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**BEFORE THE
INTERNATIONAL TRADE ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE AND THE
UNITED STATES INTERNATIONAL TRADE COMMISSION**

**FROZEN WARMWATER SHRIMP FROM ECUADOR, INDIA,
INDONESIA, AND THE SOCIALIST REPUBLIC OF VIETNAM**

**PETITION FOR THE IMPOSITION
OF ANTIDUMPING AND COUNTERVAILING DUTIES PURSUANT TO
SECTIONS 701 AND 731 OF THE TARIFF ACT OF 1930, AS AMENDED**

**VOLUME VII – INFORMATION RELATED TO COUNTERVAILABLE SUBSIDIES
PROVIDED TO VIETNAMESE PRODUCERS OF SUBJECT MERCHANDISE**

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I. COUNTERVAILING DUTIES SHOULD BE IMPOSED ON IMPORTS OF FROZEN WARMWATER SHRIMP FROM VIETNAM

This volume of the petition presents information reasonably available to the American Shrimp Processors Association (“Petitioner”) demonstrating that the production and exportation of frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”) are benefitting from countervailable subsidies within the meaning of Section 771(5) of the Tariff Act of 1930, as amended (“the Act”).¹ Pursuant to Section 701(a)(1) and (2) of the Act, the U.S. Department of Commerce (“Commerce”) shall impose a countervailing duty on merchandise imported from a “Subsidies Agreement” country² where the imported merchandise: (1) is produced or exported by companies that benefit from countervailable subsidies, and (2) materially injures or threatens material injury to a domestic industry.³ Both of these requirements are plainly satisfied here. Accordingly, Petitioner requests that Commerce investigate and impose countervailing duties with respect to the countervailable subsidies set forth herein and any other countervailable subsidies discovered in the course of the requested countervailing duty investigation.

II. NAME OF THE COUNTRY IN WHICH THE SUBJECT MERCHANDISE IS MANUFACTURED OR PRODUCED

The subject merchandise is manufactured or produced in Vietnam, and the countervailable subsidies have been conferred by the Government of Vietnam (“GOV”) and other government and public entities in Vietnam.

¹ See 19 U.S.C. § 1677(5).

² As a member of the World Trade Organization (“WTO”), Vietnam is a country under the “Subsidies Agreement.”

³ 19 U.S.C. § 1671(a)(1) and (2).

III. NAMES AND ADDRESSES OF VIETNAMESE PRODUCERS BENEFITTING FROM SUBSIDY PROGRAMS

Petitioner has identified a number of producers or exporters of frozen warmwater shrimp in Vietnam believed to have benefited from countervailable subsidies and whose products are believed to have been exported to the United States. The names and addresses of these companies can be found in Volume I of these petitions at Exhibit I-16.

IV. EFFORTS TO OBTAIN INFORMATION

In accordance with the statutory and regulatory provisions for countervailing duty petitions, this volume presents information “reasonably available” to Petitioner concerning possible countervailable subsidies available to and bestowed on producers and exporters of the subject merchandise in Vietnam.⁴ Notably, Petitioner does not have to prove at the outset that a subsidy allegation will be confirmed during the course of the investigation or that a potentially countervailable subsidy is actually being used for a subsidy allegation to be included in an investigation.⁵

Petitioner has conducted extensive research to document government subsidies provided by the GOV to producers and exporters in Vietnam of frozen warmwater shrimp, including a review of the following sources:

- (1) Past countervailing duty determinations (*i.e.*, Federal Register notices and available information from case dockets) covering the country, subject merchandise, and or/producers included in this Petition;

⁴ See 19 U.S.C. § 1671a(b)(1); 19 C.F.R. § 351.202 (setting forth the “reasonably available” standard).

⁵ See, *e.g.*, *Forged Steel Fittings from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 83 Fed. Reg. 50,342 (Dep’t Commerce Oct. 5, 2018), and accompanying Issues and Decision Memorandum at Comment 2.

(2) Articles and news reports regarding the producers, industry, and country in question available through the World Wide Web and online data services;

(3) Where available, public financial information for the producers, industry, and country at issue; and

(4) Reports from the World Trade Organization (“WTO”), European Union, U.S. government, and other governments concerning the producers of the subject merchandise, the industry in Vietnam, and the alleged subsidy programs.

However, much of the information that would allow Petitioner to determine with certainty the types and amounts of subsidies received by producers or exporters of frozen warmwater shrimp in Vietnam is difficult or impossible to obtain. As a result of the difficulties inherent in documenting subsidization, Petitioner agrees with Commerce that “there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.”⁶ The most thorough manner in which the type and number of subsidies may be determined is through administrative investigations.

Despite the difficulties in obtaining information, Petitioner has investigated and is providing information demonstrating that the GOV has granted, and continues to grant, various forms of assistance to producers and exporters of frozen warmwater shrimp in Vietnam that constitute countervailable subsidies pursuant to Section 771 of the Act.⁷

V. PERIOD OF INVESTIGATION AND AVERAGE USEFUL LIFE

The most recently completed calendar year as of the filing of these petitions is 2022, and calendar year 2022 is therefore the appropriate period of investigation (“POI”) for this

⁶ *Notice of Preliminary Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India*, 68 Fed. Reg. 40,629, 40,632 (Dep’t Commerce July 8, 2003).

⁷ *See* 19 U.S.C. § 1677.

proceeding.⁸ In addition to investigating any recurring subsidies granted during the POI and any subsidized loans outstanding during the POI, Commerce is also required to investigate any non-recurring subsidies conferring a benefit that is allocable to the POI.⁹ Commerce will presume the allocation period for non-recurring subsidies to be the average useful life (“AUL”) of renewable physical assets for the industry concerned as listed in the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.¹⁰ In the instant case, the AUL is 12 years.¹¹ Commerce should therefore investigate any non-recurring subsidies received from 2011 to 2022, as well as recurring subsidies and outstanding loans during 2022.

VI. SCOPE OF SUBSIDIES INCLUDED IN THE PETITION

This petition includes subsidies to processors of frozen shrimp as well as subsidies to producers of fresh shrimp (*e.g.*, shrimp farmers and fishermen). Commerce should include both types of subsidies in its initiation, as it is likely that one or more shrimp processors selected for investigation will also farm shrimp or be cross-owned with shrimp farming operations. To the extent that foreign producers of frozen shrimp also produce fresh shrimp, subsidies tied to the production of those inputs will be attributed to both the input and the downstream product.¹² In addition, subsidies to the production of fresh shrimp by cross-owned input suppliers will be attributed to the combined sales of the input and downstream products if Commerce finds that fresh shrimp is primarily dedicated to the production of frozen shrimp.¹³ According to the U.S.

⁸ 19 C.F.R. § 351.204(b)(2).

⁹ 19 C.F.R. §§ 351.524(a) and (b), 351.525.

¹⁰ *See* “Publication 946 (2022): How to Depreciate Property,” *Department of the Treasury, Internal Revenue Service* (excerpt) at p. 98, **Exhibit VII-1**.

¹¹ *Id.* at Table B-2, Asset Class 20.4 (“Manufacture of Other Food and Kindred Products”).

¹² 19 C.F.R. § 351.525(b)(5)(ii).

¹³ 19 C.F.R. § 351.525(b)(6)(iv).

International Trade Commission (“Commission”), fresh shrimp is “overwhelmingly used as an input in the production of frozen product” and is “overwhelmingly sold in processed form.”¹⁴ Commerce should therefore find that fresh shrimp is primarily dedicated to the production of frozen shrimp and attribute any subsidies to the production of fresh shrimp from which cross-owned input suppliers benefit to the combined sales of the input and the downstream product. To the extent that companies selected for investigation produce their own fresh shrimp or source the input from cross-owned suppliers, no upstream subsidy allegation is necessary for Commerce to initiate an investigation into programs benefitting the production of fresh shrimp.¹⁵

Alternatively, in the event that a processor selected for investigation is not integrated or cross-owned with shrimp farming operations, Commerce should initiate an investigation into subsidies to raw shrimp and deem such subsidies to be provided with respect to the manufacture, production, or exportation of processed frozen shrimp under Section 771B of the Act. The Act States as follows:

In the case of an agricultural product processed from a raw agricultural product in which –

- (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and
- (2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.¹⁶

¹⁴ See U.S. International Trade Commission, *Frozen Warmwater Shrimp from China, India, Thailand, and Vietnam*, Inv. Nos. 731-TA0-1064 and 1066-1068 (Third Review), USITC Pub. 5432 (June 2023) (“USITC Pub. 5432”) at 13, excerpts attached at **Exhibit VII-2**.

¹⁵ 19 C.F.R. § 351.525(b)(5)(ii) and (6)(iv).

¹⁶ 19 U.S.C. § 1677-2.

These processor/grower provisions apply to fishery products such as shrimp. The statute defines “raw agricultural product” as “any farm or fishery product.”¹⁷ Commerce has noted that this definition applies to the raw and processed agricultural subsidy provisions in Section 771B of the Act.¹⁸ Moreover, Section 771B of the Act codified existing Commerce practice when it was enacted in 1988.¹⁹ At that time, Commerce’s practice was to deem raw fish subsidies to be provided with respect to processed fish exports in the same manner in which subsidies to other raw agricultural products were deemed to be provided with respect to processed agricultural exports.²⁰ Thus, fresh shrimp and processed shrimp qualify as raw and processed agricultural products, respectively, under Section 771B of the Act.

Furthermore, both of the requirements of Section 771B are met in this case. Indeed, Commerce found that raw and processed shrimp met both prongs of Section 771B of the Act in its prior subsidy investigations on frozen warmwater shrimp,²¹ and the Petitioner is not aware of any change in facts that would require a different result here.

¹⁷ 19 U.S.C. § 1677(4)(E)(iv).

¹⁸ *See Certain Softwood Lumber Products from Canada*, 57 Fed. Reg. 22,570, 22,573 (Dep’t Commerce May 28, 1992) (final affirmative countervailing duty determination).

¹⁹ H.R. Rep. No. 100-576, at 588 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1621.

²⁰ *See, e.g., Certain Fresh Atlantic Groundfish From Canada*, 51 Fed. Reg. 10,041 (Dep’t Commerce Mar. 24, 1986) (final affirmative countervailing duty determination) (countervailing subsidies to fishermen and processors); *Certain Fish from Canada*, 43 Fed. Reg. 25,996 (Dep’t Commerce June 16, 1978) (final countervailing duty determination) (same). Although not explicitly addressed in *Certain Fresh Atlantic Groundfish From Canada* or *Certain Fish from Canada*, the Department has recognized both of these cases as situations in which benefits to producers of a raw agricultural product were considered benefits to producers of the processed agricultural product. *Fresh, Chilled, and Frozen Pork from Canada*, 54 Fed. Reg. 30,774, 30,775 (Dep’t Commerce July 24, 1989) (final affirmative countervailing duty determination).

²¹ *See, e.g., Certain Frozen Warmwater Shrimp From Ecuador: Final Affirmative Countervailing Duty Determination*, 78 Fed. Reg. 50,398 (Dep’t Commerce Aug. 19, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

First, demand for fresh shrimp is substantially dependent on demand for frozen shrimp, as required under Section 771B(1).²² In previous cases, Commerce has found this criterion to be met when most of the raw product is produced for further processing.²³ The U.S. Court of International Trade has affirmed this practice, explaining: “Where more than half of a prior stage product is dedicated to the production of a latter stage product, demand for the prior stage product is largely but not wholly dependent on the latter stage product,” and the requirements of Section 771B(1) are satisfied.²⁴ As noted above, the Commission has found that fresh shrimp is “overwhelmingly” sold in processed form, and earlier this year it determined there had been no changes to the facts underlying this original determination.²⁵ Because nearly all fresh shrimp is processed into frozen shrimp, the first statutory criterion is met in this case.

Second, the processing of frozen shrimp adds only limited value to fresh shrimp, as required under Section 771B(2).²⁶ In previous cases, Commerce has found this criterion to be satisfied where processing operations did not change the essential character of the raw product and where such operations added limited value to the product, such as 20 to 30 percent of the value.²⁷ As the Commission has noted in its shrimp investigations, the “initial stages of processing did not significantly change the physical characteristics and use of the product and

²² 19 U.S.C. § 1677-2(1).

²³ *See Fresh, Chilled, and Frozen Pork from Canada*, 54 Fed. Reg. 30,774, 30,775 (Dep’t Commerce July 24, 1989) (final affirmative countervailing duty determination).

²⁴ *See Asociacion de Exportadores e Industriales de Aceitunas de Mesa v. United States*, 589 F. Supp. 3d 1346, 1357 (Ct. Int’l Trade 2022).

²⁵ USTIC Pub. 5432 at 13 – 15, excerpts attached at **Exhibit VII-2**.

²⁶ *Id.* at 13.

