

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

DATE: March 25, 2010

SUBJECT: Issues and Decision Memorandum for Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination.

I. Summary

On September 4, 2009, the Department published the Preliminary Determination for this countervailing duty investigation.¹ Subsequently, we received case briefs from Petitioners, the GOV, Chin Sheng, and Fotai on January 25, 2010. We received rebuttal briefs from Petitioners, the GOV, and Fotai on February 1, 2010. Below is a complete list of the issues raised in these briefs. We have analyzed parties' comments concerning these issues in the "Analysis of Comments" section below, which also contains our proposed positions on these issues. Also below are the "Analysis of Programs" and "Subsidies Valuation Information" sections describing the subsidy programs and the methodologies used to calculate the benefits from these programs. We recommend that you approve the positions we have described in this memorandum.

- Comment 1: Simultaneous Imposition of CVD and AD Duties on an NME**
- Comment 2: The Appropriate De Minimis Rate**
- Comment 3: Cutoff Date for Countervailing Duties**
- Comment 4: Preferential Lending for the Plastics Industry**
- Comment 5: Chin Sheng's Policy Lending Rate Should Be Recalculated Using the Data Collected at Verification**
- Comment 6: Fotai's Short-Term Loan Data Were Not Verified**
- Comment 7: The Proper Benchmark for Preferential Lending**
- Comment 8: The Provision of Land at LTAR**
- Comment 9: Proper Benchmark for the Provision of Land at LTAR**
- Comment 10: Duty Exemptions on Imports of Raw Materials Provided to Fotai**

¹ We are using various short cites and acronyms throughout this memorandum. A table of these short cites and acronyms is attached. Also attached is a table of authorities.

- Comment 11: Chin Sheng's Sales Denominator**
Comment 12: Income Tax Programs and Programs Not Used
Comment 13: Application of AFA to API

II. Background

After the publication of the Preliminary Determination, the Department issued various supplemental questionnaires to the GOV, API,² Chin Sheng, and Fotai. As detailed fully in the "Case History" section of the Federal Register notice issued concurrently with this Issues and Decision Memorandum, the parties submitted timely responses to all of the Department's questionnaires and supplemental questionnaires. On October 5, 2009, Petitioners submitted a timely request for a hearing pursuant to 19 CFR 351.310(c), which they subsequently withdrew on January 27, 2010.

The Department conducted verification of the questionnaire responses submitted by the GOV (including the central and local governments), Chin Sheng, and Fotai from November 2, 2009 to November 18, 2009. The Department issued verification reports on January 4, 2010. The Department issued a report regarding discussions held with third party experts concerning banking in Vietnam on January 11, 2010.

On February 12, 2010, the Department exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days.³ Based on this extension, the deadline for this final determination was changed from March 18, 2010 to March 25, 2010.

III. Applicability of the CVD Law to Vietnam

In our Preliminary Determination, we found the CVD law to be applicable to Vietnam. For the reasons stated in the Preliminary Determination and the Vietnam CVD Applicability Memorandum, we continue to find the CVD law applicable to Vietnam.⁴

None of the comments submitted by the parties, which are fully addressed below, lead us to conclude that the CVD law cannot be applied to Vietnam.

IV. Subsidies Valuation

A. Period of Investigation

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

² As discussed below, on October 21, 2009, the Department was informed by API that it was no longer participating in the investigation.

³ See Tolling Memorandum.

⁴ See Preliminary Determination, 74 FR at 45813, and Vietnam CVD Applicability Memorandum.

B. Date of Applicability of CVD Law to Vietnam

Consistent with the Preliminary Determination, we have determined that the date from which it is appropriate and administratively feasible to identify and measure subsidies in Vietnam for purposes of the CVD law is January 11, 2007, the date on which Vietnam became a member of the WTO. Thus, only subsidies provided on or after January 11, 2007, are included in the “Programs Determined to be Countervailable” section, below. More detail concerning this decision is provided in response to Comment 3, below.

C. Allocation Period

In the Preliminary Determination, consistent with 19 CFR 351.524(d)(2), we used the AUL of assets as the allocation period for non-recurring subsidies provided on or after January 11, 2007. The AUL applicable to the PRCBs industry is 11 years, according to the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System, as revised. No party in this proceeding has disputed this allocation period. Thus, we have continued to use an 11-year AUL in this final determination.

D. Loan Benchmark and Discount Rates

We are not calculating subsidy rates for any loans or non-recurring subsidies in this final determination. Consequently we have not relied on any loan benchmark rates or discount rates in our calculations. See “Analysis of Programs” and “Analysis of Comments” sections below.

E. Attribution of Subsidies – Sales Denominator

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considered the basis for each respondent company’s receipt of benefits under each program at issue. For export subsidies, the Department attributed the subsidies only to products exported by the respondent companies and used export sales as the denominator, pursuant to 19 CFR 351.525(b)(2). All other non-export related subsidies were attributed to the total sales of all products produced by Chin Sheng and Fotai, and we used total sales as the denominator, pursuant to 19 CFR 351.525(b)(3).

We received one comment on our calculation of Chin Sheng’s denominator, and, based on this comment, we have recalculated Chin Sheng’s total sales used for attribution purposes.⁵ In addition, based on information gathered at verification, we have removed from Fotai’s total sales and total export sales the sales value of merchandise it did not produce.⁶

V. Application of Facts Otherwise Available and AFA for API and Fotai

Section 776(a)(2) of the Act provides that the Department shall apply “facts otherwise available” if a party withholds information that has been requested, fails to provide information within the deadlines established, significantly impedes a proceeding, or provides information that cannot be

⁵ See Comment 11, below.

⁶ See Fotai Verification Report at 4.

verified. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record.

A. API

As noted above, on October 21, 2009, API informed the Department it would no longer participate in this investigation and withdrew its business-proprietary information from the record. Given API's complete withdrawal from this proceeding as a mandatory respondent, an action clearly within the scope of section 776(a)(2), the Department has based its CVD rate on facts otherwise available. Because API chose not to participate and thus did not cooperate to the best of its ability in this investigation, in selecting from among the facts available, an adverse inference is warranted (i.e., AFA).

In compliance with section 776(b) of the Act and 19 CFR 351.308(c), we are applying the policy developed in other CVD investigations to the programs under investigation,⁷ taking into account the fact that we have had no prior CVD investigations of Vietnam. Specifically, with regard to income tax reduction or exemption programs, the standard income tax for corporations in Vietnam was 28 percent during the POI, with no separate local income tax. To determine the program rate for the alleged income tax programs under which tax payers receive either a reduction of their income tax rate, or an exemption from income tax, we have applied an adverse inference that API paid no income taxes during the POI. Therefore, the highest possible countervailable subsidy rate for these programs combined is 28 percent. Thus, we are applying a countervailable subsidy rate of 28 percent on an overall basis for these programs (i.e., all income tax reduction and exemption programs combined provided a countervailable subsidy of 28 percent). This 28 percent AFA rate does not apply to other types of tax programs.

For programs other than those involving income tax exemptions and reductions, we applied the highest rate calculated for either of the other respondent companies for the identical program, if used. Absent a subsidy rate calculated for the identical program in this investigation, we applied the highest non-de minimis rate calculated for either of the other respondent companies for a similar program. Absent a subsidy rate calculated for a similar program, we applied the highest calculated subsidy rate for any program in this investigation that conceivably could have been used by API.⁸

The rates actually chosen as AFA for each allegation pursuant to this policy are detailed in a separate memorandum.⁹ We note that this policy was applied to each program under investigation, except the VAT Exemptions for Equipment for FIEs program, found to be not

⁷ See, e.g., KASR from the PRC IDM at "Use of Facts Otherwise Available and Adverse Facts Available" section.

⁸ Id.

⁹ See AFA Calculation Memorandum.

countervailable, the Export Bonus program found to be terminated, and the two programs found not applicable to producers of PRCBs: Preferential Lending to the Plastics Industry and Land Rent Exemption for Manufacturers of Plastic Products (both discussed in more detail below).

B. Fotai

During verification of Fotai's questionnaire responses, the Department was not able to verify the accuracy and completeness of Fotai's reported short-term loan information.¹⁰ Specifically, Fotai had first reported incorrect loan information in its August 17, 2009 supplemental questionnaire response, then again in its October 16, 2009 supplemental questionnaire response, then a third time in its "minor corrections" submitted to the Department at the outset of verification. When the Department discovered that the actual amounts in its books and records were different numbers than reported on these previous occasions, we concluded Fotai's inability to report consistent, accurate data rendered its reporting on this matter unreliable.

Given Fotai's inability to report verifiable short-term loan data, we have based our CVD rate for Fotai for the Preferential Lending for Exporters program on facts otherwise available, pursuant to section 776(a)(2) of the Act. Because this information was first requested in May 2009, nearly six months before verification, and because of the several opportunities available to Fotai to notice and correct the information, including providing "minor corrections" on the first day of verification which contained inaccurate short-term loan information, we conclude that Fotai did not cooperate to the best of its ability and that the application of AFA is warranted.

In compliance with section 776(b) of the Act, we are applying as AFA the highest non-de minimis rate calculated for a program in this investigation, 2.17 percent, the rate calculated for Fotai's duty exemptions for raw materials. This choice is consistent with the policy outlined above used in determining the total AFA rate for API. We have used this rate as AFA because there was no calculated rate available for an identical or similar program.

C. Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."¹¹ The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.¹² The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.¹³

¹⁰ See Fotai Verification Report at 16.

¹¹ See SAA at 870.

