



DATE: October 15, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Circular Welded Carbon-
Quality Steel Pipe from the Socialist Republic of Vietnam

I. Summary

The mandatory respondents in this investigation are SeAH VINA and Hongyuan. The petitioners in this investigation are Allied Tube and Conduit, JMC Steel Group, United States Steel Corporation, and Wheatland Tube.

On March 30, 2012, the Department published the *Preliminary Determination* in this investigation.¹ We conducted verification of the questionnaire responses submitted by SeAH VINA, Hongyuan and the GOV between May 21, 2012, and May 31, 2012, and released verification reports on July 6, 2012, (for Hongyuan) and on July 12, 2012, (for SeAH VINA and the GOV).²

The “Analysis of Programs” and “Subsidy Valuation Information” sections below describe the subsidy programs analyzed for our final determination. We have also analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

¹ For this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short cites as well as a guide to the acronyms.

² See GOV Verification Report, Hongyuan Verification Report, and SeAH VINA Verification Report.



General Issues

Comment 1 Applicability of the CVD Law to the Socialist Republic of Vietnam

Comment 2 The Appropriate *De Minimis* Standard

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

Comment 3 Countervailability of Import Duty Exemptions for Export Processing Enterprises and Companies in Export Processing Zones

Comment 4 The GOV's System for Monitoring the Inputs Used to Produce Exported Goods

Import Duty Exemptions for Imported Fixed Assets, Spare Parts and Accessories for Export Processing Enterprises and Export Processing Zones

Comment 5 Whether Hongyuan's Failure to Report Imports of Spare Parts and Accessories Warrants Use of AFA

Import Duty Exemptions for Imported Fixed Assets, Spare Parts and Accessories for Encouraged Projects

Comment 6 SeAH VINA's Failure to Report Some Imports

Comment 7 Whether SeAH VINA Received Countervailable Duty Exemptions on its Purchases of Fixed Assets, Spare Parts and Accessories

Policy Loans

Comment 8 Preferential Financing to the Steel Industry

Comment 9 Preferential Lending for Exporters

Comment 10 Whether the Banks That Provided Loans to Hongyuan and SeAH VINA are Public Entities

Comment 11 The Appropriate Benchmark for Policy Loans

Provision of Land for Less Than Adequate Remuneration ("LTAR") in Encouraged Industries or Industrial Zones

Comment 12 SeAH VINA's Land

II. Subsidy Valuation Information

A. *Period of Investigation*

The period for which we are measuring subsidies, *i.e.*, the POI, is January 1, 2010, through December 31, 2010.

B. *Allocation Period*

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the IRS Tables at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

C. *Attribution of Subsidies*

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³

Our attribution methodology is unchanged from the *Preliminary Determination*. However, neither respondent received countervailable subsidies, as explained below.

ANALYSIS OF PROGRAMS

Based upon our analysis of the petition, the responses to our questionnaires, and all other evidence on the record, we determine the following:

III. Programs Determined To Be Not Countervailable

A. Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones⁴

We verified that SeAH VINA paid the applicable import tariffs on its raw material imports.⁵ Hongyuan reported that it did not pay import duties on its imported raw materials used to

³ See *Fabrique*, 166 F. Supp. 2d at 600-604.

⁴ In the *Preliminary Determination*, we analyzed Hongyuan's exemptions under "Import Duty Exemptions for Imported Raw Materials for Exported Goods." We have analyzed Hongyuan's exemptions under a different title for this final determination.

⁵ See SeAH VINA Verification Report at 19-20.

produce exported goods because it is an export processing enterprise and, therefore, a non-tariff area, as explained below.

Export processing enterprises are defined by Decree 29/2008. According to Article 2.6 of Decree 29/2008, an export processing enterprise can either be an enterprise established in an export processing zone, or an enterprise established in an industrial zone which exports all of its production. Hongyuan is located in an industrial zone and exports all of its production. Article 21.1 of Decree 29/2008 states that “[e]xport processing zones and export processing enterprises may apply the regulations on non-tariff areas in accordance with law. The status of being an export processing enterprise shall be stipulated in the investment certificate.” Hongyuan’s investment certificate confirms its status as an export processing enterprise.

Article 5.1 of the Law on Import Duty and Export Duty defines non-tariff areas as “economic areas lying within the Vietnamese territory which are determined by geographical boundaries and set up under decisions of the Prime Minister; the goods sale, purchase and exchange between these zones and outside areas constitute import and export relations.” According to Article 21.5 of Decree 29/2008, “[e]xchanges of goods between export processing zones, export processing enterprises and other areas in the Vietnamese territory, except for non-tariff areas, shall constitute import, export transactions.” As a result, export processing enterprises must declare “imports” of materials from both foreign and domestic sources to Vietnam Customs, and follow the applicable import procedures. Likewise, companies in Vietnam making purchases from Vietnamese non-tariff areas must follow import procedures and pay any applicable import duties. Pursuant to Article 3.3 of the Law on Import Duty and Export Duty, goods imported from foreign countries into non-tariff zones for use only in non-tariff zones are not liable for import duties. Thus, Hongyuan did not pay any import duties on its “imports” of raw materials from foreign or domestic sources.

We determine that Hongyuan did not receive a financial contribution from its duty-free imports of raw materials. Accordingly, this program is not countervailable. Additional details and responses to arguments from parties can be found below at Comment 3.

B. Import Duty Exemptions on Imported Fixed Assets, Spare Parts, and Accessories for Export Processing Enterprises and Export Processing Zones

As discussed above, Hongyuan is an export processing enterprise and as such, is able to take advantage of the regulations that apply to non-tariff areas.⁶ For the same reasons that its imports of raw materials are not subject to duties, its imports of fixed assets, spare parts, and accessories are also not subject to duties. We determine that Hongyuan did not receive a financial contribution from its imports of fixed assets, spare parts, and capital equipment. Accordingly, this program is not countervailable. We address comments from parties below at Comment 3.

⁶ See Article 21.1 of Decree 29/2008.

C. Government Provision of Water for LTAR in the Bien Hoa II Industrial Zone and the Hai Phong Do Son Industrial Zone

Hongyuan and SeAH VINA sourced their water from industrial development companies. We verified that both companies paid the applicable tariff rates for their water and there was no separate tariff rate for companies located within the industrial zones.⁷

On this basis, we determine that the GOV's provision of water is not specific to the industrial zones in which the respondents are located.⁸ Thus, we determine that this program is not countervailable.

IV. Programs Determined To Be Not Used By Respondents During the POI or To Not Provide Benefits During the POI

A. Import Duty Exemptions for Imported Fixed Assets, Spare Parts and Accessories for Encouraged Projects

Decree 108/2006 lists a number of encouraged industries and projects entitled to investment incentives.⁹ According to this decree, certain geographical areas, including industrial development zones, also qualify for these incentives. Article 16.6 of the Law on Import Duty and Export Duty says that “goods imported to create fixed assets of projects entitled to investment incentives or investment projects funded with official development assistance (ODA) capital sources” are exempt from import duties. Article 12.6 of Decree 87/2010 confirms that a variety of items imported for use in encouraged projects are exempt from duties.

The GOV reported that the eligibility criteria for this program changed on October 1, 2010, pursuant to Decree 87/2010. However, Article 16.2 of this decree appears to grandfather benefits to companies that enjoyed these duty exemptions prior to October 1, 2010.

The GOV initially reported that SeAH VINA received duty exemptions because it is located in the Bien Hoa II Industrial Zone. However, we verified that, although SeAH VINA was eligible for these exemptions due to its location in an industrial development zone, it did not use this program. Rather, we verified that under the Vietnamese customs law companies are permitted to import parts that will be used to construct some fixed assets under the tariff code for the fixed asset and then will be assessed for the duty rate applicable for the completed fixed asset rather than for the import rates that would be levied for the individual imported parts used to construct that completed machinery or equipment. We verified that pursuant to Circular 85/2003, if any enterprise in Vietnam imports a number of items for use in creating one main machine, each imported item required to create the machine is only subject to the import duty rate applicable to the main machine. We verified that SeAH VINA imported all of its spare parts and accessories at the applicable duty rate pursuant to Circular 85/2003.¹⁰

⁷ See GOV IQR at 132. See also GOV Verification Report at 31-32.

⁸ See section 771(5A)(D)(iv) of the Act.

⁹ See GOV IQR at Exhibit 40, Appendix I and Appendix II.

¹⁰ See SeAH VINA Verification Report at 18.

Accordingly, for this final determination, we find that SeAH VINA did not receive any import duty exemptions under Decree 108/2006 because of the company's location in an industrial zone. We address comments from parties regarding SeAH VINA's use of this program below at Comment 7.

B. Preferential Lending to the Steel Industry

Wheatland Tube claims that according to GOV policy, projects in specified industries are eligible for preferential loans or debt restructuring. It argues that this is evidenced by the GOV's designation of steel as a spearhead industry. Further, Wheatland Tube claims that the GOV exerts control over nominally commercial banks to provide debt restructuring, loan forgiveness, and preferential lending to the Vietnamese steel industry, and that these industrial policies have resulted in preferential loans to manufacturers of circular welded pipe.

In response to our questionnaire, the GOV provided numerous planning documents pertaining to the steel industry. Among the documents the GOV submitted are the National Five-Year Plan, the Dong Nai Five Year Plan, the Hai Phong Five Year Plan, the Steel Master Plan, the 2001 Steel Plan, and the List of Spearhead Industries. After we issued our *Preliminary Determination*, Wheatland Tube provided two additional plans, which it claims the GOV failed to provide: Decision 73/2008 and Decision 271/2006.¹¹

Based on our review of these plans, we find no evidence that producers of circular welded pipe in Vietnam receive directed preferential lending. Circular welded pipe is not listed among the steel industry products designated for financial support, though other specific steel industry products are listed. We verified that circular welded pipe is not the subject of any of the projects identified in the planning documents. Further, we verified that the designation of a spearhead or priority industry is provided under the List of Spearhead Industries, and only steel billets and special-use steel have been designated by the GOV as priority industries during 2007-2010. The GOV defines special-use steel as high-quality steel for use by the defense industry, electrical engine manufacturing and ship building. We found no evidence at verification nor is there any information on the record that circular welded pipe falls under these classifications or that circular welded pipe is considered to be either steel billets or special-use steel. We also verified that circular welded pipe manufacturing has not been designated as a priority industry by the GOV. Due to the inexact terminology used in certain of the government plans, and to help confirm that there were no unreported plans applicable to the circular welded pipe and steel industry, we also examined the respondents' loan records and found no indication that the loans received by our two respondent companies were based on policy considerations.

Consequently, we determine that circular welded pipe was not part of a state targeted, or encouraged, industry or project for the provision of preferential lending during the period between the cut-off date through the POI;¹² and that the various plans that relate to the promotion of the Vietnamese steel industry do not cover the production of circular welded pipe. We discuss

¹¹ See Petitioners' Pre-Verification Comments at Exhibits 1 and 2.

¹² As described below at Comment 8, there was a brief period following the cut-off date during which the 2001 Steel Plan, which may authorize preferential financing to the steel industry, was applicable. However, neither respondent received loans during this period which were outstanding during the POI.

the individual plans in more detail and address arguments from parties below at Comment 8.

C. Provision of Land for LTAR in Encouraged Industries or Industrial Zones

SeAH VINA's land-use rights were purchased prior to the January 11, 2007 cut-off date (*i.e.*, the date after which we are analyzing countervailable subsidies, pursuant to Vietnam's January 11, 2007 accession to the WTO¹³); thus, consistent with *Bags from Vietnam*, we find that this program does not provide benefits to SeAH VINA.¹⁴

As described in the *Preliminary Determination*, the price of Hongyuan's land and the terms of its lease were established through negotiations between Hongyuan and an industrial development company. We verified that this company's authority to negotiate land prices and enter into land-use contracts does not extend beyond the industrial zone in which Hongyuan is located. The Department has found that when an industrial zone is part of a larger jurisdiction, and the larger jurisdiction is responsible for providing land use rights throughout the jurisdiction, the provision of land use rights within the industrial zone is regionally specific under section 771(5A)(D)(iv) of the Act.¹⁵ However, in this instance, the authority to negotiate the price and enter into land use contracts in the Hai Phong Do Son Industrial Zone rests with the Hai Phong Do Son Industrial Zone Joint Venture Company. As such, the provision of land use rights within the industrial zone is not limited to an enterprise or industry located within a designated geographic zone. Therefore, we determine that Hongyuan did not receive a benefit, and did not use this program.

D. Land Rent Reduction or Exemption for Exporters

E. Land Rent Reduction or Exemption for FIEs

F. Export Promotion Program

G. New Product Development Program

H. Income Tax Preferences for Encouraged Industries

I. Income Tax Preferences for Enterprises in Industrial Zones

J. Tax Refund for Reinvestment by FIEs

K. Income Tax Preferences for FIEs

L. Income Tax Preferences for Exporters

M. Preferential Lending for Exporters

¹³ See *Bags from Vietnam* and accompanying IDM at Comment 3; see also Initial Questionnaire.

¹⁴ See Comment 12 below for further discussion. We also provide additional analysis in the BPI Memo.

¹⁵ See, e.g., *OCTG from the PRC* and accompanying IDM at 20.

- N. Import Duty Preferences for FIEs
- O. Government Provision of Water for LTAR in Industrial Zones
- P. Import Duty Exemptions for Imported Raw Materials for Exported Goods

Analysis of Comments

Comment 1: Applicability of the CVD Law to the Socialist Republic of Vietnam

Affirmative Arguments

Hongyuan argues that the Department should terminate this investigation and not issue a CVD order in light of the CAFC's ruling in *GPX (Fed. Cir.)*, which held that "countervailing duties cannot be applied to goods from NME countries." According to Hongyuan, section 1(b) of Public Law 112-99, which was enacted on March 13, 2012, and specifically authorizes the simultaneous application of antidumping and countervailing duties to NMEs, violates the Fifth Amendment's guarantee of due process because it applies retroactively to all proceedings initiated on or after November 20, 2006, and "does not serve a legitimate legislative purpose furthered by rational means."

Next, Hongyuan alleges that section 1(b) of Public Law 112-99 is unconstitutional because it violates the Fifth Amendment's guarantee of equal protection under the law. According to Hongyuan, although the law allows antidumping and countervailing duties to be applied retroactively, its protections against double counting apply only prospectively. As a result, Hongyuan believes that the law impermissibly allows for a scenario in which both antidumping and countervailing duties may be imposed without any protection against potential double-counting.

Lastly, Hongyuan argues that the retroactive application of the new legislation "constitutes punishment of acts that were not punishable at the time they were committed," and, as a result, is unconstitutional because it is an *ex post facto* law.

Rebuttal Arguments

Wheatland Tube replies that there is a presumption that a statute enacted by Congress and signed by the President is constitutional.¹⁶ It argues that Hongyuan bears the burden of overturning this presumption, and it has failed to do so. Rather, Wheatland Tube claims that Hongyuan has restated arguments already raised by parties in *GPX (Fed. Cir.)* without further argumentation specific to the instant case.

