administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

**Assessment Rates**

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. For the mandatory respondents, QVD and Vinh Hoan, and new shippers, SAMEFICO and Cadovimex II, we will calculate importer-specific duty assessment rates on a per-unit basis.[10] Where the assessment rate is *de minimis,* we will instruct CBP to assess no duties on all entries of subject merchandise by that importer. We will instruct CBP to liquidate entries containing merchandise from the PRC-wide entity at the PRC-wide rate we determine in the final results of review. We will issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, except for Cadovimex II and SAMEFICO, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* the cash deposit will be zero); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnam exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of $2.11 per kilogram; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporters that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of subject merchandise from new shippers Cadovimex II or SAMEFICO entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Cadovimex II or produced and exported by SAMEFICO, the cash deposit rate will be zero; (2) for subject merchandise exported by Cadovimex II or SAMEFICO but not manufactured by Cadovimex II or SAMEFICO, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* $2.11 per kilogram); and (3) for subject merchandise manufactured by Cadovimex II or SAMEFICO, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Interested Parties**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 28, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–21429 Filed 9–3–09; 8:45 am]

**BILLING CODE 3510–DS–P**

[10] We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(C–552–805)**

### Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice. This notice also serves to align the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of PRCBs from Vietnam.

**EFFECTIVE DATE:** September 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jun Jack Zhao or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1396 and (202) 482–3586, respectively.

**SUPPLEMENTARY INFORMATION:**

**Case History**

The following events have occurred since the April 20, 2009 initiation of this investigation. *See Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam*, 74 FR 19064 (April 27, 2009) (*Initiation Notice*).

On April 21, 2009, the Department met with officials of the government of Vietnam (GOV) to provide an overview of the procedures and timetable of the investigation. *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Meeting with the Government of Socialist Republic of Vietnam (GOV): Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic

of Vietnam'' (April 23, 2009). On May 13, 2009, the Department selected as mandatory respondents the three largest Vietnamese producers/exporters of PRCBs that could reasonably be examined: Advance Polybag Co., Ltd. (API), Chin Sheng Company, Ltd. (Chin Sheng), and Fotai Vietnam Enterprise Corp. (Fotai Vietnam) and Fotai Enterprise Corporation (collectively, Fotai). *See* Memorandum to John M. Andersen, Acting Deputy Assistant Secretary, AD/CVD Operations, ''Selection of Respondents for the Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (May 13, 2009). A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Commerce building. On May 18, 2009, we issued the CVD questionnaire to the GOV, requesting that the GOV forward the company sections of the questionnaire to the mandatory company respondents.

On May 22, 2009, the U.S. International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Vietnam of PRCBs. *See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam; Determinations*, 74 FR 25771 (May 29, 2009); and *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam*, USITC Pub. 4080, Inv. Nos. 701–TA–462 and 731–TA–1156–1158 (May 2009).

On May 28, 2009, the GOV requested that the Department conduct a questionnaire presentation in Hanoi. On June 4, 2009, the Department informed the GOV that it would be unable to conduct a questionnaire presentation given the timing of the request relative to the progress of the investigation. *See* Memorandum to the File, ''Communications with the Embassy of the Socialist Republic of Vietnam Concerning Request for Questionnaire Presentation'' (June 5, 2009) and the June 17, 2009 GOV submission (responding to the Department's June 4, 2009 letter). On June 9, 2009, the GOV requested that the Department modify the May 18, 2009 questionnaire by establishing a ''cut–off date,'' limiting the time period covered by the questionnaire. During a follow–up *ex parte* meeting with the GOV, the Department stated that the issue of whether there should be a cut–off date, and what such a date would be, could not be determined until the preliminary determination. We also stated it was necessary, therefore, for the questionnaire to cover the entire average useful life (AUL) selected for this investigation (11 years). *See* Memorandum to the File, ''Ex–Parte Meeting with Counsel for the Government for the Socialist Republic of Vietnam and Chin Sheng Trading Production Co., Ltd.'' (June 18, 2009).

On June 4, 2009, we published a postponement of the preliminary determination of this investigation until August 28, 2009. *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 26846 (June 4, 2009). We received responses from the GOV and the three mandatory company respondents on July 8, 2009, to our May 18, 2009 questionnaire. On July 24, 2009, we issued supplemental questionnaires to the GOV and the three respondents. We received a response from API on August 7, 2009, and responses from the GOV, Chin Sheng, and Fotai on August 17, 2009.

On June 25, 2009, Hilex Poly Co., LLC and Superbag Corporation (collectively, Petitioners) submitted new subsidy allegations covering nine programs. On July 17, 2009, the Department determined to investigate seven of these newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Initiation Analysis

of New Subsidy Allegations'' (July 17, 2009). Also on July 17, 2009, the GOV submitted objections to the newly alleged subsidy programs, claiming Petitioners could have raised the allegations in the petition, but had chosen not to do so in order to manipulate the schedule of the investigation, depriving the GOV of adequate time to respond to questionnaires. Questions regarding these newly alleged subsidies were sent to the GOV and the three company respondents on July 17, 2009. API submitted its questionnaire response on July 30. The GOV, Chin Sheng, and Fotai submitted responses on August 7 and 10, 2009 (narrative responses were due on August 7 and attachments were due on August 10).

On July 17, 2009, Petitioners submitted a second set of new subsidy allegations regarding two programs. On July 28, 2009, the Department determined to investigate both subsidy programs pursuant to section 775 of the Act. *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Initiation Analysis of July 17, 2009 New Subsidy Allegations'' (July 28, 2009). Questions regarding this second set of newly alleged subsidies were sent to the GOV and the three company respondents on July 28, 2009. API responded to the questionnaire on August 7, 2009, and the GOV, Chin Sheng, and Fotai responded on August 17, 2009.