¹² See SAA at 870.

¹³ See SAA at 869-870.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit, and will not use information where circumstances indicate that the information is not appropriate as adverse facts available.¹⁴

In this investigation, no evidence has been presented or obtained that contradicts the relevance of the information relied upon. In fact, the rates applied are based on information provided by the GOV (with regard to income tax rates), and, in the case of API, the verified questionnaire responses of producers and exporters in the same industry as API, whose production, sales, exports, and subsidy information are contemporaneous with those of API. In the case of Fotai, the rate applied reflects its own experience as a subsidy recipient from the GOV. Therefore, in the instant case, the Department determines that the information used has been corroborated to the extent practicable.

VI. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Income Tax Preferences for Encouraged Industries¹⁵

Chin Sheng benefited from a corporate income tax rate reduction for the tax return filed during the POI. Chin Sheng also enjoyed an exemption at the same time, further reducing its effective rate. We determine that Chin Sheng received this reduction and exemption under a program for encouraged industries. Specifically, as the GOV explained at verification, Chin Sheng qualified for its tax preferences because of its investment in an encouraged industry, which at the time was defined by reference to Decree 51/1999/ND-CP.¹⁶ While the GOV claims this program has been supplanted by newer tax and investment regimes, Chin Sheng was allowed to keep its incentives under the old regimes.¹⁷ According to documentation reviewed at verification, the precise investment that qualified Chin Sheng for its tax preferences was “the new investment project (plastic doors and plastic bags).¹⁸

We determine that the tax reduction and exemption provided to Chin Sheng under this program are specific to a group of industries (*i.e.*, the industries encouraged under Decree 51/1999/ND-CP) under section 771(5A)(D)(i) of the Act. The income tax reduction and exemption are financial contributions in the form of revenue forgone by the government under section

¹⁴ See, e.g., Fresh Cut Flowers From Mexico, 61 FR at 6814.

¹⁵ While this precise program was not alleged in the petition or in the new subsidy allegations, section 775 of the Act 19 CFR 351.311(b) allows the Department to investigate a possible countervailable subsidy discovered during a proceeding. See also 19 CFR 351.311(b). We did, however, initiate an investigation of Income Tax Preferences for FIEs Operating in Encouraged Industries.

¹⁶ See GOV Verification Report at 20-21.

¹⁷ Id.

¹⁸ Id.

771(5)(D)(ii) of the Act, and provide a benefit to Chin Sheng pursuant to 19 CFR 351.509(a)(1) in the amount of tax savings. To calculate the amount of the benefit, we divided Chin Sheng's tax savings, based on the tax return filed during the POI, by its total sales. On this basis, we determine a countervailable subsidy rate of 0.44 percent ad valorem for Chin Sheng.

2. Income Tax Preferences for FIEs

We continue to find Fotai received countervailable income tax preferences under the Income Tax Preferences for FIEs program. Specifically, Fotai benefited from a reduction in the standard corporate income tax rate for the tax return filed during the POI because of its FIE status. At verification, we were told by the GOV that tax officials had disallowed a number of expenses related to Fotai's 2007 taxes, resulting in increased taxable income and an amendment to the return filed in 2008.¹⁹ During Fotai's verification, we reviewed the amendment to the return, recorded the increase in taxable income, and confirmed that this increase had also been subject to the reduced income tax rate. Therefore, for this final determination we have calculated a higher benefit for Fotai under this program.

Fotai's preferences are specific under section 771(5A)(D)(i) of the Act because they are limited as a matter of law to a group of enterprises, FIEs. The preferences are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to Fotai pursuant to 19 CFR 351.509(a)(1) in the amount of tax savings. To calculate the amount of the benefit, we divided Fotai's tax savings, based on the tax return filed during the POI and the amendments thereto, by its total sales. On this basis, we determine a countervailable subsidy rate of 0.21 percent ad valorem for Fotai.

3. Land Rent Reduction or Exemption for Exporters

In the Preliminary Determination, we countervailed one tract of land, a tract leased by Fotai directly from the provincial government (i.e., Plant 1). In finding Plant 1 countervailable, we noted provisions in the "Plastics Plan" (a document issued by the central planning agency) stating rent should be provided at preferential rates to plastics producers in key programs and "projects relocated out of cities."²⁰ We concluded these preferences were the type provided for in Decree No. 142/2005/ND-CP (the law governing how land rent is set on GOV-provided land), which explicitly provides for land rent reductions under several enumerated circumstances. However, for this final determination we are finding that PRCBs are not covered by the Plastics Plan.

While the GOV was able to demonstrate during verification that the rental rate charged for Plant 1 was consistent with the provincial land tariff schedule, a portion of Plant 1 was exempt during the POI from the rate charged. According to Fotai, that portion of its Plant 1 land on which the company's "administrative office is located or that remains empty" is entitled to an exemption until March 29, 2011.²¹ According to documents provided by Fotai, it was exempt for land

¹⁹ See GOV Verification Report at 19.

²⁰ See Preliminary Determination, 74 FR at 45817; see, also, Plastics Plan at 18.

²¹ Fotai August 7, 2009 Submission at 20.

rental because “the project is in the list of special encouragement” and the value of its export products achieved the rate of 90 percent.²²

In May 2007, the contract with Bing Doung Province for Plant 1 was renegotiated to extend the terms of the lease by an additional 30 years. This constitutes, in effect, a new contract which was approved after the cutoff date and therefore, the terms of this contract, as well as any actions by the government involving this contract, can be analyzed as potential countervailable subsidies. The exemption in question was in effect both before and after the amendment of the related contract.

We determine that the portion of land use rights provided to Fotai exempt from rental fees is specific as an export subsidy, pursuant to section 771(5A)(A) and (B) of the Act. We also determine there is a financial contribution under section 771(5)(D)(iii) of the Act because the rented land use rights constitute the provision of a good or service. We determine that a benefit exists under 19 CFR 351.511(a) to the extent that these rights were provided for LTAR. In order to calculate the benefit, we first multiplied the benchmark land rental rate by the area of the exempted portion of Plant 1.²³ We then divided this amount by Fotai’s export sales to calculate a countervailable subsidy rate of 0.71 percent ad valorem for Fotai.

4. Import Duty Exemptions for Imported Raw Materials for Exported Goods

In the Preliminary Determination, we countervailed certain materials imported by API that we determined were “not consumed in the production of the exported product,” as provided for in 19 CFR 351.519(a)(1)(ii).²⁴ We also stated our intent “to gather more information regarding how the GOV establishes and verifies which goods are consumed in the production of exported products and how it reconciles imports and exports under these exemptions.”²⁵

Although API subsequently dropped out of the investigation, we asked both Chin Sheng and Fotai to report imports of all raw materials and other materials (including accessories and spare parts) used in the production of the exported product on which the company received import duty exemptions. Chin Sheng reported that it had not received any import duty exemptions on any of its raw materials or other materials; Fotai reported that it had received such exemptions on both raw materials and other materials.²⁶

At verification, it became clear 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.²⁷ For example, in discussion with provincial customs officials in Binh Duong province, where Fotai is located, officials stated:

²² Fotai August 10, 2009 Submission at Exhibit 9, April 1, 2005 “Decision of the Director of Tax Bureau.”

²³ The calculation of the benchmark rental rate is discussed in the Land Benchmark Memorandum from the Preliminary Determination. As discussed below under Comment 9, we have made no adjustments to the benchmark for this final determination.

²⁴ See Preliminary Determination, 74 FR at 45818-19.

²⁵ Id., 74 FR. at 45819.

²⁶ Duty exemptions on imports of spare parts and accessories are addressed separately below.

²⁷ See 19 CFR 351.519(a)(4); see, also, GOV Verification Report at 21-25.

“. . .that they regularly check exports against imports and require regular reconciliation, but that they do not check on whether the yield factor accurately reflected actual consumption to produce one unit of the finished product. In response to the team’s questions, customs officials stated that Fotai’s production chart had never been checked because Fotai had been in good compliance and all imported materials had been exported based on the production chart and yield factors Fotai had submitted.

* * *

Officials did indicate that the customs office may check a company’s production chart against other companies’ production charts for the same merchandise and may investigate if they are very different. They stated that the other companies had also self-reported their yield factors and did not know if a check had been done of those companies; but such a check would have been done if a suspicion had been raised about the accuracy of the yield factors.”²⁸

We determine that the duty exemptions on all raw materials imported under this program during the POI provide countervailable benefits. In order to find import duty exemptions on raw materials noncountervailable, the government in question must have a system in place to confirm which inputs are consumed in the production of the exported product, including a normal allowance for waste.²⁹ The GOV does not have such a system and companies are, in fact, allowed to choose their own yield rates within a range established by the GOV.³⁰ Thus, the duty exemptions on raw materials for exports are fully countervailable, consistent with 19 CFR 351.519.

Fotai received benefits under this program during the POI. Chin Sheng did not receive any duty exemptions for its imports of raw materials during the POI. Having withdrawn from this investigation, API is subject to an AFA rate for this program. We determine that benefits under this program constitute an export subsidy pursuant to section 771(5A)(B) of the Act as only exporters are eligible. In addition, we determine a financial contribution exists pursuant to section 771(5)(D)(ii) of the Act as the exempted duties represent revenue forgone by the GOV. To calculate the subsidy rate for Fotai, we first determined the total value of duties exempted during the POI based on information reported by Fotai, and verified by the Department, concerning the value of the raw materials imported and the normal tariff applied to each type of raw material. We multiplied the value of each raw material imported during the POI by the applicable tariff rate to determine the aggregate benefit. We then divided the aggregate benefit by the value of Fotai’s export sales to derive a countervailable subsidy rate of 2.17 percent ad valorem for Fotai.