According to Wheatland Tube, there is substantial legal precedent demonstrating that Congress has the authority to enact retroactive economic legislation in response to judicial decisions with which it disagrees, as long as such legislation "serves a legitimate legislative purpose and as long

¹⁶ See *Usery*.

as Congress does not seek to reopen a final court judgment in any particular case after all appeals have concluded.” Wheatland Tube claims that there are only two significant constraints on Congress’s authority to enact retroactive legislation: Congress may not set aside the final judgment of an Article III court,¹⁷ and the retroactive legislation must meet the test of due process, *i.e.*, “serve a legitimate legislative purpose furthered by rational means.”¹⁸ Wheatland Tube observes that Hongyuan did not submit arguments regarding the first constraint, and the Department already described why Public Law 112-99 satisfies the second constraint in *Steel Cylinders from the PRC*.

Regarding Hongyuan’s claim that section 1(b) of Public Law 112-99 violates the Equal Protection Clause by permitting antidumping and countervailing duties to be applied simultaneously without protections against double counting,¹⁹ Wheatland Tube argues that the Supreme Court’s equal protection analysis would examine whether “there is some rational relationship between disparity of treatment and some legitimate governmental purpose.”²⁰ According to Wheatland Tube, this is the same due process standard that was addressed in *Steel Cylinders from the PRC*.

Finally, Wheatland Tube alleges that Public Law 112-99 cannot be an *ex post facto* law, because “[t]he Supreme Court has interpreted the *ex post facto* clauses of the Constitution to apply only to legislation that imposes criminal punishment.”²¹ Thus, these clauses cannot apply to unfair trade laws, because they are remedial and not punitive in nature.

Department’s Position

We disagree with Hongyuan that section 1(b) of Public Law 112-99 is unconstitutional. First, Public Law 112-99 does not violate the Fifth Amendment. As we explained in *Steel Cylinders from the PRC*, the U.S. Supreme Court has held that “legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations. . . . [t]his is true even though the effect of the legislation is to impose a new duty or liability based on past acts.”²² Indeed, the Supreme Court regularly has sustained retroactive laws against due process challenges.²³

Moreover, contrary to Hongyuan’s claim, Public Law 112-99 does serve a legitimate purpose furthered by rational means. Specifically, Public Law 112-99, among other aims, reaffirms the Department’s authority to apply the CVD law to NME countries. As we explained in *Steel Cylinders from the PRC*, “[t]he means chosen by Congress are rational because Congress wanted to ensure that, among other things, domestic producers and consumers would be free to

¹⁷ See *Plaut*.

¹⁸ See *Pension Benefit Guar. Corp.*

¹⁹ See *KYD*.

²⁰ See *Central State University*.

²¹ See *Calder*.

²² See *Steel Cylinders from the PRC* and accompanying IDM at Comment 1 (*citing Usery*).

²³ See *General Motors*, 503 U.S. at 191-92 (finding that retroactive statute met the standard of “a legitimate legislative purpose furthered by rational means”); *Pension Benefit Guar. Corp.*, 467 U.S. at 729 (upholding retroactive statute against due process challenge and explaining that “[p]rovided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches”).

obtain relief from unfairly subsidized goods from NME countries.”²⁴ Therefore, we disagree with Hongyuan that Public Law 112-99 constitutes an unconstitutional violation of the Due Process Clause.

Hongyuan’s Equal Protection argument is similarly wrong. As discussed above, section 1 of Public Law 112-99 imposes no new obligation on parties, but merely reaffirms the Department’s authority to apply the CVD law to NME countries. In other words, the legislation did not single out any companies, but simply left in place the law to which they were already subject. This is not a classification at all. However, even assuming that there was a classification of some sort, the Supreme Court “has long held that a classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.”²⁵ That requirement is satisfied here. As evidenced by the legislative history, the provision of Public Law 112-99 addressing overlapping remedies was adopted, in part, to bring the United States into compliance with its WTO obligations.²⁶ Given the statutory scheme for implementation of adverse WTO decisions,²⁷ it was entirely reasonable for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Finally, Hongyuan’s argument that Public Law 112-99 is an *ex post facto* law that constitutes punishment of acts that were not punishable at the time they were committed is wrong because Public Law 112-99 does not make any acts that were committed at any time “punishable.” Public Law 112-99 simply confirms the Department’s obligation to impose CVDs on merchandise from countries designated as NME countries. That obligation or duty rests on the Department, not on Vietnamese companies or the Vietnamese government. Moreover, subsidies are not “unlawful” but rather are trade-distorting measures that are remediable through the use of CVDs. Regardless, as Wheatland Tube notes, the *ex post facto* clauses of the Constitution apply only to legislation that imposes criminal punishment.²⁸ Public Law 112-99 is remedial, and does not impose any punishment, criminal or otherwise.

Comment 2: The Appropriate *De Minimis* Standard

Affirmative Arguments

Hongyuan argues that, should the Department not terminate the investigation it should choose two percent as the appropriate *de minimis* rate based upon section 703(b)(4)(B) of the Act, which permits the Department to apply a *de minimis* rate of two percent for developing countries. According to Hongyuan, Vietnam is widely recognized as a developing nation.

²⁴ See, e.g., 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Rep. Camp).

²⁵ See *Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2080 (2012) (internal quotes and citations omitted).

²⁶ See, e.g., 158 Cong. Rec. at H1167–68, H1171 (daily ed. March 6, 2012) (statements of Representatives Camp, Brady, and Jackson Lee).

²⁷ See 19 U.S.C. 3533, 3538.

²⁸ See *Calder*.

The GOV agrees, pointing out that Vietnam became a member of the WTO on January 11, 2007, which is after the most recent update of the “Developing and Least-Developed Country Designations under the Countervailing Duty Law” published by the USTR. The GOV argues that although Vietnam is not included in this list, the Department should nonetheless find that it is a developing country for CVD purposes and apply a two percent *de minimis* standard because Vietnam is both a developing country and a WTO member.

Rebuttal Arguments

Wheatland Tube responds by observing that section 703(b)(4) of the Act establishes one percent as the generally applicable *de minimis* rate. While Wheatland Tube acknowledges that limited exceptions do exist, for example, developing countries recognized as such by the USTR, it argues that Vietnam qualifies for none of these exceptions.

Department’s Position

The issue is moot because this final determination is negative.

Comment 3: Countervailability of Import Duty Exemptions for Export Processing Enterprises

Affirmative Arguments

Hongyuan disputes that it used the program upon which the Department initiated its investigation. As an export processing enterprise established pursuant to Article 2 of Decree 29/2008, it qualifies as a non-tariff area. As a non-tariff area, Hongyuan argues that it is not subject to import duties in the first place, and so cannot have received a duty exemption or drawback under the section of the law named in the Initiation Checklist.²⁹

Hongyuan further argues that it is “impossible” for it to have received a duty exemption for inputs not consumed in the production of exported products,³⁰ because the Department verified that all of Hongyuan’s sales during the POI were either exports of fence posts to the United States or were domestic sales of scrap resulting from production activities. Consequently, Hongyuan claims, all of the inputs for those items were consumed to produce the exported products. Hongyuan argues that its actual wastage rate for steel strip was verified to be below the allowance approved by Vietnam Customs, and that the applicable duties on Hongyuan’s sales of scrap were paid by the domestic purchaser of the scrap. Since no imports were “not consumed in the production of the exported product” as described by the regulation, Hongyuan concludes that a benefit was not conferred.

²⁹ In the Initiation Checklist, we described “Import Duty Exemptions for Imported Raw Materials for Exported Goods” by stating that “{a}ccording to Petitioners, under Article 16 of the “Law on Import Tax and Export Tax of Vietnam,” Law No. 45/2005/QH-11, goods imported for processing by a foreign party which are then exported are exempt from import duties.”

³⁰ See 19 CFR 351.519(a)(1)(ii).

The GOV emphasizes that a company cannot receive an import duty exemption, nor an accompanying countervailable benefit, without first incurring an import duty liability. In this instance, the GOV argues that Hongyuan's status as an export processing enterprise qualifies it as a non-tariff area and, according to Vietnam's Law on Import Duty and Export Duty, places Hongyuan outside of the customs territory of Vietnam. The GOV argues that "unlike a duty drawback situation, where duties are owed and can then be subsequently refunded, the GOV cannot impose duties on goods that do not reach Vietnam's customs territory." Hence, the GOV argues, since the goods did not enter Vietnam's customs territory, there is no duty liability, no duty exemption, and no countervailable benefit for Hongyuan. As summarized by the GOV, "an enterprise cannot be exempt from a tax for which there is no obligation to pay in the first instance."

According to the GOV, the Department analyzed a similar fact pattern in *DRAMS from Korea*, in which the respondents were not responsible for payment of import duties because their production activities occurred in a bonded warehouse,³¹ which the GOV claims is analogous to an export processing enterprise in Vietnam. The GOV also claims that export processing enterprises in Vietnam are analogous to similar zones in the United States. Furthermore, the GOV contends that the same reasoning applies to Hongyuan's imports of fixed assets, spare parts and accessories. Thus, the GOV maintains that Hongyuan did not receive a benefit from any of the import duty exemption programs under investigation.

Rebuttal Arguments

Wheatland Tube argues that the plain language of the Department's regulations at 19 CFR 351.519 covers import duty exemptions. It also urges the Department to dismiss the GOV's argument that a duty exemption cannot exist without a duty liability being incurred because, in Wheatland Tube's view, this argument is "predicated entirely upon the GOV's incorrect assertion that the Department 'equated Hongyuan's status as an export processing enterprise with a duty drawback system.'" It observes that the Department did not make such a connection and, since the Department was not required to do so in order to find a benefit under 19 CFR 351.519, the Department should continue to countervail the entire amount of the duties Hongyuan would have been required to pay had it not been an export processing enterprise.

Regarding specificity, Wheatland Tube cites Decree 29/2008, which defines export processing enterprises as "enterprises which export all of their products and operate in an industrial zone or economic zone." Thus, it argues, Hongyuan's benefit is both contingent upon export performance and is regionally specific.

Regarding precedent, Wheatland Tube cites *PET Film from India NSR*, in which the Department examined Special Economic Zones ("SEZs").³² Companies in these zones must commit to export all of their production, and are eligible for duty exemptions on imports of raw materials and capital goods. Wheatland Tube argues that in *PET Film from India NSR*, the Department found that similar duty exemptions were contingent on export performance, and thereby specific.

³¹ See *DRAMS from Korea* and accompanying IDM at Comment 31.

³² See *PET Film from India NSR* and accompanying IDM at 13.

Wheatland Tubes states that the Department also found a financial contribution by the Indian government in that review and a benefit in the amount of exemptions of customs duties not collected. According to Wheatland Tube, in *PET Film from India NSR*, the Department clarified that it examines whether the government in question has a reasonable and effective system to confirm which inputs, and in what amounts, are consumed in the production of the exported products³³ and examines whether the government in question carried out an examination of the actual inputs involved.³⁴ It argues the Department followed this precedent in the preliminary determination of *Pipe from India* (initiated concurrently with the instant case).

Wheatland Tube also rejects *DRAMS from Korea* as a comparable precedent. It argues that the program at issue was a duty drawback program, not a duty exemption program. Furthermore, it argues that there is no evidence to support the GOV's claim that the bonded warehouse at issue in *DRAMS from Korea* is analogous to an export processing zone.

Finally, Wheatland Tube argues that the GOV's arguments regarding Hongyuan's duty-free imports of fixed assets, spare parts and accessories should be rejected for the same reasons as should its arguments regarding duty-free imports of raw materials. It further urges the Department to reject Hongyuan's argument that benefits received by Hongyuan "{were} not based on any program alleged by petitioners nor was it based on any program for which the Department initiated this investigation." Wheatland Tube emphasizes that the Act permits the Department to examine practices or programs not alleged in the petition but discovered during the course of a proceeding.³⁵

Department's Position

We are investigating a GOV program involving the imports of raw materials, spare parts and accessories, and fixed assets by one of the circular welded pipe producers, Hongyuan. The GOV has designated Hongyuan as an export processing enterprise. A designated export processing enterprise's production facilities are a "non-tariff zone" under Vietnamese law because its operations are outside the customs territory of the country. Therefore, imports of raw materials, spare parts and accessories, and fixed assets going into a "non-tariff zone" are not subject to the customs duties of Vietnam. Because the non-tariff zone is outside the country's customs territory, customs duties, while not applicable to goods going into the zone, are applicable to all goods exiting the zone and entering the customs territory of Vietnam.

Wheatland Tube argues that this program provides a financial contribution to Hongyuan in the form of revenue foregone under section 771(5)(D)(ii) of the Act and a benefit under 19 CFR 351.519. We disagree. Under the laws of Vietnam, Hongyuan has been designated as an export processing enterprise and, thus, a non-tariff zone outside of the customs territory of the country. Consequently, imports of raw materials, spare parts and accessories, and fixed assets by Hongyuan are not subject to duties in Vietnam and, therefore, the GOV has not foregone revenue by not collecting duties on the company's imports. Moreover, we disagree that the plain language of the Department's regulations at 19 CFR 351.519 covers the non-payment of import

³³ See 19 CFR 351.519(a)(4)(i)

³⁴ See 19 CFR 351.519(a)(4)(ii).

³⁵ See Section 775 of the Act.

duties in areas outside of a county's customs territory. In our view, 19 CFR 351.519 addresses situations where duties are otherwise due, *i.e.*, situations in which goods enter the country's customs territory because only then can a government remit, drawback, or exempt a company's imports from duties or other import charges.

In addition to providing a benefit and being specific, a program must also provide a financial contribution under section 771(5)(D) of the Act to be countervailable. As explained above, we determine that there is no financial contribution within the meaning of section 771(5)(D)(ii) of the Act and, thus, we determine that this program is not countervailable.³⁶

With respect to Wheatland Tube's argument that the Department countervailed similar zones in *PET Film from India NSR*, we disagree. There is no indication that the SEZs we analyzed there were outside the customs territory of India. Rather, we observed in that case that "until an SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties,"³⁷ which implies that a duty obligation is incurred when goods enter the SEZ. This is not the situation present in the investigated program in Vietnam.

Our decision should not be read to mean that a government can simply hand a company a certificate declaring the company to be outside the country's customs territory and the Department will find no subsidy. Instead, such companies or free trade areas must be subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country's customs territory and, in the latter case, appropriate duties are collected.