²⁷ *See Rice from Thailand*, 56 Fed. Reg. 68, 69 (Dep’t Commerce Jan. 2, 1991) (final results of countervailing duty administrative review); *see also Fresh, Chilled, and Frozen Pork from Canada*, 54 Fed. Reg. 30,774, 30,775 (Dep’t Commerce July 24, 1989) (final affirmative countervailing duty determination).

appeared to add at most moderate value to the product,” and earlier this year the Commission determined there had been no changes to the facts underlying this original determination.²⁸ In addition, in its most recent sunset review on frozen warmwater shrimp, the Commission found that raw material costs represent the largest component of the price of frozen shrimp, with the ratio of raw material costs to net sales ranging from 74.1 to 79.3 percent.²⁹ Raw shrimp accounted for 96.5 percent of these raw material costs, and thus the cost of the raw shrimp input alone accounted for anywhere from 71.5 to 76.5 of the final sales value of the frozen product.³⁰ Thus, additional raw materials, processing costs, selling, general, and administrative expenses, and profit together accounted for less than 30 percent of the value of the final frozen processed product. Thus, the second statutory criterion is also met in this case.

For all these reasons, Commerce should continue its practice from prior subsidy investigations on frozen warmwater shrimp and deem any subsidies to producers of raw shrimp to be provided with respect to the production and export of frozen shrimp under Section 771B of the Act. These subsidies benefit the production of frozen shrimp even where the shrimp processors are not integrated or cross-owned with shrimp farming operations. Furthermore, no upstream subsidy allegation is required under Section 771A of the Act in order for Commerce to include these subsidies in its investigation and deem them to be provided with respect to frozen shrimp.³¹

²⁸ USTIC Pub. 5432 at 13 – 15, excerpts attached at **Exhibit VII-2**.

²⁹ *Id.* at III-19, Table III-12.

³⁰ *Id.* at III-30, Table III-15 (0.741*0.965=0.715 and 0.793*0.965=0.765).

³¹ *See Fresh, Chilled, and Frozen Pork from Canada*, 54 Fed. Reg. 30,774, 30,775 (Dep’t Commerce July 24, 1989) (final affirmative countervailing duty determination) (explaining why no upstream subsidy allegation is required when subsidies are deemed provided to processed products under 19 U.S.C. § 1677-2); *see also Rice from Thailand*, 51 Fed. Reg. 12,356, 12,357-58, 12,362 (Dep’t

In conclusion, Commerce should include subsidies to producers of raw shrimp in its investigation with regard to shrimp processors that are vertically integrated or cross-owned with shrimp farming operations. In addition, even if processors are not integrated or cross-owned with producers of raw shrimp, Commerce should investigate subsidies to fresh shrimp because any subsidies should be deemed to be provided to the production and export of frozen shrimp under Section 771B of the Act.

VII. IMPORTS OF FROZEN WARMWATER SHRIMP FROM VIETNAM BENEFIT FROM COUNTERAVAILABLE SUBSIDIES

The GOV provides various forms of assistance to producers and exporters of the merchandise under consideration, including preferential lending, export financing, income tax exemptions and reductions, import duty exemptions, reductions, and rebates, exemptions or reductions of rent and land use fees and taxes, and various grants. The available evidence indicates that these forms of assistance constitute countervailable subsidies under Section 771 of the Act because they constitute financial contributions, provide a benefit, and are specific. Petitioner provides descriptions of the various countervailable subsidies available to Vietnamese producers and exporters of frozen warmwater shrimp below.

A. Lending Programs and Guarantees

The banking sector in Vietnam is heavily regulated and dominated by the GOV. Commerce has extensively analyzed the banking sector in Vietnam over several countervailing duty proceedings. Most recently, in the 2021 administrative review of Passenger Vehicle and

Commerce Apr. 10, 1986) (final affirmative countervailing duty determination and countervailing duty order).

Light Truck Tires from Vietnam (“*PVLT Tires from Vietnam*”), Commerce provided an analysis of Vietnam’s financial system.³²

In the Financial Sector Memorandum issued by Commerce in the *PVLT Tires from Vietnam* 2021 administrative review, Commerce explained that Vietnam’s two most recent Constitutions have called for a strong role for the state in managing the economy. Specifically, the 1992 Constitution mandated that the state sector shall “play the leading role in the national economy” and that the government should “manage the national economy by means of laws, plans and policies.”³³ Article 51 of the 2013 Constitution, the most recent version, further confirms the predominant role the state is expected to have in the economy: “the Vietnamese economy is a socialist oriented market economy” in which the “{s}tate economic sector plays the leading role.”³⁴

In terms of the banking sector, the State Bank of Vietnam (“SBV”), pursuant to the 2010 *Law on the State Bank of Vietnam*, operates as a “ministerial-level agency of the government” whose governor is a cabinet member and part of the ruling administration.³⁵ The SBV is under the direct control of the Prime Minister and is legally part of the GOV as part of the executive arm.³⁶ As an executive body agency, it is therefore charged not only with prudential oversight and regulation of the financial sector but also with implementing and promoting official GOV policy and economic planning initiatives.³⁷

³² Commerce Memorandum, “Analysis of Vietnam’s Financial System,” Oct. 12, 2022, at Attachment 1, “Review of Vietnam’s Financial Sector for Countervailing Duty (CVD) Benchmarking Purposes,” May 12, 2020 (“Financial Sector Memorandum”), **Exhibit VII-3**.

³³ *Id.* at 13.

³⁴ *Id.*

³⁵ *Id.* at 14.

³⁶ *Id.*

³⁷ *Id.*

In addition to direct activities in the economy, the SBV maintains a controlling interest in the “big four” banks of Vietnam: the Vietnam Bank for Agriculture and Rural Development (“Agribank”), the Vietnam Joint Stock Commercial Bank of Industry and Trade (“Vietinbank”), the Joint Stock Commercial Bank for Foreign Trade of Vietnam (“Vietcombank”), and the Bank for Industry and Development of Vietnam (“BIDV”).³⁸ While the banks other than Agribank are not 100 percent owned by the SBV and, therefore, are not considered “state-owned” under Vietnamese law, all four banks are still considered state-owned commercial banks (“SOCBs”) for statistical purposes.³⁹ In fact, as of 2018, the SBV held 64 percent of Vietinbank, 77.11 percent of Vietcombank, and 95.28 percent of BIDV,⁴⁰ and Commerce explained that:

State control is apparent at the highest levels of the corporate hierarchy at Vietnam’s SOCBs, where many high-ranking government or Communist Party of Vietnam (CPV) officials serve on the board of directors in an official government capacity and actively manage the banks in compliance with CPV and GOVN policies and objectives. In the latest annual reports, board members, including, in some cases, the Chairman, are often listed as Party members, as well as members of various national CPV committees, such as the Central Businesses Bloc Party Committee, a committee within the CPV Central Committee, which itself is under the leadership and direction of the Politburo, Vietnam’s highest decision-making body. According to the annual report of Vietcombank, these officials are “armed with the confidence and expectations of the Central Party” and together with the leaders of Agribank and Vietinbank work under the guidance and direction of the GOVN and the SBV as principal managers of all aspects of the banks’ operations, in accordance with the banking system’s two-tier corporate structure.⁴¹

³⁸ *Id.* at 9-10.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 11 (internal citations omitted).

As a result of the GOV's heavy investment in the SOCBs, the regulatory framework imposed on the banking sector, and the direct control on the banking sector imposed by the GOV, Commerce determined in *PVLT Tires from Vietnam* that domestic interest rates in Vietnam were “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.”⁴² Given the distortion in the banking sector, and the policies discussed in greater detail below, Petitioner alleges that loans from SOCBs are provided at preferential rates below the rates that would be offered in normal commercial transactions.

1. Policy Lending from the State Bank of Vietnam and Other Policy Banks

In March of 2021, the Prime Minister approved the “Strategy for the Growth of Vietnam’s Fisheries to 2030, with a Vision to 2045,” Decision No. 339/QD-TTg (“2030 – 2045 Fisheries Strategy”), pursuant to the Law on Fisheries dated November 21, 2017.⁴³ The 2030 – 2045 Fisheries Strategy identifies among its main goals increasing aquaculture production to 7.0 million tonnes and increasing the export turnover of the entire fishery industry by up to \$16 billion USD by 2030.⁴⁴ With regard to aquaculture specifically, the 2030 – 2045 Fisheries Strategy identifies a need to develop more effective farming, and higher-quality breed production systems, while also continuing to develop and improve the large-scale commodity

⁴² *Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 Fed. Reg. 71,607 (Dep’t Commerce Nov. 10, 2020) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 28,566 (Dep’t Commerce May 27, 2021) (“*PVLT Tires from Vietnam*”) and accompanying Issues and Decision Memorandum (“*PVLT Tires IDM*”).

⁴³ Ministry of Agricultural and Rural Development (“MARD”), *Action Plan for the Implementation of the Vietnam Fisheries Development Strategy*, May 5, 2021, at **Exhibit VII-4**.

⁴⁴ 2030 – 2045 Fisheries Strategy at Art. 1.II.2, at **Exhibit VII-5**.

seafood processing industry and prioritizing the use of domestically produced raw materials, “creating a large volume of products for export processing,” “expanding export markets,” and “maintaining and developing the market share of Vietnamese seafood in the key markets (e.g. the United States, the European Union, China, Japan...).”⁴⁵

The 2030 – 2045 Fisheries Strategy also calls for an increased concentration of resource investment in infrastructure designated to support the seafood industry, including concentrated aquaculture zones, marine aquaculture zones, concentrated aquatic breeding areas, marine breeding centers, and national and regional breeding centers.⁴⁶ Research and development related to reducing costs, increasing the value and productivity of processing activities, breeding high-quality and disease resistant shrimp, preserving and creating new habitats, and livestock monitoring solutions are also prioritized.⁴⁷

Pursuant to the 2030 – 2045 Fisheries Strategy, in August of 2022 the Prime Minister implemented the National Aquaculture Development Program for the Period of 2021 – 2030, Decision No. 985/QD-TTg (“2021 – 2030 Aquaculture Development Program”). The general objectives of the 2021 – 2030 Aquaculture Development Program are to:

Develop aquaculture in a manner that is effective, sustainable, and adapting to climate change; improve efficiency, quality, value, and competitiveness of aquaculture products; satisfy domestic and export market requirements. By 2030, aquaculture productivity reaches 7,0 million tonne/year, creates jobs, and increases income for employees.⁴⁸

Specific objectives under the 2021 – 2030 Aquaculture Development Program for the 2021 – 2025 period include increasing total aquaculture productivity to 5.6 million tonnes per

⁴⁵ *Id.* at Art. 1.III.1.c. & d.

⁴⁶ *Id.* at Art. 1.IV.1.

⁴⁷ *Id.* at Art. 1.IV.2.

⁴⁸ 2021 – 2030 Aquaculture Development Program at Art. 1.I.1, at **Exhibit VII-6**.

year, and increasing exports to \$7.8 billion USD per year,⁴⁹ while actively producing and supplying over 50 percent of the demand for black tiger shrimp broodstock, and over 25 percent of the demand for vannamei (*i.e.*, “whiteleg”) shrimp broodstock.⁵⁰ The 2021 – 2030 Aquaculture Development Program further calls for increases to aquaculture production capacity and production of broodstock, including giant tiger prawns and whiteleg shrimp.⁵¹ Additional upgrades in aquaculture infrastructures are targeted,⁵² as well as investments and application of research involving new breeds, disease resistance, and waste treatment.⁵³

Both the 2030 – 2045 Fisheries Strategy and the 2021 – 2030 Aquaculture Development Program incorporate the SBV into their plans. Article 2.2 of the 2030 – 2045 Fisheries Strategy states that, along with the Ministry of Planning and Investment and the Ministry of Finance, “the State Bank of Vietnam shall, according to their assigned functions and tasks, complete investment, finance and credit policies in order to effectively meet the objectives and tasks of the Strategy,”⁵⁴ and identifies among the strategy’s funding sources “{p}referential funds and loans.”⁵⁵ The 2021 – 2030 Aquaculture Development Program further states that the “State bank of Vietnam shall {t}ake charge ... in researching and proposing incentive policies regarding loan

⁴⁹ MARD, *Seafood export value expected to reach 7.8 billion USD per year by 2025*, Aug. 22, 2022, at **Exhibit VII-7**. See also 2021 – 2030 Aquaculture Development Program at Art. 1.I.2., at **Exhibit VII-6**.

⁵⁰ *Id.*

⁵¹ 2021 – 2030 Aquaculture Development Program at Art. 1.II.1.a & b., at **Exhibit VII-6**.

⁵² *Id.* at Art. 1.II.3.

⁵³ *Id.* at Art. 1.II.6.

⁵⁴ 2030 – 2045 Fisheries Strategy at Art. 2.2., at **Exhibit VII-5**.