²⁸ See GOV Verification Report at 24.

²⁹ See, e.g., Hot-Rolled Steel from Thailand IDM at “Programs Determined to Confer Subsidies” section, discussing Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36(1); see, also, 19 CFR 351.519(a)(4).

³⁰ See GOV Verification Report at 25.

5. Exemption of Import Duties on Imports of Spare Parts and Accessories for Industrial Zone Enterprises

We initiated on two programs involving duty exemptions for fixed assets or for the creation of fixed assets in the Preliminary Determination. We determined the two programs were not used because none of the respondents had imports under these programs during the POI, or after the cutoff date in amounts large enough to be allocated to the POI pursuant to the test for allocation of nonrecurring benefits articulated in 19 CFR 351.524(b)(2). However, additional questionnaire responses indicated Fotai received duty exemptions during the POI on imported spare parts and accessories. Fotai qualified for such exemptions because one of its plants is located in an industrial zone.

Exemptions from import duties are normally treated as a recurring subsidy (the one exception involves duty exemptions on imports of plant and equipment).³¹ In addition, spare parts and accessories are imported on a regular basis and, presumably, Fotai can expect exemptions on such imports on an ongoing basis from year to year. We determine that benefits under this program are specific pursuant to section 771(5A)(D)(iv) of the Act because the exemptions are limited to enterprises located within a designated geographical region (i.e., industrial zones) within the jurisdiction of the authority providing the subsidy. In addition, we determine a financial contribution exists pursuant to section 771(5)(D)(ii) of the Act as the exempted duties represent revenue forgone by the GOV. To calculate the subsidy rate to Fotai, we first determined the total value of duties exempted during the POI based on information reported by Fotai and the GOV, and verified by the Department, concerning the value of the spare parts and accessories imported during the POI and the normal tariff applied to each type of spare part or accessory. We multiplied the value of each type of imported spare part or accessory by the applicable tariff rate to determine the aggregate benefit. We then divided the aggregate benefit by the value of Fotai's total sales to derive a countervailable subsidy rate of 0.02 percent ad valorem for Fotai.

B. Program Determined To Be Not Countervailable

VAT Exemptions for Equipment for FIEs

We continue to determine that the VAT Exemptions for Equipment for FIEs program is not countervailable for the reasons given in detail in the Preliminary Determination.³² Information gathered at verification supports our finding in the Preliminary Determination.³³

C. Program Determined To Be Terminated

Export Bonus Program

We continue to determine that the Export Bonus program has been terminated pursuant to the information provided by the GOV discussed in the Preliminary Determination.³⁴ Information

³¹ See 19 CFR 351.524(c)(1).

³² See Preliminary Determination, 74 FR at 45819.

³³ See GOV Verification Report at 22-23.

gathered at verification confirmed that the Export Bonus program has been terminated and that there are no residual benefits. Although the GOV indicated at verification that the Export Bonus program was replaced by the Export Promotion program as part of the GOV's efforts to comply with its WTO obligations, the Export Promotion program is also under investigation.³⁵ Therefore, since the replacement program will continue to be investigated if a CVD order is issued, we find that it is appropriate to determine the Export Bonus program has been terminated pursuant to 19 CFR 351.526(d).

D. Programs Determined To Have Been Not Used During the Period of Investigation

Except as noted below, and except for API, we determine that producers and exporters of PRCBs did not apply for or receive benefits under the following programs during the POI.

1. Government Provision of Water for LTAR in Industrial Zones
2. Preferential Lending for Exporters

We have determined that this program was not used by Chin Sheng. As AFA, we have determined that it was used by API and Fotai.

3. Preferential Lending for the Plastics Industry

As discussed in detail below in our response to Comment 4, we find that the program for Preferential Lending for the Plastics Industry is not applicable to the PRCB industry. Thus, unlike the other programs determined to be not used by the participating respondents, Chin Sheng and Fotai, this program will not be part of the AFA rate determined for API. See Comment 4 below.

4. Export Promotion Program

At verification, the GOV demonstrated that none of the three respondents had participated in a trade show funded under this program, the only project funded under this program during the POI for the plastics industry. Nevertheless, we are including this program in our AFA rate for API. Because we were not able to complete our investigation of API, we have no way of confirming that it did not receive funding under this program through other routes; e.g., through a cross-owned affiliate.

5. New Product Development Program
6. Income Tax Preferences for Exporters
7. Income Tax Preferences for FIEs Operating in Encouraged Industries
8. Import Tax Exemptions for FIEs Using Imported Goods to Create Fixed Assets

³⁴ See Preliminary Determination, 74 FR at 45819.

³⁵ See GOV Verification Report at 25 (the verification report refers to the Export Promotion program as the Trade Promotion program).

9. Exemption of Import Duties on Importation of Fixed Assets for Industrial Zone Enterprises
10. Import Tax Exemptions for FIEs Importing Raw Materials
11. Land Rent Exemption for Manufacturers of Plastic Products

As noted below in our response to Comment 8, we are determining that certain land provided to Fotai by Binh Duong province is countervailable. However, unlike in the Preliminary Determination, we have not found that such countervailable land was provided pursuant to Fotai's production of plastics. The allegation for this program was premised on references to land rate preferences in the Plastics Plan.³⁶ As we have determined that the Plastics Plan does not cover PRCBs, we find this program not applicable, and, thus, not used by the PRCBs industry. Because this program is not applicable to producers of the subject merchandise, we are not including this program as part of the AFA rate determined for API.

12. Provision of Land Use Rights in Industrial Zones for LTAR
13. Land Rent Reduction or Exemption for FIEs
14. Exemption of Import Duties for Imported Raw Materials for Industrial Zone Enterprises
15. Accelerated Depreciation for Companies in Encouraged Industries and Industrial Zones
16. Losses Carried Forward for Companies in Encouraged Industries and Industrial Zones

VII. Analysis of Comments

Comment 1: Simultaneous Imposition of CVD and AD Duties on an NME

The GOV argues that, in accordance with the CIT's decision in GPX Tire, the Department should terminate this proceeding until its methodology is modified to avoid double counting when simultaneously applying CVD and AD remedies calculated pursuant to the Department's NME methodology. The GOV argues that the court in GPX Tire found that, as the CVD and NME AD methodologies are both oriented towards offsetting subsidies that contribute to an unfairly low price in the U.S. market, applying both measures against a company risks subjecting it to double remedies. The GOV also claims the simultaneous application of these remedies contradicts Congressional intent underlying the CVD and AD laws.

Respondent Fotai incorporates by reference the GOV's arguments. Fotai also argues that, if the Department persists with this investigation, it should modify its methodology to avoid double counting. The Department's current NME methodology calculates normal value based on unsubsidized prices in a surrogate country, notes Fotai, thereby creating a risk that CVD remedies will result in double counting. As such, argues Fotai, the Department should take steps to correct the NME methodology to avoid such double counting.

Petitioners argue that section 701(a) of the Act requires the Department to apply the CVD law to any country in which the Department determines that the government provides a countervailable

³⁶ Petitioners' June 25, 2009 New Subsidy Allegations at 2.

subsidy, and that the CVD and AD laws address different trade practices. In addition, they claim that GPX Tire does not prohibit the Department from applying the CVD law to Vietnam and that, in any case, the decision is not yet final.

Regarding Fotai's claims that an adjustment is warranted to avoid double counting, Petitioners argue Fotai has provided no evidence of double counting or any indication of what the alleged double counting might be. Moreover, they continue, Fotai's AD rate will be based on facts available, given its withdrawal from the AD investigation, and thus there "is not even the theoretical possibility of a double remedy with respect to Fotai."

Department's Position:

We continue to determine that it is appropriate to apply the CVD law and the AD law using our NME methodology, and that no adjustment for alleged double counting is necessary. The Department has addressed the simultaneous imposition of countervailing duties and antidumping duties using the NME methodology in nearly every final determination reached in a PRC CVD investigation.³⁷ Regarding the GOV's claim that the simultaneous application of these remedies contradicts Congressional intent, we have consistently explained our determination, saying:

The Department's general grant of authority to conduct CVD investigations is sufficient. Given this existing authority, no further statutory authorization is necessary. Furthermore, since the holding in Georgetown Steel v. United States, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions.³⁸

We have then cited several instances of Congressional references to the application of the CVD law to the PRC:

For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." The PRC was designated as an NME as of the passage of this bill, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general, and to the PRC in particular. In that same trade law, Congress explained that "{o}n November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement

³⁷ See, e.g., Citric Acid from the PRC IDM at Comment 2, Lawn Groomers from the PRC IDM at Comments 1 and 2, and KASR from the PRC IDM at Comment 2.

³⁸ See Lawn Groomers from the PRC IDM at Comment 1 (citation omitted).

concerning the terms of the People’s Republic of China’s eventual accession to the World Trade Organization.”