On August 19, 2009, Petitioners submitted pre–preliminary determination comments. Fotai submitted rebuttal comments on August 21, 2009, API on August 24, 2009, and the GOV on August 25, 2009.

**Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination**

On April 20, 2009, the Department initiated the CVD and AD investigations of PRCBs from Vietnam. *See Initiation Notice and Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (April 27, 2009). The CVD investigation and the AD investigation have the same scope with regard to the merchandise covered.

On August 24, 2009, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final AD determination of PRCBs from Vietnam. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. 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 January 11, 2010, unless postponed.[1]

**Scope Comments**

As explained in the preamble to the Department's regulations, we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice*, 74 FR at 19065. No

[1] The calculated signature date is January 10, 2010, a Sunday. The next business day is January 11, 2010.

such comments have been filed on the record of either this investigation or the companion AD investigation.

**Scope of the Investigation**

The scope of this investigation covers polyethylene retail carrier bags, which also may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

**Application of the CVD Law to Vietnam**

This is the first CVD investigation of exports from Vietnam. Vietnam has been treated as a non–market economy (NME) country in all past AD investigations and administrative reviews. *See, e.g.*, Memorandum to Faryar Shirzad, Assistant Secretary, Import Administration, *Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam - Determination of Market Economy Status*, November 8, 2002 (this document is available online at *http://ia.ita.doc.gov/download/vietnam-nme-status/vietnam-market-status-determination.pdf*); *see also Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45738, 45739 (August, 6, 2008), unchanged in *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 62479 (October 21, 2008). In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003).

According to the petition, there is no statutory bar to applying countervailing duties to imports from non–market economy countries like Vietnam. *See* the March 31, 2009 Petition. Citing *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown Steel*), the petition argues that the Court of Appeals for the Federal Circuit affirmed the Department's discretion regarding application of the countervailing duty law to NME countries. *Id.*

Following its assessment of another NME country, the People's Republic of China (the PRC), the Department, in its final affirmative countervailing duty determination on coated free sheet paper from the PRC, determined that the current nature of the Chinese economy does not create obstacles to applying the necessary criteria in the countervailing duty law. *See* Memorandum to David M. Spooner, Assistant Secretary, Import Administration, *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Whether the Analytical Elements of the Georgetown Steel Holding are Applicable to the PRC's Present-day Economy*, March 29, 2007; *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (CFS from the PRC), and the accompanying Issues and Decision Memorandum (CFS IDM) at Comment 1; *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

The petition argues that the Vietnamese economy, like the PRC's economy, is substantially different from the Soviet–style economy investigated in *Georgetown Steel* and that the Department should not have any special difficulties in the identification and valuation of subsidies involving a non–market economy like Vietnam. *See* the March 31, 2009 Petition. Finally, the petition argues that Vietnam's economy significantly mirrors the PRC's present-day economy and is at least as different from the Soviet–style economy at issue in Georgetown Steel, as the PRC's economy was found to be in 2007. *Id.*

The petition also argues that Vietnam's accession to the World Trade Organization (WTO) allows the Department to apply countervailing duties on imports from that country. *Id.* The WTO Subsidies and Countervailing Measures Agreement (SCM Agreement), similar to U.S. law, permits the imposition of countervailing duties on subsidized imports from member countries and nowhere exempts non–market economy imports from being subject to the provisions of the SCM Agreement. As Vietnam agreed to the SCM Agreement and other WTO provisions on the use of subsidies, the petition argues that Vietnam should be subject to the same disciplines as all other WTO members. *Id.*

Given the complex legal and policy issues involved in determining whether the CVD law should be applied to Vietnam, the Department invited public comment on this matter. *See Initiation Notice*, 74 FR at 19067. The comments we received are on file in the Department's CRU, and can be accessed on the Web at *http://ia.ita.doc.gov/ia-highlights-and-news*. Informed by those comments and based on our assessment of the differences between the Vietnamese economy today and the Soviet–style economies that were the subject of *Georgetown Steel*, we preliminarily determine that the countervailing duty law can be applied to imports from Vietnam. For a detailed discussion of the Department's research and analysis, see Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam Whether the CVD law is Applicable to

Vietnam's Present Day Economy'' (August 28, 2009).

**Date of Applicability of CVD Law to Vietnam**

We preliminarily determine that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in Vietnam for purposes of the CVD law, and have adopted January 11, 2007, the date on which Vietnam became a member of the WTO, as that date. We have selected this date because of the reforms in Vietnam's economy in the years leading up to its WTO accession and the linkage between those reforms and Vietnam's WTO membership. The changes in Vietnam's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Vietnamese producers. For example, the GOV has created room for private and foreign ownership in the production system by encouraging private entrepreneurship, liberalizing the foreign investment regime, and equitizing state–owned enterprises (SOEs).

Additionally, Vietnam's accession agreement contemplates application of the CVD law. While the accession agreement itself would not preclude application of the CVD law prior to the date of accession, the Working Party Report at Paragraph 255 regarding benchmarks for measuring subsidies and Vietnam's assumption of obligations with respect to subsidies provides support for the notion that the Vietnamese economy had reached the stage where subsidies and disciplines on subsidies (*e.g.*, countervailing duties) were meaningful. *Accession of Vietnam: Report of the Working Party on the Accession of Viet Nam*, WT/ACC/VNM/48 (October 27, 2006).

**Period of Investigation**

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2008 through December 31, 2008.

