C-570-946
Investigation
POI: 01/01/2008 – 12/31/2008
Public Document
Office 3; Operations: EBG, RC, JL, DM

May 14, 2010

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for AD/CVD Operations

RE: Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China

SUBJECT: Issues and Decision Memorandum for Final Determination

Summary

On November 2, 2009, the Department of Commerce (the Department) published the Preliminary Determination in the above-mentioned countervailing duty (CVD) investigation. See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 74 FR 56576 (November 2, 2009) (Preliminary Determination). The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits from these programs. Additionally, we have 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 response to the issues raised in the briefs. Based on the comments received and our verification findings,[1] we have made certain

[1] From January 18 through January 22, 2010, we conducted verification of the questionnaire responses submitted by Fasten Group Import & Export Co., Ltd. (Fasten I&E), Fasten Group Corporation (Fasten Corp.), Jiangyin Fasten Steel (Fasten Steel), Jiangyin Hongyu Metal Products Co., Ltd. (Hongyu Metal), Jiangyin Walsin Steel Cable Co., Ltd. (Walsin), and Jiangyin Hongsheng Co., Ltd. (Hongsheng) (collectively, the Fasten Companies). On January 27 and February 2, 2010, we conducted verification of the questionnaire responses submitted by the Government of China (GOC). On January 28 through February 1, 2010, we conducted verification of the questionnaire responses submitted by Xinhua Metal Products Company (Xinhua), Xinyu Iron and Steel Joint Stock Limited Company (Xinyu), and Xinyu Iron and Steel Limited Liability Company (Xingang) (collectively, the Xinhua Companies). We issued the GOC Verification Report on February 23, 2010, the Xinhua Companies Verification Report on March 5, 2010, and the Fasten Companies Verification Report on March 9, 2010. Copies of the verification reports are on file on the public record located in the Department's Central Records Unit (CRU), room 1117.

modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties:

Comment 1: Whether the Imposition of Countervailing Duties on the Same Imports that are Subject to Commerce's NME AD Methodology is Contrary to Law,

Comment 2: Whether the Simultaneous Application of CVD Market Benchmarks and the AD Surrogate Value Methodology Unlawfully Double-Counts the Remedy for Domestic Subsidies

Comment 3: Whether the Department May Place the Burden on Respondents to "Prove" the Double-Counting of Remedies

Comment 4: Whether the Department's Application of a December 11, 2001 "Cut-Off" Date for Examining Alleged Subsidies Is Appropriate

Comment 5: Whether the GOC Failed to Cooperate in Providing Ownership Information for Producer A in a Manner that Warrants the Application of AFA

Comment 6: Whether the GOC Failed to Cooperate in Providing Ownership Information for Producer B in a Manner that Warrants the Application of AFA

Comment 7: Whether Record Evidence Demonstrates that Producer A is a GOC Authority

Comment 8: Whether Record Evidence Demonstrates that Producer B is a GOC Authority

Comment 9: Whether the GOC Failed to Indicate Whether Certain Wire Rod Suppliers Were Producers or Trading Companies

Comment 10: Whether SOEs and Firms Majority-Owned by the GOC Constitute Government Authorities

Comment 11: Whether Private Resellers of Wire Rod Should Be Treated as Government Authorities

Comment 12: Whether the Provision of Wire Rod to PC Strand Producers is Specific

Comment 13: Whether the Benchmark for the Wire Rod for LTAR Program Should Reflect All Delivery Charges, Including Shipping and Insurance Costs

Comment 14: Whether the Department Should Include Wire Rod Prices from the CRU Monitor and AMM Monitor in the LTAR Benchmark

Comment 15: Whether to Use an In-Country Benchmark to Measure Benefits Under the Provision of Wire Rod for LTAR Program

Comment 16: Whether Benefits Under the Provision of Wire Rod Program Should Be Attributed to Sales of Fasten I&E and Hongshen

Comment 17: Whether the Wire Rod Sold for LTAR Should be Attributed Only to Sales of Wire Rod

Comment 18: Whether the Department Committed a Ministerial Error for the Fasten and the Xinhua Companies Under the Provision of Wire Rod for LTAR Program And Whether the Department Should Correct the GOC Verification Report for Alleged Errors

Comment 19: Whether the Department Erred By Including Intra-Company Sales in the Denominator Used in the Net Subsidy Calculation of the Wire Rod for LTAR Program

Comment 20: The Suitability of the Benchmark Used to Calculate Benefits Under the Policy Lending Program

Comment 21: Whether GOC Policy Lending Is Specific

Comment 22: Whether Chinese Banks are Government Authorities

Comment 23: Whether The Department Should Apply AFA Available to Unverifiable Information Provided by Xinhua

Comment 24: Whether the Department Should Investigate the PRC's Alleged Undervaluation of its Currency and Find that it Constitutes a Countervailable Export Subsidy

Comment 25: Whether Provision of Land by Municipal and Provincial Governments to Respondents Was Countervailable

Comment 26: Whether the Provision of Electricity Is Not Countervailable Because the Program Provides General Infrastructure Which Does Not Constitute a Financial Contribution

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the People's Republic of China's (PRC) most recently completed fiscal year. See 19 CFR 351.204(b)(2).

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) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject 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. See also the Preamble to the Department's regulations, which states "[I]n certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership." See Preamble to Countervailing Duty Regulations, 63 FR 65348, 65401, (November 25, 1998) (Preamble). The Court of International Trade (CIT) has further 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. See Fabrique de Fer de Charleroi v. United States, 166 F. Supp. 2d 593, 600-603 (CIT 2001) (Fabrique).

A. The Fasten Companies

In the Preliminary Determination, we explained that we have indentified Fasten Corp. as the parent of the Fasten Companies, Fasten I&E as the trading company that exported subject merchandise during the POI, and Hongsheng as an input supplier. See 74 FR at 56577 - 56578. The Fasten Companies stated that Fasten Steel, Walsin, and Company X produced PC strand that was exported to the United States during the POI through Fasten I&E.[2] According to the Fasten Companies, Hongyu Metal, though it produced PC strand, did not supply Fasten I&E with PC strand during the POI.

Based on the ownership information contained in the Fasten Companies' questionnaire responses, we preliminarily determined that, in accordance with 19 CFR 351.525(b)(6)(vi), Fasten Corp. is cross-owned with Fasten I&E and Hongsheng. See 74 FR at 56778. Our finding in this regard was based on the fact that Fasten I&E and Hongsheng are majority-owned by Fasten Corp.[3] Id. We further found that pursuant to 19 CFR 351.525(b)(6)(vi), Hongyu Metal is cross-owned with Fasten Corp., Fasten I&E, and Hongsheng by virtue of Hongsheng's majority ownership of Hongyu Metal. Id.

In addition, in the Preliminary Determination, we found that Fasten Steel and Walsin are affiliated with Hongsheng and, thus Fasten Corp. and Fasten I&E as well, as defined under

2 The identity of Company X is proprietary. See Preliminary Calculation Memorandum for Fasten Companies.
3 The exact level of ownership is proprietary.

section 771(33)(E) of the Act.[4] Id. As explained above, under 19 CFR 351.525(b)(6)(vi), cross-ownership is normally found where majority voting ownership interests between two corporations or through common ownership of two (or more) corporations exists. The Preamble goes on to explain that the Department may, nonetheless, find cross-ownership where the level of ownership is less than 50 percent if the Department finds that the interests of the firms in question have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other firm in essentially the same ways it can use its own assets (or subsidy benefits). See Preamble, 63 FR at 65401.