Congress then expressed its intent that the “United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People’s Republic of China to the WTO.” In these statutory provisions, Congress is referring, in part, to the PRC’s commitment to be bound by the SCM Agreement as well as to the specific concessions the PRC agreed to in its Accession Protocol.³⁹

The clear implication of these Congressional statements is that the CVD law can be applicable to NMEs. We note that, regarding both the PRC and Vietnam, there was no expectation at the time of these Congressional statements that the Department was likely in the near future to end its use of the NME antidumping methodology. Thus, these statements contemplate that the Department’s application of the CVD law to NMEs would take place simultaneously with the continued application of the Department’s NME antidumping methodology. We also note that Vietnam’s WTO accession protocol contained commitments regarding the SCM Agreement similar to the commitments made by the PRC.⁴⁰

We have been clear that respondents in the PRC investigations have never cited any “statutory authority that would allow us to terminate {a} CVD investigation to avoid the alleged double counting or to make an adjustment to the CVD calculations to prevent an incidence of alleged double counting.”⁴¹ Likewise, the GOV’s briefs do not contain references to any such authority.

Finally, we note, as we did in the recent final determination in OCTG from the PRC, that the CIT decision in GPX Tire, relied upon heavily by the GOV, has not been finalized: “This decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.”⁴²

While parties’ comments addressed the appropriateness of applying the CVD law along with the AD NME methodology in general, we note that the decision regarding whether to apply the CVD law to an NME is made on a country-by-country basis and that, as explained in detail in the Vietnam CVD Applicability Memorandum, we find that the economy of Vietnam has progressed sufficiently to permit the identification and measurement of subsidies. Noting that “economic reforms are incomplete and structural and institutional legacy problems remain,” we concluded that “Vietnam is no longer a classic Soviet-style, centrally-planned economy as described in Georgetown Steel.”⁴³

³⁹ Id. (citations omitted, emphasis in original).

⁴⁰ See paragraph 255 of the WTO Working Party Report.

⁴¹ See, e.g., OCTG from the PRC IDM at Comment 2, Citric Acid from the PRC IDM at Comment 2, Lawn Groomers from the PRC IDM at Comment 2, and KASR from the PRC IDM at Comment 2.

⁴² See OCTG from the PRC IDM at Comment 2.

⁴³ Vietnam CVD Applicability Memorandum at 11.

Comment 2: The Appropriate De Minimis Rate

The GOV argues that the two percent de minimis standard of Article 27 of the Agreement on Subsidies and Countervailing Measures applies to Vietnam, and that Chin Sheng's rate should have been recognized as de minimis in the Preliminary Determination. As Vietnam is a WTO member, the Department has an obligation to make a WTO-consistent final determination in this case.

Likewise, Chin Sheng argues that the Department's failure to apply a two percent de minimis standard to the respondent companies in the Preliminary Determination is contrary to U.S. law and WTO obligations, and should therefore be reversed. Had the Department lawfully upheld its obligations, Chin Sheng continues, it would have received a de minimis rate at the Preliminary Determination.

In response, Petitioners argue Vietnam is subject to the generally applicable one percent de minimis rate for countervailing duties as it has not been designated a developing country by the United States Trade Representative.

Department's Position:

We have calculated a CVD subsidy rate for one respondent, Chin Sheng, that is below one percent. As explained in the Federal Register notice issued concurrently with this memorandum, if the ITC reaches an affirmative determination, we will exclude PRCBs produced and exported by Chin Sheng from the CVD order because of its de minimis rate. For the remaining two company respondents, API and Fotai, we have determined CVD subsidy rates above two percent. Therefore the issue of whether it is appropriate to consider rates below two percent, but above one percent, de minimis, is moot.

Comment 3: Cutoff Date for Countervailing Duties

Petitioners argue that the use of a cutoff date provides Vietnam with special treatment not afforded to other U.S. trading partners, with the possible exception of the PRC. They note that the use of a cutoff date has been questioned by the CIT in the Department's final CVD determination in GPX Tire, where the CIT held that the Department must "refrain from using a uniform cut-off date for identifying and measuring subsidies in {the PRC} while it remains a designated NME."⁴⁴

Petitioners also argue that the cutoff date is inconsistent with the Act, the Department's regulations and prior practice, and the United States' WTO obligations. Section 701 of the Act, they argue, requires the Department to determine and countervail illegal subsidies without exception; the Act nowhere provides a way for the Department to countervail only subsidies dating from a country's accession to the WTO. A cutoff date also contradicts the Department's regulations and prior practice, Petitioners continue, which require non-recurring subsidies to be countervailed over the entire AUL of the assets of the industry under investigation.

⁴⁴ GPX Tire, 645 F. Supp. 2d at 1251.

The SCM Agreement provides that “subsidies granted prior to the date of entry into force of the WTO Agreement . . . shall be included in the overall rate of subsidization,”⁴⁵ Thus, Petitioners conclude: “{n}o WTO agreement or provision either requires or supports the application of a cut-off date based on the effective date for application of WTO disciplines.” Moreover, they continue, the use of a cutoff date violates the principles of most-favored-nation treatment, given that such cutoff dates are not applied in cases involving other WTO members. In joining the WTO, Petitioners add, Vietnam was obligated to notify the WTO of all subsidies that fall within Article 1 of the SCM Agreement, and its accession agreement otherwise makes clear that it shall be subject to both the SCM Agreement and the AD Agreement. Therefore, the Department’s use of a cutoff date diverges from Vietnam’s negotiated accession agreement.

Finally, Petitioners argue that the Department recognized in the Vietnam CVD Applicability Memorandum that Vietnam was gradually moving away from a “Soviet-style” economy even before its accession to the WTO. Thus, Vietnam has had measurable subsidies from before its accession to the WTO that should not be ignored by the Department.

The GOV responds by arguing the Department should select January 1, 2009, because 2009 is the year in which the Department determined countervailable subsidies could be identified and measured in Vietnam. This, the GOV argues, would be consistent with Sulfanilic Acid from Hungary. In the alternative, the Department should continue applying the date of Vietnam’s WTO accession, consistent with the Preliminary Determination and PRC investigations.

Department’s Position:

We continue to apply a cutoff date of January 11, 2007 in countervailing subsidies in this investigation. As noted above in our discussion of the “double remedies” issue in Comment 1 above, the GPX litigation has not been finalized. Therefore, the CIT’s decision regarding our use of a cutoff date in PRC CVD investigations is not binding on this proceeding. Petitioners’ remaining arguments against the use of a cutoff date have been addressed and rejected by the Department on several prior occasions in the course of our PRC CVD investigations in which we have always concluded that the use of a cutoff date is consistent with the Act and our regulations.

In the recent OCTG final determination, for example, we stated:

Petitioners contend that section 702 of the Act directs the Department to determine and countervail illegal subsidies without exception, and further that the statute does not permit a fixed date from which the Department will find countervailable subsidies. These arguments ignore that the imposition of CVD law requires the Department to be able to identify and to measure subsidies. The Department addressed the virtually identical concerns in Wire Rod from Czechoslovakia. Specifically, we examined whether any political entity is exempted per se from the countervailing duty law and found that none were, but then went on to address the additional question of whether the law could be applied to non-market economy countries like Czechoslovakia. We concluded that state intervention in that economy, such as government control of prices, did not allow us to identify specific NME government actions as bounties or grants. The Department’s

⁴⁵ SCM Agreement at Annex IV, paragraph 7.

analytical approach in *Wire Rod from Czechoslovakia* was upheld by the {Federal Circuit} in *Georgetown Steel*. The Court found that the Department had the discretion not to apply the CVD law where subsidies could not meaningfully be identified or measured. In the instant investigation, our analysis has led us to conclude that the economic changes that occurred leading up to and at the time of WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers.⁴⁶

Petitioners also argue that the reforms cited by the Department in the Preliminary Determination in determining that the CVD law could be applied to Vietnam, such as the increased role of foreign investment and domestically-owned private companies, occurred well before the 2007 cutoff date. In our PRC CVD cases we discussed similar criticism. In Lawn Groomers from the PRC, for example, we noted that while some reforms had taken place, or at least been initiated, before the PRC's WTO accession, other significant reforms had not taken place until after. We then concluded:

These examples only serve to demonstrate that economic reform is a process that occurs over time. This process can also be uneven: reforms may take hold in some sectors of the economy, or areas of the country, before others The cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the {PRC cutoff date}, subsidies in the PRC could be identified and measured.⁴⁷

Likewise, in this investigation, we have found some reforms remain incomplete or uninitiated even after WTO accession. For example, we have found that Vietnam's "SOEs remain subject to government control and influence" and land reform "remains incomplete."⁴⁸

We also disagree with the GOV that we should select January 1, 2009, as the cutoff date. The GOV relies solely on Sulfanilic Acid from Hungary in support of this argument, which determined subsidies could be identified and measured in Hungary on the same day Hungary's market economy status became effective. As the Department has explained previously, however, that determination was made before we chose to revisit our original decision not to apply the CVD law to NMEs.⁴⁹

Thus, we continue to find that Vietnam's WTO accession date is the appropriate date from which we can identify and measure subsidies in Vietnam.

Comment 4: Preferential Lending for the Plastics Industry

The GOV argues that the Preliminary Determination concluding that SOCBs provide preferential loans to PRCB producers was based largely on assumptions contradicted by facts. These false assumptions included the following: 1) the existence of a sectoral plan for the plastics industry (i.e., the "Plastics Plan") was self-executing; 2) plastics are a promoted industry covered by

⁴⁶ OCTG from the PRC IDM at Comment 2 (citations omitted).

⁴⁷ Lawn Groomers from the PRC IDM at Comment 3.

⁴⁸ See Vietnam CVD Applicability Memorandum at 7 and 9.

⁴⁹ See OCTG from the PRC IDM at Comment 3.

national and provincial plans; and, 3) SOCBs are involved in policy lending and any loans by them to respondents constitute policy lending.