For example, in the case of Hongyuan, the GOV's laws stipulate that goods may be transferred freely between non-tariff areas such as Hongyuan and may move between Hongyuan and foreign countries without incurring duties.³⁸ However, once goods (in this instance, scrap) cross from Hongyuan to the domestic customs territory, these transactions are subject to duties.³⁹ Circular 79/2009 stipulates that "{f}or raw materials and supplies imported for export production, export-processing enterprises shall carry out import procedures under regulations applicable to commercial imports, except for duty declaration and calculation."⁴⁰ Hongyuan has confirmed that even its domestic purchases of raw materials are considered "imported" under this rule.⁴¹ Similarly, "{f}or products produced and sold into the inland by export-processing enterprises, export-processing enterprises and inland enterprises shall carry out customs procedures like those for commercial imports or exports."⁴² It also states that "{f}or scraps and discarded

³⁶ Hongyuan's situation is similar to that of the bonded factories examined in *DRAMS from Korea* where the Department found no countervailable subsidy.

³⁷ See *PET Film from India NSR* and accompanying IDM at 15.

³⁸ See, e.g., GOV IQR at Exhibit 43, Article 3.3.

³⁹ The generally-applicable duty rate for scrap in Vietnam is zero percent. See GOV Verification Report at 9.

However, the transaction is still being assessed duties on the same basis as would be imports from a foreign country.

⁴⁰ See GOV IQR at Exhibit 45, at 47.

⁴¹ See Hongyuan IQR at 24.

⁴² Pursuant to Decree 29/2008, "{e}xport processing enterprises means enterprises which are established and operate in an export processing zone or enterprises which export all of their products and operate in an industrial zone or economic zone." See GOV IQR at Exhibit 41, Article 2.6. While Hongyuan is outside of an export processing zone and must export all of its finished production, there is no evidence that companies within export processing zones

products of commercial value which are allowed for sale into the inland, inland enterprises shall carry out import procedures under regulations applicable to commercial imports.”⁴³ Decree 29/2008 confirms that “{e}xchanges of goods between export processing zones, export processing enterprises and other areas in the Vietnamese territory, except for non-tariff areas, shall constitute import, export transactions.”⁴⁴ Lastly, Article 3.3 of the Law on Import Duty and Export Duty provides that goods exported from non-tariff zones to foreign countries, goods imported from foreign countries into non-tariff zones for use in non-tariff zones only, and goods transported from one non-tariff zone to another are not subject to duties.

Regarding whether these laws are applied, we verified that “any transaction in or out of the company’s gates are considered international transactions,”⁴⁵ and that “goods imported by domestic enterprises from these export processing zones or enterprises are subject to the applicable import duties.”⁴⁶ The GOV requires export processing enterprises to register raw materials being imported, products being exported, and norms for those materials.⁴⁷ Companies must also file quarterly liquidation reports that tie their imported materials to their exported products.⁴⁸ These procedures are similar to those followed by the Vietnam Customs authority for companies that are not export processing enterprises.⁴⁹ We verified that “Customs may elect to conduct an actual inspection of the goods, which may be done through the collection of a sample.”⁵⁰ We also verified that Customs uses risk management software to identify potential errors in the documents submitted by companies.⁵¹ At Hongyuan, we verified that “Customs comes and inspects the {scrap} being sold to confirm the materials are consistent with what is reported on the import declaration form. Company officials stated that Customs conducts this examination for every sale of scrap.”⁵² Consequently, we consider the GOV to be implementing the laws regarding export processing enterprises, and effectively monitoring goods entering and leaving Hongyuan’s facilities.

These rigorous procedures demonstrate that Hongyuan clearly is outside the customs territory of Vietnam and that the Vietnamese customs authorities ensure that there is no blurring of the line between Hongyuan and Vietnam. Similarly, the areas outside of Vietnam’s customs territory can be differentiated from other designated areas, such as industrial zones, by the customs treatment of goods moving in and out of the area.

must meet this criteria.

⁴³ See GOV IQR at Exhibit 45, at 48.

⁴⁴ See GOV IQR at Exhibit 41, Article 21.5.

⁴⁵ See Hongyuan Verification Report at 7.

⁴⁶ See GOV Verification Report at 2.

⁴⁷ See, e.g., GOV Verification Report at 3.

⁴⁸ *Id.*

⁴⁹ See GOV IQR at 85.

⁵⁰ See, e.g., GOV Verification Report at 2-11.

⁵¹ See GOV Verification Report at 3.

⁵² See Hongyuan Verification Report at 5.

Comment 4: The GOV's System for Monitoring the Inputs Used to Produce Exported Goods

Affirmative Arguments

The GOV argues that whether it has an effective system for monitoring the inputs used to produce exported goods is irrelevant, because “{n}either of the respondents participated in Vietnam’s duty drawback system.”⁵³ In particular, the GOV emphasizes that “Hongyuan has no import duty liability, preempting Hongyuan’s ability to even participate in duty drawback.”⁵⁴ Notwithstanding this, the GOV and Hongyuan contend that Vietnam does, in fact, have an effective system to confirm which inputs are consumed in the production of exported products.⁵⁵ Both parties claim the Department’s finding in *Bags from Vietnam* that Vietnam does not have such a system was cursory.

Hongyuan begins by recounting that the system employed by the GOV is described in Article 45 of Circular 79/2009. It reiterates that export processing enterprises must file liquidation reports with Vietnam Customs on a quarterly basis, and observes that the Department tied information from the liquidation reports and norm registrations to Hongyuan’s accounting system and production documentation at verification. Hongyuan also argues that its import declarations and export declarations, which form the basis for the liquidation reports, are subject to random inspection. It observes that the Department verified that Hongyuan’s import and export declarations were selected for physical inspection at a number of points during the POI. Hongyuan goes on to emphasize that the Department verified that when norms are registered by an enterprise, a customs official “will use his/her expertise or consult other, third-party professionals to determine whether the norms are reasonable or not,” and that officials will “compare the registered norms to other norms in the Customs database for companies producing similar merchandise in order to determine whether these registered norms are ‘reasonable.’”⁵⁶ Finally, Hongyuan argues that its registration of revised norms after implementing more efficient production technology demonstrates that the GOV’s system is “effective, operational and verifiable.”

The GOV also provides a detailed overview of the monitoring procedures established by Vietnamese law, although it argues that such procedures are not relevant to this case. The GOV reiterates that companies importing raw materials for the production of exported goods must register the materials and supplies they import, along with the norms for these materials. It claims that this standard applies to both export processing enterprises like Hongyuan, and to domestic enterprises participating in Vietnam’s duty drawback system. According to the GOV, norms are defined as the amount of materials or supplies that are actually used for the production of export products, “including the proportion of scraps and discarded products within the consumption norms collected in the process of producing exports from imported materials and supplies.”

⁵³ See GOV Case Brief at 7.

⁵⁴ *Id.*

⁵⁵ See 19 CFR 351.519(a)(4)(i).

⁵⁶ See Hongyuan Case Brief at 13, quoting GOV Verification Report at 4.

The GOV goes on to explain that companies exporting finished products using imported raw materials must also submit a report on warehoused, ex-warehoused, and in-stock imported materials. The report also indicates the quantity of export goods produced. Multiplying this quantity by the registered norm yields the amount of raw materials and supplies consumed in the production of export products. Export processing enterprises must submit such a report as part of their quarterly liquidation reports. The GOV claims that customs officials can determine how many imported raw materials and supplies constitute the exported products based on these reports.

According to the GOV, these procedures are not just codified in law; they are actually implemented by Customs officials. It claims that there are numerous opportunities for inspections to take place: upon an enterprise's initial registration of norms, upon any adjustment to registered norms, upon filing of quarterly liquidation reports, and upon a company's submission of import and export declaration forms. These forms are subject to physical inspection and are monitored using risk assessment software. The GOV argues that Customs may also conduct an inspection any time it suspects fraud. It claims that a company's failure to report accurate norms is sanctionable. As an example, it points to the Department's request at verification that the GOV provide a detailed description of the process for physically inspecting registered norms. As part of the GOV's reply, a customs official described an instance in which she became suspicious of the norms filed by a company. After becoming suspicious, she requested a product sample from the enterprise and calculated an accurate norm for the export product. Customs then informed the company of the error and assessed a penalty. In sum, the GOV argues that the record evidence in this case proves that Vietnam has an effective system for monitoring imports and exports, and justifies overturning the Department's determination in *Bags from Vietnam*.

Wheatland Tube alleges that the record of this investigation makes an even stronger case than the record in *Bags from Vietnam* for finding that Vietnam does not have an appropriate system to confirm which inputs are consumed in the production of exported products, and in what amounts. It argues that the GOV stated that "there is no legal provision setting limitations on norms companies are allowed to register" and there are no "legally defined ranges" for norms. It goes on to argue that the GOV's claim that "if a company is making an adjustment to a previously registered norm and if that adjustment reflects an increase in the amount of material used, an examination will be conducted by Customs"⁵⁷ is contradicted by Hongyuan's revision of its wastage rate during the POI as a result of more efficient production techniques and the verification finding that "Customs has not physically checked the norms that {Hongyuan} reported against its actual consumption of raw materials."⁵⁸

Rebuttal Arguments

Wheatland Tube alleges that the GOV's affirmative arguments contain a number of inconsistencies. In Wheatland Tube's view, the GOV's claim that "Hongyuan's status as an export processing enterprise does not trigger the requirement of an effective monitoring system"

⁵⁷ See GOV Verification Report at 5.

⁵⁸ See Hongyuan Verification Report at 11.

contradicts its suggestion that the monitoring procedures for non-tariff zones and for duty drawback are virtually identical. It reiterates that Customs has not physically inspected Hongyuan's norms, even after it adjusted its registered wastage rate. According to Wheatland Tube, the fact that no inspection was conducted following this adjustment contradicts the GOV's statement at verification that adjustments to previously registered norms reflecting an increase in the amount of material used will prompt a physical inspection. It emphasizes that this apparent non-compliance demonstrates that the GOV's system does not comply with 19 CFR 351.519(a)(4).

According to Wheatland Tube, the record shows that "Hongyuan was left to its own devices in calculating norms and wastage rates." It points to Hongyuan's claim at verification that its registered norms for 2009 were based on its experience. When the Department observed that the company had just begun operations, company officials clarified that "the people working at the factory have prior production experience from other companies they've worked for in the past."⁵⁹ Based on this description, Wheatland Tube argues that the GOV's system to confirm which inputs are consumed during production "cannot be validated here by the Department" based on "an *ad hoc* method."⁶⁰

Wheatland Tube also highlights the Department's finding at verification that Hongyuan tracks its waste based on "informal notes," which are then discarded. It claims that, as a result, there is no accurate source of information for tracking Hongyuan's saleable scrap or usable waste. Even had Hongyuan not discarded these notes, it claims that such notes do not meet the regulatory standard envisioned by 19 CFR 351.519(a)(4). Wheatland Tube also points to Hongyuan's inability to precisely calculate wastage rates for non-steel materials incorporated into circular welded pipe as evidence of Hongyuan's unreliable recordkeeping.

Wheatland Tube observes that in *PET Film from India 2008 AR*, the Department countervailed an import duty exemption program because the GOI did not "provide {norms} calculations that reflect the production experience of the PET Film industry as a whole{.}" It claims that the Department found that the GOI's standard input output norms, or SIONS, were based on only partial data from one company and discussion with a second company. Thus, it says the Department found that the PET Film SION "relied only on the consumption register of one company, was not tied to any information in the company's financial statement, and was based on outdated production information." From Wheatland Tube's perspective, the GOV's system being examined in this case falls short even of the system the Department countervailed in *PET Film from India 2008 AR*.

Hongyuan claims that Wheatland Tube selectively quotes from the Department's verification report in an attempt to discredit the GOV's system for tracking inputs consumed in the production of exported products. Despite Wheatland Tube's claims that the GOV failed to inspect Hongyuan's norms after Hongyuan updated them, Hongyuan observes that the norm adjustment must reflect an increase in the amount of material used in order to trigger an inspection. Hongyuan argues that its revised norms reflected a decrease rather than an increase

⁵⁹ *Id.*

⁶⁰ See Petitioners' Rebuttal Brief at 37.

in material used, as a result of more efficient production techniques. Thus, no inspection was required. Hongyuan also claims that, in alleging that a physical inspection of Hongyuan's registered norms had not been conducted, Wheatland Tube omits important contextual information in the Department's verification report. Finally, Hongyuan alleges that Wheatland Tube's apparent standard for a reasonable system of inspection, wherein a legal framework "dictate{s} a strict range of registered norms regardless of the commercial reality of the producer," would not be "based on generally accepted commercial practices in the country of export" as required by 19 CFR 351.519(a)(4)(i).

Department's Position

As described above at Comment 3, Hongyuan did not receive a financial contribution from its duty-free imports. Therefore, because there is no countervailable subsidy, we do not reach the question of whether the GOV's system is "reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export," as required by our regulations.

Comment 5: Whether Hongyuan's Failure to Report Imports of Spare Parts and Accessories Warrants Use of AFA

Hongyuan informed the Department at verification that the company had not reported its imports of spare parts and accessories. Company officials told our verifiers that Hongyuan's omission was an "inadvertent error," and that the company understood the Department's questionnaire to only be requesting information about fixed assets. Although Hongyuan attempted to present information about its imports of spare parts and accessories at verification as a minor correction, we did not accept it.⁶¹

Affirmative Arguments

According to Wheatland Tube, Hongyuan's claim that the Department's questionnaire did not request information regarding spare parts and accessories is "demonstrably false." It cites various points in the record of this proceeding wherein Hongyuan stated that it had provided information regarding spare parts and accessories; *e.g.*, "Hongyuan confirms that it reported in Exhibit 15 its 'imports' of fixed assets, spare parts, and accessories originating from within Vietnam." Wheatland Tube argues that Hongyuan's attempt to submit this information at verification was not a minor correction. It cites *Bags from Vietnam* in arguing that Hongyuan's failure to provide the requested information in response to the Department's inquiries earlier in this proceeding "renders its 'reporting on this matter unreliable.'" Wheatland Tube concludes that, in order to be consistent with its past practice and with section 776(b) of the Act, the Department should use the highest non-*de minimis* rate calculated for a program in this investigation, which it anticipates will be the rate calculated for Hongyuan's import duty exemptions for raw materials.

Hongyuan did not provide affirmative arguments for this issue.

⁶¹ See Hongyuan Verification Report at 3.

Rebuttal Arguments

Hongyuan restates its position that information regarding non-fixed asset tools and equipment was not specifically requested by the Department. Rather, it argues that it presented information regarding spare parts and accessories at the start of verification “for purposes of completeness.” As support, it cites to statements in the Petition, the Initiation Checklist, and the Initial Questionnaire that it claims show the Department only requested information regarding goods imported to create fixed assets, and not all spare parts and accessories. For example, the Initiation Checklist, in its description of “Exemption of Import Duties on Imports of Fixed Assets, Spare Parts and Accessories for Industrial Zones” states that “Petitioners allege that enterprises located in industrial zones are exempt from import duties on goods imported to create fixed assets, such as manufacturing equipment and spare parts.”⁶² Additionally, the Department described “Duty Exemptions on Goods for the Creation of Fixed Assets for Encouraged Projects” by citing Article 16 of the Law on Import Duty and Export Duty and Article 16 of Decree 149/2005, and stated that Petitioners “allege that goods imported to create fixed assets for encouraged investment projects are exempted from import duties.”⁶³

Should the Department decide to apply facts available, Hongyuan contends that the Department should limit any facts available decision to the portion of spare parts and accessories that were not reported, and not to the program as a whole. Hongyuan observes that at verification, the Department tied import declarations and invoices for fixed assets to Hongyuan’s accounting system and the worksheet whereby Hongyuan reported its fixed assets. Hongyuan also argues that, contrary to Wheatland Tube’s claim that Hongyuan’s omission renders the rest of its reporting unreliable, the Department verified the accuracy of Hongyuan’s fixed asset equipment purchases. Therefore, Hongyuan argues that the Department must rely on this verified information for its final determination.

