18-19.
[232] *Id.*
[233] *Id.*
[234] *Id.*
[235] *Id*.

Grant Programs	
Export Promotion Grants	25.41[236]
Investment Support Grants	25.41[237]
Total	**173.51**

[236] *See Wire Hangers from Vietnam* IDM at 12-14; *see also Laminated Sacks from Vietnam* IDM at 14 (selecting identical rate for "Export Promotion Program").
[237] *See Wire Hangers from Vietnam* IDM at 12-14.