The GOV argues that the Plastics Plan is not intended as a mandate to any government entity, but rather as a framework for development. By endorsing certain activities in the Plastics Plan, the GOV hopes to attract support from certain government agencies and investment from the private sector.

Similarly, national five-year plans are not self-executing but act as a framework for institutional development, for providing adequate laws to support development, and for encouraging investment. Furthermore, according to the GOV, nothing in the five-year plan or its appendices suggests the involvement of SOCBs in the implementation of any part of the five year plan. Instead, by law, policy lending is limited to the VDB, and there is no mention in such law of any role for SOCBs. Given that producers of PRCBs have not received any loans from the VDB, it is impossible to conclude that these producers have received preferential financing from the GOV or any entity of the GOV, including SOCBs. Finally, the GOV claims loan documents provided during the course of the investigation do not provide any support for the notion that the respondent producers received a preferential interest rate.

Respondent Chin Sheng argues that SOCBs in Vietnam are not “government authorities” as defined by the statute, and that the record lacks evidence of any policy lending program specific to the PRBC industry. Accordingly, Chin Sheng adopts by reference the GOV’s arguments.

Petitioners respond by concurring with the Preliminary Determination. According to Petitioners, the GOV’s argument that its industrial planning documents have no effect because they have not been implemented defies reality and should be rejected. To the contrary, they continue, the GOV’s industrial plans are not the meaningless pronouncements the GOV has claimed for purposes of this proceeding. There is ample evidence on the record, Petitioners argue, that industrial plans target the plastics industry and exporters, and that banks are compelled to lend pursuant to these policies.

Department’s Position:

We find that the 2004 Plastics Plan does not cover the PRCBs industry, and, as such, the Plastics Plan does not authorize lending to the PRCB industry. In the Preliminary Determination, we determined that both Chin Sheng and Fotai had received preferential lending from SOCBs. We based our decision on references in the central five-year plan and the Plastics Plan indicating PRCBs were part of recognized industries targeted for development (*i.e.*, “key” industries), and documents indicating the State Bank of Vietnam was directing commercial banks to lend on preferential terms to such targeted industries. Based on our analysis of all the information on the record, including the results of verification, we now determine that the evidence does not support continuing to find that PRCBs are part of the industries addressed in such planning documents.

The central objective of the Plastics Plan, which is the primary document at issue, appears to be to encourage the production of high-tech plastic products for domestic consumption and export demand. The objective of the Plastics Plan is put forward clearly in Article 1, which states: “To

use utmost home-made raw materials, use new materials technology, develop the production of products of high quality, diversified types and models” in order to achieve national goals such as increased tax revenue, export competitiveness, etc.⁵⁰ This emphasis on high technology is discernable through other provisions of the plan, such as references in the first two “development orientations” regarding the application of “modern technologies” and “advanced and modern equipment of the world.”⁵¹ It also identifies as a “major target” deserving “special attention” “the training of new jobs in service of factories producing hi-tech products.”⁵² The Plastics Plan also includes references to increased research and development and the need to “build laboratories and research centers in order to conduct experiments in association with the application of sciences and technologies”⁵³

Information from verification reinforces the conclusion that the Plastics Plan is targeted at high-tech products that do not include PRCBs. In discussing the local HCMC plan at verification, we learned that that plan actually discourages the plastics industry from locating within the city proper (where Chin Sheng is located). The local plan states that several low-growth industries, including plastics, should not be encouraged because these industries are labor intensive and cause pollution.⁵⁴ Local officials noted several types of plastic producers that were exceptions to the rule, such as “plastics and plastic composites for oil refinery and petrochemicals” and other “hi- tech” plastics such as plastics used for the medical industry and “high-strength plastics that could be used for car parts.”⁵⁵ Thus, planning at the local level corroborates the high-tech emphasis of the Plastics Plan at the central level.

Although Petitioners are correct that the Plastics Plan contains references to export promotion, whatever action such language contemplates, it does not appear to be directed at producers or exporters of PRCBs. Thus, because we find that PRCBs are not covered by the GOV’s planning for the plastics industry, we determine that preferential lending under the Plastics Plan is not applicable, and thus not used by producers/exporters of PRCBs. We note that because we are finding the program not applicable to PRCBs, we are not including this program in our AFA calculation for API, discussed above.⁵⁶

As discussed in the “Analysis of Programs” section above, we also initiated on a separate program of Preferential Lending for Exporters. In the Preliminary Determination, the Department determined that this program was not used based on the companies’ questionnaire responses. However, as discussed above, API dropped out of the investigation and therefore, we are applying an AFA rate for this program to API. In addition, as discussed above, we were unable to verify the completeness and accuracy of the short-term loan information submitted by Fotai and, therefore, we are finding this program used by Fotai and assigning it an AFA rate. We saw no evidence in the questionnaire responses or at verification indicating Chin Sheng’s loans were export contingent.

⁵⁰ Plastics Plan at 14-15.

⁵¹ Id. at 15.

⁵² Id. at 18.

⁵³ Id. at 15.

⁵⁴ See GOV Verification Report at 7.

⁵⁵ Id.

⁵⁶ See AFA Calculation Memorandum.

Comment 5: Chin Sheng’s Policy Lending Rate Should Be Recalculated Using the Data Collected at Verification

Both Petitioners and Chin Sheng note that corrections were made to Chin Sheng’s reported loan information during the course of verification. Both parties argue this corrected information should be used as the basis for calculating Chin Sheng’s benefits under a countervailed preferential lending program.

Department’s Position:

Given that the Department has determined that any lending under the Plastics Plan is not applicable to PRCBs and that Chin Sheng did not receive any export-contingent loans, this issue no longer needs to be addressed.

Comment 6: Fotai’s Short-Term Loan Data Were Not Verified

Petitioners argue that Fotai’s inability to demonstrate the accuracy of its reported short-term loan principle and interest figures at verification warrants the application of AFA on “this issue.”

Fotai argues that its inability to demonstrate the accuracy of these figures was not the result of a lack of cooperation on its part, and that, therefore, adverse inferences are not warranted in the use of facts available.

Department’s Position:

As discussed above in response to Comment 4, the Department has found the Preferential Lending for the Plastics Industry program not to be applicable to producers and exporters of PRCB, including Fotai. However, as noted above in the “Application of Facts Otherwise Available and AFA for API and Fotai” section, we are applying an AFA rate to Fotai for the Preferential Lending To Exporters program because of its inability to demonstrate the accuracy and completeness of its reported short-term loan information during verification.

Comment 7: Proper Benchmark for Preferential Lending⁵⁷

The GOV argues that the Department has no authority to use an external interest rate benchmark, given our regulations’ references to the use of loans respondents could actually “obtain on the market” and “national” average interest rates as benchmarks. In addition, the GOV argues that the Department has not established a set of objective criteria to apply in determining whether or not a domestic interest rate can be used as a benchmark for determining the existence and valuation of subsidies. Given what it perceives as a lack of objective criteria in the Department’s analysis, the GOV provides its own framework in order “to comment meaningfully” on the issue.

⁵⁷ Parties provided extensive comments on whether an external benchmark to measure the benefits from a countervailable preferential lending program is warranted. As noted above, however, the Department is not calculating any rates for preferential lending in this investigation, but instead is only assigning two AFA rates for the Preferential Lending to Exporters program. Thus the lending benchmark issue has become moot, and what follows is an abbreviated overview of parties comments.

It then comments on elements in the Department's Banking Sector Analysis Memorandum, and discusses its role in the Vietnamese banking sector vis-à-vis the rest of the world. Chin Sheng adopts and incorporates by reference the arguments on this issue made by the GOV.

Petitioners respond by arguing that loans provided by Vietnamese banks necessarily reflect the distortion of the GOV's industrial policies and that, therefore, such loans cannot satisfy the Act's requirement that the Department use a "market rate" as a benchmark. The use of an internal benchmark would result in a circular comparison of the policy loans at issue with themselves. While the Vietnamese financial sector may face some of the same challenges as other countries, Petitioners continue, the GOV's ownership and ability to control the country's banking sets it apart. The GOV's discussion of banking law and reform in Vietnam confuses aspirations with reality.

Department's Position:

Given that the Department is not calculating any rates for preferential lending and is only assigning two AFA rates for the Preferential Lending to Exporters program, this issue is moot.

Comment 8: The Provision of Land at LTAR

The GOV argues that the provision of land is not recognized as a financial contribution under the Act, and that the Department cannot make the requisite finding of specificity in this instance. The GOV argues that the provision of land use rights generally does not satisfy the Act's requirement of a financial contribution. The list of four types of financial contributions in section 771(5)(D) of the Act is exclusive, as it uses the word "means" instead of "includes;" *i.e.*, "The term 'financial contribution' means . . ." (emphasis added). The provision of land does not fall within any of these types of contributions, including the provision of goods or services, the GOV argues. Relying on Black's Law Dictionary and the Uniform Commercial Code, the GOV claims land is not a good or service under the law. A plain reading of the Act, the GOV concludes, does not allow for a finding of a "financial contribution," and the Department's determinations in other CVD investigations has required a tortured explanation of the common and legal meaning of a "good." The Department should therefore adhere to the language of the Act and terminate the investigation of this alleged program.

The GOV further argues that the record contains no evidence of any policy, rule, law, or directive that results in a reduced land use price or rent exemption for the mandatory respondents. The Department's focus in the Preliminary Determination on Article 2.2 of the Plastics Plan was misguided, as the recommended incentives have never been implemented. Verification conducted in Binh Duong province and HCMC confirmed that no such measures have been enacted to benefit the plastic industry, the GOV claims. The Preliminary Determination's discussion of the Plastics Plan represented a fundamental misunderstanding of the purpose and impact of development plans in Vietnam. The record contains absolutely no evidence that the plans produced at the central or provincial level are self-executing, nor is there evidence that Article 2.2 has ever been implemented by any ministry, or that a plastic bag producer has received preferential terms because of its provisions.