**Subsidies Valuation Information**

*Allocation Period*

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 11 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture PRCBs. No party in this proceeding has disputed this allocation period. There are no non–recurring subsidy benefits in this preliminary determination that exceed 0.5 percent of relevant sales, and thus no benefits were allocated across the AUL. See 19 CFR 351.524(b)(2).

*Denominator and Attribution of Subsidies*

When selecting an appropriate denominator for use in calculating the *ad valorem* countervailable subsidy rate, the Department considered the basis for the approval of benefits under each program at issue. For example, export subsidies are attributed only to products exported and export sales are used as the denominator, *see* 19 CFR 351.525(b)(2); while domestic subsidies are attributed to the total sales of all products of each respondent and total sales are used as the denominator in our calculations. *See* 19 CFR 351.525(b)(3). All three respondents reported that they had no cross–owned affiliates that received subsidies and no trading companies involved in sales transactions; therefore, we are using only respondents' own sales figures as denominators. *Id.*

API acts solely as a processor on behalf of its U.S. parent. Its sales revenue consists solely of conversion fees paid by the parent. It reported, however, the value of the merchandise that is reported to U.S. Customs and Border Protection (CBP) when the merchandise is entered into the United States as the value to be used as the denominator for all subsidy calculations. This constructed sales value includes the conversion fees plus the value of the materials converted.

We preliminarily determine that API's sales revenue figure (*i.e.*, its conversion fees) should be used as the denominator for subsidy calculations. This figure is the income value from its financial statements and its tax return. It is the basis used by API to claim the income tax preferences described below. The value of the merchandise, by contrast, represents the income of API's U.S. parent. Furthermore, we note that API did not adequately address why such an adjustment is warranted in this case and whether the facts in this case meet the criteria for the Department to consider such an adjustment set forth in *Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review*, 57 FR 26646, 26647 (June 15, 1992), and in CFS IDM at Comment 21.

*Discount Rate for Allocation*

As noted above, there are no non–recurring subsidy benefits in this preliminary determination that exceed 0.5 percent of relevant sales, and thus no benefits were allocated across the AUL. As such, discount rates were not required for this preliminary determination.

*Interest Rate Benchmarks*

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,'' indicating that a benchmark must be a market–based rate. Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. 19 CFR 351.505(a)(3)(i). If the firm does not receive any comparable commercial loans during the relevant periods, the Department's regulations provide that we ''may use a national average interest rate for comparable commercial loans.'' 19 CFR 351.505(a)(3)(ii). The Department, however, has determined that loans provided by Vietnamese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam A Review of Vietnam's Banking Sector'' (August 28, 2009) (Vietnam Banking Memorandum). Thus, the benchmarks that are described under 19 CFR 351.505(a)(3) are not appropriate. The Department is, therefore, preliminarily determining that it must use an external, market–based benchmark interest rate.

For loans denominated in Vietnamese dong, we are calculating the external benchmark following, where appropriate, the regression–based methodology first developed in the CVD investigation of Coated Free Sheet Paper from the PRC, and updated in several subsequent PRC investigations, most recently Citric Acid. *See* CFS IDM at ''Benchmarks'' section, and *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision Memorandum at ''Benchmarks and Discount Rates'' section. 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 Vietnam Banking Memorandum.

Following the methodology developed in the PRC investigations, we first identified the countries most similar to 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. Vietnam, with a per capita GNI of $890, is near the upper boundary of the low income category (and the lower boundary of the lower–middle income category), which the World Bank established as $975 during the POI. However, data are not currently available for many of the countries in the low income ''basket.'' *See* Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam: Preliminary Determination Loan Benchmark Analysis'' (August 28, 2009) (Loan Benchmark Memorandum). Moreover, several of the countries in the basket appear to be involved in crises that would preclude a functional internal lending system. These factors suggest that the low income basket of countries cannot serve as the basis of a benchmark interest rate. Thus, we are preliminarily determining to use the lower–middle income basket of countries as the basis of our regression analysis.

With the following exceptions, we have used the interest and inflation rates reported in the International Financial Statistics (IFS), collected by the International Monetary Fund, for the countries identified as ''lower–middle income'' by the World Bank. First, we did not include those economies the Department considered to be non–market economies for any part of the years in question: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates for the IFS for the relevant years, since our calculation requires both lending and inflation rates for each country considered in the regression analysis (*i.e.*, we deduct inflation from nominal lending rates to derive real rates). Third, Jordan reported a deposit rate, not a lending rate; and the rates reported by Ecuador and Timor L'Este are dollar–denominated rates. Therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation–adjusted short–term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

With the interest rates remaining, adjusted for inflation, we performed the regression analysis and calculated short–term interest rates, exclusive of inflation, for the years the Vietnamese dong loans were disbursed. *See* Loan Benchmark Memorandum. We did not need to calculate long–term Vietnamese dong benchmark rates.

For loans denominated in U.S. dollars, we are again choosing to follow the methodology developed over a number of successive PRC investigations. Specifically, for U.S. dollar loans, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. For long–term U.S. dollar loans, we added the spread between one-year and 5-year and 10-year BB bond rates in order to calculate 5-year and 10-year dollar benchmark rates. *Id.*

*Land Benchmark*

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. As explained in detail in a separate memorandum, the Department cannot rely on the use of so called ''first–tier'' and ''second–tier benchmarks'' to assess the benefits from the provision of land at LTAR in Vietnam, and we have also preliminarily determined that the purchase of land–use rights in Vietnam is not conducted in accordance with market principles. *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam Land Markets in Vietnam'' (August 28, 2009).