Department’s Position

As described above at Comment 3, Hongyuan did not receive a financial contribution from its duty-free imports. Therefore, because there is no countervailable subsidy, we do not reach the question of whether to apply AFA to Hongyuan for its failure to report some spare parts and accessories.

Comment 6: SeAH VINA’s Failure to Report Some Imports

Affirmative Arguments

Wheatland Tube argues that the Department should apply AFA to SeAH VINA because, at verification, SeAH VINA untimely presented imports that had not been reported in its previous submissions.

Because of the relative size and scope of the information presented at verification, Wheatland

⁶² See Initiation Checklist at 22.

⁶³ See GOV IQR at Exhibit 43 and 49.

Tube contends that this information should not have been considered a “minor correction.” Moreover, it contends that because SeAH VINA did not provide a complete and accurate record of its imports prior to verification, as requested in the Department’s initial and supplemental questionnaires, SeAH VINA has failed to provide information within the deadlines established and has failed to cooperate by not acting to the best of its ability to comply with a request for information. Accordingly, Wheatland Tube states that this failure should result in the application of AFA under section 776(b) of the Act.

Rebuttal Arguments

SeAH VINA disputes Wheatland Tube’s assertion that the Department should apply AFA to SeAH VINA’s imported purchases. SeAH VINA contends that Wheatland Tube has exaggerated the magnitude of the corrections SeAH VINA provided at verification. To defend its claim, SeAH VINA points out that it had correctly reported the figures for its imported purchases of fixed assets and had inadvertently over-reported, not under-reported, its imported purchases of spare parts and accessories. Further, SeAH VINA asserts that the increases in reported purchases Wheatland Tube points to are largely due to the reclassification of raw material purchases that had previously been classified as spare parts and accessories. SeAH VINA notes that Wheatland Tube has not made any assertion that SeAH VINA received any countervailable benefits from any of these purchases, but instead has focused its efforts on presenting information in a light that makes it appear as though SeAH VINA’s corrections were not “minor” and that SeAH VINA did not act to the best of its ability by withholding information from the Department.

SeAH VINA contends that the corrections it presented were due to difficulties it had in compiling and reporting the data requested by the Department. SeAH VINA states that these difficulties stemmed from the fact that many of its records were being kept in a warehouse subsequent to the company’s migration from a manual to an electric record keeping system. SeAH VINA also notes that prior to verification, it notified the Department of these difficulties.⁶⁴ SeAH VINA argues that given these difficulties, it should be reasonable to expect certain corrections may be required. Therefore, SeAH VINA maintains that the corrections it provided at verification were “minor” and contends that because it made attempts to provide the requested information, there is no basis for Wheatland Tube’s allegation that SeAH VINA failed to act to the best of its ability in reporting its imports of fixed assets, spare parts and accessories.

Department’s Position

We disagree with Wheatland Tube’s assertions that AFA should be applied to SeAH VINA for the information it presented at verification regarding its imported raw materials, spare parts, and accessories.

We first disagree with Wheatland Tube’s argument that SeAH VINA failed to cooperate by not acting to the best of its ability to comply with a request for information. While SeAH VINA did not initially report its imports of spare parts and accessories, it did provide this information in its

⁶⁴ See SeAH VINA Correction Submission.

response to a supplemental questionnaire issued by the Department.⁶⁵ As SeAH VINA points out, prior to verification, it brought to the Department's attention the fact that it had experienced difficulty finding and compiling all of its manually filed import data (as opposed to the electronically filed data it initially based its entire import purchase database upon). In discovering this information, SeAH VINA timely provided revised import databases that included corrections to its previous reporting, namely, the addition of manually filed imports of raw materials, spare parts, and accessories.⁶⁶ The additional minor corrections SeAH VINA presented at verification stemmed from its previously reported difficulties with its manually filed imports. Thus, we determine that SeAH VINA was fully cooperative to the Department's requests for information, prior to verification.

We also disagree with Wheatland Tube's argument that SeAH VINA's corrections were not minor in nature. It is standard Departmental practice to accept corrections of minor errors identified by the respondents at the outset of verification if the information corrects information already on the record, or the information corroborates, supports, or clarifies information already on the record.⁶⁷ The errors identified by SeAH VINA were minor in that they affected only a small number of imports in comparison to SeAH VINA's total imports, reflected changes to ensure consistency of its reporting, corrected errors in a description of a field, or added relatively few manually filed imports. With respect to the latter, as noted above, SeAH VINA had previously informed the Department of the difficulty it experienced in compiling this information. Thus, we are satisfied that the corrections presented at the outset of verification were minor.

It should also be noted that SeAH VINA did not import any of these items under any of the import duty exemption programs being investigated (*i.e.*, it paid all import duties on its raw materials, spare parts, and accessories).⁶⁸ Thus, the addition of previously unreported imports simply provides a complete and accurate record of SeAH VINA's imports and has no bearing on the extent to which SeAH VINA benefited from alleged countervailable subsidies. More importantly, the Department fully verified the accuracy and completeness of these minor corrections.⁶⁹

Therefore, because we find that SeAH VINA cooperated to the best of its ability and that the corrections it presented at verification were "minor," we determine that AFA is not warranted with respect to SeAH VINA's imports of raw materials, fixed assets, spare parts, or accessories.

⁶⁵ See SeAH VINA 2SQR at 3.

⁶⁶ See SeAH VINA Correction Submission.

⁶⁷ See, *e.g.*, *Kitchen Racks AD from the PRC* and accompanying IDM at Comment 4; *Steel Wire Rod from Mexico* and accompanying IDM at Comment 1.

⁶⁸ See SeAH VINA IQR at 25; SeAH VINA Verification Report at 19-20.

⁶⁹ See SeAH VINA Verification Report at 13-20.

Comment 7: Whether SeAH VINA Received Countervailable Duty Exemptions on its Purchases of Fixed Assets, Spare Parts and Accessories

Affirmative Arguments

Wheatland Tube agrees with the Department's *Preliminary Determination* that SeAH VINA received countervailable benefits under the program "Import Duty Exemptions on Imported Fixed Assets, Spare Parts, and Accessories for Encouraged Projects" and asserts that it should affirm this decision for the final results.

SeAH VINA and the GOV disagree with the Department's *Preliminary Determination* and assert that verified information on the record confirms that SeAH VINA did not benefit from import duty exemptions on its fixed assets, spare parts, or accessories based on its location in an industrial zone.

To support these claims, SeAH VINA first notes that the Department verified SeAH VINA paid all duties normally applicable to its imported spare parts and accessories and, therefore, did not benefit from import duty exemptions on its imported spare parts and accessories.⁷⁰

SeAH VINA and the GOV next argue that the goods SeAH VINA imported for use in the creation of fixed assets were not exempt from duties, but rather were imported under a single HTS number for which the normal duty applicable is zero.⁷¹ The GOV notes that Department's verification confirmed that "{f}or each year, the applicable duty rates for the tariff number SeAH VINA imported its pipe production lines under (8436101000) were zero."⁷² SeAH VINA and the GOV state that under Vietnamese law a company importing items for use in the construction of a single pipe forming mill is permitted to classify all of the imported items under HTS item 8463101000, even if the items are imported in separate entries.⁷³ According to SeAH VINA and the GOV, the Department's verification confirmed that SeAH VINA imported its fixed assets under this single HTS number, as documented with each of its customs declarations.⁷⁴ SeAH VINA notes that Vietnamese Customs authorities approved these declarations without modifying this classification.⁷⁵ Therefore, SeAH VINA and the GOV conclude that the Department has a complete record which demonstrates that, under normal Vietnamese customs principles, the duty rate applicable to SeAH VINA's imports of items used in the construction of its pipe mills was zero and no duty exemptions were provided. Accordingly, SeAH VINA and the GOV assert that the Department's *Preliminary Determination* should be reversed for the final determination as SeAH VINA did not receive countervailable benefits under this program.

⁷⁰ See SeAH VINA Verification Report at Exhibit S-1, at 3, and SeAH VINA Verification Exhibit S-9, at 24-38, 40-63. See also SeAH VINA 2SQR at Appendix SS-1-B.

⁷¹ See SeAH VINA Verification Report at 16. See also SeAH VINA Verification Exhibit S-9, at 2-23. See also SeAH VINA 2SQR at Appendix SS-1-A.

⁷² See GOV Verification Report at 12 and GOV Verification Exhibit GOV-22

⁷³ See GOV Verification Report at 12 ("pursuant to Circular 85/2003, if an enterprise imports a number of items for use in creating one main machine, each imported item required to create the machine is only subject to the import duty rate applicable to the main machine.").

⁷⁴ See SeAH VINA Verification Report at 15-19.

⁷⁵ See SeAH VINA Verification Report at 16. See also SeAH VINA Verification Exhibit S-10, at 39-41, 45-46. See also SeAH VINA 2SQR, Appendix SS-1-E.

Finally, SeAH VINA notes that in the *Preliminary Determination* the Department explained that “{b}ecause SeAH VINA reported that all imports under this program were used to *create* fixed assets, we are treating all of SeAH VINA’s duty exemptions for imports under this program as recurring subsidies.”⁷⁶ According to SeAH VINA, this is not consistent with the Department’s practice as employed in *Garment Hangers from Vietnam Prelim* and *Steel Wheels from the PRC* in which the Department stated that “when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.” Therefore, SeAH VINA asserts that because the fixed assets it imported are tied to the firm’s capital assets, any subsidies arising from alleged exemptions on these goods should be classified as non-recurring subsidies, and such benefits should be amortized over the AUL of the company’s assets pursuant to 19 CFR 351.524(b).

Rebuttal Arguments

Wheatland Tube disputes the GOV’s and SeAH VINA’s claims that SeAH VINA did not receive countervailable benefits under this program and contends that the record demonstrates SeAH VINA qualified and applied for benefits under this program based on its location in an industrial zone. Wheatland Tube observes that SeAH VINA’s eligibility for this program is clearly indicated in its most recent investment certificate, which covers the entire POI. It also emphasizes that Vietnamese Customs officials informed the Department at verification that if a company is applying for import duty exemptions it is qualified for, the company would identify such on the customs form.⁷⁷ Wheatland Tube states that the record confirms SeAH VINA indeed did apply for such exemptions.⁷⁸

Wheatland Tube also disputes SeAH VINA’s and the GOV’s claims that SeAH VINA did not receive exemptions under this program because it imported its fixed assets under a single HTS number pertaining to a pipe mill production line. Specifically, Wheatland Tube states that the HTS number that SeAH VINA and the GOV say entitles SeAH VINA to duty-free imports of “a single pipe mill” was not listed on the company’s registered list of items for importation for its pipe production mill. Moreover, because the law that provides for duty exemptions, Decree 108/2006, is mentioned on this registered list, Wheatland Tube contends it is only logical to find that the reason SeAH VINA did not pay import duties for these goods was because of the exemptions this program provides, not because of the HTS number pertaining to pipe mill production lines.

Finally, Wheatland Tube disagrees with SeAH VINA’s argument that the Department should treat benefits under this program as non-recurring. It contends that SeAH VINA’s references to *Garment Hangers from Vietnam Prelim* and *Steel Wheels from the PRC* are misplaced. For example, Wheatland Tube states that in *Garment Hangers from Vietnam Prelim*, the Department was looking at imports that were explicitly tied to the respondent’s capital equipment. In addition, it states that the record in *Steel Wheels from the PRC* showed that the program related to imported production equipment, not spare parts and accessories. Instead, Wheatland Tube

⁷⁶ See SeAH VINA Prelim Calc Memo at 3 (emphasis added by SeAH VINA).

⁷⁷ See SeAH VINA Verification Report at 16.

⁷⁸ *Id.* at 16 and at Exhibit S-10.

contends the Department should affirm its *Preliminary Determination* and continue to treat SeAH VINA's benefits from its imported fixed assets as recurring.

Department's Position

We agree with SeAH VINA and the GOV. While Wheatland Tube is correct in pointing out that SeAH VINA's investment certificate makes it eligible to import these items duty free, the record indicates that SeAH VINA did not avail itself of these exemptions. Rather, the Department verified that SeAH VINA paid the applicable duties for its imports of fixed assets, spare parts, and accessories.⁷⁹

Pursuant to Circular 85/2003 (later amended by Circular 49/2010), SeAH VINA imported goods used to create fixed assets, in this case pipe production lines, under the HTS heading for pipe production lines.⁸⁰ In order to do so, the law required that SeAH VINA register a list of items it intended to import for its production line in 2008 and 2009.⁸¹ Because of changes in the law in 2010, no registered list was required for SeAH VINA's imports in 2010.⁸² We verified the normal applicable duty to imported pipe production lines is zero.⁸³

While Wheatland Tube points to the fact that this registered list did not identify the HTS number for a pipe production mill as evidence SeAH VINA did not import these items under the HTS number for pipe production mills, we note that the purpose of this list was to provide customs with a list that identifies the names, quantities, and values of the items expected to be imported for the creation of the pipe production mill.⁸⁴ Therefore, the exclusion of this HTS number from this registered list is not meaningful. Wheatland Tube also notes that Decree 108/2006 was listed on this registered list. While this particular reference to Decree 108/2006 was not specifically discussed in the verification report, the relevant fact established by the verification report is that the Department confirmed that the imported items in question were all imported pursuant to Circular 85/2003, not Decree 108/2006.

Therefore, the verified record (*e.g.*, import declarations, audited reports confirming the importation and implementation of each item brought in under the main machine HTS number, Vietnamese laws, and the tariff schedules from 2008-2010) confirms that SeAH VINA imported its fixed assets under a single HTS number with an applicable duty rate of zero. Consequently, SeAH VINA paid all applicable duties on its imports of spare parts and accessories and we find that SeAH VINA did not receive duty exemptions under this program.

Because we are determining that SeAH VINA did not benefit from this duty exemption program, we do not reach the issue of whether to treat benefits as recurring or non-recurring, as discussed by Wheatland Tube and SeAH VINA.

⁷⁹ See SeAH VINA Verification Report at 13-19 and GOV Verification Report at 11-13.

⁸⁰ See GOV 1SQR at Exhibits GOVS1-26 and GOVS1-27.