Based on Hongsheng's level of ownership of Fasten Steel, combined with the information provided in the Fasten Companies' October 15, 2009 submission, we preliminarily determined that Fasten Steel is cross-owned with Hongsheng and, thus, is cross-owned with the Fasten Companies. Id. The Fasten Companies' October 15, 2009, submission indicates that Hongsheng possesses a significant ability to control the operations of Fasten Steel. Hongsheng appointed three out of seven of directors in Fasten Steel's board of directors. One of the individuals appointed to the board of Fasten Steel serves as the board chairman. The other two board members appointed by Hongsheng serve Fasten Steel's as director and general manager. See the Fasten Companies' October 15, 2009, submission at 1 through 4. In addition, the October 15, 2009, submission indicates that Hongsheng served as the guarantor on several of Fasten Steel's loans. Also, the October 15, 2009, submission indicates a degree of cooperation with respect to the wire rod that Hongsheng acquired from wire rod suppliers during the POI. As the Fasten Companies explain, "during Hongsheng's negotiations with rod suppliers, Fasten Steel did play an important role because, as a producer of the subject merchandise, Fasten Steel had a better understanding of the wire rod market and prices." See October 19, 2009, submission as 3. Lastly, information supplied by Hongyu Metal indicates that during the POI, Hongyu Metal paid its electricity expenses to Fasten Steel thereby further indicating the degree to which Fasten Steel is inter-connected with subsidiaries of Hongsheng. See Hongyu Metal's August 26, 2009, submission at 22. Therefore, based on this information, we preliminarily determined that Fasten Steel is cross-owned with Hongsheng as well as Fasten Corp., Hongyu Metal, and Fasten I&E. Id. And in the Preliminary Determination, we determined that measurement of any subsidy benefits received by Fasten I&E, Hongyu Metal or Fasten Steel are subject to the cross-ownership regulations under 19 CFR 351.525(b), as applicable. Id.

Regarding Walsin, in the Preliminary Determination we did not reach any conclusions with respect to cross-ownership. Id. However, as a producer of subject merchandise whose goods were exported by Fasten I&E to the United States during the POI, we found that any subsidies to Walsin are attributable to the subject merchandise pursuant to the Department's trading company regulation at 19 CFR 351.525(c). Id.

Regarding Company X, we found in the Preliminary Determination that affiliation and cross-ownership do not exist with regard to Fasten Corp., Fasten I&E, Hongsheng, Fasten Steel, or Hongyu Metal. Id. We further preliminarily determined that measurement of any subsidy benefits received by Company X remains subject to our trading company regulation within the meaning of 19 CFR 351.525(c). Id.

Regardless of cross-ownership, under 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is

4 The level of ownership of Fasten Steel and Walsin held by Hongsheng is proprietary.

sold through the trading company. However, when investigating or reviewing companies, the Department, has, in some instances, limited the number of producers it examines under 19 CFR 351.525(c). For example, in Pasta from Italy, one of the mandatory respondents selected was a trading company that exported pasta produced by multiple pasta manufacturers. In accordance with 19 CFR 351.525(c), the Department cumulated the benefits received by the trading company and its pasta producers, but, limited its analysis to the two major pasta manufacturers that supplied the trading company during the period of review (POR). See Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review, 66 FR 64214 (December 12, 2001) (Pasta from Italy), and accompanying Issues and Decision Memorandum (Pasta from Italy Decision Memorandum) at "Attribution."

Similarly, in light of the circumstances of the instant case, we preliminarily determined that it is appropriate to limit our examination of possible subsidies to PC strand producers to the following companies, all of whom are affiliated in some manner with the Fasten Corp.: Fasten Steel, Hongyu Metal, and Walsin. Id. We noted in the Preliminary Determination that, when compared with Company X, Walsin accounted for a larger share of PC strand exported to the United States by Fasten I&E during the POI. See 74 FR at 56578; see also the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, "Analysis of Fasten Group Import & Export Co., Ltd.'s (Fasten I&E) Suppliers of Subject Merchandise" (October 26, 2009), of which the public version is on file in the CRU of the Commerce Building.

In consideration of the foregoing, in accordance with 19 CFR 351.525(b)(6)(iii), in the Preliminary Determination, we attributed subsidies received by the Fasten Corp. to the consolidated sales of the Fasten Corp., which include Fasten I&E. See 74 FR at 56579. In accordance with 19 CFR 351.525(b)(6)(i), in the Preliminary Determination we attributed subsidies received by Fasten I&E to the sales of Fasten I&E. Id.

In accordance with 19 CFR 351.525(c), in the Preliminary Determination we cumulated the subsidies received by Walsin with benefits from subsidies attributable to Fasten I&E. Id. Specifically, for each countervailable subsidy received by Walsin, we derived the benefit and calculated a program subsidy rate. We then multiplied the total subsidy rate calculated for Walsin by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E.[5] Lastly, we added the apportioned subsidy rate to the other subsidy rates attributable to Fasten I&E.

Concerning Hongyu Metal and Fasten Steel, in the Preliminary Determination, we attributed subsidies received by those firms by the sum of the firms' respective total sales and the sales of Fasten I&E. See 19 C.F.R. 351.525(b)(6)(ii); see also 74 FR at 56579. As noted in the Preliminary Determation, Hongyu Metal did not produce PC strand that was exported to the United States by Fasten I&E during the POI. Id. Nonetheless, our decision in the Preliminary Determination to examine subsidies received by Hongyu Metal is consistent with the Department's prior practice, which was affirmed by the Court of International Trade. See Cut-to-Length Carbon Steel Plate From Belgium; Final Results of Countervailing Duty Administrative Review, 64 FR 12982, 12984 (March 16, 1999); see also Fabrique, 166 F. Supp. 2d 593, 603 – 604.

5 In deriving the share of PC strand produced by Fasten Steel and Walsin that was exported by Fasten Steel I&E during the POI, we did not include the sales volume of Company X. See Preliminary Determination, 74 FR at 56579.

As explained in the "Analysis of Programs" section below, we examined whether Hongsheng purchased wire rod for LTAR.[6] As stated in the Preliminary Determination, Hongsheng did not produce the wire rod that it sold to Fasten Steel and Hongyu Metal during the POI. See 74 FR at 56579. Rather, Hongsheng acquired the inputs from other producers. Id. Therefore, in conducting our subsidy analysis of the provision of wire rod for LTAR program, in the Preliminary Determination we limited our benefit calculations to Hongsheng's wire rod suppliers that we have determined are government authorities capable of providing a financial contribution as described under 771(5)(D)(iv) of the Act. Id. Further, in the Preliminary Determination, in accordance with 19 CFR 351.525(b)(6)(iii), we attributed subsidies received by Hongsheng to sales of Hongsheng, Hongyu Metal, Fasten Steel, and Fasten I&E. Id.

Further, in the Preliminary Determination, we attributed any benefits received by Walsin in connection with the purchase of wire rod for LTAR produced by government authorities to the total sales of Walsin. See 74 FR at 56579. In addition, we cumulated the subsidies received by Walsin with those subsidies received by Fasten I&E in the manner described above. Id.

We received comments from interested parties regarding the attribution methods applied with regard to the Fasten Companies in the Preliminary Determination. See Comments 16 and 17. However, there has been no new evidence or comments from interested parties that ead us to alter our preliminary findings on this issue. Therefore, we have continued to apply to the Fasten Companies the attribution methods described in the Preliminary Determination. See 74 FR 56577 – 56779.

B. Xinhua, Xinyu, and Xingang (Collectively the Xinhua Companies)

In its initial questionnaire response, Xinhua reported that it is wholly-owned by Xinyu and that Xinyu, in turn, is wholly-owned by Xingang. In accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determined that Xinhua, Xinyu, and Xingang are cross-owned. See 74 FR at 56579. Further, pursuant to 19 CFR 351.525(b)(6)(iii), in the Preliminary Determination we attributed the subsidies received by Xingang to the consolidated sales of Xingang, which include Xinyu and Xinhua. Similarly, in the Preliminary Determination we attributed the subsidies received by Xinyu to the consolidated sales of Xinyu, which include Xinhua. Id. And, in accordance with 19 CFR 351.525(b)(6)(i), in the Preliminary Determination we attributed subsidies received by Xinhua to the sales of Xinhua. Id. Lastly, pursuant to 19 CFR 351.525(b)(6)(v), in the Preliminary Determination we attributed subsidies transferred to Xinhua from a cross-owned firm to the sales of Xinhua. Id.