Given these findings, we looked for an appropriate basis to determine the extent to which land–use rights are provided for less than adequate remuneration. Consistent with our PRC investigations in which land has been an issue, we have preliminarily determined that this analysis is best achieved by comparing prices for land–use rights in Vietnam with comparable market–based prices in a country at a comparable level of economic development that is within the geographic vicinity of Vietnam. In the PRC investigations, we concluded that the most appropriate benchmark for respondents' land–use rights were sales of certain industrial land plots in industrial estates, parks, and zones in Thailand. We relied on prices from a real estate market report on Asian industrial property that was prepared outside the context of any Department proceeding by an independent and internationally recognized real estate agency with a long–established presence in Asia. In relying on a land benchmark from Thailand, we noted that the PRC and Thailand had similar levels of per capita GNI and that population density in the PRC and Thailand are roughly comparable. Additionally, we noted that producers consider a number of markets, including Thailand, as options for diversifying production bases in Asia beyond the PRC. Therefore, we concluded, the same producers may compare prices across borders when deciding what land to buy. We cited to a number of sources which named Thailand as an alternative production base to the PRC.

For this investigation, we have obtained two additional sets of information from the same independent and internationally recognized real estate agency: The latest Asian Industrial Property Market Flash (AIPMF), an updated version of the same report relied on in the PRC investigations, which includes industrial land rental values for plots in industrial estates, parks, and zones in Thailand, the Philippines, and other Asian countries; and, an unpublished report that includes industrial land rental values for plots in industrial estates, parks, and zones in several Indian cites. We are placing both the AIPMF, which is available on the internet, and the unpublished Indian report on the record of this investigation. *See* Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam: Preliminary Determination Land Benchmark Analysis'' (August 28, 2009) (Land Benchmark Memorandum). In evaluating which of these locations is most appropriate to use as the source of the benchmark, we have focused on per capita GNI, considering population

density as well (following the PRC precedent described above).

Based on our analysis, we preliminarily determine that a simple average of all rental rates for industrial property in the cities of Pune and Bangalore in India provides the closest match among options on the record to Vietnam in terms of per capita GNI and population density. The per capita GNI of India is $1,070, compared to $890 for Vietnam, while the per capita GNI for the Philippines and Thailand is $1,890 and $2,840, respectively (the AIPMF includes data for other Asian nations, all with even higher incomes; *e.g.*, Singapore). While the Philippines is a closer match in terms of population density with 285 people per square kilometer (psk) compared to Vietnam's 253 people psk, India is still close with 344 people psk. At the metropolitan level, Pune and Bangalore have an average population density of 7,791 psk compared to 8,805 psk for Ho Chi Minh City (all three respondents are located in Ho Chi Minh City or adjacent towns). The other cities analyzed in the Indian report have population densities much higher than Ho Chi Minh City. The calculated average of the rates for Pune and Bangalore is $6.088 per square meter per month. *See* Land Benchmark Memorandum.

**Analysis of Programs**

Based upon our analysis of the petition and the responses to our questionnaires, we

determine the following:

I. *Programs Preliminarily Determined to Be Countervailable*

A. *Preferential Lending for the Plastics Industry*

According to the petition, the GOV directs preferential lending to plastic producers through the Vietnam Development Bank (VDB) and state–owned commercial banks (SOCBs). The petition claims this allegation is evident from the GOV's ''plastics plan,'' a five-year plan for the plastics industry subsequently provided by the GOV as Exhibit 15 of its July 8, 2009 questionnaire response, and other official documentation and press reports. *See* the March 31, 2009 Petition at 78.

The GOV states there is no policy for the provision of preferential lending to plastic producers. *See* the GOV's July 8, 2009 questionnaire response at II–27. According to the GOV, five-year plans are not ''self–executing.'' *Id.* at II–11. Instead, there must be separate, distinct policies creating preferences or subsidies designed to meet the goals of five-year plans. For example, according to the GOV, the plastics plan states only four specific programs available to plastic producers: exemptions for land rent, R&D subsidies, trade promotion funds, and loans from the VDB. Thus, the GOV argues, if there were a policy to provide preferential lending to plastic producers through SOCBs, it would be explicit, and specified within the plastics plan or other document issued by the administering agency. *See* the GOV's August 17, 2009 questionnaire response at 23. In that regard, the GOV claims that the plastic plan's reference to ''preferential credit capital,'' discussed below, refers only to loans and other financing from the VDB.[2] *Id.* at 24. The GOV also emphasizes that its influence on SOCBs was removed through a series of measures beginning in 1997. *See* the GOV's July 8, 2009 questionnaire response at II–17.

We preliminarily determine that lending from SOCBs (including joint–stock commercial banks that are owned by government entities such as other state–owned banks or SOEs) to Chin Sheng and Fotai confers a countervailable subsidy. (API did not receive any loans from banks in Vietnam). The central five-year plan for 2006–2010 identifies the ''plastics industry'' among 14 ''major tasks'' in the economic development section of the plan, and specifically states the goal of satisfying demand for ''plastic packages'' for ''daily life.'' Exhibit 10 of the July 8, 2009 GOV submission (FYP) at 81. Plastic products are also discussed in other sections of the FYP. For example, within the regional development section of the FYP, the plan provides for a ''focus'' on the development of ''key processing industries,'' such as plastics, among several others, in the ''southeastern region,'' which is where all three respondents are located. FYP at 122.