⁵⁵ *Id.* at Art. 1.VI.3.

capital, interest, and loan term for organizations, individuals engaging in investment, production in aquaculture....”⁵⁶

In addition to making direct loans under the 2030 – 2045 Fisheries Strategy and the 2021 – 2030 Aquaculture Development Program, Article 2.2 of the 2030 – 2045 Fisheries Strategy also requires the SBV to establish “complete investment, finance and credit policies in order to effectively meet the objectives and tasks of the Strategy.”⁵⁷ As such, other state policy banks have provided loans to the aquaculture industry in Vietnam. Although it touts itself as a “State-owned commercial bank,”⁵⁸ the Agribank identifies its role as one “acutely executing the directives from the National Assembly, the Government, and the State Bank of Vietnam.”⁵⁹ Most of Agribank’s customers are in the fields of agriculture, forestry, and fisheries,⁶⁰ with 65-70 percent of outstanding lending accounted for by agriculture and loans to rural areas.⁶¹ Agribank claims that it “actively participates in key Government programs on credit policies for agriculture and development,” including “{1}oans for fisheries development policies.”⁶² Agribank proactively seeks to offer low-cost loans by reducing lending interest rates pursuant to policies implemented by the SBV and GOV, decreasing average lending interest rates by more than one percent in 2021.⁶³

⁵⁶ 2021 – 2030 Aquaculture Development Program at Art. 2.7., at **Exhibit VII-6**.

⁵⁷ 2030 – 2045 Fisheries Strategy at Art. 2.2., at **Exhibit VII-5**.

⁵⁸ Agribank 2022 Annual Report at 8, at **Exhibit VII-8**.

⁵⁹ *Id.*

⁶⁰ *Id.* at 40.

⁶¹ *Id.* at 62.

⁶² *Id.*

⁶³ Agribank 2021 Annual Report at 31, at **Exhibit VII-9**.

a. Financial Contribution

Policy banks such as the SBV and Agribank are state-owned and constitute government authorities.⁶⁴ Preferential loans from policy banks provide a financial contribution in the form of a direct transfer of funds within the meaning of 19 U.S.C. § 1677(5)(D)(i).⁶⁵

b. Benefit

Under 19 U.S.C. § 1677(5)(E)(ii), policy loans under this program confer a benefit equal to the difference between what the recipients paid on the loans from the SOCBs and the amount they would have paid on comparable, commercial loans.

c. Specificity

The program makes preferential loans pursuant to government policy directives such as the 2030 – 2045 Fisheries Strategy and the 2021 – 2030 Aquaculture Development Program, which are limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

2. Interest Rate Support Program from the State Bank of Vietnam

Under this program, the SBV, Vietnam’s central bank, provides interest rate support of four percent on certain loans. This interest rate support program was instituted under *Decision No. 131/QD-TTG on Interest Rate Supports for Organizations and Individuals that Take Bank*

⁶⁴ *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 Fed. Reg. 75,973 (Dep’t Commerce Dec. 26, 2012) (“*Wire Hangers from Vietnam*”) and accompanying Issues and Decision Memorandum (“*Wire Hangers IDM*”) at 18.

⁶⁵ *Id.*

Loans for Production and Business (“Decision No. 131”) to stimulate the economy in the midst of an economic downturn by providing capital support to organizations and individuals carrying out business projects.⁶⁶ Initially, the program provided four percent interest rate support on short-term loans for qualifying businesses, but the SBV subsequently expanded it to include medium- and long-term loans of up to 24 months.⁶⁷ Decision No. 131 specified eligibility criteria for the interest rate support and added a list of ineligible projects, including “Loans in Vietnamese Dong for purchasing foreign currency to make payment to foreign countries for the import of consumer commodities or to make payment to domestic suppliers for the purchase of consumer commodities, imported from foreign countries, as materials, raw materials and assets for performing project of production, business investment and development....”⁶⁸ In investigating this program, Commerce has verified that recipients are prohibited from using interest-supported loans to purchase foreign exchange to pay for imports and that only Vietnamese dong-denominated loans are eligible for support. As a result, Commerce found that this program was countervailable as an import substitution program.⁶⁹

⁶⁶ *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 78 Fed. Reg. 50,387 (Dep’t Commerce Aug. 19, 2013) and accompanying Issues and Decision Memorandum (“Shrimp IDM”) at 15. *See also Decision No. 131, Exhibit VII-10.*

⁶⁷ Shrimp IDM at 15. *See also Circular 21/2009/TT-NHNN on Amendment, Supplement of Several Articles of the Circular No. 05/2009/TT-NHNN Dated 07 April 2009 of the State Bank of Vietnam, Providing in Details for the Implementation of Giving Interest Rate Support to Organizations, Individuals that Borrow Medium, Long Term Loans from Banks to Make New Investments for Production and Business Development, Exhibit VII-11.*

⁶⁸ Shrimp IDM at 15.

⁶⁹ *Id.* at Comment 3.

In addition to countervailing this program in *Warmwater Shrimp from Vietnam*, Commerce also countervailed this program in two subsequent countervailing duty investigations, *Steel Nails from Vietnam* and *Laminated Woven Sacks from Vietnam*.⁷⁰

a. Financial Contribution

The SBV is a government authority within the meaning of 19 U.S.C. § 1677(5)(B), and the reduction in interest payments from this program provides a financial contribution in the form of a transfer of funds within the meaning of 19 U.S.C. § 1677(5)(D)(i).

b. Benefit

The program reduces the interest recipients pay on loans. Under 19 U.S.C. § 1677(5)(E)(ii) and 19 C.F.R. § 351.505(a)(1), this program confers a benefit equal to the reduction in interest payments provided to recipients.

c. Specificity

Commerce has previously found that this program is specific within the meaning of 19 U.S.C. § 1677(5A)(C) because it is contingent upon the use of domestic rather than imported goods.⁷¹

3. Export Factoring by SOCBs

Export factoring allows banks to offer trade financing by making loans against trade receivables. The GOV has stated that SOCBs “or joint-stock commercial banks can provide

⁷⁰ *Certain Steel Nails From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 80 Fed. Reg. 28,962 (Dep’t Commerce May 20, 2015) (“*Steel Nails from Vietnam*”) and accompanying Issues and Decision Memorandum (“*Steel Nails IDM*”) at 22-23; *see also Laminated Woven Sacks From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 84 Fed. Reg. 14,647 (Dep’t Commerce Apr. 11, 2019) (“*Laminated Woven Sacks from Vietnam*”) and accompanying Issues and Decision Memorandum (“*Laminated Woven Sacks IDM*”) at 11 and 19.

⁷¹ *Shrimp IDM* at 16.

export factoring activities if they meet the conditions defined in Article 7 of the Regulation on Factoring.”⁷² The current regulation on factoring in Vietnam is provided by *Circular No. 02/2017/TT-NHNN on Factoring Services Provided by Credit Institutions and Branches of Foreign Banks*.⁷³ This regulation authorizes commercial banks, including SOCBs, to engage in factoring.

To the extent that SOCBs provide interest rates for export factoring that are below commercially-available rates, a countervailable subsidy exists. A countervailable subsidy also exists to the extent that the terms on export factoring loans offered by the SOCBs are more favorable than those from commercially-available sources. Commerce has previously determined that export factoring by SOCBs in Vietnam provides a countervailable subsidy.⁷⁴ Commerce should accordingly investigate whether SOCBs have provided export factoring to Vietnamese producers and exporters of frozen warmwater shrimp and, if so, whether these activities bestowed countervailable subsidies.

a. Financial Contribution

As Commerce previously determined in *Steel Nails from Vietnam*, SOCBs are “authorities.” Therefore, the provision of export factoring by SOCBs represents a financial contribution in the form of a transfer of funds within the meaning of 19 U.S.C. § 1677(5)(D)(i).⁷⁵

⁷² Steel Nails IDM at 19.

⁷³ *Circular No. 02/2017/TT-NHNN on Factoring Services Provided by Credit Institutions and Branches of Foreign Banks* at Article 2.1, **Exhibit VII-12**.

⁷⁴ Steel Nails IDM at 19-20; Laminated Woven Sacks IDM at 20.

⁷⁵ Steel Nails IDM at 19-20.

b. Benefit

Commerce has previously found this program to provide a benefit.⁷⁶ The benefit from export factoring by SOCBs is equal to (1) the interest saved in comparison to that paid on an equivalent commercially-available loan, and (2) the difference in fees and other costs between the factoring provided by SOCBs and those imposed by non-state banks. These savings represent a benefit under 19 U.S.C. § 1677(5)(E)(ii) and 19 C.F.R. § 351.505(a)(1).

c. Specificity

Because the receipt of benefits under this program is by definition contingent on exports, this program is deemed specific under 19 U.S.C. § 1677(5A)(B).

4. Guarantees for Export Activities from SOCBs

Vietnamese SOCBs provide guarantees for export activities to Vietnamese companies in a number of industries.⁷⁷ At least two SOCBs, Vietinbank and Vietcombank, have furnished such guarantees in the past.⁷⁸ Vietcombank, for example, offers at least four types of guarantees associated with exports:

- Performance guarantees: Vietcombank undertakes to compensate the customer if the Vietnamese exporter does not perform.
- Tax guarantees for export/import: Vietcombank will fulfill an exporter's obligation to pay any export taxes if the exporter fails to do so.
- Advance payment guarantees: Vietcombank will refund the purchaser's advance payment if the Vietnamese seller violates a contract.

⁷⁶ *Id.*

⁷⁷ *Id.* at 20-21.

⁷⁸ *Id.*; Laminated Woven Sacks IDM at 20.

- Warranty guarantees: Vietcombank issues a written commitment ensuring the beneficiary that, if the seller does not deliver the quality of work contracted for, aftersales services, maintenance, etc., Vietcombank will compensate the purchaser.⁷⁹

Vietcombank also advertises that it “is the leading bank in implementing the undertaking of the Government’s policies and the State Bank of Vietnam’s policies.”⁸⁰ Vietinbank also offers performance guarantees, committing “to fulfill the financial requirements on behalf of the Guaranteed Party in case the Guaranteed party do not meet or only partially meet the commitments with The Guaranteeing Party.”⁸¹

Because SOCBs are “authorities” within the meaning of 19 U.S.C. § 1677(5)(B), their provision of guarantees confers a countervailable subsidy to the extent that, after adjusting for differences in fees, the amount the recipient of the guarantee pays on the guaranteed loan is lower than the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the SOCB.⁸²

In *Steel Nails from Vietnam*, the GOV reported that “guarantees are normal operations of commercial banks, irrespective of whether they are state-owned commercial banks or joint-stock commercial banks. Credit institutions can perform guarantees if they meet the conditions stipulated in Circular 28/2012/TT-NHNN.”⁸³ Commerce further noted that Circular 28/2012/TT-NHNN states with respect to foreign currency guarantees under this program that “{t}he credit institutions, branches of foreign bank perform guarantee in foreign currency for organizations, individuals being resident with respect to the guarantee obligation arising from

⁷⁹ Vietcombank, “Guarantee Issuance,” at **Exhibit VII-13**.

⁸⁰ Vietcombank News, *JBIC loans 200 Million USD to Vietcombank to Support Renewable Energy Projects in Vietnam*, July 29, 2019, at **Exhibit VII-14**.

⁸¹ Vietinbank, “Guarantee,” at **Exhibit VII-15**.

⁸² 19 U.S.C. § 1677(5)(E)(3); *see also* Steel Nails IDM at 20.

⁸³ Steel Nails IDM at 20.

legal transaction in foreign currency.”⁸⁴ Because guarantees from SOCBs under this program are related to export shipments in foreign currencies, Commerce found this program countervailable.⁸⁵

a. Financial Contribution

Export guarantees by SOCBs constitute a financial contribution because SOCBs are “authorities” within the meaning of 19 U.S.C. § 1677(5)(B) and export guarantees are a transfer of funds or potential transfer of funds under 19 U.S.C. § 1677(5)(D)(i).⁸⁶

b. Benefit

The relevant statutory provision, 19 U.S.C. § 1677(5)(E)(iii), states that the benefit from a guarantee provided by an authority is equal to the difference “after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority.” To determine the benefit, Commerce will (1) compare the amount charged for the guarantee by the authority compared to the cost of a comparable guarantee, if available, from a commercial source, and (2) determine the extent to which the recipient paid a lower interest rate as a result of the guarantee.

c. Specificity

The benefits from export guarantees issued by SOCBs are necessarily limited to exporters. Such benefits are deemed specific under 19 U.S.C. § 1677(5A)(B).

⁸⁴ *Id.* See also Circular No. 28/2012/TT-NHNN Providing on Bank Guarantee at Article 4.2, at **Exhibit VII-16**.

⁸⁵ Steel Nails IDM at 20-21.

⁸⁶ *Id.*

5. Preferential Lending to Exporters by SOCBs

Commerce has found that various SOCBs in Vietnam lend to exporters at preferential rates. In *Wire Hangers from Vietnam*, Commerce described this program as follows:

According to the GOV, under this program, the lending institutions offered “supported” interest rates to exporters, provided that they use the proceeds of the loan in the manner specified in the contract, follow the payment schedule specified in the contract, conduct payment for exporting through the lending institution, and sell the foreign exchange earned from the export sale through the lending institution.⁸⁷

Commerce has identified Vietinbank as an SOCB that participates in this program.⁸⁸ In addition, Commerce has indicated that another state-owned bank participates in this program but could not release the name of the bank because that information was proprietary.⁸⁹

a. Financial Contribution

SOCBs such as Vietinbank are state-owned and constitute government authorities.⁹⁰ Preferential loans from SOCBs provide a financial contribution in the form of a direct transfer of funds within the meaning of 19 U.S.C. § 1677(5)(D)(i).⁹¹

b. Benefit

Under 19 U.S.C. § 1677(5)(E)(ii), export loans under this program confer a benefit equal to the difference between what the recipients paid on the loans from the SOCBs and the amount they would have paid on comparable, commercial loans. Commerce has found that loans under

⁸⁷ Wire Hangers IDM at 16.