The GOV argues in the affirmative that the Department correctly distinguished between land use rights sold by the government according to the land price framework and the active secondary market that does not adhere to the land price framework or the related provincial land tariff schedules. The GOV claims evidence on the record supports the conclusion that the terms of a sublease between an IDC and the sub-lessee are market-based, and are in no way restricted by the central government's land price framework or the land tariff schedules. For this reason, the Department should continue to treat transactions involving IDCs as private-to-private transactions based on market principles.

Fotai argues its land use fees are not specific and should not be deemed countervailable. According to Fotai, the Department confirmed that the Plastics Plan has never affected the land use fees applicable to Fotai and other PRCB producers. Finally, Fotai claims the record of this investigation demonstrates the price of land countervailed by the Department in the Preliminary Determination was set in accordance with the local tariff schedule and pricing policies.

Petitioners counter that claims by the GOV and Fotai, that the land preferences in the Plastics Plan are not implemented, are contradicted by Fotai's receipt of a land rent exemption from Binh Duong province for operating in an encouraged industry. Given that Fotai was exempt from paying rent because of its status as an exporter, which at the time was considered an encouraged industry, there can be no question the GOV provides land at below-market rates in order to further its industrial goals. Petitioners also argue that the Department should reject the claim that the provision of land is not a financial contribution, as the Department has rejected the same claims in its PRC investigations.

Fotai also argues that the 2007 land lease amendment, which the Department determined created a post-cutoff date subsidy, is not germane to the Department's analysis in the POI. Fotai's original land lease agreement was to expire in October 2015, seven years after the POI. Even if the amendment to the land lease agreement did constitute a material change, such a change could not be seen as having any effect until after 2015. Therefore, the amendment had no effect whatsoever on the POI itself, and the terms of the original land lease agreement are still applicable to the POI. The price countervailed by the Department in the Preliminary Determination, which is the germane fact at issue, took effect in 2006, before the January 2007 cutoff date.

Finally, Fotai argues that in calculating the countervailable subsidy rate, the Department erroneously divided the total benefit by Fotai's total sales, yet only a small portion of Fotai's land is used for the production of the merchandise under consideration. The Department should only countervail the benefit associated with the land actually used in the production of subject merchandise.

Petitioners respond to Fotai's argument concerning its lease amendment and the cutoff date by concurring with the Preliminary Determination that the amendment revised the material terms of the lease and thus resulted in new rights and obligations. Petitioners respond to Fotai's attribution argument by claiming it has failed to address the Department's test for tying subsidies to particular goods. Fotai's arguments, Petitioners claim, contradict the Department's long-standing practice of not tracing subsidies through a company's operations.

In their affirmative arguments, Petitioners claim sufficient information has been gathered since the Preliminary Determination to establish that Chin Sheng received land from the GOV for less than adequate remuneration. They note that Chin Sheng leases its land use rights from a 100 percent state-owned IDC. Considering how, in some cases, the Department has determined that enterprises with only 50 percent government ownership may be considered public entities capable of conferring subsidies, Petitioners argue the IDC at issue should definitely qualify. Petitioners then go on to discuss how land provided to Chin Sheng is specific under the Plastics Plan.

In addition to countervailing the land Chin Sheng received from an IDC, Petitioners argue the Department should countervail the land Fotai received from an IDC as well, despite the fact that the IDC is not an SOE.⁵⁸ According to Petitioners, the GOV, through its control of the industrial zone creation process and the price of land in industrial zones, entrusts and directs the IDC at issue to provide land to Fotai at the GOV “prescribed rate.”⁵⁹ Petitioners claim several facts bear out the “entrusts and directs” theory of financial contribution: The GOV plans and creates the industrial zones, recovers a surplus of land from farmers in order to depress prices, sets the lease price in the zones, and charges only an agricultural land rate to the IDCs. Thus, GOV benefits “flow through” private IDCs just as they flow through SOE IDCs.

In its rebuttal submission, the GOV responds to Petitioners “entrusts and directs” argument by claiming Petitioners have confused lease prices between the GOV and the IDCs with lease prices between the IDCs and their tenants, mistakenly interpreting restrictions on prices charged to IDCs as applying to prices charged to tenants. The GOV then reiterates its claims throughout this investigation that IDCs have complete authority to negotiate and set prices for land in industrial zones without government interference.

Department’s Position:

We determine that the GOV’s provision of Chin Sheng’s single tract of land does not provide a countervailable subsidy, because it was provided and fully paid for before the cutoff date. The Department reviewed Chin Sheng’s purchase of this land from a state-owned IDC thoroughly at verification and saw no indication of any changes in the material terms of the purchase agreement, nor any modifications to Chin Sheng’s land use rights, after 2004, three years before the cutoff date determined for Vietnam.⁶⁰ Thus, arguments regarding financial contribution and specificity related to Chin Sheng’s property do not need to be addressed.

Regarding Petitioners’ arguments on the countervailability of the land Fotai purchased from a private IDC, we do not find that entrustment or direction in accordance with section 771(5)(B)(iii) of the Act can be discerned from the relationship between the GOV and the private

⁵⁸ This is a separate tract of land provided to Fotai than the one discussed above. The first tract (“Plant 1”) was leased directly from the provincial government. The tract leased from an IDC is referred to as “Plant 3.” “Plant 2” is leased from a private, non-IDC party and is not at issue in this case.

⁵⁹ According to section 771(5)(B)(iii) of the Act, a subsidy takes place when, *inter alia*, a public authority “makes a payment to a funding mechanism to provide a financial contribution, or *entrusts or directs* a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments” (emphasis added).

⁶⁰ Chin Sheng Verification Report at 10-11.

IDC at issue. While Petitioners have cited several facts that indicate private IDCs receive low cost, expropriated farm land, and that they might be in a position to pass these savings forward to their tenants, they have not cited any evidence indicating private IDCs must do so, or are even expected to do so. Moreover, we did not discover any information in the documentation reviewed at verification, or during our discussions with the private IDC at issue, to indicate that private IDCs are obligated to pass whatever savings they enjoy along to their tenants. “Encouragement” to pass along the savings from low-priced land is too tenuous a link between the GOV and private IDCs to establish a financial contribution. Likewise, the extent of the GOV’s involvement in industrial zone planning, approval of IDC applications, etc., cannot overcome the lack of any evidence that private IDCs are not free to negotiate prices with their tenants without government interference or restrictions. In this regard, we note Petitioners’ briefs contain statements claiming the GOV does set prices charged by IDCs to tenants, but we have seen no evidence of this with regard to the private IDC involved, and believe Petitioners may have, as the GOV claims, confused leases between the GOV and private IDCs with leases between private IDCs and their tenants.

Nevertheless, as explained above in the “Analysis of Programs” section, we determine that a portion of Fotai’s Plant 1 land – the land it leases directly from the Binh Duong provincial government, was provided for LTAR during the POI. We have also determined that such land was provided pursuant to Fotai’s export performance.

We do not agree with Fotai’s arguments concerning the irrelevancy of the 2007 agreement of Fotai’s Plant 1 land. Fotai argues that since its original lease was not scheduled to expire until 2015, the terms of its current lease would have continued without change through the POI, regardless of whether the lease was amended or not. However, when the lease extension was granted, the GOV was essentially providing Fotai with a “new” lease, including the terms of the “old” lease. Thus, the fact that nothing changed other than the duration of the lease is immaterial.

We agree with Petitioners that Fotai has not demonstrated that a portion of Plant 1 is tied to non-subject merchandise in accordance with 19 CFR 351.525(b)(5)(i). Fotai has not referred to any information in the record indicating the GOV provided the land at issue contingent upon Fotai’s production of any particular merchandise. It has, instead, demonstrated how it has chosen to use that land once provided, which is not the relevant standard for determining that a subsidy is tied to the production or sale of a particular product. Thus, for this final determination we continue to calculate a subsidy rate for this program by dividing Fotai’s total benefit by its export sales.

Finally, we reject the GOV’s argument that the provision of land can never constitute a financial contribution within the CVD context. As Petitioners note, we have addressed this question before, and have consistently concluded that land is a good or service for purposes of analyzing LTAR allegations based on our review of the SAA, the preamble to our regulations, and past administrative and court precedents.⁶¹

⁶¹ See OCTG from the PRC IDC at Comment 15, and LWS from the PRC IDC at Comment 8.

Comment 9: The Proper Benchmark for the Provision of Land for LTAR

The GOV argues that, if the Department persists in countervailing land, an internal benchmark should be used to measure the amount of benefit conferred. The GOV argues that the use of an external benchmark for land is contrary to law and heavily restricted under WTO disciplines. Moreover, in the case of Vietnam, the factual justifications traditionally relied upon by the Department for use of an external benchmark cannot be supported.

The GOV argues that the Act requires a determination be made in relation to the prevailing market conditions “in the country which is subject to the investigation or review” and the Department has previously rejected the use of cross-border benchmarks as “arbitrary and capricious.” The Department properly recognized that cross-border differences in “terrain and climate,” among other differences, made accurate comparisons of U.S. and Canadian stumpage prices impossible.⁶² Land, however, states the GOV, is a form of property even more unique than timber, and involves even more variation.