The GOV also issued a five-year plan explicitly for the plastics industry. Exhibit 15 of the July 8, 2009 GOV submission (Plastics Plan). According to the GOV, the Plastics Plan was prepared by the same agencies that prepared the FYP, and elements of the Plastics Plan were included in the FYP.[3] The Plastics Plan enumerates several types of assistance that should be made available for the development of the plastics industry, or segments within that industry, including preferential credit capital. Article 2 of the Plastics Plan states that the GOV's ''preferential credit capital shall be concentrated on investment projects in support of the industry's development . . . .'' Plastics Plan at 18. The Plastics Plan also requires the State Bank of Vietnam (SBV), which is the central bank of Vietnam, to coordinate with the GOV's principal planning agency and other government agencies ''in supporting enterprises in the implementation of the approved planning.'' *Id.*

The 2007 annual report of Vietcombank, an SOCB that provided Vietnam dong loans outstanding during the POI in this investigation, states that it ''arranged and financed for many state important projects'' during 2007, indicating a goal of lending to targeted or encouraged projects. Exhibit 21 of the August 17, 2009 GOV submission at 4. A directive from the SBV, effective in the POI, ''requires credit institutions . . . to continue increasing credit extension for national key projects . . . .'' *See* Directive No. 05/2008/CT–NHNN, October 9, 2008, attached to Memorandum to the File, ''Additional Documents Regarding Preferential Lending Allegation,'' August 28, 2009 (Lending Documents Memorandum). A questionnaire issued by the SBV, also in the POI, requests that commercial banks report information on interest rates charged to different categories of customers, including ''preferential subjects under the bank's policy.'' *See* Document No. 10080/NHNN–CSTT, November 13, 2008, attached to Lending Documents Memorandum. Finally, a news bulletin posted on the SBV's website during the POI discusses the progress of SOCBs in reducing interest rates to ''priority policy–based sectors,''[4] thus appearing to acknowledge the existence of preferential policy–based lending. *See* ''News & Event: Commercial banks join in massive reduction of lending rate,'' September 24, 2008, attached to Lending Documents Memorandum.

Therefore, the Department finds that the merchandise under investigation is part of a state targeted, or encouraged, industry or project, and that there is evidence that loans from SOCBs are a designated means for developing that industry or project. While there may be no single policy document directing preferential lending to plastic producers from SOCBs, when all of the documents described above are evaluated together, it is the Department's preliminary

[2] As noted above, the GOV acknowledges there is preferential lending from the VDB, a state-owned policy bank, which does not lend to the three respondents.

[3] The Plastics Plan was issued nearly a year and a half before the FYP. Both documents cover planning and development until 2010.

[4] Another document singles out the steel industry for debt restructuring and requests that banks approve new loans to that industry, thus providing evidence that the SBV promotes specific industries. Document No. 11170/NHNN-TD, December 24, 2008, attached to Lending Documents Memorandum.

determination that SOCBs are part of the GOV framework to provide lending to targeted industries in the economy and that the plastics industry (which explicitly includes products like PRCBs as priority products) is one of the major targeted industries. Likewise, while the GOV argues that commercial banks have autonomy and are free from government interference, the record indicates that, in practice, SOCBs implement the goals of the state planning documents.

Finally, despite the GOV's claim, the fact that there may be subsidies enumerated in the plastics plan cannot be construed as proof of the non–existence of any other means of development. Such an interpretation fails to explain the purpose of the document beyond the four subsidy programs,[5] and, in our view, one of the four enumerated programs includes the provision of preferential credit capital through more than just the VDB. The plan includes no language linking the reference to ''preferential credit capital'' to the VDB, and does not even imply that the use of ''preferential credit capital'' is limited to funds from the VDB. The VDB is only mentioned once as one of several GOV agencies that are instructed to advance the goals of the plan through their coordinated efforts. As discussed above, other evidence on the record indicates that SOCBs are required to provide credit to priority industries and activities.

In addition to being a subsidy specific to the plastics industry, pursuant to section 771(5A)(D)(i) of the Act, loans from SOCBs, which we determine are public entities, constitute financial contributions from the GOV pursuant to section 771(5)(D)(i) of the Act. *See also* 771(5)(B)(i) of the Act. Information provided by the GOV in its August 17, 2009 questionnaire response indicates that two SOCBs that lent to respondents are public entities given that they are almost entirely owned by the GOV: Vietcombank and the Bank for Investment and Development of Vietnam (BIDV).[6] The August 17, 2009 questionnaire response indicates a third bank involved in this investigation, Indovina Bank Ltd. (Indovina), is also a public entity. Indovina is a joint venture between Vietin Bank (Vietin), another one of the five SOCBs in Vietnam, and Cathay United Bank, a Taiwanese bank. Vietin owns 50 percent of Indovina. It is the Department's position that it is not necessary to conduct further analysis to determine whether an SOCB (or any state–owned non–bank enterprise) is a public entity if the government is a majority owner. For Indovina, we note that under the Law of Credit Institutions, December 12, 1997, provided by the GOV as Exhibit 7 of its July 8, 2009 questionnaire response, the chairman and other members of the managing board including the general director of the bank must be approved by the SBV. In addition, there are conditions within Indovina's Articles of Association which provide the GOV with an apparent upper hand in any dispute between the two partners. *See* Exhibit S1–25 of the GOV's August 17, 2009 questionnaire response. (The Articles of Association is a proprietary document, therefore, the exact terms may not be publically disclosed.) Based on either of these two factors, the GOV is the dominant partner or shareholder. Therefore, we preliminarily determine that Indovina is a public entity.

Finally, this program provides benefits to the recipients equal to the difference between what the recipients paid on loans from SOCBs and the amount they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act. Only Fotai and Chin Sheng received loans from the GOV SOCBs that were outstanding during the POI. In determining the amount these companies would have paid on comparable commercial loans, we employed the interest rate benchmarks discussed above. We then divided the benefits by each company's total sales. On this basis, we preliminarily determine the CVD subsidy to be 1.18 percent *ad valore*m for Chin Sheng and 0.21 percent *ad valorem* for Fotai.