⁸⁸ Shrimp IDM at 14; *see also* Wire Hangers IDM at 16.

⁸⁹ Wire Hangers IDM at 16.

⁹⁰ *Id.* at 18.

⁹¹ *Id.*

this program were in fact provided at interest rates below commercial benchmark rates, so that the recipient received a benefit.⁹²

c. Specificity

The program makes preferential loans available specifically for exports of Vietnamese products. The program is therefore “contingent upon export performance” and deemed specific under 19 U.S.C. § 1677(5A)(B).

6. Export Credits from the Vietnam Development Bank

Pursuant to *Decision No. 108/2006/QD-TTg Establishing the Vietnam Development Bank* (“Decision No. 108/2006/QD-TTg”), the Vietnam Development Bank (“VDB”) provides export credits at preferential rates to exporters in Vietnam.⁹³ The VDB was established on May 19, 2006 “to execute the state development investment and export credit policies as regulated by the Government.”⁹⁴ The VDB’s 2021 annual report states that “VDB is owned by the State,”⁹⁵ as a “policy bank operating... with 100% state-owned charter capital,”⁹⁶ and with the Board of Directors acting as “the direct representative of the State *{sic}* owner.”⁹⁷ Thus, the VDB is a policy bank acting directly to implement the GOV’s development goals. Article 4 of Decision No. 108/2006 states that the function of the bank is to mobilize and receive funds from domestic

⁹² *Id.*

⁹³ *Decision No. 108/2006/QD-TTg Establishing the Vietnam Development Bank*, at **Exhibit VII-17**.

⁹⁴ VDB, “History,” at **Exhibit VII-18**.

⁹⁵ VDB Annual Report 2021 at 21, at **Exhibit VII-19**.

⁹⁶ *Id.*

⁹⁷ *Id.*

and foreign organizations to implement the State’s development assistance programs and its export credit policies.⁹⁸

Decree 75/2011/ND-CP on State Investment Credit and Export Credit (“Decree 75/2011”) states that the interest rate on export credits is set by the Chairman of the Management Council of the VDB.⁹⁹ The decree also states that these interest rates should “match” market rates.¹⁰⁰ However, in a past examination of loans provided by the VDB, Commerce has found that this is not the case. As Commerce explained:

Under the program, the VDB provides lines of credit to exporters, with the loan contracts stipulating that a penalty interest rate will be charged if the loan proceeds are not used for the intended purpose of supporting the production and shipment of exported goods. . . . {I}n practice, {the borrower} enters into an export line of credit with the VDB and, in order to receive the “preferential export” interest rate, it must provide documentation demonstrating it utilized the funds to produce exported goods or otherwise pay the “agreed” rate.¹⁰¹

In the *PVLT Tires from Vietnam* investigation, the GOV stated that this program has been terminated as of May 15, 2017, following the enactment of *Decree 32/2017/ND-CP on State Investment Credit* (“Decree 32/2017”).¹⁰² However, the GOV explained in that investigation that, per Article 29 of Decree 32, contracts for borrowing entered into before the termination of Decree 75 were still valid.¹⁰³ In addition, while the GOV has characterized this program as

⁹⁸ Decision No. 108/2006/QD-TTg, at **Exhibit VII-17**. See also Shrimp IDM at 13.

⁹⁹ Decree No. 75/2011/ND-CP at Article 21.1, at **Exhibit VII-20**.

¹⁰⁰ *Id.*

¹⁰¹ Shrimp IDM at 13.

¹⁰² GOV Letter, “Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: GOV’s Initial Questionnaire Response,” (Aug. 25, 2020) (Public Version) (GOV PVLT Tires Sec. II Response) at 21, at **Exhibit VII-21**; see also Decree No. 32/2017, at **Exhibit VII-22**.

¹⁰³ GOV PVLT Tires Sec. II Response at 21, at **Exhibit VII-21**.

having been terminated, the VDB's own website continues to advertise the availability of export credits to Vietnamese companies.¹⁰⁴

Commerce has found that export credits issued by the VDB are provided at preferential interest rates, as the rates charged are below the benchmark Commerce calculated for commercially-available loans.¹⁰⁵ Given the past usage of this program by a number of different industries in Vietnam, Commerce should investigate whether Vietnamese producers and exporters of frozen warmwater shrimp have utilized and benefitted from these export credits from the VDB.

a. Financial Contribution

The VDB is a state-owned policy bank that exists to carry out the GOV's export credit policies. It is therefore an authority as described in 19 U.S.C. § 1677(5)(B), and its export credits provide a financial contribution in the form a direct transfer of funds under 19 U.S.C. § 1677(5)(D)(i).

b. Benefit

Export credits from the VDB provide a benefit to the recipient to the extent that the recipient received a lower interest rate and paid less interest than the recipient would have paid on a comparable commercial loan. The amount of the benefit is equal to the difference between what the recipient paid on the loan and what it would have paid under a commercial benchmark interest rate. 19 U.S.C. § 1677(5)(E)(ii) and 19 C.F.R. § 351.505(a)(1).

¹⁰⁴ VDB, "Export Credit," at **Exhibit VII-23**.

¹⁰⁵ Shrimp IDM at 13-14.

c. Specificity

As the VDB lending under this program is tied to exports, it is an export subsidy and therefore deemed specific under 19 U.S.C. § 1677(5A)(B).

7. Investment Credits from the VDB

Pursuant to Decision No. 108/2006, the VDB was established “to execute the state development investment and export credit policies as regulated by the Government.”¹⁰⁶ Along with the export credits discussed above, Decree 75/2011 (as well as its successor, Decree 32/2017) make available a variety of investment credits offered by the VDB.¹⁰⁷ These investment credits consist of both investment loans and post-investment support, with eligible enterprises listed in the Appendix to Decree 32/2017. Notably, the Appendix to Decree 32/2017 (and its predecessor, Appendix I to Decree 75/2011) identify investment projects in industrial parks, economic zones, export processing zones, and hi-tech parks as being eligible for investments under this program. As with the export credit program, per Article 29 of Decree 32/2017, any investment loans taken out under the prior loan provisions of Decree 75/2011 are given full effect under the law.¹⁰⁸ The VDB’s own website also advertises the availability of these investment credits.¹⁰⁹

a. Financial Contribution

As noted above, the VDB is a state-owned policy bank that exists to carry out the GOV’s investment credit policies. It is therefore an authority as described in 19 U.S.C. § 1677(5)(B),

¹⁰⁶ VDB, “History,” at **Exhibit VII-18**.

¹⁰⁷ VDB, “Investment Credit,” at **Exhibit VII-24**.

¹⁰⁸ Decree 32/2017 Art. 29, at **Exhibit VII-22**.

¹⁰⁹ VDB, “Investment Credit,” at **Exhibit VII-24**.

and its investment credit loans provide a financial contribution in the form a direct transfer of funds under 19 U.S.C. § 1677(5)(D)(i).

b. Benefit

Preferential investment credits from the VDB provide a benefit to the recipient to the extent that the recipient received a lower interest rate and paid less interest than the recipient would have paid on a comparable commercial loan. The amount of the benefit is equal to the difference between what the recipient paid on the loan and what it would have paid under a commercial benchmark interest rate. 19 U.S.C. § 1677(5)(E)(ii) and 19 C.F.R. § 351.505(a)(1).

c. Specificity

As the VDB investment credits provided under this program are limited to investment projects in industrial parks, economic zones, export processing zones, and hi-tech parks, as listed in Appendix I of Decree 75/2011 and the Appendix to Decree 32/2017, benefits under this program are regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

8. Agribank Support for Organic Agriculture

In August of 2018, the GOV promulgated *Decree 109/2018/ND-CP on Organic Agriculture* to regulate the production of “organic agricultural products in the field of cultivation, breed, forestry and aquaculture and policies to encourage the development of organic agricultural production.”¹¹⁰ Additional guidance regarding the pursuit of organic farming was provided in the 2030 – 2045 Fisheries Strategy which calls for “{e}ncouraging the development of... organic and ecological farming models,”¹¹¹ as well as researching aquacultural technologies including

¹¹⁰ Decree 109/2018/ND-CP at Article 1, at **Exhibit VII-25**.

¹¹¹ 2030 – 2045 Fisheries Strategy at Art. 1.III.1.c., at **Exhibit VII-5**.

organic and ecological farming.¹¹² Meanwhile, the 2021 – 2030 Aquaculture Development Program calls for prioritizing “organic rearing methods.”¹¹³

In its most recent annual report, Agribank acknowledges that since 2016, and more recently in alignment with the national strategy on green development for the 2021 – 2030 period, the bank has offered “a preferential credit program for ‘organic agriculture’ with unlimited funds, starting at VND 50 trillion,” with over VND 30 trillion so far disbursed, and with VND 5 trillion still outstanding under this program as of 2022.¹¹⁴ Decision No. 1658/QD-TTg on the “National Green Growth Strategy for the 2021 – 2030 Period, Vision Towards 2050,” (“National Green Growth Strategy”) of 2021 calls for the SVB to “{r}eview, adjust and refine banking and credit institutions in alignment with the green growth targets” and to “promulgate incentivizing credit policies for green investment projects”¹¹⁵ in order to “{d}evelop modern, clean, organic and sustainable agriculture; raise the quality, the added value and the competitiveness of agricultural production through adjustments and shifts in the composition of ... aquaculture production.”¹¹⁶ Agribank, as noted, identifies its role as one “acutely executing the directives from the National Assembly, the Government, and the State Bank of Vietnam.”¹¹⁷

¹¹² *Id.* at Art. 1.IV.2.

¹¹³ 2021 – 2030 Aquaculture Development Program at Art. 1.II.2.a., at **Exhibit VII-6**.

¹¹⁴ Agribank 2022 Annual Report at 37, at **Exhibit VII-8**.

¹¹⁵ National Green Growth Strategy Art. 1.IV.1.n., at **Exhibit VII-26**.

¹¹⁶ *Id.* at Art. 1.III.2.b.

¹¹⁷ Agribank 2022 Annual Report at 8, at **Exhibit VII-8**.

a. Financial Contribution

As noted above, policy banks such as Agribank are state-owned and constitute government authorities.¹¹⁸ Preferential loans from policy banks provide a financial contribution in the form of a direct transfer of funds within the meaning of 19 U.S.C. § 1677(5)(D)(i).¹¹⁹

b. Benefit

Under 19 U.S.C. § 1677(5)(E)(ii), policy loans under this program confer a benefit equal to the difference between what the recipients paid on the loans from Agribank and the amount they would have paid on comparable, commercial loans.

c. Specificity

The program makes preferential loans pursuant to government policy directives such as the 2030 – 2045 Fisheries Strategy, the 2021 – 2030 Aquaculture Development Program, and the National Green Growth Strategy, which are limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

¹¹⁸ Wire Hangers IDM at 18.

¹¹⁹ *Id.*

B. Income Tax Programs

1. Income Tax Preferences for Enterprises in Special Zones

Under Article 15 of *Decree 124/2008/ND-CP Detailing and Guiding the Implementation of a Number of Articles of the Law on Enterprise Income Tax* (“Decree No. 124/2008”) of December 11, 2008, companies are entitled to reduced income tax rates if located in specified areas, including in “economic zones or hi-tech parks established under the Prime Minister’s decisions.”¹²⁰ Commerce has previously examined this program in *Steel Nails from Vietnam*, noting that:

Specifically, Article 15 {of Decree 124} provides a tax incentive rate of 10 percent for 15 years for new enterprises located in the areas with extreme socioeconomic difficulties as enumerated in the Appendix to Decree 124, as well as in economic zones and high-tech parks; additionally, an incentive tax rate of 20 percent for 10 years is available for new enterprises located in the areas with socio-economic difficulties as enumerated in the Appendix of Decree 124.¹²¹

Under Article 16 of Decree No. 124/2008, income tax exemptions are also available for four years, with an additional 50 percent reduction of payable tax amounts for a subsequent nine years. These benefits are applicable to companies located in areas with socio-economic difficulties or extreme socio-economic difficulties, which include economic zones and high-tech parks.

a. Financial Contribution

Reduced tax rates and income tax exemptions provided under this program provide a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

¹²⁰ Decree No. 124/2008/ND-CP, at **Exhibit VII-27**.