Xinhua reported that it acquired a relatively small quantity of wire rod inputs from Xinyu during the POI. For purposes of the Preliminary Determination, we treated Xinhua's purchases of wire rod from Xinyu as an internal transaction that does not constitute a financial contribution from a government authority. Id. Therefore, we did not include such transactions in our preliminary subsidy analysis. Id.

We received comments from interested parties regarding the attribution methods applied with regard to the Xinhua Companies in the Preliminary Determination. However, there has been no new evidence or collected since the issuance of the Preliminary

6 Concerning Walsin, during the POI it purchased its wire rod inputs from suppliers other than Hongsheng.

Determination or comments from interested parties that leads us to alter our preliminary findings. Therefore, we have continued to apply to the Xinhua Companies the attribution methods described in the Preliminary Determination. See 74 FR at 56579.

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. As no interested party has claimed that the AUL of 12 years is unreasonable, we have allocated non-recurring subsidies over a period of 12 years.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

In the Preliminary Determination, we explained that, in accordance with the Department's practice, we identified and measured subsidies in China beginning on the date of the country's accession to the World Trade Organization (WTO), December 11, 2001. See Preliminary Determination, 74 FR at 56579; see also, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (Line Pipe from the PRC), and accompanying Issues and Decision Memorandum (Line Pipe from the PRC Decision Memorandum) at "Allocation Period" section and Comment 18.

We received comments from interested parties regarding our decision to limit our investigation to subsidies bestowed after December 11, 2001. However, the comments from interested parties have not led us to alter the approach applied in the Preliminary Determination. See Comment 4.

Adverse Facts Available

Section 776(a)(2) of the Act, provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from the Department for information, notifies the Department that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the

information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission . . ., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."

A. Federal Provision of Electricity for LTAR

On July 2, 2009, the Department issued its initial questionnaire to the GOC. In the questionnaire, the Department asked the GOC several questions regarding its alleged provision of electricity to the mandatory respondents for LTAR. See Appendix 7 of the Department's initial questionnaire. The GOC failed to respond to these questions. See the GOC's August 24, 2009, questionnaire response at 52 through 55. The Department issued a supplemental questionnaire in which it asked the GOC once again to submit the requested information concerning the provision of electricity for LTAR program. See the Department's September 2, 2009, supplemental questionnaire. Again, the GOC failed to provide all of the requested information with regard to several of the Department's questions. See the GOC's September 29, 2009, supplemental questionnaire response at 12 through 14.[7]

The GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program, despite more than one opportunity. We find that in failing to provide the requested information the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iv) and 771(5A)(D)(iv) of the Act. Our finding in this regard is unchanged from the Preliminary Determination. See 74 FR at 56579. See "Federal Provision of Electricity for LTAR" under

7 The questions for which the GOC failed to provide responses pertained to how increases in cost elements in the GOC's electricity price proposals led to retail price increases for electricity, how various cost elements factored into the GOC's electricity price proposals, and how cost element increases in the GOC's price proposals and the final price increases for electricity were allocated across provinces and across tariff end-user categories.

the "Programs Found To Be Countervailable" section of this determination for a discussion of the Department's derivation of the benefit.

B. Status of Wire Rod Suppliers

In its questionnaire responses, Xinhua reported the purchases of wire rod made by its PC strand producing factory. At verification, the Department discovered that Xinhua failed to report the wire rod purchased for their aluminum and steel wire rod factories. See the Xinhua Companies Verification Report at 12. The Xinhua Companies explained that they did not report these other purchases of wire rod because the other two factories did not use the wire rod they purchased during the POI to produce PC strand. See the Xinhua Companies Verification Report at 12. However, the Department's questionnaire clearly requested that respondents report the total volume and value of wire rod purchased during the POI. See the Department's July 2, 2009, initial questionnaire at III-13. Furthermore, the Department's regulations and established practice do not track the manner in which subsidies are used and, thus, all wire rod acquired by Xinhua during the POI is relevant to our benefit analysis. See, e.g., Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 FR at 39657, 39663 – 39664 (July 10, 2008) (CWASPP from the PRC Preliminary Determination), unchanged in CWASPP from the PRC:

> ". . . in accordance with our regulations, we do not consider the manner in which WSP used its inputs as a factor that is germane to the Department's subsidy analysis and, thus, we have for purposes of this preliminary determination subjected WSP's purchases of stainless steel coils from GOC authorities to our LTAR subsidy analysis.

The Xinhua Companies' information pertaining to purchases of wire rod failed to verify in so far as the Department only discovered at verification the full range of wire rod purchases. As a result, and given the late stage in the proceeding, the Department was precluded from gathering the necessary information pertaining to the ownership status of these additional wire rod producers. Accordingly, the Department finds that it must employ facts available under Section 776(a)(2)(A) and (D) of the Act. Furthermore, the Department finds that in only providing this information at verification the Xinhua Companies failed to cooperate to the best of their ability within the meaning of Section 776(b) of the Act. Thus, where we lacked ownership information, the Department is applying AFA and assuming that Xinhua's two other factories purchased their wire rod during the POI exclusively from wire rod producers acting as GOC authorities and that such purchases constitute a financial contribution under section 771(5)(D)(iv) of the Act.

C. Policy Lending

In the initial questionnaire, the Department instructed respondents to report all policy loans on which interest payments were outstanding during the POI. See the Department's July 2, 2009, initial questionnaire at III-6. At the beginning of verification, the Xinhua Companies notified the verification team that they only reported the requested information for loans with

outstanding interest payments that were taken out during the POI.[8] See the Xinhua Companies Verification Report at 8 – 10. In other words, in their questionnaire responses, the Xinhua Companies reported their short-term loans taken out during the POI but neglected to report interest paid during the POI on short-term loans taken out in 2007, which is the year prior to the POI. At verification, the Department provided the Xinhua Companies with an opportunity to provide the missing loan information. None of the companies were able to provide this information. Id. at 20 (the Department offered to continue the verification on February 2 but the company officials were unwilling to do). Therefore, the Department was not able to verify that the Xinhua Companies reported all of its loans during the POI.

During verification, the Department was able to confirm the accuracy of the reported information for loans taken out during the POI. See Xinhua Companies Verification Report at 8 – 10. In addition, the verifiers were able to identify the aggregate amount of interest paid during the POI on loans taken out in 2007 for both companies. Id. Based on this limited information collected at verification, we note that for Xinhua and Xinyu the aggregate amount of interest paid during the POI on loans taken out in 2007 constitutes a significant share of the total interest paid during the POI. Id. In contrast, Xingang did not provide the verifiers with any information that would have allowed them to trace any of the loan information contained in Xingang's questionnaire response to its books and records. Id.

The Xinhua Companies failed to provide the requested loan information and this omission was revealed at verification. Accordingly, the Department finds that it must employ facts available under section 776(a)(2)(A) & (D) of the Act. Furthermore, the Department finds that in failing to provide the information for all of their loans on which interest payments were outstanding during the POI, Xinhua and Xinyu did not cooperated to the best of their ability. In addition, because it did not provide the verifiers with the necessary information needed to trace the loan information in its questionnaire response to its books and records, we find that Xingang failed to cooperate to the best of its ability. Thus, pursuant to section 776(b) of the Act, we are applying total AFA. In this final determination, we are computing a single, total AFA rate for the Xinhua Companies using the net subsidy rate under the policy lending program calculated for the Fasten Companies. The use of program-specific net subsidy rate calculated for a cooperating respondent as a total AFA rate is consistent with the Department's practice. See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 20098) (LWTP from the PRC) and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at "Selection of the Adverse Facts Available Rate" section.