⁸¹ See GOV Verification Report at 12.

⁸² *Id.*

⁸³ See GOV Verification Report at 12 and Exhibit GOV-2.

⁸⁴ See GOV Verification Report at 12.

Comment 8: Preferential Financing to the Steel Industry

In the *Preliminary Determination*, the Department found that the respondents did not receive preferential financing to the steel industry. We then concluded that “[b]ased on a review of these plans, circular welded pipe is not listed among the steel industry products designated for financial support, although other specific steel industry products are listed... we preliminarily determine that circular welded pipe was not part of a state targeted, or encouraged, industry or project; and that the various plans that relate to the promotion of the Vietnamese steel industry do not cover the production of circular welded pipe.”⁸⁵

Affirmative Argument

Wheatland Tube protests that the Department’s finding is “demonstrably incorrect.”

First, Wheatland Tube points to the GOV’s alleged failure to provide some planning documents as reason to find that the GOV has a policy to support the circular welded pipe industry. It observes that the GOV only provided translated excerpts from two planning documents. The two documents Wheatland Tube claims the GOV should have provided to the Department are Decision 73/2008 and Decision 271/2006. According to Wheatland Tube, the GOV’s failure to provide these plans is “critical” because the lists of prioritized projects in these plans include projects to produce rolled steel pipe and rolled unwrought steel pipe.

Following this argument, Wheatland Tube provides an overview of the policy documents that are on the record, and why it sees these documents as supporting an affirmative determination of policy lending. Wheatland Tube argues that despite market-based reforms since 1986, central planning still dictates development goals for some areas of Vietnam’s economy. It points to the GOV’s National Ten Year Plan, which it claims shows that the GOV requires banks to lend pursuant to the GOV’s development policies. It also points to the “institutionalized link between adherence to development objectives and the receipt of financing that was highlighted by Vietnam in its WTO accession process,” referring specifically to the GOV’s Development Assistance Fund. Receipt of loans under this program, according to Wheatland Tube, is contingent upon industrial policies, export performance, and use of domestic rather than imported goods.

Wheatland Tube then proceeds to a more focused discussion of steel products in particular. It argues that a “plain reading” of the Steel Master Plan demonstrates that it covers steel pipe. According to Wheatland Tube, the Steel Master Plan specifically identifies “finished steel products.” Since the circular welded pipe under investigation is both “finished” and made of steel, they argue that circular welded pipe is, intuitively, covered by the Steel Master Plan. Although GOV officials stated at verification that circular welded pipe is not covered under this plan, Wheatland Tube observes that the GOV did not provide any evidence to support this claim. Moreover, it points out that the appendix to the Steel Master Plan mentions several pipe projects, specifically “[p]rojects on refining and rolling steel sheets and non-welded steel tubes.” The appendix also mentions making investment in finished steel products “in service of shipbuilding,

⁸⁵ See *Preliminary Determination*, 77 FR at 19217.

oil and gas, and mechanical engineering for the manufacture of extra-long and extra-heavy equipment.” Wheatland Tube opines that “it would be difficult to envision finished steel for the oil and gas industry that is *not* pipe.” In sum, Wheatland Tube claims that the language of the Steel Master Plan belies a broader definition of “finished steel products” than that claimed by the GOV.

Even if the GOV’s definition of “finished steel products” were accepted, Wheatland Tube argues that the Steel Master Plan’s reference to increasing exports of “pig iron and steel of all kinds” demonstrates that the GOV is directing preferential financing to exporters of steel products, including circular welded pipe. It emphasizes that Hongyuan was designated by the GOV as an export processing enterprise, and that it exports 100 percent of its production. As evidence of the GOV’s policy to provide preferential financing to exporters, Wheatland Tube cites to portions of the Steel Master Plan stating that “{t}he government shall encourage the businesses to promote steel export to potential markets, especially to neighboring countries and the region. The Ministry of Finance shall take the prime responsibility... and submit to the Prime Minister the policy on supporting to exportation of construction steel products.” Wheatland Tube also cites to SeAH VINA’s sales brochure, which states that SeAH VINA “has been playing an important role in Vietnam’s economic development as a leader in the steel pipe industry, a mainstay of national infrastructure.”

Wheatland Tube emphasizes that it is “ultimately up to local governments to direct the implementation of the plan.” It reasons that since there are many pipe producers in Vietnam, but few producers of slab, hot-rolled steel and billets, it follows that the Steel Master Plan is being implemented by local government authorities through developing the pipe industry. For example, it observes that Decision 271/2006 (regarding Hai Phong City) mentions two encouraged pipe projects: one for “rolling unwrought steel pipes,” and one for “rolling steel pipes.” According to Wheatland Tube, this plan’s mention of “rolling steel pipes” is proof that the GOV’s development plans do include the subject merchandise.

Even though the plans and policies described above do not specifically mention circular welded pipe, Wheatland Tube argues that the Department should not constrain its analysis to whether circular welded pipe is mentioned in the GOV’s planning documents – both because a *prima facie* reading of the GOV’s steel-related plans shows that they encompass all steel products, and because such an analysis would contradict Departmental precedent. For example, Wheatland Tube argues the Department found that the Government of the PRC had a policy in place to support the growth of the “paper industry” through preferential financing in *Thermal Paper from the PRC*. Wheatland Tube claims that the Department did not require the policy documents on the record of that investigation to specifically mention “lightweight thermal paper” as an encouraged product in order to find the existence of preferential financing.⁸⁶ Likewise, Wheatland Tube points out that in *OTR Tires from the PRC*, the Department wrote that “[a]lthough in this case, there are no discrete policy plans for the tire industry, per se, the totality of the information on this record... shows that the government is directing policy lending to the tire industry or to specific enterprises in the tire industry.”⁸⁷

⁸⁶ See *Thermal Paper from the PRC* and accompanying IDM at 12.

⁸⁷ See *OTR Tires from the PRC* and accompanying IDM at 98.

The GOV disagrees with what it calls “leaps and assumptions” on the part of Wheatland Tube. According to the GOV, the evidence gathered by the Department since the *Preliminary Determination* only bolsters the Department’s preliminary finding that circular welded pipe is not covered by the GOV’s policy plans. Regarding the national five year socio-economic plan and the 2010 annual plan, the GOV contends that these plans are geared towards broad goals such as GDP growth, and only mention steel in a general sense. It also emphasizes that circular welded pipe is “completely absent” from both plans. The GOV also claims that the plans promulgated by Hai Phong city and Dong Nai province⁸⁸ do not mention circular welded pipe at any point.

Furthermore, the GOV argues that the national Steel Master Plan does not include circular welded pipe. It points out that the Steel Master Plan identifies three products targeted for development: pig iron, raw steel and finished steel products. The GOV recounts that it clarified “finished steel products” to refer to flat steel and special steel products. In response to the Department’s questions at verification, the GOV further clarified that “flat steel” refers to products such as rebar and hot-rolled steel that ultimately are used to create other products. Likewise, the dictionary entry supplied by the GOV at verification described “special steel” as “non-common” steel (such as alloy steel). According to the GOV, the list of investment projects attached to the Steel Master Plan confirms this reading, as all of the projects listed therein are for pig iron, ingot steel and rolled steel. Since circular welded pipe does not fall into any of these categories, the GOV claims that there is no evidence to find that the Steel Master Plan covers circular welded pipe.

Similarly, the GOV argues that List of Spearhead Industries does not include any reference or discussion regarding circular welded pipe. Instead, it references special-use steel and steel billets. In its questionnaire responses, the GOV recounts that it described special-use steel as being used in the defense industry, ship building, and in other advanced products that require high-quality steel. It also points to the definition of “special steel” it provided at verification, which also does not mention circular welded pipe. Finally, the GOV argues that List of Spearhead Industries makes no mention of a lending program for the steel industry.

The GOV goes on to argue that the GOV’s planning documents are not self-implementing. It emphasizes that the mention of one industry in a government plan cannot be understood to mean that all members of that industry will receive some unspecified government subsidy. Instead, the GOV portrays its plans as being “aspirational in nature” and covering a range of economic, societal and environmental goals. It reiterates its position that “{g}overnment plans do not, on their own, confer any benefits on industries discussed in the plan.” Finally, the GOV argues that preferential lending policies would be contrary to law. It cites Article 15 of the Law on Credit Institutions, which states that “{c}redit institutions shall have the right to business autonomy and shall be responsible for their business results. No organization or individual shall be permitted to interfere illegally with the business autonomy of credit institutions.” Rather, according to the GOV, all policy lending in Vietnam occurs through two designated policy banks.

⁸⁸ These include the Hai Phong Five Year Plan, the Dong Nai Five Year Plan, and the Hai Phong Annual Plan.

Rebuttal Argument

The GOV begins by pointing out what it sees as two inaccuracies in Wheatland Tube's statements: first, it disputes Wheatland Tube's claim that the GOV did not cooperate with the Department because it provided only partial translations of two provincial-level planning documents. It points to the Department's question, which requests "an index and summary for each provincial and municipal 5-year plan issued by the provincial and local authorities." Second, in response to Wheatland Tube's accusation that the GOV failed to provide some key planning documents,⁸⁹ the GOV emphasizes that it did provide seven planning documents in response to the Department's initial questionnaire, and claims that it provided all relevant five-year plans, as well as all plans concerning the steel industry. It argues that it has been fully responsive to all of the Department's questions.

The GOV goes on to argue that the Department should not rely on its experience in Chinese CVD cases as the basis for its findings regarding Vietnam. According to the GOV, the Department's analytical framework for determining whether policy lending exists is premised upon the understanding of Chinese law described in *Free Sheet Paper from the PRC*. In that case, the Department found that "cited documents contemplate affirmative State action to implement the government's policies and, in fact, mandate their implementation by various levels of government, as opposed to providing mere guidance."⁹⁰ The GOV argues Wheatland Tube has failed to produce evidence of a similar requirement in Vietnam, because no such requirement exists. Thus, it is not enough for the Department to find that steel is mentioned in planning documents. According to the GOV, the Department must first find that compliance with government plans in Vietnam is mandatory.

The GOV cites the criteria described in *Citric Acid from the PRC* and argues that, in addition to finding evidence that government plans require the development of a particular industry, the Department must also find that there are directives for financing to be provided to that industry. According to the GOV, Wheatland Tube's brief does not address this second component. In *Citric Acid from the PRC*, the Department found that "the evidence does not indicate that a national level plan exists that includes directives to provide financing for the citric acid industry."⁹¹ According to the GOV, the same is true in this case regarding circular welded pipe.

The GOV goes on to allege that Wheatland Tube has quoted selectively from planning documents in order to build its case. For example, the GOV cites one passage in which Wheatland Tube argues that "{t}he Steel Master Plan states that investments in steel projects will be made from the GOV's 'own capital,' through 'preferential loans,' and 'domestic and foreign commercial loans.'" Taken in context, however, the full quotation reads as follows:

"To diversify investment capital for the steel industry from own capital, preferential loan (for ingot steel manufacture projects), domestic and foreign commercial loans, capital raised from the issuance of government bonds, corporate bonds and project bonds, foreign investment capital."

⁸⁹ Specifically, Decision 73/2008 and Decision 271/2006.

⁹⁰ See *Free Sheet Paper from the PRC* and accompanying IDM at 54.

⁹¹ See *Citric Acid from the PRC* accompanying IDM at 53.

According to the GOV, it is apparent that the phrase “own capital” refers to the capital of the steel industry, not the GOV; and that the “preferential loans” are limited to ingot steel manufacturing projects. The GOV also argues that the loan documentation the Department collected at verification does not suggest interference by the GOV in the bank’s provision of financing to the respondents. Thus, from the GOV’s perspective, there is no evidence on the record that the GOV directs preferential financing to producers of circular welded pipe.

To the above, Hongyuan adds its claim that all of the information cited by Wheatland Tube was already before the Department when it issued the *Preliminary Determination*. The company goes on to provide “a brief summary of the facts” regarding its receipt of financing, in order to demonstrate that it did not receive preferential lending: it argues that the Department verified its loans to have been provided on market-based terms, it observes that the line of credit it received was secured by collateral, and argues that the interest rate it paid on its line of credit is consistent with information provided by Wheatland Tube.

SeAH VINA observes that it had loans from only four banks outstanding during the POI. According to SeAH VINA, one of the banks is a “purely foreign” institution, two of the banks are Vietnamese branches of foreign-owned banks, and the last bank was a joint venture between a Korean bank and a Vietnamese bank. Of those banks, the Korean-Vietnamese joint venture bank charged SeAH VINA the highest interest rate on its loans. SeAH VINA concludes with the assertion that there is no evidence it benefitted from preferential financing, particularly since most of its loans were from foreign-owned banks.

Wheatland Tube contests the GOV’s claim that none of the plans on the record reference circular welded pipe. It emphasizes that the Steel Master Plan lists a “non-welded steel tube” project, and Decision 271/2006 (of Hai Phong City) lists a “project on rolling unwrought steel pipes” and a “project on rolling steel pipes.” Wheatland Tube also emphasizes that another plan it submitted, Decision 73/2008 (from Dong Nai Province), specifically lists steel manufacturing as a priority for investment, along with a “steel rolling factory.” It argues that the GOV had a “clear obligation” to provide these plans, but it did not do so. Wheatland Tube goes on to reiterate a number of arguments from its case brief regarding “finished steel products,” steel products used in the oil and gas industries, steel used in the construction industry, and steel exports. It alleges that the Five-Year Plan lists engineered steel as a development priority, and thereby includes circular welded pipe.

Wheatland Tube also reiterates its arguments that the GOV provides financing to steel producers. For instance, it argues that the Steel Master Plan requires provincial and municipal People’s Committees to “direct investment in the development of steel manufacturing establishment in their localities in accordance with this master plan.” It also argues that the Vietnamese Ministry of Finance is required to “coordinate with the Ministry of Trade and the Ministry of Planning and Investment in studying, improving and proposing mechanisms, financial policies as well as import tax and export tax policies in order to step up investment in the development and restructuring of the steel industry. Wheatland Tube further contends that Decision 271/2006 calls for preferential policies to be adopted “for major industries and industrial products of the city,” and that the plans discussed above seek to ensure that the directives contained in the plans are actually implemented.

Department's Position

We have reviewed the evidence on the record and all arguments from parties, and we continue to determine that neither respondent received preferential financing to the steel industry.

In *Free Sheet Paper from the PRC* and, by extension, in *Thermal Paper from the PRC*, we found that “the GOC has a policy in place to encourage and support the growth and development of the paper industry through preferential financing initiatives, as illustrated in the five-year plans and industrial policies on the record.”⁹² We agree with Wheatland Tube that we did not require that the paper plans at issue in *Thermal Paper from the PRC* specifically identify “lightweight thermal paper” as a type of paper covered by the plans.⁹³ However, we disagree with Wheatland Tube’s apparent conclusion that the mere existence of a plan targeting an industry or the mention of some products from an industry is sufficient basis to assume that all products in an industry have been targeted for government assistance. We countervailed preferential lending in the cases above because some of the plans in question were general to the entire paper industry.⁹⁴ However, the plans on the record of this investigation are not all-encompassing. They target specific steel products, and do not include circular welded pipe. We individually address the plans mentioning steel and discussed by parties below.