¹²¹ *Steel Nails IDM* at 26.

b. Benefit

The benefit from this program is equal to the difference between the income tax the recipient would have paid absent the program and the income tax it actually paid, as provided for in 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(1).

c. Specificity

Because this program is only available to companies located in designated areas, it is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

2. Income Tax Preferences for Exporters

Under *Decree No. 164/2003/ND-CP Detailing the Implementation of the Law on Enterprise Income Tax* (“Decree No. 164/2003”), companies engaged in exporting goods are eligible for additional income tax preferences. In particular, Article 39 states that the GOV will provide:

1. 50% reduction of the payable tax on the turnover earned in the following cases:
 - a. Export in the first year is conducted by mode of direct export;
 - b. Export of new commodities with economic-technical and utility properties different from those of the commodities already exported by the enterprises;
 - c. Export to a new country or new territories other than the former markets.
2. 50% reduction of the payable income tax on the additional income arising from export in the fiscal year, for investors whose export turnover of the current year is higher than that of the previous year.
3. 20% reduction of the payable income tax on the income earned from export in a fiscal year in the following cases:
 - a. The export turnover accounts for more than 50% of the total turnover; the tax reduction shall be considered annually.

- b. The export markets are maintained in a stable manner with regard to volume or export value for previous three consecutive years.¹²²

Pursuant to Article 39, benefits under this program are limited to businesses dealing in export goods as defined in Section III, List A of the Appendix to Decree No. 164/2003. Section III, List A identifies such businesses as those engaged in the production and export of goods with the export value of the goods exceeding 50 percent of the total value of goods produced and/or traded in a fiscal year.¹²³ Alternatively, if an applicant's sales of exported goods do not amount to more than 50 percent of the total value of goods produced, Section III, List A identifies additional eligible industries that can take advantage of reduced income tax rates, including those involved in “{r}aising, culturing aquatic resources in unexploited water areas,”¹²⁴ and “{p}rocessing and preserving aquatic products from domestic raw materials.”¹²⁵

a. Financial Contribution

Reduced income tax rates and income tax exemptions provided under this program provide a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

b. Benefit

The benefit for this program is equal to the difference between the income tax the recipient would have paid absent the program and the income tax it actually paid, as provided for in 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(1).

¹²² *Decree No. 164/2003/ND-CP Detailing the Implementation of the Law on Enterprise Income Tax*, at **Exhibit VII-28**.

¹²³ *Id.* at Appendix List A, Section III.

¹²⁴ *Id.* at Section I(5).

¹²⁵ *Id.* at Section IV(4).

c. Specificity

Because this program is available to companies exporting goods from Vietnam, it is specific as an export subsidy pursuant to 19 U.S.C. § 1677(5A)(B). Alternatively, this program is expressly limited to certain industries, including those involved in the exploitation and/or processing of aquatic resources, and is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i).

3. Tax Benefits for Old Investments

As described above, Decree No. 164/2003 makes certain tax benefits available to companies in Vietnam. Among these benefits, Article 36 of Decree No. 164/2003 states that “{b}usiness establishments newly set up under investment projects and relocated business establishments shall enjoy tax exemption and/or reduction.”¹²⁶ The Appendix to Decree No. 164/2003 also identifies companies with investment projects in “{r}aising, culturing aquatic resources in unexploited water areas,”¹²⁷ “{p}rocessing and preserving aquatic products from domestic raw materials,”¹²⁸ and {r}aising livestock, poultry and aquatic animals under programs on agricultural restructuring at farm or larger scales”¹²⁹ as being eligible for investment preferences. In 2004, this law was amended pursuant to Article 1.4 of *Decree No. 152/2004/ND-CP of August 6, 2004* (“Decree No. 152/2004”), which amends Article 36 of Decree No. 164/2003 to further extend benefits to companies located in industrial parks and export processing zones:

¹²⁶ *Id.* at Art. 36.

¹²⁷ *Id.* at Appendix List A, Section I(5).

¹²⁸ *Id.* at Section IV(4).

¹²⁹ *Id.* at Section VI(3).

13. Business establishments newly set up under investment projects executed in industrial parks or export processing zones shall:

- a/ Enjoy tax exemption for 2 years as from the date their taxable incomes are generated and the 50% reduction of payable tax amounts for 6 subsequent years for service establishments newly set up under investment projects executed in industrial parks;
- b/ Enjoy tax exemption for 3 years as from the date their taxable incomes are generated and the 50% reduction of payable tax amounts for 7 subsequent years for service establishments newly set up under investment projects executed in export processing zones, production establishments newly set up under investment projects executed in industrial parks;
- c/ Enjoy tax exemption for 4 years as from the date their taxable incomes are generated and the 50% reduction of payable tax amounts for 7 subsequent years for establishments dealing in infrastructure development, which are newly set up under investment projects for development of infrastructures of industrial parks and export processing zones; export processing enterprises in production fields regardless of whether they are located inside or outside export processing zones.¹³⁰

In the most recent countervailing duty investigation involving Vietnam, the GOV claimed that this program had been superseded by *Decree No. 218/2013/ND-CP Detailing and Guiding the Implementation of Law on Corporate Income Tax* (“Decree No. 218/2013”) and *Decree No. 12/2015/ND-CP on Elaboration of the Law on Amendments to Tax Laws and Amendments to Some Articles of Decrees on Taxations* (“Decree 12/2015”).¹³¹ The GOV explained, however, that pursuant to Article 1.20 of Decree No. 12/2015:

enterprises having an investment project eligible for income tax preferences provided in the regulations applicable at the issuance

¹³⁰ *Decree of Government No. 152/2004/ND-CP of August 6, 2004 amending and supplementing a number of articles of The Government’s Decree No. 164/2003/ND-CP of December 22, 2003 detailing the implementation of the law on enterprise income tax, at Exhibit VII-29.*

¹³¹ GOV PVL Tires Sec. II Response at page 1 of Exhibit G-1, at **Exhibit VII-21.**

date of the investment license, (*i.e.*, the old regulations) and at the same time eligible for income tax preferences under the amended regulations (*i.e.*, the new regulations) may choose to benefit either from preferences under the old regulations or under the new regulations.¹³²

As eligibility for benefits under this program is dependent upon the date of the investment license, and may continue for up to seven years after a taxable income is first generated, Vietnamese companies are still eligible to benefit from this program during the proposed POI of calendar year 2022.

a. Financial Contribution

Reduced tax rates and income tax exemptions provided under this program provide a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

b. Benefit

The benefit for this program is equal to the difference between the income tax the recipient would have paid absent the program and the income tax it actually paid, as provided for in 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(1).

c. Specificity

Because access to this program is limited by law to a limited field of industries identified in List A of the Appendix, including those involved in culturing, raising, and processing aquaculture products, benefits under this program are *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Furthermore, because some benefits are only available to companies located in designated areas, the program is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

¹³² *Id.* See also Decree No. 12/2015/ND-CP on Elaboration of the Law on Amendments to Tax Laws and Amendments to Some Articles of Decrees on Taxations, at **Exhibit VII-30**.

4. Tax Benefits for New Investments

In 2013, the GOV promulgated additional tax incentives pursuant to *Decree No. 218/2013 on Detailing and Guiding the Implementation of Law on Corporate Income Tax* (“Decree No. 218/2013”). Available tax incentives include tax exemptions for new investments in industrial zones,¹³³ as well as tax reductions for companies that increase the value of their fixed assets and production capacity.¹³⁴ Under Article 15 of Decree No. 218/2013, an incentive income tax rate of 10 percent is available to companies located in economic zones or high technology zones,¹³⁵ while a reduced income tax rate of 17 percent or 20 percent is available to enterprises creating new investment projects involving the fishery industry.¹³⁶ Under Article 16 of Decree No. 218/2013, the following additional tax exemptions are also available:

1. Tax exemption for 4 years, reduction of 50% of tax payable for the next 9 years for:
 - a) Income of enterprise from performing new investment projects is specified in Clause 1, Article 15 of this Decree;
 - b) Income of enterprise from performing new investment projects in the field of socialization shall comply in difficult or extremely difficult socio-economic conditions specified in the Annex issued with this Decree.
2. Tax exemption for 4 years, reduction of 50% of tax payable for the next 5 years for enterprise’s income from performing new investment projects in the field of socialization in the areas not in the list of difficult or extremely difficult socio-economic conditions specified in the Annex issued with this Decree.

¹³³ Decree No. 218/2013 at Art. 16.3, at **Exhibit VII-31**.

¹³⁴ *Id.* at Art. 16.5.

¹³⁵ *Id.* at Art. 15.1.

¹³⁶ *Id.* at Art. 15.3. Petitioner notes that Decree No. 2018/2013 uses the terms “fishery” and “aquaculture” interchangeably. *See, e.g.*, Art. 4(1) of Decree No. 2018/2013. This is consistent with the Law on Fisheries, No. 18/2017/QH14 which defines “fishery activities” as those involving aquatic resources, aquaculture, and commercial fishing. *See Exhibit VII-32*.

3. Tax exemption for 2 years, reduction of 50% of tax payable for the next 4 years for incomes from performing new investment projects specified in Clause 3, Article 15 of this Decree and enterprise's income from performing new investment projects in industrial parks (except for industrial parks located in the areas with advantageous socio-economic conditions).¹³⁷

a. Financial Contribution

Reduced tax rates and income tax exemptions provided under this program provide a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

b. Benefit

The benefit for this program is equal to the difference between the income tax the recipient would have paid absent the program and the income tax it actually paid, as provided for in 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(l).

c. Specificity

Because this program is only available to companies located in designated areas, it is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv). In addition, because the fishery industry is expressly identified as eligible, benefits under this program are specific as a matter of law under 19 U.S.C. § 1677(5A)(D)(i).

5. Income Tax Preferences under Decree 24

Under *Decree No. 24/2007/ND-CP Detailing the implementation of the Law on enterprise income tax* ("Decree No. 24/2007"), of February 14, 2007, the GOV provides income tax preferences to enterprises in certain designated sectors of the economy and those in areas with "serious socio-economic difficulties." In particular, the decree sets maximum income tax rates for the relevant enterprises. Article 34 of Decree No. 24/2007 details the income tax

¹³⁷ Decree No. 218/2013 at Art. 16.1-16.3, at **Exhibit VII-31**.

reductions for projects undertaken by sectors qualifying for special investment incentives and/or preferences for firms operating in regions of difficult socioeconomic conditions. Benefits include reduced tax rates ranging from 10-20 percent over a period of 10-15 years for companies involved in the sectors identified on the list of sectors entitled to investment preferences,¹³⁸ rather than the normal enterprise income tax rate of 28 percent.¹³⁹ Article 18 of *Decree No. 108/2006/ND-CP Detailing and Guiding the Implementation of a Number of Articles of the Investment Law* (“Decree No. 108/2006”) explains that investors in permissible industrial projects in Vietnam have the right to “incentives in accordance with the provisions of This Decree and relevant laws.”¹⁴⁰

In *Wind Towers from Vietnam*, Commerce explained that the list of sectors entitled to special investment incentives under Decree No. 24/2007 is found in Appendix I to Decree No. 108 No. 108/2006.¹⁴¹ Included in Appendix I is a “list of domains entitled to special investment preferences,” which includes “{b}reeding, rearing and growing agricultural, forest and aquaculture products on uncultivated land, unexploited waters,” “{f}ishery in offshore sea

¹³⁸ Decree No. 24/2007 at Arts. 34.1-34.3, at **Exhibit VII-33**.

¹³⁹ *Id.* at Article 34.4.

¹⁴⁰ *Decree No. 108/2006/ND-CP Detailing and Guiding the Implementation of a Number of Articles of the Investment Law*, at **Exhibit VII-34**.

¹⁴¹ *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 Fed. Reg. 68,104 (Dep’t Commerce Dec. 13, 2019) and accompanying Preliminary Determination Memorandum at 6-7, unchanged in *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances*, 85 Fed. Reg. 40,229 (Dep’t Commerce July 6, 2020) (“*Wind Towers from Vietnam*”).

waters,” and “{p}roduction of artificial strains, new plant varieties and livestock breeds of high economic value.”¹⁴²

a. Financial Contribution

Reduced tax rates and income tax exemptions provided under this program provide a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

b. Benefit

The benefit for this program is equal to the difference between the income tax the recipient would have paid absent the program and the income tax it actually paid, as provided for in 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(l).

c. Specificity

This program is specific as a matter of law under 19 U.S.C. § 1677(5A)(D)(i) because it is expressly provided to companies in certain designated sectors, including aquaculture. In addition, it is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) because it is limited to companies in designated areas.

6. Preferential Income Tax Program for Foreign-Invested Enterprises

Under Article 33 of the *Law on Investment, No. 59/2005/HQ11* (“Law No. 59/2005”), the GOV offers tax incentives to foreign-invested enterprises that meet the criteria listed in Article 28.2. These incentives are provided to companies located in “industrial zones, export processing zones, high-tech zones and economic zones.”¹⁴³ Accelerated depreciation for fixed assets is also available under this program, pursuant to Article 35 of Law No. 59/2005.

¹⁴² *Decree No. 108/2006/ND-CP Detailing and Guiding the Implementation of a Number of Articles of the Investment Law*, at Appendix I, at **Exhibit VII-34**.