D. Import Tariff and Value Added Tax Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Xinhua, Xinyu, and Xingang reported receiving benefits under this program. At verification, the Department was able to confirm that Xinhua properly reported its receipt of benefits under the program and were able to trace Xinhua's usage of the program through its books and records. See Xinhua Companies Verification Report at 16. As a result, the application of AFA with respect to Xinhua is not necessary and, we have calculated the benefit for Xinhua under this program using the standard benefit methodology discussed in "Import

8 All of the Xinhua Companies' loans were short-term loans.

Tariff and Value Added Tax Exemptions for FIES and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries" of the "Programs Determined To Be Countervailable" section below.

In contrast, we find that Xinyu and Xingang have failed to properly report their use of this program. As explained below in the "Import Tariff and Value Added Tax Exemptions for FIES and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries" section, this program involves non-recurring benefits that may be allocated over the AUL period. Thus, in the initial questionnaire, we instructed the Xinhua Companies to report benefits received under this program beginning from the December 11, 2001 (the "cut-off" date) through the end of the POI. See the Department's July 2, 2009, initial questionnaire at III-17. Nevertheless, at verification, the verifiers learned that Xinyu and Xingang only reported benefits received under this program during the POI. See Xinhua Companies Verification Report at 16. Further, at verification Xinyu and Xingang were unable to provide information concerning their use of the program in prior years. Id.

Xinyu and Xingang failed to provide the requested import tariff and value added tax exemptions information and this omission was revealed at verification. Accordingly, the Department finds that it must employ facts available under section 776(a)(2)(A) and (D) of the Act. Furthermore, the Department finds that, by failing to report their usage of the program in the years prior to the POI, Xinyu and Xingang have not cooperated to the best of their ability. Thus, pursuant to section 776(b) of the Act, we are applying, as AFA, a total net subsidy rate to Xinyu and Xingang the total net subsidy rate calculated for the Fasten Companies of **0.43** percent ad valorem, which the highest calculated rate for this program in this investigation. The use of program-specific net subsidy rate calculated for a cooperating respondent as a total AFA rate is consistent with the Department's practice. See, e.g., LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate" section.

E. Various Grant Programs

1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program

Xinyu reported receiving a grant under this program. In the verification outline, the Department identified this program as one of the programs it wanted to examine at verification. In the verification outline, the Department further indicated days during which the verification would take place. See the Department's January 21, 2010 Verification Outline at 1 – 2. As indicated in the verification report, due to discrepancies related to the Xinhua Companies' receipt of GOC policy loans and import duty and VAT exemptions, the verifiers concluded the final scheduled day of verification without having completed their examination of this program. See Xinhua Companies Verification Report at 20. As stated in the verification report, the verifiers offered to remain on-site for an extra day in order to allow the Xinhua Companies an opportunity to complete the verification regarding these grant programs, but the Xinhua Companies refused. See the Xinhua Companies Verification Report at 20 (the Department offered to continue the verification on February 2 but the company officials were unwilling to do).

Because the Xinhua Companies did not provide the Department with sufficient time to verify its information, the Xinhua Companies have provided the Department with information

that could not be verified. Accordingly, the Department is employing facts available pursuant to section 776(a)(2)(D) of the Act. Furthermore, by failing to allow the Department to examine this program at verification, we find that the Xinhua Companies have failed to cooperate to the best of their ability, and in doing so, the Xinhua Companies have prevented the Department from verifying how the firms used the program and confirming the grant amount received under the program. As a result, we find that the application of total AFA under section 776(b) of the Act is warranted. No other respondent firm used this program. In addition, the Department has not calculated an above de minimis rate for this program in prior CVD investigations involving the PRC. Furthermore, all previously calculated rates for grant programs from prior China CVD investigations have been de minimis (e.g., less than 0.5 percent ad valorem). Therefore, as total AFA for this program, we determine to use the rate of **13.36** percent as calculated for the "Provision of Land for LTAR" program from Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at "Provision of Land for LTAR."

2. Grant Under the Elimination of Backward Production Capacity Award Fund

Xingang reported receiving a grant under this program. As with the previous program, due to discrepancies related to the Xinhua Companies' receipt of GOC policy loans and import duty and VAT exemptions, the verifiers concluded the final scheduled day of verification without having completed their examination of this program. See Xinhua Companies Verification Report at 20. As stated in the verification report, the verifiers offered to remain on-site for an extra day in order to allow the Xinhua Companies an opportunity to complete the verification regarding these grant programs, but the Xinhua Companies refused. Id.

Because the Xinhua Companies did not provide the Department with sufficient time to verify its information, the Xinhua Companies have provided the Department with information that could not be verified. Accordingly, the Department is employing facts available pursuant to Section 776(a)(2)(D) of the Act. Furthermore, by failing to allow the Department to examine this program at verification, we find that the Xinhua Companies have failed to cooperate to the best of their ability and, in so doing, the Xinhua Companies have prevented the Department from verifying how the firms used the program and confirming the grant amount received under the program. As a result, we find that the application of total AFA under section 776(b) of the Act is warranted. No other respondent firm used this program. In addition, the Department has not calculated an above de minimis rate for this program in prior CVD investigations involving the PRC. Furthermore, all previously calculated rates for grant programs from prior China CVD investigations have been de minimis (e.g., less than 0.5 percent ad valorem). Therefore, as total AFA for this program, we determine to use the rate of 13.36 percent for the "Provision of Wire Rod for LTAR" program from LWS from the PRC.

3. Grant Under the 2008 National Science and Technological Support Fund: Research on Controlled Cooling After Rolling Production Technology of High-Strength Electricity Power Use of Special Angle Steel

Xinyu reported receiving a grant under this program. As with the previous program, due to discrepancies related to the Xinhua Companies' receipt of GOC policy loans and import duty and VAT exemptions, the verifiers concluded the final scheduled day of verification without having completed their examination of this program. See Xinhua Companies Verification Report at 20. As stated in the verification report, the verifiers offered to remain on-site for an extra day in order to allow the Xinhua Companies an opportunity to complete the verification regarding these grant programs, but the Xinhua Companies refused. Id.

Because the Xinhua Companies did not provide the Department with sufficient time to verify its information, the Xinhua Companies have provided the Department with information that could not be verified. Accordingly, the Department is employing facts available pursuant to Section 776(a)(2)(D) of the Act. Furthermore, by failing to allow the Department to examine this program at verification, we find that the Xinhua Companies have failed to cooperate to the best of their ability and, in so doing, the Xinhua Companies have prevented the Department from verifying how the firms used the program and confirming the grant amount received under the program. As a result, we find that the application of total AFA under section 776(b) of the Act is warranted. We have assigned a total AFA net subsidy rate for this program using the Department's CVD AFA hierarchy. See LTWP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate." Fasten Corp. reported receiving a grant under this program during the POI. Therefore, pursuant to the Department's AFA hierarchy, we are computing an AFA rate for the Xinhua Companies using the total net subsidy rate calculated for the Fasten Companies under this program, which is 0.45 percent ad valorem.

4. Additional Grant Programs

As discussed below in the "Programs Determined To Be Countervailable" section, the Xinhua and Fasten Companies self-reported receiving various lump sum cash grants from the GOC.[9] As a result, the Department sent questionnaires to the GOC regarding these programs. See the Second through Eight Supplemental Questionnaires the Department sent to the GOC. For certain programs, the GOC provided in its supplemental questionnaire responses information concerning the nature of the programs and indicated that the programs were not contingent upon exports but failed to respond to the Department's questions concerning the distribution of benefits. See the GOC's Second through Eight Supplemental Questionnaires.

As discussed above, the GOC failed to provide the Department with the information pertaining to the lump sum cash grants. Accordingly, the Department has determined that it must employ the facts available pursuant to section 776(a)(2)(A) of the Act. In addition, we find that the GOC has failed to cooperate to the best of its ability in failing to provide this information. Therefore, for those programs for which we lack the necessary information, in accordance with section 776(b) of the Act, we are assuming that the programs are de facto specific as domestic subsidies within the meaning of section 771(5A)(D)(iii) of the Act. For

9 In the case of the Xinhua Companies, the programs addressed in this section are distinct from those programs used by the Xinhua Companies for which the grant amounts discussed in E.1, E.2, and E.3 above.

further information, see the "Grant Programs Treated as Domestic Subsidies Pursuant to AFA" section.