Use of third-country benchmarks is heavily circumscribed under the SCM Agreement, according to the GOV, with Article 14 requiring justification for the rejection of internal benchmarks and for the use of the selected surrogate. Because the Department cannot demonstrate the impropriety of internal benchmarks or any “rational connection” between land conditions in the surrogate Indian cities and Vietnam, the Department should adopt land benchmarks based on internal land transactions.

The GOV argues that the majority of industrial land transactions are private, business-to-business transactions without government involvement. The GOV claims it does not set the price of land in approximately 70 percent of business-to-business land transactions, a fact ignored in the Land Market Analysis Memorandum. Indeed, the GOV continues, that memorandum does not discuss the substantial secondary market that exists in Vietnam or its implications on market pricing. Even in the “limited circumstances” where land has not already been allocated to individuals or companies, prices are largely consistent with transactions occurring in the secondary market. Using a broad, market-based pricing framework created by the central government, provincial governments set land use prices entirely in accordance with their current local land markets.

Chin Sheng likewise argues that the Department should reverse its preliminary determination that an external land benchmark is necessary to calculate a subsidy rate. The use of external benchmarks unfairly prejudices and distorts the Department’s evaluation of whether benefits were conferred under the alleged programs, and is at odds with substantial evidence on the record of strong, competitive, and dynamic markets for land. Accordingly, Chin Sheng adopts and incorporates by reference the arguments on this issue made by the GOV.

In rebuttal, Petitioners argue that the Department’s regulations require the use of a “market-determined” price as a benchmark. As the GOV is the primary supplier of land in Vietnam, its domination of the land market precludes the presence of market-determined prices in that country. According to Petitioners, the GOV’s influence over land pricing extends beyond its

⁶² See Lumber from Canada I, 48 FR at 24168, and Lumber from Canada III, 57 FR at 22577-78.

original allocations of land and taints subsequent transfers of land, particularly in industrial zones. Thus, even the secondary market is distorted. Finally, Petitioners note the GOV agreed as part of its WTO accession that there could be circumstances in which WTO members would need to use external benchmarks to determine the amount of benefit from a subsidy program.

Putting aside the propriety of using an external land benchmark in the first place, Fotai argues that the Department erred in the selection of Pune and Bangalore, India, as surrogate locations. While the Department chose these two cities because their population densities are similar to HCMC, Fotai notes it is located in a completely different province from HCMC. In contrast to Pune, Bangalore, and HCMC, the town where Fotai is located has a relatively low population density, amounting to less than one quarter of the density of HCMC. Moreover, Fotai argues, it built and paid for all of the improvements and fixtures on the empty land it leases from the provincial government in a non-industrial area. As such the Department should calculate the land use fee benchmark based on the same category; *i.e.*, empty land at non-industrial locations, from a comparison city. For these reasons, it concludes, should the Department find that the land use fee it pays is countervailable, a more appropriate land benchmark should be chosen.

Petitioners respond to Fotai by noting that, while Fotai may not be located in the same legal jurisdiction as HCMC, it is within the same metropolitan area, and thus the Department's preliminary selection of a benchmark from the Pune and Bangalore metropolitan areas was appropriate.

Department's Position:

We have continued to use an external benchmark for purposes of this final determination. Regarding the GOV's legal arguments, we do not consider our use of an external benchmark in this investigation to be contrary to either the Act or our WTO obligations. We have determined previously, despite arguments similar to the GOV's, that it is appropriate, in certain circumstances, to use out-of-country benchmarks, and discussed these arguments at length.⁶³

Regarding the specific facts of this investigation that justify using an external benchmark in valuing land-use rights, we explained our determination in detail, at the time of the Preliminary Determination, that the GOV's dominance of the land market in Vietnam results in a distorted market from which no non-distorted benchmarks could be chosen.⁶⁴ The GOV criticizes that analysis by emphasizing the relative roles of the primary and secondary markets, and claiming we failed to take account of the large secondary market, in which private parties sell and lease land, in our land market analysis. However, we did address the secondary market and concluded: "While the land reforms allow for sub-leasing of land between private parties, government regulations place restrictions on these leasing rights."⁶⁵ We also noted that "the fundamental {land-use rights} held by private parties, that serve as the basis for sub-leases, have

⁶³ See, e.g., OCTG from the PRC IDC at Comment 16, and LWS from the PRC IDC at Comment 11, discussing the use of out-of-country benchmarks in countervailing stumpage fees in prior proceedings, including the Canadian stumpage fees referred to by the GOV.

⁶⁴ See Land Market Analysis Memorandum.

⁶⁵ *Id.* at 6.

been granted by State agencies at prices that have been set under State decrees.”⁶⁶ Thus, even conceding for the sake of argument that the secondary market is as large as the GOV has claimed during this investigation, the secondary market, like the primary market, is a distorted market.

Petitioners correctly characterize the magnitude of this distortion by discussing the role of IDCs and industrial zones in this secondary market. When the GOV states that it “does not set the pricing of land in approximately 70 percent of the business to business land transactions,”⁶⁷ a significant portion of these transactions are between IDCs and their tenants. As noted in the verification report:

The Department asked whether IDCs represent a very large portion of the secondary market for land. The land officials stated they did. Because of the high prices and zoning restrictions in the cities, secondary land transactions were more common in IZs; i.e., industrial users will have an easier time finding a suitable tract of land in an IZ than elsewhere, and they will also have more certainty that the land will not be expropriated for new purposes or rezoned.⁶⁸

First, it is worth noting how prices are determined when the GOV provides land to IDCs. The land provided to IDCs is “almost 100 percent” agricultural land expropriated from farmers for compensation negotiated by the GOV.⁶⁹ IDCs are then initially charged a price for their land in accordance with the agricultural land tariffs established by each province based on surveys of “certificates of transfer filed with the Public Notary when land transactions are concluded,” and also “information from the tax department, bankruptcy court, divorce court, etc.”⁷⁰ Significantly, the surveys do “not include leases from the IDC to subleasing tenants,”⁷¹ the same transactions that constitute “a very large portion” of the secondary market the GOV claims is based on market principles. Thus, prices charged to IDCs are based on low-priced agricultural land tariffs determined without reference to what is allegedly the most market-oriented portion of the commercial land market. These prices then serve as the basis for the IDCs sub-lease prices to their own tenants.

Thus, while it may be correct to determine that subleases from private IDCs do not constitute financial contributions under the statute, it would not be correct to conclude that these subleases are market-based because of the government’s involvement in Vietnam’s land market. Moreover, while the percentage of IDCs that are also SOEs is not on the record, in this investigation two of three were SOEs,⁷² and the Land Market Analysis Memorandum notes that “industrial land is mainly in the hands of SOEs.”⁷³

The fundamental issue with respect to an internal land benchmark is whether the provision of land in Vietnam is market-based. As detailed in the August 28, 2009 Land Market Analysis

⁶⁶ Id.

⁶⁷ GOV Case Brief at 52.

⁶⁸ GOV Verification Report at 31.

⁶⁹ Id.

⁷⁰ Id. at 33.

⁷¹ Id.

⁷² GOV October 14, 2010 Submission at 10.

⁷³ Land Market Analysis Memorandum at 5.

Memorandum, the Department, based on its research and analysis, found that the prices for land in Vietnam are not market-based. The GOV has not provided documentation to undermine the finding in the Land Market Analysis Memorandum which relies, in great part, on the research and conclusions of independent, third parties.

The Land Market Analysis Memorandum explains in detail the facts and analysis used in reaching the decision that land prices in Vietnam are not market-based. We have examined the arguments and statements made by the GOV and these arguments do not give cause to deviate from the conclusions reached in the Land Market Analysis Memorandum. The salient facts regarding the lack of a market-based land system in Vietnam is that government is involved in the allocation, access and pricing of land. This involvement restricts the development of a market-based land system because the government maintains a predominant role in Vietnam's land market. Thus, while there may land transaction via sub-leasing of land use rights between private parties, the access of these rights and the parameters within which these transactions are permitted to operate are set by the government.

Therefore, given our preliminary analysis, and the forgoing additional analysis of the secondary land market, we continue to conclude that land prices in Vietnam are distorted and that we cannot rely on in-country transactions as a benchmark.

Given our determination to continue using an external benchmark, we are choosing also to continue using the same data as in the Preliminary Determination for the calculation of that benchmark. Specifically, we are relying on information gathered by an internationally recognized commercial real estate company regarding industrial land prices in Pune and Bangalore, India. We do not agree with Fotai that we should choose information provided in that report for less densely populated Indian cities instead. It is appropriate to choose Pune and Bangalore as the surrogate cities as their population density is most similar to the HCMC metropolitan area, in which both Chin Sheng and Fotai are located.

While Fotai is not located within the city itself, it is still within the metropolitan area, and while its particular location is likely less densely populated than the center of the city, the report provided by the commercial real estate company includes maps of sites included in the report's price surveys, and these maps indicate the Pune and Bangalore information was based exclusively on industrial land located on the outskirts of these cities. In addition, at verification the GOV informed the Department that Fotai's rental rate was for "industrial" land.⁷⁴ Therefore, we do not agree with Fotai that we should choose a benchmark for "empty land at non-industrial" locations, because of the initially undeveloped state of the land it rents. Thus, we find that the data we have chosen appropriately reflects Fotai's situation: Industrial land located on the outskirts of densely populated metropolitan areas.