¹⁴³ *Law No. 59/2005/HQ11 On Investment*, at **Exhibit VII-35**.

a. Financial Contribution

Reduced tax rates and income tax exemptions provided under this program provide a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

b. Benefit

The benefit for this program is equal to the difference between the income tax the recipient would have paid absent the program and the income tax it actually paid, as provided for in 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(1).

c. Specificity

Because this program is limited to companies located in designated areas, namely “industrial zones, export processing zones, high-tech zones and economic zones,” it is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

7. Accelerated Depreciation and Increases of Deductible Expenses

In June of 2020, the GOV promulgated the Law on Investment, Law No. 61/2020/QH14 (“Law No. 61/2020/QH14”), Chapter III of which covers “Investment Incentives and Supports.” Under Chapter III, Article 15(d) includes “{a}ccelerated depreciation, or increase of deductible expenses when calculating taxable incomes” as an investment incentive available to a limited range of industries, which include “{c}ultivation and processing of agricultural, forest, and fishery products” and “production of ... animal breeds,”¹⁴⁴ as well as investments made in “{i}ndustrial parks, export processing zones, hi-tech parks and economic zones.”¹⁴⁵

¹⁴⁴ Law No. 61/2020/QH14 at Art. 16(1)(e), at **Exhibit VII-36**.

¹⁴⁵ *Id.* at Art. 16(2)(b).

a. Financial Contribution

Investment support in the form of accelerated depreciation and increases in deductible expenses provide a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

b. Benefit

The benefit for this program is equal to the difference between the income tax the recipient would have paid absent the program and the income tax it actually paid, as provided for in 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(1).

c. Specificity

Because this program is expressly limited to certain industries, including those in the cultivation and processing of fishery products, as well as the production of animal breeds, it is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Furthermore, because this program is limited to companies located in designated areas, namely “industrial zones, export processing zones, high-tech zones and economic zones,” it is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

C. Other Revenue Foregone

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

Law No. 107/2016/QH13 on Export and Import Duties (“Law No. 107/2016”) provides import duty exemptions for imports used to produce exported goods. Specifically, Article 16.7 exempts imported goods that are incorporated into products for export, and Article 16.6 provides a similar exemption to goods imported for processing and export.¹⁴⁶ Article 16.12, in particular,

¹⁴⁶ Law No. 107/2016, at **Exhibit VII-37**.

authorizes exemptions for “animals breeds... that cannot be domestically produced....”¹⁴⁷

Significantly, this law eliminated the previous requirement that the export of the finished good occur within 275 days of importation.¹⁴⁸ Article 12 of *Decree No. 134/2016/ND-CP Guidelines for the Law on Export and Import Duties* (“Decree No. 134/2016”) provides detailed guidance on these exemptions, which apply to “{r}aw materials, supplies, components, semi-finished products and finished products import for manufacture of domestic exports,”¹⁴⁹ while Article 18.1 provides for an exemption of duties on “animal breeds ... that cannot be domestically manufactured and have to be imported to serve... aquaculture....”¹⁵⁰

Commerce will treat as a subsidy the remission of import duties in connection with exported goods if the country cannot show that the system for calculating and remitting import duties meets certain requirements.¹⁵¹ Most recently, in the investigation of *PVLT Tires from Vietnam*, Commerce determined that Vietnam does not meet these requirements:

We have not applied {the exceptions identified 19 C.F.R. § 351.519(a)(4)} to the GOV’s program because we do not find the GOV’s system to be reasonable. The GOV’s system allows scrap to be sold on the domestic market without the encumbrance of the import duties normally associated with entering goods into the market for scrap created during the production of products bound for export markets

The GOV argues that its system is reasonable because it makes an acceptable “allowance for waste” in accordance with 19 CFR 351.519(a)(1)(ii). Both KTV and the GOV conflate “waste” and “scrap” with respect to what we consider a “normal allowance for waste.” Contrary to the GOV’s arguments, we do not consider its

¹⁴⁷ *Id.*

¹⁴⁸ “New Regulations on Import and Export Duties of Vietnam,” *Vietnamese Attorney* (July 2016), at **Exhibit VII-38**.

¹⁴⁹ *Decree No. 134/2016/ND-CP Guidelines for the Law on Export and Import Duties*, at **Exhibit VII-39**.

¹⁵⁰ *Id.*

¹⁵¹ *See* 19 C.F.R. § 351.519(a)(4).

norms to be inaccurate, and they appear to do what they intend to; however, its norms are overly inclusive

In this investigation, the GOV's system is not reasonable because producers may sell recovered forms of "waste and rejects" that were created during the production of exported products, from imported inputs, without customs procedures (*i.e.*, paying duties) on that scrap even after making allowances for unrecoverable waste.¹⁵²

There is no indication that the GOV's administration of this program has changed since *PVLT Tires from Vietnam*, the most recent countervailing duty investigation involving Vietnam.

a. Financial Contribution

The exemption of import duties constitutes a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone by the GOV.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.519, the benefit under this program is equal to the amount of import duties not collected.

c. Specificity

Because benefits under this program are only available to exporters, this program is an export subsidy and is specific under 19 U.S.C. § 1677(5A)(B).

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

Under Article 19.1(c) of Law No. 107/2016, companies that have already paid import duties on goods imported for use in the manufacture of exports are eligible to receive refunds of those duties.¹⁵³ Article 36.1 of Decree No. 134/2016 discusses the implementation of this law. In particular, it states that "{p}aid import duties on goods that are initially imported for business

¹⁵² PVLT Tires IDM at Comment 8, pages 34-35 (internal citations omitted).

¹⁵³ Law No. 107/2016, at **Exhibit VII-37**.

operation but eventually used for manufacture of goods that have been exported into a foreign country or a free trade zone shall be refunded,”¹⁵⁴ and that eligible refunds include duties paid for raw materials, supplies, components, and semi-finished products incorporated into or used in the manufacture of goods for export.¹⁵⁵

Commerce has examined an earlier version of this program in *Wire Hangers from Vietnam*, finding 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.”¹⁵⁶ Based on this finding, Commerce determined that the exemptions or reimbursements under the program constituted a benefit in the amount of the duties exempted or reimbursed.¹⁵⁷

a. Financial Contribution

The exemption of import duties constitutes a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone by the GOV.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.519, the benefit under this program is equal to the amount of import duties refunded.

c. Specificity

Because benefits under this program are only available to exporters, this program is an export subsidy and is specific under 19 U.S.C. § 1677(5A)(B).

¹⁵⁴ *Decree No. 134/2016/ND-CP Guidelines for the Law on Export and Import Duties*, Art. 36.1, at **Exhibit VII-39**.

¹⁵⁵ *Id.* at Art. 36.2.

¹⁵⁶ *Wire Hangers IDM* at 15.

¹⁵⁷ *Id.*

3. Exemption of Import Duties for Imports into Industrial Zones

Article 16.11 of Law No. 107/2016 provides an exemption from import duties on machinery and equipment, raw materials for the manufacture of machinery and equipment, and components, parts, spare parts, and accessories for companies in industrial zones.¹⁵⁸ Essentially, as Commerce has previously found regarding this program, “enterprises located in industrial zones are entitled to import duty exemptions on their imported goods used to create fixed assets.”¹⁵⁹ Detailed guidance on the application of this program is provided by Article 14 of Decree No. 134/2016.

a. Financial Contribution

The exemption of import duties constitutes a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone by the GOV.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.519, the benefit under this program is equal to the amount of import duties not collected.

c. Specificity

Because benefits under this program are only available to companies located in industrial zones, this program is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

¹⁵⁸ Law No. 107/2016, at **Exhibit VII-37**.

¹⁵⁹ *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 Fed. Reg. 39,983 (Dep’t Commerce Aug. 13, 2018) and accompanying Preliminary Determination Memorandum (“Laminated Woven Sacks PDM”) at 21, unchanged in *Laminated Woven Sacks from Vietnam*.

4. Exemption of Import Duties for Foreign-Invested Enterprises

Vietnamese law also provides import duty exemptions for foreign-invested enterprises under some circumstances. Article 57 of *Decree No. 24/2000/ND-CP Detailing the Implementation of the Law on Foreign Investment in Vietnam* (“Decree No. 24/2000”) exempts imports of equipment, machinery, parts, spare parts, components, and other materials for the creation of fixed assets from the payment of import duties.¹⁶⁰ Article 57.7 of Decree No. 24/2000 also exempts imports of raw materials used by foreign-invested enterprises to produce goods for export. Furthermore, Article 48 of *Law No. 52-L/CTN on Foreign Investment in Vietnam*, an updated version of the previous law, exempts foreign-invested enterprises located in export processing zones from all import and export duties.¹⁶¹

a. Financial Contribution

The exemption of import duties constitutes a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone by the GOV.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.519, the benefit under this program is equal to the amount of import duties not collected.

c. Specificity

Because benefits under this program are expressly limited by law to foreign-invested enterprises, it is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i).

¹⁶⁰ *Decree No. 24/2000/ND-CP Detailing the Implementation of the Law on Foreign Investment in Vietnam*, at **Exhibit VII-40**.

¹⁶¹ *Law No. 52-L/CTN on Foreign Investment in Vietnam*, at **Exhibit VII-41**.

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

In *Laminated Woven Sacks from Vietnam*, Commerce self-initiated an examination into this program.¹⁶² Commerce explained that under Article 2.4 of Decree No. 134/2016, goods imported from foreign countries to non-tariff zones (*i.e.*, free trade zones) and used within the non-tariff zones do not incur import duties.¹⁶³ Commerce further explained that pursuant to Article 1.2 of *Decree 87/2010/ND-CP Detailing a Number of Articles of the Law on Import Duty and Export Duty* (“Decree No. 87/2010”), “(g)oods brought from the domestic market into non-tariff zones or vice versa are dutiable” and that “non-tariff zones include export processing zones, export processing enterprises, warehouses, and storing zones of goods pending duty.”¹⁶⁴ Additionally, Commerce noted that Article 2.3 of Decree No. 87/2010 states that “{g}oods exported from non-tariff zones to foreign countries; goods imported from foreign countries into non-tariff zones for use in non-tariff zones only; goods transported from one non-tariff zone to another” are non-dutiable objects.

As Commerce explained, designated non-tariff areas, such as export processing zones, are generally not subject to duties and therefore provide no financial contribution in the form of revenue foregone. However, the foreign government must ensure that “such companies or free trade areas must be subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country’s customs territory and, in the latter case, appropriate duties are collected.”¹⁶⁵ Commerce ultimately

¹⁶² *Laminated Woven Sacks PDM* at 17.

¹⁶³ *Id.*

¹⁶⁴ *Id.* See also *Decree 87/2010/ND-CP Detailing a Number of Articles of the Law on Import Duty and Export Duty*, at **Exhibit VII-42**.

¹⁶⁵ *Laminated Woven Sacks PDM* at 18.

determined that such a system of enforcement was not in place in Vietnam and that the program was countervailable.¹⁶⁶ Commerce should continue to examine this program in the instant investigation to determine whether benefits are being provided to producers and exporters of frozen warmwater shrimp.

a. Financial Contribution

The exemption of import duties constitutes a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone by the GOV.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.519, the benefit under this program is equal to the amount of import duties not collected.

c. Specificity

Because the import duty exemptions on raw materials are contingent upon export performance, they are specific as export subsidies under 19 U.S.C. § 1677(5A)(B).

6. Import Duty Exemptions on Equipment and Machinery

Pursuant to Article 12.6(a) of Decree No. 87/2010, equipment and machinery imported to create fixed assets for investment projects in the domains entitled to import duty preferences as listed in Appendix I of the decree are exempted from import duties.¹⁶⁷ Appendix 1 of Decree No. 87/2010 identifies a “List of Sectors in which Investment is Particularly Promoted,” including the “{a}quaculture in unclaimed land areas and unexploited water areas,”¹⁶⁸ “{p}roduction of

¹⁶⁶ *Id.*; Laminated Woven Sacks IDM at 28.

¹⁶⁷ *Decree 87/2010/ND-CP Detailing a Number of Articles of the Law on Import Duty and Export Duty*, at **Exhibit VII-42**.

¹⁶⁸ *Id.* at Appendix I, at A.II.8

new... livestock breeds,”¹⁶⁹ and in the “List of Sectors in Which Investment is Promoted,” the “{r}earing and processing of agricultural, forest and fisheries products.”¹⁷⁰ Commerce has previously determined that this program is countervailable.¹⁷¹

a. Financial Contribution

The exemption of import duties constitutes a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone by the GOV.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.519, the benefit under this program is equal to the amount of import duties not collected.

c. Specificity

Because the import duty exemptions on equipment and machinery are expressly limited to a list of sectors, which include the “{a}quaculture in unclaimed land areas and unexploited water areas,” “{p}roduction of new... livestock breeds,”¹⁷² and the “{r}earing and processing of agricultural, forest and fisheries products,” benefits under this program are *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i).

7. Exemption from Irrigation Fees

Land-based aquaculture in Vietnam is heavily dependent on water supplies, particularly water that is clean and not contaminated by salt water or wastewater from other industries.¹⁷³

¹⁶⁹ *Id.* at Appendix I, at A.II.10.