List of Spearhead Industries

In this plan’s “list of prioritized and spearhead industries,” steel is referenced, but incentives are limited to “steel billets and special-use steel,” neither of which describes circular welded pipe.⁹⁵ As we noted earlier in our determination, the information on the record shows that special-use steel “refers to high-quality steel for use by the defense industry, electrical engine manufacturing and ship building.”⁹⁶ This description is confirmed elsewhere, such as the Steel Master Plan.⁹⁷ The GOV also provided additional clarification of this term at verification.⁹⁸ More importantly, this plan does not discuss financing for steel products. Thus, this plan does not include circular welded pipe.

National Five-Year Plan

The GOV’s Five-Year Plan lists a number of types of steel whose production will be encouraged in the Red River Delta. These products are high quality steel, steel sheets, steel plates, and engineered steel.⁹⁹ The information on the record shows that “engineered steel” is a subset of special-use steel, and that neither designation describes circular welded pipe.¹⁰⁰ The plan also refers to “steel for construction,” but only in the context of “ensur{ing} supply-demand

⁹² See *Free Sheet Paper from the PRC* and accompanying IDM at 9.

⁹³ See Petitioners’ Case Brief at 25.

⁹⁴ See *Free Sheet Paper from the PRC* and accompanying IDM at Comment 8.

⁹⁵ See GOV IQR at Exhibit 6, Appendix.

⁹⁶ See GOV 1SQR at 3.

⁹⁷ See, e.g., Steel Master Plan at Section 3(b): “To study investment in a special steel mill with a capacity of around 0.3-0.5 million tons/year in service of machinery manufacture and defense industry.”

⁹⁸ See GOV Verification Report at 14-17.

⁹⁹ See GOV IQR at Exhibit 9, page 107.

¹⁰⁰ See GOV Verification Report at 14.

balance.”¹⁰¹ More importantly, the plan does not reference loans or financing to the steel industry or for steel products. Thus, this plan does not include circular welded pipe.

Steel Master Plan

The GOV’s Steel Master Plan mentions a number of products and projects targeted for development assistance. These include pig iron, ingot (or raw) steel, and “finished steel products.”¹⁰² The information on the record shows that this refers specifically to flat steel products and long steel products.¹⁰³ At verification, it was further clarified that finished steel products “was used to describe flat or long steel products that are no longer in raw form. Officials continued to explain that this category would include things such as rebar or hot-rolled steel, which are ultimately used to create other products.”¹⁰⁴ The GOV confirmed that circular welded pipe was not intended by this term. Although it was not able to produce supporting evidence at verification, their description of the term is consistent with the types of specific projects described in the Steel Master Plan.¹⁰⁵

The Steel Master Plan also describes export of “pig iron and steel of all kinds” as a development objective.¹⁰⁶ However, the plan goes on to clarify the specific kinds of steel and steel projects that actually are able to qualify for investment assistance, and circular welded pipe is not among them.¹⁰⁷ Finally, the plan mentions “projects to make and roll steel sheets, large shaped steel products and non-welded steel tubes with advanced technologies... in service of shipbuilding, oil and gas, and mechanical engineering for the manufacture of extra-long and extra-heavy equipment.”¹⁰⁸ Although Wheatland Tube would have us treat this reference to “non-welded steel tube” as proof that assistance flows to all pipe projects, this is clearly not the same product as circular welded pipe (*i.e.*, one is welded and one is not). Also, because the plan lists the specific steel products such as non-welded steel tubes that will be employed in the service of the oil and gas industry, and that list does not include circular welded pipe, Wheatland Tube’s argument that “it would be difficult to envision finished steel for the oil and gas industry that is not pipe,” *ergo*, this passage references circular welded pipe, is not persuasive.

The only reference to preferential loans in this plan is for steel ingot production.¹⁰⁹ The previous steel plan, the 2001 Steel Plan, does mention the provision of financing to key steel projects and the steel industry; however, it does not reference circular welded pipe. Furthermore, it was replaced by the passage of the Steel Master Plan in 2007, and neither respondent received financing that was still outstanding in the POI during the brief window between the cutoff date

¹⁰¹ See GOV IQR at 67.

¹⁰² See GOV IQR at Exhibit 12.

¹⁰³ *Id.*

¹⁰⁴ See GOV Verification Report at 15.

¹⁰⁵ For example, “high quality hot-rolled and cold-rolled steel coils and zinc plated steel” (Section 3(b), “a number of smaller-sized projects to make flat-steel products, including 2 hot-rolled steel sheet mills” (*Id.*), and “{p}rojects on refining and rolling construction steel and large shaped steel products of high quality” (Appendix I).

¹⁰⁶ See GOV IQR at Exhibit 12, Section 1(2)(d).

¹⁰⁷ See GOV IQR at Exhibit 12, at Section 3 and in the Appendix.

¹⁰⁸ See GOV IQR at Exhibit 12, Section 3(b).

¹⁰⁹ “To diversify investment capital for the steel industry from own capital, preferential loan (for ingot steel manufacture projects), domestic and foreign commercial loans...” See Section 3(c) of the Steel Master Plan.

and the passage of the Steel Master Plan.¹¹⁰ In conclusion, circular welded pipe is not covered by the Steel Master Plan.

Decree 108/2006

This decree lists high-quality steel, alloys, special metal, sponge iron and steel billet as types of steel that have been targeted for special investment incentives.¹¹¹ The GOV confirmed at verification that none of these categories include circular welded pipe.¹¹²

As Hongyuan has observed, the only evidence before us now that was not on the record at the *Preliminary Determination* are the two policy plans submitted by Wheatland Tube, so we now proceed to address those plans. First, we disagree with Wheatland Tube that the GOV was required to provide these plans. Our questionnaire instructed the GOV to provide provincial and municipal five-year plans that were issued after the cutoff date.¹¹³ Neither of the plans provided by Wheatland Tube fell within the criteria of our questionnaire request and, thus, were not required to be submitted to the Department by the GOV. However, even if they had fallen within the scope of our Initial Questionnaire, as discussed below, neither plan mentions circular welded pipe.

Decision 271/2006

This plan identifies specific projects in the steel industry that are targeted for investment, but all of the projects that could refer to circular welded pipe are planned for 2011 or later. Our POI ends in 2010. Wheatland Tube emphasize that this decision “specifically mentions plans for two pipe projects: one for rolling unwrought steel pipes and one for rolling steel pipe.”¹¹⁴ Again, as the Department pointed out at the hearing in this investigation, these are among the projects that are planned to commence after this investigation’s POI.¹¹⁵ Also, the plan does not mention financing in relation to the steel industry. The only reference to financing under the plan is to ODA, which takes the form of loans issued through Vietnam’s official policy bank.¹¹⁶ We verified that neither respondent in this investigation received ODA. Accordingly, this plan does not include circular welded pipe.

Dong Nai Five-Year Plan

This resolution lists 15 “spearhead” industries for Dong Nai Province. None of them include steel or steel products.¹¹⁷ The plan does include a generic mention of “steel manufacture” on a “list of programs and projects prioritized for investment study,” however, this is among some 230 other projects that have been prioritized for 2010.¹¹⁸ The only specific reference to a steel

¹¹⁰ See GOV IQR at 35 and at Article 3 of Exhibit 12.

¹¹¹ See GOV IQR at Exhibit 40, Appendix I.

¹¹² See GOV Verification Report at 17.

¹¹³ See Initial Questionnaire at Section II, page 4.

¹¹⁴ See Petitioners’ Pre-Verification Comments at Exhibit 2, Appendix.

¹¹⁵ See Hearing Transcript at 107.

¹¹⁶ See, e.g., GOV IQR at Articles 3 and 4 of Exhibit 30.

¹¹⁷ See Petitioners’ Pre-Verification Comments at Exhibit 1, Article 1, Section III.

¹¹⁸ See Petitioners’ Pre-Verification Comments at Exhibit 1, Appendix.

project in this plan is a steel rolling factory, which is planned for the period 2011-2020.¹¹⁹ This plan also does not mention financing to the steel industry, with the possible exception of ODA funds. As noted above, we verified that neither of our respondents received ODA funds.

In conclusion, the products targeted for preferential treatment in the policy plans on this record fall into two categories: raw materials used to manufacture other products (*e.g.*, steel ingots and hot rolled coil), and specialty steel, such as alloys and steel for shipbuilding. Therefore, when viewed in its entirety, the record of this investigation does not support an affirmative finding of preferential lending to producers of circular welded pipe. Instead of finding this program non-countervailable, we have determined that it was not used because future GOV plans may include circular welded pipe. In fact, GOV officials informed us at verification that circular welded pipe may be specifically identified in the next Steel Master Plan.¹²⁰

Comment 9: Preferential Lending for Exporters

Affirmative Arguments

In addition to preferential lending to the steel industry, Wheatland Tube has alleged that the GOV maintains a policy of providing preferential lending to exporters. Wheatland Tube observes that the GOV's National Ten Year Plan calls for exports to increase at "more than double that of GDP." It argues that the GOV's Development Assistance Fund provides preferential loans based in part on export performance. It observes that one of the development objectives listed in the Steel Master Plan is increasing "{e}xport of pig iron and steel of all kinds." In addition to this current steel plan, Wheatland Tube argues that the 2001 Steel Plan states that "{t}he Government shall encourage the businesses to promote steel export to potential markets." This prior plan also says that "the Ministry of Finance shall... submit to the Prime Minister the policy on supporting to exportation of construction steel products." Wheatland Tube's claim that circular welded pipe is used extensively in the construction industry for such purposes as structural pipe, fence pipe, sprinkler and water pipe, and scaffolding. It also points to SeAH VINA's sales brochure, which claims SeAH VINA is "a mainstay of national infrastructure" and "the first Vietnam exporter of steel pipes to the USA."

No other parties provided affirmative arguments on this issue.

Rebuttal Arguments

Wheatland Tube reiterates that the Steel Master Plan targets the increased export of steel products. It observes that Hongyuan, as an export processing enterprise, exports 100 percent of its production of steel pipe.

No other parties provided rebuttal arguments on this issue.

¹¹⁹ *Id.*

¹²⁰ *See* GOV Verification Report at 15.

Department's Position

The only example listed by Wheatland Tube that actually describes the provision of financing to exporters is the Development Assistance Fund. The 2001 Steel Plan states that:

Based on assigned functions and tasks, the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Industry, the State Bank of Vietnam and Development Assistance Fund shall be in charge to seek domestic and foreign funds, including ODA preferential loans and FDI, allocate capital and provide loans according to the annual plan in order to meet investment requirements of the steel industry.¹²¹

However, as discussed above, the 2001 Steel Plan was replaced in 2007, and there is no evidence that the respondents' outstanding loans during the POI were received pursuant to the 2001 Steel Plan or the Development Assistance Fund. Lastly, it is unclear whether Development Assistance Fund loans are still contingent on export performance. The *Report of the Working Party on the Accession of Vietnam* provided by Wheatland Tube says that "{t}he representative of Viet Nam further confirmed that... Viet Nam would remove the prohibited elements of the first two programmes by eliminating the export requirements or localization requirements, as relevant, by the date of accession."¹²² We are not aware of any other record evidence describing the provision of preferential loans to exporters. Furthermore, based upon our examination of the respondents' loan documents during verification, we did not find any loans that were export contingent. Therefore, we determine that this program was not used by the respondents.

Comment 10: Whether the Banks That Provided Loans to Hongyuan and SeAH VINA are Public Entities

Affirmative Arguments

Wheatland Tube argues that the Department should find that the banks that provided loans to the respondents in this investigation are public entities. It asserts that the Department has previously found that Indovina is a public entity, and that there is no information on the record of this proceeding suggesting this finding should be reversed.¹²³ Because of the GOV's alleged failure to fully provide requested information regarding Shinhanvina,¹²⁴ Wheatland Tube claims the Department should rely on its determination that Indovina is a public entity to find that Shinhanvina is also a public entity. According to Wheatland Tube, policy documents on the record clearly show the GOV exercises significant control over Vietnamese banks and requires them to lend pursuant to its industrial policies.¹²⁵ Wheatland Tube also argues that the Steel Master Plan illustrates the GOV's call for support to selected industries by designating responsibilities to various Ministries in efforts to implement the Steel Master Plan.¹²⁶ Even if the

¹²¹ See GOV IQR at Exhibit 13, Article 3.

¹²² See Petition at Exhibit III-D-7.

¹²³ See *Bags from Vietnam*.

¹²⁴ On March 16, 2012, the GOV attempted to clarify information pertaining to Shinhanvina; however, the Department rejected the GOV's submission as untimely filed, pursuant to 19 CFR 351.301(c)(2).

¹²⁵ See GOV IQR at Exhibit 7-8.

¹²⁶ See GOV IQR at Exhibit 11.

Department does not find the respondents' lenders to be public entities, Wheatland Tube asserts that the GOV also directs non-state-owned banks to lend according to national industrial and economic policies.¹²⁷ Wheatland Tube observes that the SAA directs the "entrusts or directs" standard shall be interpreted "broadly."¹²⁸

The GOV replies that the WTO Appellate Body recently found in *WTO AB Decision*¹²⁹ that "{a} public body within the meaning of Article I.1.(a)(1) of the SCM Agreement must be an entity that possess, exercises or is vested with governmental authority."¹³⁰ The GOV also highlights the Appellate Body's explanation that this analysis must be holistic and consider all relevant characteristics of the bank, and that "evidence of government ownership, in itself, is not evidence of meaningful control of an entity by government and cannot, without more, serve as a basis for establishing that the entity is vested with authority to perform a governmental function."¹³¹ Regardless of how the Department identifies a government authority, however, the GOV asserts that the record supports the conclusion that the GOV did not exercise meaningful control over the relevant banks in this investigation. According to the GOV, the ownership of Indovina has changed since the Department's determination in *Bags from Vietnam*.¹³² The GOV asserts that, during the POI, the Vietnamese party to Indovina did not possess majority ownership in the bank, possess majority control of the Board of Directors, or possess the authority to nominate the individual with control of the day-to-day operations of the bank. Similarly, the GOV argues that an analysis of Shinhanvina's ownership reveals that it, like Indovina, is majority foreign-owned.¹³³ Finally, the GOV asserts that the record demonstrates that the loans to the respondents were based on market terms. As evidence, the GOV argues that the internal loan documents, credit analysis, and lending practices reviewed by the Department during verification provide no basis for a conclusion that the loans were provided at preferential terms due to any government policy or plan.