B. *Land Rent Exemption for Manufacturers of Plastic Products*

According to the petition, the GOV owns all land in Vietnam and uses this land ownership to further its industrial and economic policies. *See* June 25, 2009 New Subsidy Allegations at 2. In addition, the petition claims the Plastics Plan, discussed above in the context of preferential lending, exempts companies that invest in ''key programs'' from paying rent for land. According to the GOV, the ''mandatory respondents did not enjoy any reduction or exemption from the payment of the amounts applicable to their sub–leases or, in the case of Fotai, lease.'' GOV's August 10, 2009 questionnaire response at 14.

We preliminarily determine that one tract of land leased by Fotai is countervailable. API and Chin Sheng lease their land from private companies, who in turn lease their land from the GOV.[7] Fotai leases two tracts from private companies and a third tract from the Binh Duong provincial government. According to Fotai's submission, the tract leased from the provincial government was previously exempt from lease fees in its entirety, apparently under a now terminated land law that provided an exemption for certain projects.[8] The exemption expired for all but that fraction used for office space, and, under the superseding land law, a new lease rate was negotiated in 2006. In May 2007, the agreement was amended by the province to provide a 30-year extension of the terms of the lease.

According to a decree implementing the new land law, Decree No. 142/2005/ND–CP, November 14, 2005, Exhibit NSA1–7 of the GOV's August 10, 2009 questionnaire response, land rent shall be reduced under several specific circumstances enumerated in the law, and also where the Prime Minister determines it is appropriate to do so based on the recommendations of agency heads and provincial and municipal governments. *Id.* at Article 15. The GOV's plastics plan, in turn, provides that ''key programs . . . and projects relocated out of cities are all entitled to enjoy the localities' preferential regimes on land rent exemption.'' Plastics Plan at Article 2.

The plan then briefly describes three key programs (Plastics Plan at Article 2), and expands these three programs in a list of nine investment fields in an appendix. Fotai would appear to qualify under one or more of the three programs and nine fields. Moreover, Binh Duong province, is one of three ''concentrated plastic industry zones'' specifically directed in the plastics plan to relocate plastic factories from inner cities into ''industrial parks or clusters.''[9]

[5] We note in this regard that the record indicates at least two other GOV efforts to implement the goals of the plastics plan that are not explicitly mentioned in the plastics plan: 1) Chin Sheng received tax preferences, as discussed below, because, apparently, of its production of plastics; and, 2) the GOV's tariff schedule applies zero rates to imports of basic plastic raw materials (polyethylene and polypropylene) and plastic processing equipment.

[6] According to the GOV, there are five SOCBs: Vietcombank, BIDV, Vietin Bank, Agribank, and Mekong Housing and Commercial Bank.

[7] To be precise, except for the transaction involving Fotai and Binh Duong province, the respondents sublease land from other private companies that have leased the land use rights from the GOV. The Department could not find any evidence that the companies involved in these sublease transactions with the respondents are government entities or SOEs. We intend to gather additional information regarding the lease agreements between the GOV and the private parties from whom the respondents sublease their land in supplemental questionnaires.

[8] Fotai's documents reference Decision No. 189/2000/QD-BTC, November 24, 2000.

[9] Advance is also located in Binh Duong province. Chin Sheng is located in Ho Chi Minh

Continued

Thus, we preliminarily determine that Fotai's land rented from Binh Duong province was provided by the province pursuant to Fotai's production of plastics as referenced under the Plastics Plan. While the rate readjustment took place in 2006, before the January 11, 2007 cut–off date, discussed above under the ''Date of Applicability of CVD Law to Vietnam'' section, the Department finds that the May 2007 amendment to the agreement, which changed its material terms by extending its duration to 30 years, constitutes a new subsidy provided after the cut–off date, which is countervailable.

We preliminarily determine that the provision of land to manufacturers of plastic products is specific to the plastics industry, pursuant to section 771(5A)(D)(i) of the Act. We also preliminarily determine there is a financial contribution under section 771(5)(D)(iii) of the Act because the rented land use rights constitute the provision of a good or service. We preliminarily determine that a benefit exists under 19 CFR 351.511(a) to the extent that these rights were provided for LTAR. In order to calculate the benefit, we first multiplied the benchmark land rental rate, discussed above under the ''Land Benchmark'' section, by the total area of Fotai's tract at issue. We then deducted the rental fee paid by Fotai during the POI to derive the total benefit. We then divided the total benefit by Fotai's total sales to calculate a countervailable subsidy rate of 3.86 percent *ad valorem* for Fotai.

C. *Corporate Income Tax Exemptions and Reductions*

The petition alleged Income Tax Preferences for Foreign Invested Enterprises (FIEs). In the June 25, 2009 new subsidy allegations, Petitioners alleged a similar program of Discounted Corporate Income Taxes for Industrial Zone Enterprises.

We preliminarily determine that API was eligible for countervailable income tax preferences under the Discounted Corporate Income Taxes for Industrial Zone Enterprises program, but received no benefit during the POI.

We preliminarily determine that Fotai received countervailable income tax preferences under the Income Tax Preferences for FIEs program. Such preferences are specific under section 771(5A)(D)(i) of the Act because they are limited as a matter of law to a group of enterprises, FIEs. The preferences are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to Fotai pursuant to 19 CFR 351.509(a)(1) in the amount of tax savings. Specifically, Fotai benefited from a reduction in the standard corporate income tax rate for the tax return filed during the POI (its income tax rate under the program will change in subsequent years). To calculate the amount of the benefit,

we divided Fotai's tax savings by its total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.17 percent *ad valorem* for Fotai.