For other programs, rather than respond to the Department's questions, in its supplemental questionnaire response the GOC claimed that respondents mistakenly reported having received cash grants under the programs. See the GOC's Sixth Supplemental Questionnaire. Other than statements in the narrative section of its questionnaire response, the GOC did not substantiate its claims regarding these programs. In addition, the GOC did not respond to the Department's questions regarding these programs, including questions pertaining to specificity. Further, respondents' questionnaire responses included copies of payment vouchers they received from the GOC indicating receipt of payments equal to the grant amounts reported in the narrative of their questionnaire responses.

Section 776(a)(2)(A) of the Act provides that the Department shall use facts available when a party withholds information that has been requested by the Department. Further, section 776(b) of the Act provides that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.

As discussed above, the GOC failed to provide the requested information pertaining to specificity. Accordingly, the Department finds that it must employ facts available pursuant to section 776(a)(2)(A) of the Act. Furthermore, in light of the information contained in respondents' questionnaire responses indicating receipt of funds under the programs and given that the GOC did not substantiate its claims of non-use, we find that, by failing to submit questionnaire responses for these programs, the GOC has not cooperated to the best of its ability. Therefore, for these programs, because we lack any specificity information whatsoever from the GOC, we are assuming, pursuant to section 776(b) of the Act, that the programs are contingent upon export sales and are specific under section 771(5A)(B) of the Act. For further information, see the "Grant Programs Treated as Export Subsidies Pursuant to AFA" section.

Subsidies Valuation Information

A. Benchmarks for Short-Term RMB Denominated Loan

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. See 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." See 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. In the Preliminary Determination, we stated that "for the reasons explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market." See Preliminary Determination, 74 FR at 56580; see also Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty

Determination, 72 FR 60645 (October 25, 2007) (CFS from the PRC) and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum) at Comment 10. We further explained in the Preliminary Determination that because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). See 74 FR at 56580. Similarly, in the Preliminary Determination we explained that we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Id. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department selected an external market-based benchmark interest rate in the Preliminary Determination. Id.

We received comments from interested parties regarding our preliminary decision to use an external market benchmark interest rate. However, comments from interested parties have not led us to alter our preliminary findings. See Comment 15. On this point, we note that the use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum (Softwood Lumber from Canada Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

As in the Preliminary Determination, 74 FR at 56580, we are calculating the external benchmark using the regression-based methodology first developed in CFS from the PRC and more recently updated in LWTP from the PRC. See CFS from the PRC Decision Memorandum at Comment 10; see also LWTP from the PRC Decision Memorandum at "Benchmarks and Discount Rates" section. This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita GNIs similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

To calculate the external benchmark for this determination, we first determined which countries are similar to the PRC in terms of gross national income (GNI), based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. See CFS from the PRC Decision Memorandum at "Benchmarks for RMB-Denominated Loans." The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for antidumping (AD) purposes for any part of the years in question (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan). Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Specifically, Jordan reported a deposit rate, not a

lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

The resulting inflation-adjusted benchmark lending rates are provided in the respondents' preliminary calculation memoranda. Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation figure as reported in the IFS.

We received comments from interested parties regarding our derivation of short-term benchmark interest rates using the regression-based methodology described above. However, comments from interested parties have not led us to alter our preliminary findings. See Comment 20.

B. Benchmarks for Long-Term Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008) (LWRP from the PRC), and accompanying Issues and Decision Memorandum (LWRP from the PRC Decision Memorandum) at "Discount Rates" section. In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) (Citric Acid from the PRC), and accompanying Issues and Decision Memorandum (Citric Acid from the PRC Decision Memorandum) at Comment 14. In the Preliminary Determination, we utilized the revised methodology from Citric Acid from the PRC when deriving our long-term benchmark rates. See Preliminary Determination, 74 FR at 56581.

We received comments from interested parties regarding our derivation of long-term benchmark interest rates using the regression-based methodology described above. Comments from interested parties have not led us to alter the methodology employed in the preliminary findings. See Comment 20.

C. Benchmarks for Foreign Currency-Denominated Loans

For foreign currency-denominated short-term loans, the Department used as a benchmark in the Preliminary Determination the one-year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. See 74 FR at 56581. Our approach in the Preliminary Determination was consistent with the Department's practice. See LWTP from the PRC Decision Memorandum at "Benchmarks and Discount Rates" section. For long-term

foreign currency-denominated loans, in the Preliminary Determination the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See 74 FR 65681. We have utilized the same approach in the final determination.

D. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used as our discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy.

ANALYSIS OF PROGRAMS

I. Programs Determined To Be Countervailable

A. Provision of Wire Rod for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold wire rod to the mandatory respondents for LTAR. The Xinhua Companies and the Fasten Companies reported obtaining wire rod during the POI from trading companies as well as directly from wire rod producers.

Consistent with the Department's past practice, in this investigation, we find that the wire rod producers that supply respondents and that are majority-government owned are "authorities," within the meaning of section 771(5)(B) of the Act. See 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, 73 FR 40480 (July 15, 2008) (Tires from the PRC), and accompanying Issues and Decision Memorandum (Tires from the PRC Decision Memorandum) at "Government Provision of Rubber for Less than Adequate Remuneration." Further, we determine that wire rod supplied by companies deemed to be government authorities constitute a financial contribution to respondents in the form of a governmental provision of a good and that the respondents received a subsidy to the extent that the price they paid for wire rod produced by these suppliers was sold for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

In the Preliminary Determination, we explained that the Fasten Companies and the Xinhua Companies reported acquiring certain quantities of wire rod from trading companies. See 74 FR at 56581. We further explained that in prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) (CWP from the PRC) and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at "Hot-Rolled Steel for Less Than Adequate Remuneration" section; see also Certain Kitchen Shelving and Racks from the People's Republic of China: Final

Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (Racks from the PRC), and accompanying Issues and Decision Memorandum (Racks from the PRC Decision Memorandum) at "Provision of Wire Rod for Less than Adequate Remuneration" section, and Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009) (CWASPP from the PRC) and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at "Provision of SSC for LTAR." Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. In the Preliminary Determination, we stated that, in some instances, the GOC and the mandatory respondents supplied the requested information. See 74 FR at 56581.

We further stated in the Preliminary Determination that, in other instances, although the GOC and the mandatory respondents properly indicated whether the wire rod suppliers were trading companies in the business of reselling wire rod they were, nonetheless, unable to identify the producers that supplied the trading companies. See 74 FR at 56581. Because the respondent companies and the GOC have not been able to supply the requested information, we preliminarily determined that the necessary information is not on the record and, as a result, we are resorting to the use of facts available (FA) within the meaning of sections 776(a)(1) and (2) of the Act. Id. In its response, the GOC provided information on the amount of wire rod produced by state-owned enterprises (SOEs) and private producers in the PRC. Using these data, we derived the ratio of wire rod produced by SOEs during the POI. Thus, pursuant to sections 776(a)(1) and (2) of the Act, in the Preliminary Determination we resorted to the use of FA with regard to the wire rod sold to the Fasten Companies and Xinhua Companies by certain domestic trading companies. See 74 FR 56581. Specifically, we assumed that the percentage of wire rod supplied by these domestic trading companies that is produced by government authorities is equal to the ratio of wire rod produced by SOEs during the POI.[10] See Final Calculation Memoranda for the Fasten Companies and the Xinhua Companies.