Rebuttal Arguments

SeAH VINA argues that Shinhanvina actually provided loans at higher lending rates than any of SeAH VINA's other lenders. In addition, SeAH VINA observes that the loan it obtained from Shinhanvina was guaranteed by the Korean parent company, which it asserts provides a far better explanation for the rate charged for a loan from the subsidiary of a Korean bank.

Regarding Wheatland Tube's affirmative arguments, the GOV emphasizes that the banking sector in Vietnam is more diverse than the banking sector in the PRC, and is not dominated by the government. It observes that there are only two policy banks in Vietnam (neither of which extended loans to the respondents), five 100% foreign-owned banks, 37 joint stock commercial banks, five joint venture banks, and 45 foreign bank branches. According to the GOV, this is not

¹²⁷ See GOV IQR at Exhibit 14.

¹²⁸ See SAA, at 4040, 4239.

¹²⁹ See *WTO AB Decision* at 317.

¹³⁰ *Id.* at 345.

¹³¹ *Id.* at 346.

¹³² The domestic owner of Indovina, Vietin Bank, was partially owned by the GOV during the POI.

¹³³ The portion of Shinhanvina domestically owned was held by Vietcombank, which, in turn, is partially owned by Vietnam's State Capital Investment Corporation (the investment arm of the Vietnamese government) and partially owned by non-government entities (foreign and domestic).

indicative of a banking sector characterized by “near complete” state-ownership. The GOV also argues that banks in Vietnam are not required to “carry out their loan business upon the needs of national economy and the social development and under the guidance of State industrial policies,” as in the PRC. Rather, the GOV observes that the Law on Credit Institutions stipulates that “[c]redit institutions shall have the right to business autonomy and shall be responsible for their business results. No organization or individual shall be permitted to interfere illegally with the business autonomy of credit institutions.”¹³⁴ As evidence, the GOV points to the numerous documents the Department collected at verification showing that loans to the circular welded pipe industry are “granted on a commercial basis.”¹³⁵ The GOV also objects to Wheatland Tube’s references to the SBV’s 2008 Annual Report because Wheatland Tube cites to a draft document, and the language in question was not included in the final version of the SBV’s 2008 Annual Report.

Department’s Position

Because we have determined that neither respondent benefitted from policy lending during the POI, we do not reach the question of whether Shinhanvina and Indovina are public entities.

Comment 11: The Appropriate Benchmark for Policy Loans

Affirmative Argument

Wheatland Tube claims that the GOV’s dominance of the financial sector should preclude the use of domestic interest rates as loan benchmarks. It argues the Department should instead use a basket interest rate from countries at a similar stage of development to Vietnam to determine the benefit conferred by policy lending.

Rebuttal Argument

The GOV replies that the Department’s regulations do not authorize the use of an external benchmark. Even if the Department should disagree, the GOV argues that merely being designated an NME does not automatically require the use of an external benchmark. Rather, it claims the Department must “individually examine the facts related to banking and make a determination based on those facts.”

Department’s Position

Because we have determined that neither respondent benefitted from policy lending during the POI, we do not reach the question of the appropriate benchmark.

¹³⁴ See GOV IQR at Exhibit 18.

¹³⁵ See *Free Sheet Paper from the PRC* and accompanying IDM at 60.

Comment 12: SeAH VINA's Land

Affirmative Arguments

Wheatland Tube disagrees with the Department's *Preliminary Determination* that SeAH VINA obtained its land use rights prior to the January 11, 2007 cut-off date and, thus, could not have received countervailable benefits. Rather, Wheatland Tube argues that record evidence demonstrates that the material terms of SeAH VINA's land-use rights significantly changed after the January 11, 2007 cut-off date. Accordingly, Wheatland Tube contends the Department should base its final determination for this program on these post cut-off date events and find that SeAH VINA received its land at LTAR.

Wheatland Tube disputes SeAH VINA's and the GOV's depiction of SeAH VINA's January 31, 2007 land contract as a "formality" and asserts that this contract, in conjunction with other supporting documents referred to therein,¹³⁶ voided all prior land agreements and established a new land contract. Further, Wheatland Tube notes that the parties involved, the amount of land, and the price of the land— three elements Wheatland Tube asserts are critical in any lease—all changed with the issuance of the January 31, 2007 land contract.¹³⁷ Finally, Wheatland Tube states that the record confirms that SeAH VINA received its land use rights directly from the provincial government and at new rates set by the provincial government after the cut-off date. Due to the proprietary nature of Wheatland Tube's arguments, *see* BPI Memo for further detail of Wheatland Tube's analysis of SeAH VINA's land documents.

Wheatland Tube concludes that because record evidence demonstrates that the relevant terms of the lease were established after the cut-off date, the Department should find that SeAH VINA received countervailable benefits under this program. Wheatland Tube argues this is consistent with the Department's past practice, pointing to *Garment Hangers from Vietnam Prelim*, where the Department faced a similar situation in which a "new land lease contract" between the respondent and the GOV covered the same plot of land as a contract that preceded the cut-off date. Wheatland Tube also points to *OTR Tires CIO Memo*, in which a respondent's agreements differed in their material terms from earlier agreements and constituted new, countervailable events post-cut-off date.¹³⁸ Finally, Wheatland Tube notes that in *OTR Tires from the PRC* the Department made a determination that respondent TUTRIC's loans, although originated prior to the PRC cut-off date, were countervailable because "the end of the renegotiated repayment period for some of these loans" ended after the cut-off-date, and that the loans were forgiven by SOCBs after the cut-off-date. Wheatland Tube asserts that because SeAH VINA's land contract was renegotiated after the cut-off date, the Department should find that SeAH VINA received countervailable benefits through the provision of land for LTAR.

Finally, Wheatland Tube argues that SeAH VINA's rent is less than market prices and, thus, provides benefits that the Department should countervail. Wheatland Tube further asserts that the government owns and controls land within Vietnam, and, therefore, the Department should use an external benchmark in calculating the countervailable benefit for SeAH VINA's land.

¹³⁶ See SeAH VINA 2SQR at Appendix SS-3; *see also* GOV Verification Exhibit 19.

¹³⁷ See SeAH VINA IQR at Appendix 10-A and 10-C.

¹³⁸ See *OTR Tires CIO Memo* at 5

Wheatland Tube states that in this circumstance, the most appropriate source for a market benchmark is a market economy proximate to Vietnam and it requests that the Department follow the practice adopted in the *Bags from Vietnam* investigation, in which indicative land values from a third country were used to determine whether any benefit was conferred through the provision of land-use rights.¹³⁹

Rebuttal Arguments

SeAH VINA and the GOV dispute Wheatland Tube's claims that SeAH VINA obtained land use rights or that the material terms of its land use rights were significantly changed after the cut-off date. SeAH VINA asserts that it obtained the right to use its land from the state-owned company WASECO in 1995, when SeAH VINA¹⁴⁰ was first established.¹⁴¹ SeAH VINA argues that the January 31, 2007 land agreement Wheatland Tube refers to in its argument simply describes a revision of the terms under which WASECO, not SeAH VINA, leases the land from the provincial government. Moreover, SeAH VINA contends that the agreement did not in any way alter SeAH VINA's terms or rights to the land as established in its 1995 agreement with WASECO.

SeAH VINA and the GOV argue that Wheatland Tube has ignored important record information that demonstrates that SeAH VINA's rights have not changed since its initial land agreement and that it was, and continues to be, under no obligation to make land rent payments to any provincial or national government authorities. In support of these claims, SeAH VINA states that at the time it was founded, WASECO contributed land use rights for a defined period of time as its capital contribution to the company.¹⁴² SeAH VINA and the GOV note that WASECO's obligation to contribute land-use rights to the company, and the value assigned to that contribution, are clearly documented in the company's original investment license.¹⁴³ SeAH VINA also states that WASECO subsequently entered into an agreement with the Bien Hoa II Industrial Zone in February 1996 to lease the land that WASECO was contractually obligated to provide to Saigon Steel Pipe Corporation. According to SeAH VINA, this 1996 lease agreement specifically states that "Land rental: is paid by the Construction and Sewage Company No. 2 (WASECO)," and sets the rent to be paid by WASECO for the first five years of the lease.¹⁴⁴ In addition, SeAH VINA points out that this lease agreement states that Saigon Steel Pipe Corporation "will receive the Land Using Certificate with the duration and land size" described in the contract.¹⁴⁵

Contrary to Wheatland Tube's claims, the GOV and SeAH VINA contend that the January 31, 2007 agreement did not change any of the "essential terms" of SeAH VINA's original land agreement, discussed above. SeAH VINA states the January 31, 2007 agreement only adjusted

¹³⁹ See *Bags from Vietnam* and accompanying IDM at Comment 9.

¹⁴⁰ SeAH VINA initially began as a joint venture known as Saigon Steel Pipe Corporation.

¹⁴¹ See SeAH VINA IQR at Appendix 2.

¹⁴² The period of time is business proprietary information. See BPI Memo and SeAH VINA IQR at 33 and at Appendix 10-A.

¹⁴³ See SeAH VINA IQR at Appendix 2 (Investment Certificate dated August 8, 1995, Article 3(b)).

¹⁴⁴ See SeAH VINA ISQR at Appendix S3-A, Article 1.1.1.

¹⁴⁵ *Id.* at 4, Article 2.3.

the terms of WASECO's rent for the land WASECO had been contractually obligated to supply to SeAH VINA for the entirety of the defined period, which started in 1995. SeAH VINA states that the January 31, 2007 agreement did not affect or change the terms under which SeAH VINA had received its land-use rights from WASECO, nor did it change the terms under which SeAH VINA continues to enjoy the use of those rights. Furthermore, SeAH VINA contends that nothing in the agreement required SeAH VINA to pay any additional money to WASECO, the Bien Hoa II Industrial Zone, or any provincial or national government authority. Instead, SeAH VINA notes that this agreement specifically confirms that WASECO maintains its obligation for paying the rent for SeAH VINA's land."¹⁴⁶

SeAH VINA also argues that Wheatland Tube has not provided any evidence that SeAH VINA's 1995 payment for land-use rights was inconsistent with market prices for land-use rights at that time. Moreover, SeAH VINA maintains that it has not been required to make any additional payments for its land-use rights since its initial land agreement in 1995, including after the cut-off date. Thus, says SeAH VINA, there is no basis for finding that it obtained its land-use rights for LTAR.

The GOV argues that Wheatland Tube's citation to *OTR Tires from the PRC* is inapposite. The GOV states that in *OTR Tires from the PRC*, the respondent's obligations under its new loan agreement were fundamentally changed after the cut-off date. As a result, the Department determined that the respondent received a benefit based on the changes to the new loan agreement. In contrast, the GOV asserts that SeAH VINA's obligations with respect to its land have never changed since SeAH VINA's inception. Further, the GOV states that SeAH VINA was not responsible for making land rent payments before or after the cut-off date.

In addition, the GOV argues that record evidence does not support a finding that this program is specific. The GOV contends that the Department could not reasonably find *de jure* specificity because there is no evidence that the CWP industry or SeAH VINA received land benefits pursuant to any provision of law that is not generally applicable. The GOV further states that the program is not *de facto* specific because the record shows that land rent was calculated pursuant to the generally applicable land rent calculation in Vietnam. The GOV asserts that there is no evidence supporting the allegation that the rent was calculated in a different manner than any other enterprise or industry. The GOV concludes that without a record demonstrating specificity for this alleged program, the Department cannot determine SeAH VINA received countervailable benefits through the GOV's provision of land.

The GOV also states that even if the Department were to find SeAH VINA received a specific financial contribution under this program, it should not use external benchmarks to calculate the benefits as Wheatland Tube has argued. Instead, the GOV contends that land use rights in Vietnam are sold based on market principles and, thus, that internal market transactions should be used to calculate the land benchmark, if necessary. The GOV asserts that the record shows that land prices in Vietnam are determined by the market, not dictated by the government. According to the GOV, the vast majority of land transactions in Vietnam are private transactions

¹⁴⁶ See SeAH VINA IQR at Appendix 10-C, (Articles 2 and 4.4).

in which the state plays no role in setting the price or other terms of the transaction.¹⁴⁷

In addition, the GOV argues that the CVD statute makes an explicit preference for the use of internal benchmarks by requiring that a determination of LTAR be made “in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review.”¹⁴⁸ The GOV also argues that the Department’s regulations state that the adequacy of remuneration is normally measured by comparing “the government price to a market-determined price for the good or service, resulting from actual transactions in the country in question” and that the Department should only turn to world market prices if market-determined prices are not available. Accordingly, the GOV maintains that if the Department countervails the provision of land, it should rely on internal benchmarks to determine benefit.

Department’s Position

We disagree with Wheatland Tube that post cut-off date (*i.e.*, the date after which we are analyzing countervailable subsidies, pursuant to Vietnam’s January 11, 2007 accession to the WTO¹⁴⁹) events warrant a determination that SeAH VINA’s obtained its land use rights at LTAR.

SeAH VINA initially started in 1995 as a joint venture company known as Saigon Steel Pipe Corporation, with three investors: Daewoo, WASECO, and SSC (SeAH VINA’s Korean parent company).¹⁵⁰ WASECO provided land use rights as part of its capital contribution to the joint venture and record evidence shows that WASECO has maintained the financial obligation for making the land payments for SeAH VINA’s land since the company’s inception.¹⁵¹ In 2004, Daewoo’s equity stake in the company was purchased by SSC.¹⁵² Subsequently, in 2006, prior to the cut-off date, SSC purchased WASECO’s equity in the company.¹⁵³

Two key events occurred as a result of SSC’s 2006 purchase. First, the affiliation that once existed through WASECO’s partial ownership of SeAH VINA, was terminated.¹⁵⁴ Second, SSC fully compensated WASECO for the entirety of its investment in SeAH VINA, including its contribution of land-use rights.¹⁵⁵ Furthermore, because WASECO and SeAH VINA no longer shared any affiliation after the 2006 buyout, there is no indication that any benefit WASECO may receive through changes in its land contract with the provincial government after the cut-off date would in any way benefit SeAH VINA.

¹⁴⁷ See GOV Verification Report at 22.

¹⁴⁸ See Section 771(5)(E)(iv) of the Act.

¹⁴⁹ See *Bags from Vietnam* and accompanying IDM at Comment 3; see also Initial Questionnaire.

¹⁵⁰ See SeAH VINA IQR at 7 and Appendix 2.

¹⁵¹ See SeAH VINA IQR at Appendices 10-A, 10-B, and 10-C; SeAH VINA 1SQR at Appendix S-3-B; and SeAH VINA Verification Report at 21-23.

¹⁵² See SeAH VINA IQR at 8 and Appendix 2.

¹⁵³ *Id.* at 8 and Appendix 10-B.

¹⁵⁴ *Id.* at 8 (“As a result of these transactions, Saigon Steel Pipe became a wholly-owned subsidiary of SeAH Steel Corporation”).

¹⁵⁵ *Id.* at Appendix 10-B.