Chin Sheng also benefited from a corporate income tax rate reduction for the tax return filed during the POI. Chin Sheng also enjoyed an exemption at the same time, further reducing its effective rate. We preliminarily determine that Chin Sheng received this reduction and exemption under a program for new investment projects and relocated businesses. While such a program was not alleged in the petition or in the new subsidy allegations, 19 CFR 351.311(b) allows the Department to investigate a possible countervailable subsidy discovered during a proceeding. According to Chin Sheng's August 10, 2009 questionnaire response at page 6, the company received its ''incentive tax'' rate because of its status as a ''business establishment newly set up under investment projects.'' Chin Sheng also references an April 2007 memorandum it received from the Tax Department, Exhibit 7 of the August 10, 2009 questionnaire response, that discusses its tax treatment. The memorandum refers to Circular 128/2003/TT–BTC, December 22, 2003 (Circular 128), a document not submitted or discussed by the GOV, but which appears to be a terminated tax law for domestic enterprises. Chin Sheng refers to section E.III.1.1 of the circular. However, there is no section E.III.1.1. Presumably, Chin Sheng intended to cite section F.III.1.1, which provides rate reductions and exemptions for ''business establishments newly set up under investment projects and relocated business establishments.''

We preliminarily determine that the tax reduction and exemption provided to Chin Sheng under this program are specific to a group of enterprises, ''business establishments newly set up under investment projects and relocated business establishments,'' under section 771(5A)(D)(i) of the Act. The income tax reduction and exemption are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to Chin Sheng pursuant to 19 CFR 351.509(a)(1) in the amount of tax savings. To calculate the amount of the benefit, we divided Chin Sheng's tax savings by its total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.51 percent *ad valorem* for Chin Sheng.

D. *Import Duty Exemptions for Raw Materials*

According to the petition and the June 25, 2009 new subsidy allegations, companies in Vietnam are entitled to exemptions from import duties on raw materials if they are FIEs or located in industrial zones. While both API and Fotai are in fact exempt from paying duties on imported raw materials, their exemptions stem from Article 16 of the Law on Import Tax and Export Tax, Law No. 45/2005/QH–11, June 14, 2005, included as Exhibit 43 of the GOV's July 8, 2009 questionnaire response. Article 16 states that ''§g§oods imported for processing for a foreign party which are then exported'' are exempt from import duties. Thus, according to respondents, their exemptions are not contingent on either FIE status or location in industrial zones.[10]

Despite this incorrect identification of the nature of the program, such exemptions can still constitute countervailable export subsidies ''to the extent that the §Department§ determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste'' under 19 CFR 351.519(a)(1)(i). Thus, we preliminarily determine that API received countervailable benefits under this program to the extent it imported materials not consumed in exported products. Such materials were identified by API in its July 8, 2009 questionnaire response. Such exemptions are specific as export subsidies in accordance with section 771(5A)(A) and (B) of the Act because they are contingent upon export performance. Furthermore, such exemptions provide a financial contribution in the form of revenue forgone under 771(5)(D)(ii) of the Act. To calculate the amount of the benefit, we summed the amount of duties saved on materials imported but not consumed in exported products, and divided the sum by API's export sales. On this basis, we preliminarily determine a rate of 0.20 percent *ad valorem*.

City, another one of the three ≥zones≥ referred to in the plastics plan.

[10] According to the GOV, the FIE exemption program was part of a terminated law. Also according to the GOV, there is no exemption program for industrial zones.

As noted, Fotai also had imports of materials under this program, but it is unclear whether all of these materials were consumed in the exported products. We intend to gather clarifying information after this preliminary determination. Chin Sheng reported that its imports are subject to a zero rate under the normal tariff schedule, and, therefore, it did not benefit from the program. Chin Sheng's claims are consistent with the 2005 Tariff Schedule for Vietnam, the latest the Department was able to locate in English. However, the Department intends to gather more information regarding how the GOV establishes and verifies which goods are consumed in the production of exported products and how it reconciles imports and exports under these exemptions. Because the exemptions received by API and Fotai were not linked to FIE status or industrial zone location, the GOV provided limited information in its questionnaire responses concerning these exemptions.

*II. Programs Preliminarily Determined to Be Not Countervailable*

*VAT Exemptions for Equipment for FIEs*

In the June 25, 2009 new subsidy allegations, Petitioners claim FIEs are exempt from paying VAT on imported equipment. We preliminarily determine that this program is not countervailable because a benefit is not provided under the program.

Under the VAT system described by the GOV and company respondents, absent an exemption, a company would normally pay VAT to suppliers on purchases. In turn, the company collects VAT from its customer along with the sales price. The VAT paid by the company to suppliers on purchased equipment is called ''input'' VAT, while the VAT the company collects from the customer is called ''output'' VAT. The company periodically submits a VAT report to the GOV that reconciles the two VAT amounts, and passes forward to the government only the amount by which output VAT exceeds input VAT. Conversely, if input VAT exceeds output VAT, the government refunds the difference to the company. Thus, with or without the exemption, the company merely passes forward VAT collected from its customer (or receives a refund); it is the final consumer, not the producer, who actually incurs the VAT owed to the government.