We stated in the Preliminary Determination that, in other instances, the GOC and the mandatory respondents failed to indicate, as instructed, whether their wire rod suppliers were producers or trading companies. See 74 FR 56582. We stated that this lack of information impedes our ability to determine whether the wire sold by these wire rod suppliers was, in fact, produced by a government authority. See section 776(a)(2)(A) and (C) of the Act. Id. Therefore in the Preliminary Determination, we resorted to the use of AFA as described under section 776(b) of the Act. Id. Specifically, in the Preliminary Determination, we made the following adverse assumptions:

> 1. In instances in which a mandatory respondent identified an input supplier as a private company but failed to indicate whether the supplier was an input producer or a trading company, we assumed that the supplier acted as a private trading company (rather than a private producer), and;

10 In other words, in instances where we are applying FA, we are assuming that the percentage of wire rod purchased by domestic trading companies during the POI was equal to the ratio of wire rod produced by SOEs during the POI, as indicated by the aggregate data supplied in the questionnaire responses of the GOC.

2. In instances in which the mandatory respondent indentified an input supplier as a state-owned company but failed to indicate whether the supplier was an input producer or a trading company, we assumed that the supplier acted as a producer.

See 74 FR at 56582.

These adverse assumptions had the effect of increasing the amount of benefits attributed to the mandatory respondent in question. Id.

Upon further review and examination of the information supplied by the Fasten and Xinhua Companies, we find that the wire rod purchase data supplied by the Fasten Companies and the Xinhua Companies reflect purchases made directly from wire rod producers, as opposed to wire rod trading companies. As a result, the application of FA and AFA under the provision of wire rod for LTAR program, as discussed in the Preliminary Determination, is not necessary.

However, as discussed above in the "Adverse Facts Available" section, Xinhua, failed to identify prior to verification all of the factories from which it acquired wire rod during the POI. In its questionnaire responses, Xinhua reported the purchases of wire rod made by its PC strand producing factory, but, in spite of the Department's instructions, failed to report prior to verification the PC strand acquired by its other two factories. The Xinhua Companies have indicated that Xinhua's other two factories did not use the wire rod they purchased during the POI to produce PC strand. However, as explained in prior CVD proceedings, the Department does not track the manner in which subsidies are used and, thus, all wire rod acquired by Xinhua during the POI is subject to our benefit analysis. See, e.g., CWASPP from the PRC Preliminary Determination, 73 FR at 39657, 39663 – 39664, unchanged in CWASPP from the PRC

As a result of the Xinhua Companies' failure to provide complete information concerning all of its factories' purchases of wire rod during the POI, the Department was unable to ascertain the extent to which the wire rod purchased by Xinhua's other two factories was obtained from wire rod producers that were acting as GOC authorities. Thus, where we lacked ownership information, as AFA, we are assuming that Xinhua's two other factories purchased their wire rod during the POI exclusively from wire rod producers acting as GOC authorities

Having addressed the issue of financial contribution, we must next analyze whether the sale of wire rod to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in Softwood Lumber from Canada, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See

Softwood Lumber from Canada Decision Memorandum at "Market-Based Benchmark" section.

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the Preamble:

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble, 63 FR at 65377. The Preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Id.

In the instant investigation, the GOC reported the total wire rod production by state-owned entities during the POI. In the Preliminary Determination, we explained that the number of these state-owned entities (SOEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in Racks from the PRC, in which the Department determined that the GOC had direct ownership or control of wire rod production. See 74 FR at 56582; see also Racks Decision Memorandum, at Comment 4. We further explained in the Preliminary Determination that because the GOC has not provided any information that would lead the Department to reconsider the determination in Racks from the PRC, where we found that the substantial market share held by SOEs shows that the government plays a predominant role in the this market. See 74 FR at 56582; see also Racks Decision Memorandum at "Provision of Wire Rod for LTAR". We also stated in the Preliminary Determination that the government's predominant position is further demonstrated by the low level of imports, which accounted for only 0.91 percent of the volume of wire rod available in the Chinese market during the POI. See 74 FR at 56582; see also GOC's September 15, 2009, questionnaire response at 23. In addition, we stated in the Preliminary Determination that, because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. See 74 FR at 56582. We noted that approach was consistent with the Department's practice. See Preliminary Determination, 74 FR at 56582, citing to the LWRP Decision Memorandum, at Comment 7.

In addition, we explained in the Preliminary Determination that in Racks from the PRC the Department determined that the 10 percent export tariff and export licensing requirement instituted by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. See 74 FR 56582. We explained in the Preliminary Determination that such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would otherwise be. See 74 FR at 56582; see also Racks Decision Memorandum at "Provision of Wire Rod for LTAR." Consequently, in the Preliminary Determination, we determined that there are no appropriate tier one benchmark prices available for wire rod. See 74 FR 56582.

Subsequent to the Preliminary Determination, we issued a supplemental questionnaire to the GOC in which we inquired as to whether export tariffs and export licensing requirements remained in place with regard to wire rod during the POI. In its response, the GOC confirmed that an export tariff was in effect for wire rod and that the export requirements in place during

the POI of the investigation of Racks from the PRC remained in effect during the POI of the instant investigation. See The GOC's December 23, 2009 submission at 2 – 3. Therefore, based on the information discussed in the Preliminary Determination and on the information obtained subsequent to the Department's Preliminary Determination, because of the government's predominant role in the domestic wire rod market, we continue to find that there are no appropriate tier one benchmark prices available for wire rod during the POI.

We note that Fasten I&E reported that it imported wire rod during the POI. See Exhibit 1 of Fasten I&E's September 22, 2009, supplemental questionnaire response. However, as explained above, because of the predominant role of the government in the domestic market and because, imports of wire rod only account for a small percent of the volume of wire rod available in the Chinese market during the POI, we have determined that there are no appropriate tier-one benchmark prices on the record, including import prices. This is consistent with the Department's approach in prior CVD proceedings involving the PRC. See LWRP from the PRC Decision Memorandum at Comment 7; see also Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration" section. Consequently, because we determine that there are no available tier-one benchmark prices, we have turned to tier-two, i.e., world market prices available to purchasers in the PRC.

We next examined whether the record contained data that could be used as a tier-two wire rod benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for SWRH 82B wire rod (or high carbon wire rod) in the United States, as sourced from the American Metals Market (AMM). See petitioners' October 6, 2009, submission at Exhibit 4.[11] The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). Petitioners provided information indicating that one of the producers of subject merchandise, Walsin, uses SWRH 82B to produce subject merchandise. On January 11, 2010, the Fasten Companies submitted information regarding wire rod for sale in Europe, the United States and Far Eastern markets. We received comments from interested parties regarding the data upon which the Department should base its tier-two wire rod benchmark. See Comment 14. Based on comments from interested parties and information on the record of the investigation, we have determined to base our tier-two wire rod benchmark on price data sourced from the AMM and the CRU Monitor. Specifically, we have simple averaged the prices for high-carbon wire rod from the United States, as reported in the AMM and CRU Monitor. For further information, see Comment 14.

Therefore, for purposes of the final determination, we find that the data from AMM and the CRU Monitor should be used to derive a tier-two, world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. See, e.g., CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section; see also LWRP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section. We find that, for purposes of the final determination, prices from the AMA and the CRU Monitor to be sufficiently reliable and representative.

To determine whether wire rod suppliers, acting as government authorities, sold wire rod to respondents for LTAR, we compared the prices the respondents paid to the suppliers to our wire rod benchmark price. We conducted our comparison on a monthly basis, reflecting

[11] Petitioners are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

the structure of the available benchmark data. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the mandatory respondents for their purchases of wire rod.