¹⁷⁰ *Id.* at Appendix I, at B.II.

¹⁷¹ Shrimp IDM at 22-23.

¹⁷² *Id.* at Appendix I, at A.II.10.

¹⁷³ Le Minh Thoa and Nguyen Tu Anh, *Developing Irrigation Systems for Sustainable Aquaculture in Vietnam*, Res Militaris, Jan. 2023, at 1, at **Exhibit VII-43**.

According to a 2023 journal article covering the systems of irrigation in Vietnam, “Vietnam is one of the few countries in Southeast Asia with a relatively complete developed irrigation system, with thousands of large, medium, and minor irrigation systems for water supply, irrigation, and drainage serving agricultural production, aquaculture, and water supply for domestic and industrial use...”¹⁷⁴ The GOV has historically funded large-scale irrigation systems in Vietnam,¹⁷⁵ collecting irrigation service fees from farmers and other water users.¹⁷⁶

Beginning in 2008, the GOV implemented an irrigation fee exemption scheme under which the government “is responsible for paying most of the cost for irrigation activities.”¹⁷⁷ *Decree No. 115/2008/ND-CP Amending and supplementing a number of articles of Decree No. 143/2003/ND-CP dated November 28, 2003 of the Government detailing the implementation of a number of articles of the Ordinance on Exploitation and Protection of Irrigation Works* (“Decree No. 115/2008”), amending Article 19 of Decree No. 143/2003/ND-CP, the earlier ordinance on the exploitation and protection of irrigation works, provides for an “{e}xemption from irrigation fees for all land and water surface areas used for agricultural production, forestry, {and} aquaculture...” The water fee table to which the exemptions apply is also included in Decree No. 115/2008, and includes both “{w}ater supply for aquaculture” as well as “{a}quaculture at

¹⁷⁴ *Id.* at 2.

¹⁷⁵ Jonathan Richard Cook *et al.*, *The Irrigation Service Fee Waiver in Viet Nam*, ADB Briefs, Apr. 2013, at 1, at **Exhibit VII-44**.

¹⁷⁶ *Id.* at 2.

¹⁷⁷ Le Viet Phu and Do Truong Phuong Lam, *Rice, irrigation policy and the need for improved water management in Vietnam*, Global Water Forum, Sept. 19, 2023, at 1, at **Exhibit VII-45**.

irrigation reservoirs.”¹⁷⁸ Under Decree No. 115/2008, farmers, including those involved in aquaculture, no longer need to pay for water used in their activities.¹⁷⁹

a. Financial Contribution

The exemption of irrigation fees constitutes a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone by the GOV.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.510(a)(1), the benefit under this program is equal to the amount of the uncollected irrigation fees.

c. Specificity

Because the irrigation fee exemption is expressly limited to “agricultural production, forestry, {and} aquaculture” activities, this program is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i).

D. Land Programs

1. Exemption or Reduction of Rents for Encouraged Industries

All land in Vietnam is owned by the state, with its distribution controlled by the GOV.¹⁸⁰ Under *Decree No. 142/2005/ND-CP on Collection of Land Rents and Water Surface Rents* (“Decree No. 142/2005”), the GOV offers rent exemptions and reductions when land is used for, *inter alia*, “projects in the domains entitled to investment encouragement or special investment

¹⁷⁸ Decree 115/2008, at **Exhibit VII-46**.

¹⁷⁹ Jonathan Richard Cook *et al.*, *The Irrigation Service Fee Waiver in Viet Nam*, ADB Briefs, Apr. 2013, at 2, at **Exhibit VII-44**.

¹⁸⁰ Constitution of the Socialist Republic of Vietnam (excerpt) at Art. 53, at **Exhibit VII-47**.

encouragement,”¹⁸¹ with land rents and water surface rents exempted in cases of “investment projects in the domains where investment is specially encourage, which are executed in geographical areas facing exceptional socio-economic difficulties.”¹⁸²

Article 18 of Decree No. 108/2006 explains that investors in permissible industrial projects in Vietnam have the right to “incentives in accordance with the provisions of This Decree and relevant laws.” Article 26 of the same decree continues:

Investors to whom the State assigns land without collection of land use levies, assigns land with collection of land use levies or the State leases land and who have investment projects in domains or geographical areas entitled to investment preferences defined in this Decree are entitled to exemption from or reduction of land use tax, land use levy, land rent or water surface rent in accordance with the land law and the taxation law.¹⁸³

Appendix I to Decree No. 108/2006 identifies industrial sectors entitled to special investment incentives, including those involved in “breeding, rearing, growing and processing agricultural, forest and aquaculture products,” and “production of artificial strains, new plant varieties and livestock breeds.”¹⁸⁴ In addition, Appendix II identifies a list of geographical areas entitled to preferences.

a. Financial Contribution

Exemptions from or reductions of rent constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone. Alternatively, the provision of land for reduced

¹⁸¹ *Decree 142/2005/ND-CP on Collection of Land Rents and Water Surface Rents* at Art. 4.3, at **Exhibit VII-48**.

¹⁸² *Id.* at Art. 14.1.

¹⁸³ *Decree No. 108/2006/ND-CP Detailing and Guiding the Implementation of a Number of Articles of the Investment Law*, at **Exhibit VII-34**.

¹⁸⁴ *Id.* at Appendix I.

or exempted rent constitutes the provision of a good for less than adequate remuneration under 19 U.S.C. § 1677(5)(D)(iii).

b. Benefit

Under 19 U.S.C. § 1677(5)(E)(iv) and 19 C.F.R. § 351.511(a)(1), the benefit from this program is equal to the difference between the market rate for rent in the locality and the actual rent paid.

c. Specificity

This program is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i) because it is limited to only those industries and enterprises designated as eligible for the incentive in the decree, including “breeding, rearing, growing and processing agricultural, forest and aquaculture products,” and “production of artificial strains, new plant varieties and livestock breeds.” Additionally, to the extent that any farmers, producers, or processors of shrimp are located in one of the areas listed in Appendix II of Decree No. 108/2006, the benefits provided by this program are regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

2. Exemptions of Land and Water Surface-Use Taxes and Levies for Encouraged Industries

In addition to the land provisions discussed above, Article 26 of Decree No. 108/2006 indicates that investors with projects that qualify as “projects in the domains entitled to investment encouragement or special investment encouragement” as discussed in Decree No. 142/2005 are also exempt from land use taxes and land use levies.¹⁸⁵ Appendix I to Decree No. 108/2006 identifies industrial sectors entitled to incentives, including those involved in “breeding, rearing, growing and processing agricultural, forest and aquaculture products,” and

¹⁸⁵ *Id.*

“production of artificial strains, new plant varieties and livestock breeds.”¹⁸⁶ In addition, Appendix II identifies a list of geographical areas entitled to preferences.

a. Financial Contribution

Exemptions from land use taxes and land use levies constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone.

b. Benefit

In accordance with 19 C.F.R. § 351.509(a)(1), the benefit from this program is equal to the taxes or levies exempted under the program.

c. Specificity

This program is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i) because it is limited to only those industries and enterprises designated as eligible for the incentive in the decree, including the “breeding, rearing, growing and processing agricultural, forest and aquaculture products,” and “production of artificial strains, new plant varieties and livestock breeds.” Additionally, to the extent that any farmers, producers, or processors of shrimp are located in one of the areas listed in Appendix II of Decree No. 108/2006, the benefits provided by this program are regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

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

Decision No. 189/2000/QD-BTC Issuing the Regulation on the Land, Water Surface and Sea Surface Rents Applicable to Forms of Foreign Investment in Vietnam (“Decision No. 189/2000”) creates a framework for establishing rates for property rented to foreign-invested enterprises.¹⁸⁷ According to Article 1 of Decision No. 189/2000, joint ventures and enterprises

¹⁸⁶ *Id.* at Appendix I.

¹⁸⁷ *Decision No. 189/2000/QD-BTC Issuing the Regulation on the Land, Water Surface and Sea Surface Rents Applicable to Forms of Foreign Investment in Vietnam*, at **Exhibit VII-49**.

with 100 percent foreign capital that lease land in Vietnam are permitted access to favorable rent policies, including rent reductions and exemptions.¹⁸⁸ According to Article 8.7 of Decision No.

189/2000:

The land rent exemption or reduction under this Decision shall apply to all foreign investment projects in Vietnam.

For the already licensed projects that are in the period of capital construction and enjoying the land rent reduction under Decision No. 179/1998/QD-BTC (/179-1998-qd-btc) of February 24, 1998, they shall now be entitled to the land rent exemption according to the provisions in Clause 2 of this Article for the remaining duration of capital construction.

For projects that have been put into operation from the date of capital construction completion till the effective date of this Decision but the time for land rent exemption under the provisions in Clause 3 of this Article has not expired, they shall still be entitled to land rent exemption for the remaining duration.¹⁸⁹

The regulation under Decision No. 189/2000 provides the actual formula for setting rental rates at Article 3, with separate calculations for urban and non-urban land,¹⁹⁰ while Article 5 guarantees that rents are not to increase during 5-year lease periods and are not to increase more than 15 percent from one lease period to the next.¹⁹¹ As well as setting rental rates, Article 8.3 of the regulation also exempts foreign-invested enterprises from having to pay rent for a set period, depending upon the location, with exemptions of up to 11 years being available to investors.¹⁹² To the extent that foreign-invested enterprises are located in industrial parks, export processing zones, or high-tech parks, Article 3.4 of Decision No. 189/2000 states that the land

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

rents calculated under Article 3.1-3.3 are reduced to 80 percent of what they would otherwise be. Appendix 1b of Decision No. 189/2000 specifically identifies companies “{p}roducing, processing for export at least eighty (80) per cent of products” as “Specially Encouraged Investment Projects.”¹⁹³

a. Financial Contribution

Exemptions from or reductions of rent constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(ii) in the form of revenue foregone. Alternatively, the provision of land for reduced or exempted rent constitutes the provision of a good for less than adequate remuneration under 19 U.S.C. § 1677(5)(D)(iii).

b. Benefit

In accordance with 19 C.F.R. § 351.509(a)(1), the benefit from this program is equal to the rent reduced or exempted under the program. Alternatively, under 19 U.S.C. § 1677(5)(E)(iv) and 19 C.F.R. § 351.511(a)(1), the benefit from this program is equal to the difference between the market rate for rent in the locality and the actual rent paid.

c. Specificity

This program is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i) because it is expressly limited by law to companies that are 100 percent foreign-invested enterprises. Additionally, to the extent that any additional exemptions are provided to producers of frozen warmwater shrimp located in one of the areas designated in Article 8.3 of the regulation under Decision No. 189/2000, the benefits are regionally specific under 19 U.S.C. § 1677(5A)(D)(iv). Depending on the recipient’s location in an industrial park or export-processing zone, or its categorization as a “Specially Encouraged Investment Project,” further reductions of rent under Article 3.4 of

¹⁹³ *Id.*

Decision No. 189/2000 may be regionally specific or specific as an export subsidy pursuant to 19 U.S.C. § 1677(5A)(D)(iv) and 19 U.S.C. § 1677(5A)(B), respectively.

E. Grant Programs

1. Export Promotion Grants

The GOV provides direct support to exporters through its export promotion program, which is designed to enhance trade promotion activities and develop export markets.¹⁹⁴ The program is administered by the Evaluation Council, which is led by the Ministry of Industry and Trade, but also includes the Ministry of Finance and other relevant ministries and agencies.¹⁹⁵

Decision No. 72/2010/QD-TTg Promulgating the Regulation on elaboration, management and implementation of national trade promotion program (“Decision No. 72/2010”), dated November 15, 2010, describes as its objective a national trade promotion program built on the basis of export-oriented development consistent with the government’s economic and social development strategies, as well as an intent to develop export markets.¹⁹⁶ Article 9 of Decision No. 72/2010 provides direct funding to industries with export promotion programs to cover various costs, including:

- Trade information, market research, and database construction of key export markets for each sector;
- Export advocacy in the form of industry promotion
- Hiring domestic and foreign experts to advise on product development, improving product quality, export development, and foreign market entry;
- Training in Vietnam and abroad to improve trade promotion operations;
- Organizing and participating in trade fairs;

¹⁹⁴ GOV PVL Tires Sec. II Response at 19, at **Exhibit VII-21**.

¹⁹⁵ *Id.*

¹⁹⁶ *Decision No. 72/2010/QD-TTg Promulgating the Regulation on elaboration, management and implementation of national trade promotion program*, at **Exhibit VII-50**.

- Organizing trade delegations abroad (including the cost of airfare, the cost of seminars and meetings, and the cost of communication, promotion, and invited guests);
- Organizing mixed promotion activities combining trade investment and tourism in order to boost exports of goods and services of Vietnam and attract investment and foreign tourists to Vietnam;
- Promoting the organization of foreign enterprises to come to Vietnam to purchase goods, including the cost of holding events and travel and accommodation expenses;
- Organizing international conferences of export sectors in Vietnam (including the cost of renting and decorating halls, facilities, interpretation, translation, printing documents, and advocacy); and
- Providing support for overseas market access to the brands of goods and services designated as featured national brands.¹⁹⁷

a. Financial Contribution

The export promotion program provides a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because it constitutes a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

These benefits are specific under 19 U.S.C. § 1677(5A)(A) and (B) because they are only available to exporters.