Comment 10: Duty Exemptions on Imports of Raw Materials Provided to Fotai

Petitioners argue that Fotai is not being charged import duties on scrap and waste generated above the waste rate agreed upon with Vietnamese customs authorities. Moreover, continue Petitioners, it is not clear how the relevant authorities will verify that Fotai's waste rate was

⁷⁴ GOV Verification Report at 35.

higher than the estimated or “agreed upon yield rate.” As a result, Petitioners argue, it appears that Fotai received exemptions on import duties that it would otherwise be required to pay.

Fotai responds to Petitioners by noting that the Department verified that, in those instances in the POI in which it was unable to use imported raw materials within the time limits set by the GOV, it was obligated to pay import duties, and did pay import duties, on these raw materials. Fotai also notes that the Department verified its accounting system properly tracked the purchase and consumption of raw materials, as well as the sale of scrap and finished goods, and that Vietnamese customs officials confirmed for the Department during verification that Fotai’s reported yields for different raw materials are within the range set by the customs office. Therefore, Fotai concludes, the record confirms it has paid all duties due and received no exemptions.

Department’s Position:

In the Preliminary Determination, we countervailed duty exemptions provided on materials not consumed in the production of exported products imported by API. We requested additional information from Chin Sheng and Fotai concerning all duty exemptions they received, and we requested detailed information from the GOV regarding the system it has in place to determine which materials are consumed in the production of exported products and in what amounts, including a normal allowance for waste.⁷⁵ Based on responses to these requests as well as the results of verification, we are countervailing in this final determination the duty exemptions on all raw materials imported by Fotai.

In order for exemptions on raw materials to be found not countervailable, the government in question must have a system in place to confirm which inputs are consumed in the production of exported products, including a normal allowance for waste.⁷⁶ As discussed in detail above under the “Analysis of Programs” section, the verification report is clear that the GOV does not have such a system. Thus, the duty exemptions on raw materials for exports are fully countervailable.

We note that, given the inadequacy of the GOV system in this regard, Fotai’s claims regarding its compliance with that system are irrelevant. What matters is what is being demanded by the GOV in terms of compliance, which, as discussed above, is not sufficient to confirm which inputs are consumed in the production of exported products.

Comment 11: Chin Sheng’s Sales Denominator

Chin Sheng argues that in the Preliminary Determination, the Department calculated total sales using only export sales, thereby failing to include a substantial volume of sales made to the domestic Vietnam market. In its verification report, the Department correctly notes Chin Sheng’s total global sales value. Chin Sheng argues that the verification figure must be used as the denominator in the Department’s calculation of its CVD subsidy rate for the final determination.

⁷⁵ 19 CFR 351.519(a)(1)(ii).

⁷⁶ See 19 CFR 351.519(a)(1)(ii).

Department's Position:

We agree with Chin Sheng. In the Preliminary Determination, we used what appeared to be the total FOB sales value reported by Chin Sheng. At verification, Chin Sheng was able to clarify its total FOB sales value, including both domestic and export sales. Thus, we have used the verified total sales figure for this final determination.

Comment 12: Income Tax Programs and Programs Not Used

Chin Sheng argues that the Department correctly determined that it did not use a number of alleged subsidy programs, including programs for foreign invested enterprises, other income tax exemption or reduction programs, the export promotion program, the new product development program, and the export bonus program. These determinations were made on the basis of substantial record evidence, Chin Sheng argues, which included an absence of any indication that Chin Sheng participated in any of the above-mentioned alleged programs. After these findings were made, the Department verified Chin Sheng's responses and found no evidence to contradict its preliminary determinations. The GOV concurs with Chin Sheng in arguing that the Department should continue to find these programs to be not used. The GOV also argues that the Department should maintain its preliminary determinations regarding income tax programs, as verification did not reveal any contradictions to these earlier determinations.

Department's Position:

We continue to find that Chin Sheng and Fotai each benefited from income tax reductions and/or exemptions. Both companies received reduced income tax rates for separate reasons. We are adjusting the calculation of Fotai's benefit from income tax preferences to reflect increased taxable income reported on an amended tax return filed during the POI discovered during verification. These matters are all discussed in detail above in the "Analysis of Programs" section of this memorandum and in the business-proprietary calculation memoranda issued concurrently with this final determination.⁷⁷ We are also continuing to find that many programs were not used by either Chin Sheng or Fotai, as discussed in the "Analysis of Programs" section above.

Comment 13: Application of AFA to API

Petitioners argue that because API withdrew from the investigation and the Department consequently could not verify its data, the Department should base its final determination on total facts available. In addition, an adverse inference is warranted because, in ending its participation in this investigation, API failed to cooperate to the best of its ability.

Department's Position:

As discussed in detail above in the "Application of Facts Otherwise Available and AFA for API and Fotai" section of this memorandum, API's decision to withdraw from this investigation before verification and remove its questionnaire responses from the record of this proceeding

⁷⁷ See Chin Sheng Calculation Memorandum and Fotai Calculation Memorandum.

clearly constitute a lack of cooperation under sections 776(a) and (b) of the Act that warrants the application of adverse facts available.⁷⁸

VIII. Recommendation

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

Agree _____ Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)

⁷⁸ See, also, AFA Calculation Memorandum.

Appendix

1. Acronyms and Abbreviations

<u>Acronym/Abbreviation</u>	<u>Full Name</u>
The Act	Tariff Act of 1930, as amended
AD	Antidumping
AFA	Adverse Facts Available
API	Advance Polybag Co., Ltd.
AUL	Average Useful Life
Chin Sheng	Chin Sheng Company, Ltd.
CIT	Court of International Trade
CVD	Countervailing Duty
Department	U.S. Department of Commerce
FIE	Foreign Investment Enterprise
Fotai	Fotai Vietnam Enterprise Corporation
GOV	Government of Vietnam
HCMC	Ho Chi Minh City
IDC	Infrastructure Development Company
IDM	Issues and Decision Memorandum
LTAR	Less Than Adequate Remuneration
NME	Nonmarket Economy
Petitioners	Hilex Poly Co. LLC and Superbag Corporation
PRC	People's Republic of China
POI	Period of Investigation
PRCB	Polyethylene Retail Carrier Bag
SAA	Statement of Administrative Action
SOCB	State-Owned Commercial Bank
SOE	State-Owned Enterprise
VAT	Value Added Tax
VDB	Vietnam Development Bank
WTO	World Trade Organization

2. Department Memoranda

<u>Short Cite</u>	<u>Full Cite</u>
AFA Calculation Memorandum	Memorandum to the File, "Application of Adverse Facts Available Rates for Final Determination," dated March 25, 2009
Banking Sector Analysis Memorandum	Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from Vietnam – A Review of Vietnam's Banking Sector," dated August 28, 2009

Ching Sheng Calculation Memorandum	Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, “Final Determination Calculations for Chin Sheng Co., Ltd.,” dated March 25, 2010
Ching Sheng Verification Report	Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, “Verification of the Questionnaire Responses Submitted by Chin Sheng Co., Ltd.,” dated January 4, 2010
Fotai Calculation Memorandum	Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, “Final Determination Calculations for Fotai Vietnam Enterprise Corporation,” dated March 25, 2010
Fotai Verification Report	Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, “Verification of the Questionnaire Responses Submitted by Fotai Vietnam Enterprise Corporation,” dated January 4, 2010
GOV Verification Report	Memorandum to the File, “Verification of the Questionnaire Responses Submitted by the Government of Vietnam (GOV),” dated January 4, 2010
Land Market Analysis Memorandum	Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, “Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from Vietnam – Land Markets in Vietnam,” dated August 28, 2009
Land Benchmark Memorandum	Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, “Preliminary Determination Calculations Land Benchmark Analysis,” dated August 28, 2009
Tolling Memorandum	Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,” dated February 12, 2010.”
Vietnam CVD Applicability Memorandum	Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration,

“Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam – Whether the Countervailing duty law is Applicable to Vietnam’s Present-Day Economy,” dated August 31, 2009

3. Litigation

Short Cite
GPX Tire

Full Cite
GPX International Tire Corp. v. United States, 645 F. Supp. 2d 1231 (CIT 2009)

4. Administrative Determinations and Notices

Short Cite
Citric Acid from the PRC

Full Cite
Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009)

Fresh Cut Flowers from Mexico

Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996)

Hot-Rolled Steel from Thailand

Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410, October 3, 2001

KASR from the PRC

Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009)

LWS from the PRC

Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008)

Lawn Groomers from the PRC

Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009)

<u>Lumber from Canada I</u>	<u>Final Negative Countervailing Duty Determinations; Certain Softwood Products From Canada, 48 FR 24159 (May 31, 1983)</u>
<u>Lumber from Canada III</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570 (May 28, 1992)</u>
<u>OCTG from the PRC</u>	<u>Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009)</u>
<u>Preliminary Determination</u>	<u>Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 45811 (September 4, 2009)</u>
<u>Sodium Nitrite from the PRC</u>	<u>Sodium Nitrite From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 38981 (July 8, 2008)</u>
<u>Sulfanilic Acid from Hungary</u>	<u>Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002)</u>
5. <u>Miscellaneous (Regulatory, Statutory, Articles, etc.)</u>	
<u>Short Cite</u> Plastics Plan	<u>Full Cite</u> Decree No. 11/2004/QD-BCVN (February 17, 2004), Approving the General Planning on Development of Vietnam’s Plastic Industry till 2010
<u>SAA</u>	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
<u>SCM Agreement</u>	Agreement on Subsidies and Countervailing Measures
<u>WTO Working Party Report</u>	<u>Accession of Vietnam: Report of the Working Party on the Accession of Viet Nam, WT/ACC/VNM/48 (October 27, 2006)</u>