As explained in the Preliminary Determination, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. See 74 FR at 56583. Regarding delivery charges, at the time of the Preliminary Determination, we lacked information and, therefore, did not adjust the benchmark in this regard. Id. But, in the Preliminary Determination, we explained that we would continue to seek the relevant information for the final determination. Subsequent to the Preliminary Determination, petitioners submitted information concerning ocean freight. Specifically, petitioners submitted on the record of the investigation price quotes from Maersk Line for shipping iron and steel products from Los Angeles, California to Shanghai, China in each month of the POI. In accordance with 19 CFR 351.511(a)(2)(iv), we have added these ocean freight costs to our wire rod benchmark price. See petitioners' January 8, 2010, submission. In addition, we have added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. See 19 CFR 351.511(a)(2)(iv). With respect to the three percent insurance charge on imports noted by the petitioner, consistent with Racks from the PRC, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See Racks from the PRC Decision Memorandum at Comment 9. Regarding the question of whether to adjust for inland freight in the wire rod benchmark and the prices respondents paid to GOC authorities, we lack on the record of the instant investigation the necessary information concerning inland freight rates to make such an adjustment. We note that respondents reported the wire rod prices paid to GOC authorities net of inland freight. Thus, inland freight costs are absent from both benchmark and government wire rod prices. We will collect information concerning inland freight in any subsequent administrative review(s).

Comparing the benchmark unit prices to the unit prices paid by respondents for wire rod, we determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). In the case of the Xinhua Companies, we compared the wire rod benchmarks prices to the prices the Xinhua Companies paid to their wire rod suppliers. Xinhua purchased some of its wire rod from Xinyu. As explained in the "Attribution" section above, we are not including Xinhua's purchases of wire rod from Xinyu in our subsidy calculations. As discussed above, regarding Xinhua's previously unreported wire rod quantities, for those wire rod suppliers for which we lack ownership information, we are assuming, as AFA, that the suppliers are state-owned producers and, as such, we have included the suppliers' sales of wire rod in the benefit calculation.

In the case of Hongsheng, we compared the wire rod benchmark prices to the prices Hongsheng paid to its wire rod suppliers. In the case of Walsin, it purchased its wire rod from suppliers other than Hongsheng. Thus, we compared the wire rod benchmark prices to the prices Walsin paid to its suppliers.

Finally, with respect to specificity, the third necessary element of a countervailable subsidy under the Act, the GOC has provided information on end uses for wire rod. See Exhibit 58 of the GOC's August 26, 2009, questionnaire response. The GOC stated that the

end uses of wire rod relate to the type of industry involved as a direct purchaser of the input. The GOC further stated that the consumption of wire rod occurs across a broad range of industries. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act, LWRP from the PRC Decision Memorandum at Comment 7; and Racks from the PRC Decision Memorandum at "Provision of Wire Rod from Less Than Adequate Remuneration."

We find that the GOC's provision of wire rod for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. Regarding the Xinhua companies, for wire rod sold to Xinhua for LTAR, we divided Xinhua's benefit by Xinhua's total sales. Regarding the Fasten Companies, for wire rod sold to Hongsheng for LTAR, we divided Hongsheng's benefit by combined total sales of Hongsheng, Fasten Steel, Hongyu Metal, and Fasten I&E. Regarding wire rod sold to Walsin for LTAR, we divided Walsin's benefit by its total sales. We then cumulated the benefits Walsin received under the program using the methodology described in the "Attribution" section. Specifically, we multiplied the total subsidy rate for Walsin by its share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. On this basis, we calculated a total net subsidy rate of **15.31** percent ad valorem for the Xinhua Companies and **6.18** percent ad valorem for the Fasten Companies.

B. Provision of Land Use Rights for LTAR to FIEs in Jiangxi and the City of Xinyu

As explained in Preliminary Determination, we have investigated the extent to which Jiangxi Province has industrial plans in place that support the provision of land to the members of the steel industry for LTAR and whether the City of Xinyu provides land to FIEs for LTAR. See Preliminary Determination, 74 FR at 56583. The Xinhua Companies are located in Jiangxi Province and the City of Xinyu. The Fasten Companies are not located in Jiangxi Province or the City of Xinyu. On this basis, we did not examine the Fasten Companies under this program, and, preliminarily determined that the Fasten Companies did not use this program during the POI.

The Xinhua Companies reported that Xinyu acquired usage rights three parcels of land from government authorities located in the City of Xinyu. Two purchases occurred in 1996. The other purchase occurred in 2004. As explained above, we are limiting our analysis of subsidies beginning after December 11, 2001, which is the date of the PRC's accession to the WTO. Thus, we are not examining the land use rights that Xinyu acquired from government authorities in 1996. Regarding the land use rights that Xinyu acquired in 2004, information supplied by the Xinhua Companies indicates that Xinyu acquired the usage rights from the Xinyu Hi-Tech Economic Development Zone Committee, which we find is controlled by City of Xinyu, and that the land is located in a development zone.

The Department determined in LWS from the PRC that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical

Circumstances, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at Comment 8. The Department also found that when the provision of land-use rights in an industrial park is limited to a designated geographical region within the seller's (e.g., county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act. Id. at Comment 9. In the instant investigation we find that the Xinyu Hi-Tech Economic Development Zone is a designated area that is under the jurisdiction of the City of Xinyu. Therefore, consistent with LWS from the PRC, we determine that Xinyu's purchase of granted land-use rights located within the Xinyu Hi-Tech Economic Development Zone in 2004 gives rise to countervailable subsidies to the extent that the purchases conferred a benefit. Our approach in this regard is unchanged from the Preliminary Determination. See 74 FR at 56583 – 56584.

To determine whether the Xinhua Companies received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices (referred to as tier-one prices in the LTAR regulation) within the country. See 19 CFR 351.511(a)(2)(i). In LWS from the PRC, the Department determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that tier-one benchmarks do not exist. See LWS from the PRC Decision Memorandum at Comment 10. The Department also found that tier-two benchmarks, world market land prices that would be available to purchasers in China, are not appropriate because "they cannot be 'available to an in-country purchaser' while located and sold out-of-country on the world market." Id. at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration"; see also 19 CFR 351.511(a)(2)(ii). Because benchmarks were unavailable under the first and second tiers, the Department determined the adequacy of remuneration by reference to tier-three. The Department found, however, that the sale of land-use rights in China was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. See LWS from the PRC Decision Memorandum at Comment 10; see also 19 CFR 351.511(a)(2)(iii). We determine that in the instant investigation the GOC has not submitted any information that rebuts the examination conducted or the conclusions reached by the Department in LWS from the PRC. Our approach in this regard is unchanged from the Preliminary Determination. See 74 FR at 56583 – 56584.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, for the final determination we are comparing the price that the Xinyu paid for its granted land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, China. Specifically, we are comparing the price Xinyu paid to the City of Xinyu in 2004 to the price of certain industrial land in industrial estates, parks, and zones in Thailand in 2004. See LWS from the PRC Decision Memorandum at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration." Our approach in this regard is unchanged from the Preliminary Determination. See 74 FR at 56583 – 56584.

To calculate the benefit, we computed the amount that Xinyu would have paid for its granted land-use rights and subtracted the amount Xinyu actually paid for its 2004 purchase. Our comparison indicates that the price Xinyu paid to the government authority in 2004 was less than our land benchmark price and, thus, that Xinyu received a benefit under section

771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of Xinyu's total consolidated sales in the year of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold. Therefore, we used the discount rate described under the "Benchmarks and Discount Rates" section of this determination to allocate the benefit over the life of the land-use rights contract, which is 50 years.

To calculate the net subsidy rate, we divided the benefit by Xinyu's consolidated sales for the POI. On this basis, we calculated a net subsidy rate of **0.01** percent ad valorem.

C. Import Tariff and Value Added Tax Exemptions for FIES and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the State Council's Circular on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. Under the program, companies are authorized to receive the exemptions based on their FIE status and the list of assets approved by the GOC at the time their FIE status was approved. Domestic enterprises eligible for the VAT and duty exemptions must have government-approved projects that are in line with the current "Catalog of Key Industries, Products, and Technologies the Development of Which is Encouraged by the State." Whether an FIE or domestic enterprise, only equipment that is not listed in the Catalog on Non-Duty Exemptible Article for Importation is eligible for the VAT and duty exemptions. Different catalogs are prepared for FIEs and domestic enterprises. To receive the exemptions, a qualified enterprise has to show a certificate provided by the NDRC, or its provincial branch, to the customs officials upon importation of the equipment.