Therefore, while we agree with Wheatland Tube that certain terms relating to the land on which SeAH VINA operates were changed with the issuance of the January 31, 2007 contract, we find that none of the post cut-off date events altered SeAH VINA's rights, terms, or obligations for its land.

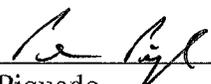
Because we are determining that SeAH VINA did not use this program, we do not reach the specificity and benchmark issues raised by Wheatland Tube and the GOV.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department Positions are accepted, we will publish the final determination in the *Federal Register*.

AGREE

DISAGREE



Paul Piquado
Assistant Secretary
for Import Administration

15 OCTOBER 2012
(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Complete Title
Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AUL	Average Useful Life
CAFC	Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
circular welded pipe	Circular Welded Carbon-Quality Steel Pipe
CIT	Court of International Trade
cut-off date	January 11, 2007 (<i>i.e.</i> , the date after which we are analyzing countervailable subsidies, pursuant to Vietnam's January 11, 2007 accession to the WTO). <i>See Bags from Vietnam</i> at Comment 3; <i>see also</i> Initial Questionnaire.
CVD	Countervailing Duty
Daewoo	Daewoo Corporation
Department	Department of Commerce
FDI	Foreign Direct Investment
FIE	Foreign-Invested Enterprise
FOB	Free on Board
GDP	Gross Domestic Product
GOV	Government of the Socialist Republic of Vietnam
Hongyuan	Vietnam Hongyuan Machinery Manufactory Co., Ltd.
HTS	Harmonized Tariff Schedule
IDM	Issues and Decision Memorandum
Indovina	Indovina Bank Ltd.
IRS Tables	U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System
LTAR	Less Than Adequate Remuneration
NME	Non-Market Economy
ODA	Official Development Assistance
Petitioners	Allied Tube and Conduit, JMC Steel Group, United States Steel Corporation, and Wheatland Tube
POI	Period of Investigation

Acronym/Abbreviation	Complete Title
PRC	People's Republic of China
SBV	State Bank of Vietnam
SeAH VINA	SeAH Steel VINA Corp.
Shinhanvina	Shinhanvina Bank
SOCB	State Owned and Controlled Bank
SQR	Supplemental Questionnaire Response
SSC	SeAH Steel Corporation
USTR	United States Trade Representative
Vietnam	Socialist Republic of Vietnam
WASECO	Water Supply & Sewerage Construction and Investment Company
WTO	World Trade Organization

II. LITIGATION TABLE

Short Citation	Complete Court Case Title
<i>Calder</i>	<i>Calder v. Bull</i> , 3 U.S. (3 Dall.) 386, 391 (1798)
<i>Central State University</i>	<i>Central State University v. American Assoc. of University Professors</i> , 526 U.S. 124, 128 (1999)
<i>Fabrique</i>	<i>Fabrique de Fer de Charleroi, SA v. United States</i> , 166 F. Supp. 2d 593 (CIT 2001).
<i>General Motors</i>	<i>General Motors Corp. v. Romein</i> , 503 U.S. 181 (1992)
<i>GPX (Fed. Cir.)</i>	<i>GPX Int'l Tires Corp. v. United States</i> , 666 F.3d 732 (Fed. Cir. 2011).
<i>KYD</i>	<i>KYD, Inc. v. United States</i> , 607 F.3d 760 (Fed. Cir. 2010)
<i>Pension Benefit Guar. Corp.</i>	<i>Pension Benefit Guar. Corp., v. R.A. Gray & Co.</i> , 467 U.S. 717 (1984)
<i>Plaut</i>	<i>Plaut v. Spendthrift Farm, Inc.</i> , 514 U.S. 211, 227 (1995)
<i>Usery</i>	<i>Usery v. Turner Elkhorn Mining Co.</i> , 428 U.S. 1 (1976).

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if “certain” is in the title of the case, it has been excluded from the title listing.

Short Citation	Administrative Case Determinations
<i>Bags from Vietnam</i>	<i>Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination</i> , 75 FR 16428 (April 1, 2010) and accompanying Issues and Decision Memorandum
<i>Citric Acid from the PRC</i>	<i>Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision MemorandumIDM
<i>DRAMS from Korea</i>	<i>Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea</i> , 68 FR 37122 (June 23, 2003) and accompanying Issues and Decision MemorandumIDM
<i>Free Sheet Paper from the PRC</i>	<i>Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 72 FR 60645 (October 25, 2007) and accompanying Issues and Decision MemorandumIDM
<i>Garment Hangers from Vietnam Prelim</i>	<i>Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination</i> , 77 FR 32930 (June 4, 2012).
<i>Kitchen Racks AD from the PRC</i>	<i>Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision MemorandumIDM
<i>OCTG from the PRC</i>	<i>Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination</i> , 74 FR 64045 (December 7, 2009) and accompanying Issues and Decision MemorandumIDM

Short Citation	Administrative Case Determinations
<i>OTR Tires CIO Memo</i>	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, through Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China; Analysis of Change in Ownership (May 27, 2008)
<i>OTR Tires from the PRC</i>	<i>Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances</i> , 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision MemorandumIDM
<i>PET Film from India 2008 AR</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review</i> , 73 FR 7708 (February 11, 2008) and accompanying Issues and Decision MemorandumIDM
<i>PET Film from India NSR</i>	<i>Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Countervailing Duty New Shipper Review</i> , 76 FR 30910 (May 27, 2011) and accompanying Issues and Decision MemorandumIDM
<i>Pipe from India</i>	<i>Circular Welded Carbon-Quality Steel Pipe from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination</i> , 77 FR 19192 (March 30, 2012) and accompanying Issues and Decision MemorandumIDM
<i>Steel Cylinders from the PRC</i>	<i>High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 77 FR 26738 (May 7, 2012) and accompanying Issues and Decision MemorandumIDM
<i>Steel Wheels from the PRC</i>	<i>Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination</i> , 77 FR 17017 (March 23, 2012) and accompanying Issues and Decision MemorandumIDM
<i>Steel Wire Rod from Mexico</i>	<i>Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico</i> , 70 FR 25809 (May 16, 2005) and accompanying Issues and Decision MemorandumIDM
<i>Thermal Paper from the PRC</i>	<i>Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision MemorandumIDM

IV. CASE-RELATED DOCUMENTS

Short Citation	Complete Document Title
BPI Memo	Memorandum from Yasmin Nair, Program Manager AD/CVD Operations, Office 1, to Susan Kuhbach, Director AD/CVD Operations, Office 1, "Proprietary Discussion of Comment 11 from the Issues and Decision Memorandum for the Final Determination" (October 15, 2012).
GOV 1SQR	Letter from the GOV to the Department, "Government of Vietnam's Supplemental CVD Response: Circular Welded Carbon-Quality Steel Pipe from Vietnam (March 13, 2012)
GOV Case Brief	Letter from the GOV to the Department, "Government of Vietnam's Case Brief: Circular Welded Carbon-Quality Steel Pipe from Vietnam" (August 3, 2012)
GOV IQR	Letter from the GOV to the Department, "Government of Vietnam's Initial CVD Response: Circular Welded Carbon-Quality Steel Pipe from Vietnam (February 16, 2012)
GOV Verification Exhibit	Letter from the GOV to the Department, "Government of Vietnam's Submission of Verification Exhibits: Circular Welded Carbon-Quality Steel Pipe from Vietnam" (June 7, 2012)
GOV Verification Report	Memorandum from Nancy Decker and Austin Redington, International Trade Analysts, to Susan H. Kuhbach, Office Director, "Verification Report: Government of the Socialist Republic of Vietnam ("GOV")" (July 12, 2012).
Hearing Transcript	United States of America, Department of Commerce, Import Administration: Public Hearing in the matter of the Antidumping (<i>sic</i>) Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam, dated September 7, 2012
Hongyuan Case Brief	Letter from Hongyuan to the Department, "Circular Welded Carbon-Quality Steel Pipe from Vietnam: Case Brief" (August 3, 2012)

Short Citation	Complete Document Title
Hongyuan IQR	Letter from Hongyuan to the Department, “Circular Welded Carbon-Quality Steel Pipe from Vietnam” (February 16, 2012)
Hongyuan Verification Report	Memorandum from Nancy Decker and Austin Redington, International Trade Analysts, to Susan H. Kuhbach, Office Director, “Verification Report for Vietnam Hongyuan Machinery Manufactory Co., Ltd. (“Hongyuan”)” (July 6, 2012).
Initial Questionnaire	Countervailing Duty Questionnaire in the Countervailing Duty (CVD) Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam, C-552-810 (December 20, 2011)
Initiation Checklist	“Countervailing Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam,” dated November 15, 2011
Petition	Before the United States Department of Commerce, United States International Trade Commission: Certain Circular Welded Carbon-Quality Steel Pipe – Countervailing Duty Petition, Volume III-D dated October 26, 2011.
Petitioners’ Case Brief	Letter from Petitioners to the Department, “Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam / Case Brief” (August 8, 2012)
Petitioners’ Pre-Verification Comments	Letter from Petitioners to the Department, “Pre-Verification Comments” (May 9, 2012)
Petitioners’ Rebuttal Brief	Letter from Petitioners to the Department, “Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam / Rebuttal Brief” (August 8, 2012)

Short Citation	Complete Document Title
<i>Preliminary Determination</i>	<i>Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 77 FR 19211 (March 30, 2012)</i>
SeAH VINA 1SQR	Letter from SeAH VINA to the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam: Supplemental Response of SeAH Steel VINA Corp.” (March 12, 2012)
SeAH VINA 2SQR	Letter from SeAH VINA to the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam: Supplemental Response of SeAH Steel VINA Corp.” (April 27, 2012)
SeAH VINA Correction Submission	Letter from SeAH VINA to the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam: Correction of Errors Discovered in Prior Submissions” (May 14, 2012)
SeAH VINA IQR	Letter from SeAH VINA to the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam: Section III Response of SeAH Steel VINA Corp.” (February 16, 2012)
SeAH VINA Prelim Calc Memo	Memorandum from Austin Redington, International Trade Analyst to the File, “Preliminary Determination Calculation Memorandum for SeAH Steel VINA Corp.” (March 26, 2012)
SeAH VINA Verification Exhibit	Letter from SeAH VINA to the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam: Verification Exhibits (June 5, 2012)
SeAH VINA Verification Report	Memorandum from Nancy Decker and Austin Redington, International Trade Analysts, to Susan H. Kuhbach, Office Director, “Verification Report for SeAH Steel VINA Corp. (“SeAH VINA”)” (July 6, 2012)

V. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Complete Title
Public Law 112-99	<i>Application of Countervailing Duty Provisions to Nonmarket Economy Countries</i> , Pub. L. No. 112-99, 126 Stat. 265 (2012)
<i>Report of the Working Party on the Accession of Vietnam</i>	World Trade Organization – <i>Report of the Working Party on the Accession of Viet Nam</i> , WT/ACC/VNMJ48 (October 27, 2006)
SAA	<i>Statement of Administrative Action accompanying the Uruguay Round Agreements Act</i> , H.R. Rep No. 103-826 (1994)
<i>SCM Agreement</i>	<i>Agreement on Subsidies and Countervailing Measures</i> , April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
<i>WTO AB Decision</i>	<i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i> , WT/DS379/AB/R (March 11, 2011)

VI. GOVERNMENT OF VIETNAM LAWS

Short Citation	Complete Title	Location
2001 Steel Plan	Decision 134/2001/QD-TTg, Approving the overall planning for development of steel industry until the year 2010, dated September 10, 2001	GOV IQR at Exhibit 13
Circular 49/2010	Circular No. 49/2010/TT-BTC, Guiding the classification of, and application of tariffs to, imports and exports	GOV 1SQR at Exhibit GOVS1-27
Circular 79/2009	Circular No. 79/2009/TT-BTC of April 20, 2009, guiding customs procedures; customs inspection and supervision; import duty, export duty and tax administration applicable to imports and exports	GOV IQR at Exhibit 45
Circular 85/2003	Circular No. 85/2003/TT-BTC, Guiding commodity classification according to the list of imports and exports, the preferential import tariff and the export tariff	GOV 1SQR at Exhibit GOVS1-26

Short Citation	Complete Title	Location
Decision 271/2006	Decision No. 271/2006/QD-TTg of November 27, 2006, Approving the adjusted and supplemented master plan on socio-economic development of Hai Phong City up to 2020	Petitioners' Pre-Verification Comments at Exhibit 2
Decision 73/2008	Decision No. 73/2008/QD-TTg, Approving the master plan on socio-economic development of Dong Nai Province up to 2020 (June 4, 2008)	Petitioners' Pre-Verification Comments at Exhibit 1
Decree 108/2006	Decree No. 108/2006/ND-CP, Detailing and guiding the implementation of a number of articles of the investment law	GOV IQR at Exhibit 40
Decree 149/2005	Decree No. 149/2005/ND-CP of December 8, 2005 detailing the implementation of the import and export tax law	GOV IQR at Exhibit 49
Decree 29/2008	Decree 29/2008/ND-CP, Issuing regulations on industrial zones, export processing zones and economic zones	GOV IQR at Exhibit 41
Decree 87/2010	Decree No. 87/2010/ND-CP, Detailing the implementation of the Law on Import and Export Tax 2005	GOV IQR at Exhibit 63
Dong Nai Five-Year Plan	Resolution 62/2006/NQ-HDND by Dong Nai People's Council on the targets, tasks and solution for socio-economic development and security of the city 2006-2010	GOV IQR at Exhibit 32

Short Citation	Complete Title	Location
Hai Phong Annual Plan	Resolution No. 16/2009/NQ-HDND, Hai Phong City 2010 Annual Plan	GOV Verification Exhibit GOV-18
Hai Phong Five Year Plan	Resolution 08/2006/NQ-HDND by Hai Phong People's Council on socio-economic development of Hai Phong City from 2006 to 2010	GOV IQR at Exhibit 33
Law on Credit Institutions	Law on Credit Institutions of December 12, 1997	GOV IQR at Exhibit 18
Law on Import Duty and Export Duty	Law on Import Duty and Export Duty, Law No. 45/2005/QH-11, passed on June 14, 2005	GOV IQR at Exhibit 43
List of Spearhead Industries	Decision No. 55/2007/QD-TTg, Approving the list of priority industries and spearhead industries for the 2007-2010 period with a vision to 2020, and a number of incentive policies for these industries	GOV IQR at Exhibit 6
National Five-Year Plan	Resolution 56/2006/QH11 of June 29, 2006 on five-year social-economic development plan for the period of 2006-2010	GOV IQR at Exhibit 7
National Ten Year Plan	Strategy for Socio-Economic Development, 2001-2010 presented by the Central Committee to the 9 th National Congress	Petition at Exhibit III-D-5, and GOV IQR at Exhibit 10

Short Citation	Complete Title	Location
Steel Master Plan	Decision 145/2007/QD-TTg, Approving the master plan on the development of Vietnam's steel industry in the 2007-2015 period, with the 2025 vision taken into consideration	GOV IQR at Exhibit 12