2. Investment Support Grants

In June of 2020, the GOV promulgated the Law on Investment, Law No. 61/2020/QH14, Chapter III of which covers “Investment Incentives and Supports.” Under Chapter III, Article 18 includes “{f}orms of investment support,” which include:

- Support for development of technical and social infrastructure systems;
- Support for human resources training and development;
- Credit support;

¹⁹⁷ *Id.* at Article 9.

- Support for relocating production;
- Support for science, technique, and technology transfer;
- Support for market development and information; and
- Support for research and development.¹⁹⁸

Pursuant to Law No. 61/2020/QH14, investment incentives are only available to a limited range of industries, which include “{c}ultivation and processing of agricultural, forest, and fishery products,” “production of ... animal breeds,”¹⁹⁹ and investments made in “{i}ndustrial parks, export processing zones, hi-tech parks and economic zones.”²⁰⁰

a. Financial Contribution

Investment support grants provide a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because it constitutes a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

Because investment support grants are only available to a limited range of industries, including fishery products (*i.e.*, aquaculture), these benefits are *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Alternatively, because these grants are only available to companies located in industrial parks, export processing zones, hi-tech parks and economic zones, they are regionally specific under 19 U.S.C. § 1677(5A)(D)(iv).

¹⁹⁸ Law No. 61/2020/QH14 at Art. 18, at **Exhibit VII-36**.

¹⁹⁹ Art. 16(1)(e).

²⁰⁰ Art. 16(2)(b).

3. Insurance Premium Subsidies

Pursuant to Decision No. 315/QD-TTg, in 2011 the GOV established an agricultural insurance premium support program covering rice farming, livestock husbandry, and aquaculture, covering natural risks associated with typhoons, floods, drought, frost, saltwater intrusion, and tsunamis,²⁰¹ as well as losses due to diseases specific to shrimp.²⁰² The Ministry of Finance and the MARD are responsible for administering the program.²⁰³ Under the program, the GOV subsidizes insurance premiums for persons engaged in these industries, with 20 percent of premium costs covered for organizations or cooperatives, and individual household premiums receiving support in the amount of 60 – 100 percent of the total premiums, depending on income.²⁰⁴

While the program instituted through Decision No. 315/QD-TTg was initially designed as a pilot program scheduled to run through 2013,²⁰⁵ the program has continued to the present day. Most recently, in 2018, the GOV promulgated the Decree on Agricultural Insurance, No. 58/2018/ND-CP, which continued the implementation of the program. As with the earlier iteration of the program, 20 percent of insurance premiums are covered for organizations or cooperatives, while assistance for individual households can receive subsidies covering 20 – 90

²⁰¹ Food and Agriculture Organization of the United Nations, *Aquaculture Insurance in Viet Nam: Experiences from the Pilot Programme* (2016), at iv, at **Exhibit VII-51**.

²⁰² *Id.*

²⁰³ *Id.* at 6.

²⁰⁴ *Id.* at iv.

²⁰⁵ FFTC Agricultural Policy Platform, *Agricultural Insurance Policies in Vietnam*, July 25, 2014, at **Exhibit VII-52**.

of premium costs.²⁰⁶ Covered risks continue to include natural disasters and animal diseases, including those specific to aquatic animals.²⁰⁷

Commerce examined the original version of this program, instituted under Decree No. 351/2011/QQ-TDg, in the 2012 investigation frozen warmwater shrimp from Vietnam.²⁰⁸

a. Financial Contribution

Insurance premiums subsidized by the GOV provides a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

The GOV's provision of insurance premium subsidies is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i) because they are only available by law to certain industries, *i.e.*, producers of agricultural and aquaculture products.

²⁰⁶ Decree No. 58/2018/ND-CP at Art. 19, at **Exhibit VII-53**.

²⁰⁷ *Id.* at Art. 20.

²⁰⁸ Commerce Memorandum, "Analysis of the Petitioner's Second New Subsidy Allegations," May 3, 3013 {sic}, at **Exhibit VII-54**.

4. Grants for Researching, Developing, and Raising New Breeds

In order to improve research capacity and the production of agricultural, plant, and livestock varieties to support the modernization of the agricultural sector, adapt to climate change, and restructure agricultural production to improve competitiveness, increase value-added and promote sustainable development, in 2020 the GOV promulgated *Decision No. 703/QD-TTg, the Approval of the Program for Development of Research and Seed Production for Restructuring the Agricultural Industry in the Period of 2021-2030* (“Decision No. 703/QD-TTg”).²⁰⁹ As one of the “Main Missions” of this program, 1.2 billion VND is dedicated to “{r}esearch and breed selection,” with a mission to:

Select, create and develop new food crop varieties with high yield and quality, resistant to pests and unfavorable conditions; ... Select and create key livestock breeds with high productivity, quality, disease resistance, and breeds adapted to climate change ... Research, master and develop technology for selecting and breeding parent breeds and seed production techniques for some key disease-free **aquatic breeds**.²¹⁰

The GOV has budgeted funds for the support of this program through 2030, with funding allocated between the 2021 – 2025 and 2025 – 2030 periods.²¹¹

²⁰⁹ OECD 30. Viet Nam | Agricultural Policy Monitoring and Evaluation 2022: Reforming Agricultural Policies for Climate Change Mitigation, at **Exhibit VII-55**; *see also* Decision No. 703/QD-TTg, at **Exhibit VII-56**.

²¹⁰ Decision No. 703/QD-TTg (emphasis added), Art. 1.II.1.c., at **Exhibit VII-56**.

²¹¹ *Id.* at IV, “Total Investment.”

a. Financial Contribution

Research and development funds provided by the GOV constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they provide a direct transfer of funds to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

The GOV's provision of research and development funds under this program is *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i) because the funds are only available to certain industries, namely, producers of agricultural, livestock, and aquaculture products.

5. Aquatic Resource Protection and Development Fund

Pursuant to Article 16(1) of *Decree No. 26/2019/ND-CP, the Guidelines for Implementation of the Law on Fisheries* (“Decree No. 26/2019/ND-CP”), “the aquatic resource protection and development fund provides assistance for programs, projects and non-project activities in the field of aquatic resource conservation, protection, regeneration and development that are not specified in the budget plan nationwide.”²¹² Decree No. 26/2019/ND-CP implements Article 21 of the *Law on Fisheries, Law No. 18/2017/QH14* (“Law on Fisheries”), of November 21, 2017, which gives the MARD authority over centralized funds, and provincial People’s Committees control over provincially-controlled funds. Funds under the program are “for assisting programs, projects, or non-project activities related to protection and development of aquatic resources...”²¹³ “Aquatic resources,” according to the law, are “organisms that live in

²¹² Decree No. 26/2019/ND-CP, at **Exhibit VII-57**.

²¹³ Law on Fisheries Art. 21(3)(b), at **Exhibit VII-32**.

natural water and have economic, scientific, tourism, and entertainment value.”²¹⁴ At both levels of government, funding is used to provide education and examples of aquatic resource protection and development nationwide; the recovery of ecosystems, and the regeneration of aquatic resources;²¹⁵ and provide funding to “domestic organizations, individuals, households and communities that execute programs and projects...”²¹⁶

a. Financial Contribution

Pursuant to Article 21 of the Law on Fisheries, the Aquatic Protection and Development Fund is managed by the MARD at the national level, and by the People’s Committees at the provincial level. Therefore, any funding provided under this program constitutes a financial contribution by an authority under 19 U.S.C. § 1677(5)(D)(i) because it is a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

Pursuant to the Law on Fisheries and Decree No. 26/2019/ND-CP, funds under this program are limited those involved in the exploitation or conservation of “aquatic resources,” and are thus *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i).

²¹⁴ *Id.* at Art. 3(2).

²¹⁵ *Id.* at Art. 19(2).

²¹⁶ *Id.* at Art. 19(4).

6. Fishery Infrastructure Investment and Upgradation Project

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to invest in upgrading infrastructure and improving fishery logistics services to meet the requirements of the seafood supply chain. Investments include upgrades to fishing ports, storms shelters for vessels, loading and unloading machines, breeding infrastructure, infrastructure in concentrated industrial aquacultural zones as well as marine farming zones, investing in cold-storage facilities, and setting up fishery databases and statistics systems.²¹⁷ In addition, investments are targeted to fishing centers in Hai Phong, Da Nang, Khanh Hoa, Ba Ria, Vung Tau, Kien Giang, and Can Tho.²¹⁸

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

²¹⁷ 2030 – 2045 Fisheries Strategy at Appendix, at **Exhibit VII-5**.

²¹⁸ *Id.*

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B). This program is also regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) because it is limited to activities located in fishing centers in Hai Phong, Da Nang, Khanh Hoa, Ba Ria, Vung Tau, Kien Giang, and Can Tho.

7. National Program for Protection and Development of Aquatic Resources

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to conserve, protect, and revive aquatic resources and aquatic species that have economic or scientific value, as well as to improve the management of fishing activities to develop sustainable activities and preserve biological diversity in Vietnam.²¹⁹

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

²¹⁹ *Id.*

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

8. National Program for Effective and Sustainable Fishing Development

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is improve the sustainability of exploited seafood resources by means of reorganizing fishing activities, supporting the fishing trade, improving safety, investing in upgraded monitoring capabilities, increasing the value of fishing products, and improving coastal fishing communities.

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

9. National Program for Aquaculture Development

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to develop aquaculture in an efficient, sustainable, and responsible manner by means of investigating, surveying, evaluating and identifying marine areas with potential for marine farming activities, developing inland aquaculture fishery specialties, and developing hi-tech aquaculture for export purposes.²²⁰

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

²²⁰ *Id.*

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

10. Marine Aquaculture Development Project

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to develop marine or coastal aquaculture into a commodity-scale production sector for export processing and domestic consumption purposes by developing high-quality aquatic breed production capabilities, developing the manufacturing of industrial feed, and developing systems for preserving and transporting marine aquaculture products to minimize losses.²²¹

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

²²¹ *Id.*

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

11. Seafood Processing and Trading Development Project

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to diversify processed seafood products and improve the portion of added value to the product by means of researching, forecasting, developing, and expanding markets, promoting trade, building key brands, and investing in processing value-added products.²²²

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

²²² *Id.*

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

12. Project on Developing Science, Technology, and Digital Transformation in the Fisheries Sector

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to develop modern and efficient science and technology in order to proactively control a number of source technologies and applying and transferring advanced science and technology achievements.²²³ As part of the program, the MARD provides assistance with researching and developing indigenous aquatic species, shrimp broodstock, and breeds used for marine aquaculture, as well as researching and transferring advance aquacultural technologies including the manufacturing of industrial feed.²²⁴ The MARD also provides assistance with developing vaccines and disease resistance, and applying technology to better process value-added products and reduce post-harvest losses.²²⁵

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

13. Fishery Human Resource Training and Development Project

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to train and develop workers to meet industry requirements in various aquaculture subsectors, including seafood processing and trading and logistic services.²²⁶

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

²²⁶ *Id.*

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

14. Project on Development of Co-management of Aquatic Resource Protection

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to develop co-management of aquatic resources in accordance with the 2017 Fisheries Law and to improve eco-tourism.²²⁷

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

²²⁷ *Id.*

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

15. Fishery Environmental Protection Project

Pursuant to the 2030 – 2045 Fisheries Strategy, the objective of this program, which is run by the MARD and scheduled to run from 2021 through 2030, is to actively control and prevent pollution in fishery production activities by means of investigating and assessing the environmental protection in fisheries production activities, including aquaculture, seafood processing, and logistics services.²²⁸

a. Financial Contribution

Investment funds provided under this program constitute a financial contribution under 19 U.S.C. § 1677(5)(D)(i) because they constitute a direct transfer of funds from the GOV to the recipients.

b. Benefit

Under 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.504, the benefit under this program is equal to the amount of funds received.

²²⁸ *Id.*

c. Specificity

Funds are provided under this program pursuant to the 2030 – 2045 Fisheries Strategy, which is limited in scope to aquaculture products, including shrimp. The program is therefore *de jure* specific under 19 U.S.C. § 1677(5A)(D)(i). Moreover, because assistance under this program is designed to increase exports of aquaculture products, in particular to the United States, this program is deemed contingent as an export subsidy under 19 U.S.C. § 1677(5A)(B).

VIII. CONCLUSION

As described herein, producers and exporters of frozen warmwater shrimp in Vietnam are benefitting from substantial countervailable subsidies that are causing material injury to the domestic industry in the United States. Petitioner therefore requests that Commerce initiate a countervailing duty investigation of imports of frozen warmwater shrimp from Vietnam.

* * *

We appreciate Commerce’s attention to this matter. Please contact the undersigned with any questions regarding this submission.

Respectfully submitted,



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