The Department has examined similar VAT exemptions and rebates in past proceedings and has determined that the amount of exempted or rebated VAT was, in itself, not countervailable within the meaning of 19 CFR 351.510 and 19 CFR 351.517. The Department has further determined in these prior cases that exempting the tax at the time of importation, rather than recovering the tax at the time of reconciliation, conferred no benefit because of the short time difference between the two events. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at ''VAT Exemptions Under the Investment Promotion Act,'' and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory ''DRAM'' Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying Issues and Decision Memorandum at ''Exemption of VAT on Imports Used for Bonded Factories under Construction.'' Therefore, based on the respondents' description of the program, we preliminarily determine the respondents did not benefit from a VAT exemption for equipment.

*III. Programs Preliminarily Determined to Be Terminated*

*Export Bonus Program*

The GOV submitted documents, specifically Decision No. 1042/QD–BTM, June 29, 2007, Exhibit 39 of the GOV's July 8, 2009 questionnaire response, demonstrating this program was terminated effective June 29, 2007. The GOV also stated the last bonuses were granted in 2006 based on exports in 2005. Thus, we preliminarily determine, in accordance with 19 CFR 351.526, that the program was terminated and the last benefits disbursed before the POI of this investigation.

*IV. Programs Preliminarily Determined to Be Not Used by Respondents*

*A. Government Provision of Water for LTAR in Industrial Zones*

The petition claims occupants of industrial zones are offered special rates on water. API provided all of its water invoices for the POI along with a water rate schedule for the area outside its industrial zone. The rates on the invoices were identical to the rates on the schedule. Chin Sheng also provided POI invoices. The rates on its invoices are identical to the rate stated by the GOV in its August 10, 2009 questionnaire response. Fotai claimed not to have used water in its industrial zone location, which was not operational during the POI. The GOV stated that the rates paid in all industrial zones in which the three respondents have facilities are identical to the rates charged in the surrounding regions. Therefore, because there is no evidence of preferential pricing, we preliminarily determine that this program is not used.

*B. Preferential Lending for Exporters*

*C. Export Promotion Program*

*D. New Product Development Program*

*E. Income Tax Preferences for Exporters*

*F. Income Tax Preferences for FIEs Operating in Encouraged Industries*

*G. Import Tax Exemptions for FIEs Using Imported Goods to Create Fixed Assets*

*H. Import Tax Exemptions for FIEs Importing Raw Materials*

*I. Provision of Land Use Rights in Industrial Zones For LTAR*

*J. Land Rent Reduction or Exemption for FIEs*

*K. Exemption of Import Duties on Importation of Fixed Assets for Industrial Zone Enterprises*

According to the petition and the June 25, 2009 new subsidy allegations, companies in Vietnam are entitled to exemptions from import duties for equipment if they are FIEs or located in industrial zones. API and Fotai reported they are eligible for such exemptions because of their location in industrial zones. API also reported it is eligible for such exemptions because, under a now terminated law, it exports more than 80 percent of its sales; its preference apparently surviving under a grandfathering or transition clause. Chin Sheng reported it did not participate in any program providing duty exemptions for imported equipment.

After applying the ''cut–off'' date discussed above under the ''Date of Applicability of CVD Law to Vietnam'' section, we preliminarily determine Fotai had no equipment import exemptions after the cut–off date. API had no equipment import exemptions during the POI and its equipment import exemptions prior to the POI were not greater than 0.5 percent of relevant sales. Therefore, benefits for these imports were expensed prior to the POI in accordance with 19 CFR 351.524(b)(2).

*L. Exemption of Import Duties for Imported Raw Materials for Industrial Zone Enterprises*

*M. Accelerated Depreciation for Companies in Encouraged Industries and Industrial Zones*

*N. Losses Carried Forward for Companies in Encouraged Industries and Industrial Zones*

**Verification**

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the GOV and the company respondents prior to making our final determination.

**Suspension of Liquidation**

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

| Exporter/Manufacturer | Net Subsidy Rate |
|---|---|
| Advance Polybag Co., Ltd. | 0.20% (de minimis) |
| Chin Sheng Company, Ltd. | 1.69% |
| Fotai Vietnam Enterprise Corp. | 4.24% |
| All Others | 2.97% |

Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States, excluding any zero and *de minimis* rates and any rates based solely on the facts available.[11] In this investigation, Chin Sheng and Fotai's rates meet the criteria for the all others rate. Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all others rate by weight averaging the rates of the Chin Sheng and Fotai because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two firms' rates.

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, except for products both produced and exported by API, which has a *de minimis* rate, we are directing CBP to suspend liquidation of all entries of PRCBs from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

**ITC Notification**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

**Disclosure and Public Comment**

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, case briefs for this investigation must be submitted no later than 50 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: August 28, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–21427 Filed 9–3–09; 8:45 am]

**BILLING CODE 3510–DS–S**

[11] Pursuant to 19 CFR 351.204(d)(3), the Department must also exclude the countervailable subsidy rate calculated for a voluntary respondent. In this investigation, we had no producers or exporters request to be voluntary respondents.

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### International Code Council: The Update Process for the International Codes and Standards

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The International Code Council (ICC), promulgator of the International Codes and Standards, maintains a process for updating the entire family of International Codes based on receipt of proposals from interested individuals and organizations involved in the construction industry as well as the general public. The codes are updated every three years (2009—current edition, 2012, 2015 editions, etc.). In the past, the codes were updated on 2–18 month cycles, with an intervening supplement between cycles. Starting with the 2009/2010 Cycle, ICC is transitioning to a development cycle where there will only be a single cycle of code development with the codes split into two groups. For each group of codes, there are two hearings for each code development cycle; the first where a committee considers the proposals and recommends an action on each proposal and the second to consider comments submitted in response to the committee action on proposals.

The purpose of this notice is to increase public participation in the system used by ICC to develop and