Xinhua, Xinyu, and Xingang reported receiving VAT and duty exemptions under this program due to its status as a qualified domestic enterprise. Walsin and Hongyu Metal also reported using this program due to their status as FIEs.

We determine that the VAT and duty exemptions received under the program constitute a financial contribution in the form of revenue forgone by the GOC, which provide a benefit to the recipients in the amount of the VAT and tariff savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act, as well as 19 CFR 351.510(a)(1). Our approach in this regard is unchanged from the Preliminary Determination. See 74 FR at 56584.

We acknowledge that the pool of companies eligible for benefits is larger than FIEs because some domestic companies may also qualify for the exemptions. However, as explained above and in past CVD proceedings, the domestic enterprises must have government-approved projects which are in line with the current "Catalog of Key Industries, Products, and Technologies the Development of Which Is Encouraged by the State," and must be approved by the State Council, NDRC, or another agency to which authority has been delegated. Therefore, we determine that the addition of certain domestic enterprises as eligible users does not broaden the reach or variety of users sufficiently to render the program non-specific. On this basis, we continue to find the program is specific under section 771(5A)(D)(iii)(I) of the Act. Our approach in this regard is unchanged from the Preliminary

Determination. See 74 FR at 56584 - 56585. Further, our determination to countervail this program is consistent with the Department's treatment of this program in past CVD proceedings involving the PRC. See, e.g., CFS from the PRC Decision Memorandum at "VAT and Tariff Exemptions on Imported Equipment" and Comment 16; see also Tires from the PRC Decision Memorandum at "VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries."

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, 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. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we are examining the VAT and tariff exemptions Xinhua received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's practice. See, e.g., Line Pipe from the PRC Decision Memorandum at Comment 8: ". . . we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties." Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we divided the total grant amount by the corresponding total sales of the respondent for the year in question. Pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the year of receipt for those years in which the grant amount was less than 0.5 percent of the total sales of Xinhua. For those years in which the grant amounts were greater than 0.5 percent of respondent's total sales, we allocated the benefit to the POI using the methodology described under 19 CFR 351.524(d). We derived the long-term discount rate using the methodology described in the "Subsidies Valuation Information" section of this memorandum. We then calculated the total benefit under the program by summing all of the benefit amounts allocated to the POI.

In the case of Xinyu and Xingang, we did not use the benefit methodology described above. Rather, we calculated net subsidy rates for Xinyu and Xingang using the AFA methodology described above in the "Adverse Facts Available" section. Accordingly, we have applied a total net subsidy rate of **0.43** percent ad valorem to Xinyu and **0.43** percent ad valorem to Xingang. To calculate the net subsidy rate for Xinhua, we divided Xinhua's the total benefit by Xinhua's total sales for the POI. We then summed these three net subsidies rates to calculate grand total net subsidy for the Xinhua Companies under this program. On this basis, we calculated a total net subsidy rate of **1.14** percent ad valorem for the Xinhua Companies.

Regarding Walsin, we divided the total benefit it received under the program by its total sales. As explained in the "Attribution" section, we then cumulated the subsidies received by Walsin under the program with benefits from subsidies received by Fasten I&E. Specifically, we multiplied the total subsidy rate for Walsin by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. Concerning Hongyu Metal,

we divided the benefits it received under the program by the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we calculated a total net subsidy rate of **0.43** percent ad valorem for the Fasten Companies.

D. Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level

The Famous Brand program is administered at the central, provincial, and municipal government level. During the POI, Xinhua reported receiving a grant under the Famous Brand program from the City of Xinyu. Fasten Corp. reported receiving a grant from the Jiangsu Province.

The Notice of Xinyu People's Government on Issuing Administration Rules for Xinyu City Famous Brand Products (Administration Rules) states that firms with the famous brand designation are eligible to receive grants from the City of Xinyu. The Administration Rules state that they were drafted in accordance with the Strategic Work Plan for Industries in Jiangxi Province, as issued by the Jiangxi Provincial Government (1995), document number #86 (Strategic Work Plan). See Xinhua's August 4, 2009, questionnaire response at Annex 16. The Strategic Work Plan lists the requirements that applicants must meet in order to receive the famous brand designation. Among those requirements is the following:

> The product should have high market share, high economic benefits, high economic driving force or high ability to earn foreign exchange through export.

Id. Xinhua reported applying for and receiving a grant from the City of Xinyu during the POI pursuant to the Administration Rules.

Based on the information available on the record of the investigation, we determine that grants Xinhua received from the City of Xinyu under the famous brand program constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Based on the information contained in the Strategic Work Plan, we determine that grants provided by the City of Xinyu under the famous brands program are contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(B) of the Act. Our approach in this regard remains unchanged from the Preliminary Determination. See 74 FR at 56585.

Concerning Fasten Corp., information in its questionnaire response indicates that it received a grant from Jiangsu Province during the POI that was contingent upon export performance. See Fasten Corp.'s August 26, 2009, questionnaire response at 50. Therefore, as was the case in the Preliminary Determination, we find the grant Fasten Corp. received under the Famous Brand program of Jiangsu Province to be countervailable for the same reasons as discussed above. See 74 FR at 56585.

The grants that Xinhua and Fasten Corp. received during the POI was less than 0.5 percent of their respective total export sales during the POI.[12] Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt). On this basis, we

12 As explained in the "Attribution" section, we used the total consolidated export sales of Fasten Corp. when conducting the 0.5 percent test described under 19 CFR 351.524(b)(2).

calculated a total net subsidy rate of **0.03** percent ad valorem for the Xinhua Companies and a total net subsidy rate of **0.01** percent ad valorem for the Fasten Companies.

E. Implementing Measures on the Supporting Fund for Foreign Trade & Economic Development of Jiangxi Province (Implementing Measures)

Under the Implementing Measures, the Government of Jiangxi Province provides grants to firms with positive growth rates that export between $10 million and $20 million worth of high-tech mechanical or electrical products. See Xinhua Questionnaire response at page 104 and Annex 17. Xinhua reported applying for and receiving a grant pursuant to the Implementing Measures during the POI.

Based on the information available on the record of the investigation, we determine that the grant Xinhua received from the Government of Jiangxi Province under the Implementing Measures constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We determine that the grant provided by the Government of Jiangxi Province under the Implementing Measures program is contingent on export performance. Therefore, we find that the program is specific under section 771(5A)(B) of the Act. Our findings in this regard remain unchanged from the Preliminary Determination. See 74 FR at 56586.

The grant that Xinhua received during the POI was less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of **0.06** percent ad valorem for the Xinhua Companies.

F. Circular on Issuance of Management Methods for Foreign Trade Development Support Fund (Support Fund)

Under the Support Fund, firms with an annual export value of $1,000,000 to $5,000,000 are eligible to receive grants from the Ministry of Foreign Trade and Economic Cooperation. See Xinhua Questionnaire response at page 112 and Annex 18. Xinhua reported applying for and receiving a grant pursuant to the Support Fund during the POI.

Based on the information available on the record of the investigation, we determine that the grant Xinhua received from the GOC under the Support Fund constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We determine that the grant provided by the GOC under the Support Fund is contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(B) of the Act. Our findings in this regard remain unchanged from the Preliminary Determination. See 74 FR at 56586.

The grant that Xinhua received during the POI was less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of **0.05** percent ad valorem for the Xinhua Companies.

G. R&D Funds Provided Under Cao Qi No. 479 Decree (Also Referred To As Grants Under Regulations for Export Product Research and Development Fund Management)

In its questionnaire response, Xinhua indicated that in 2007 it received a grant from the Ministry of Finance pursuant to the Notice on Publishing Management Fund Used in Research and Development of Export Mechanical and Electrical Products (WJMJCF (2007) (Document Number 527). The legislation indicates that receipt of the grant was contingent upon export performance.

We determine that the grant constitutes a financial contribution in the form of a direct transfer of funds and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further determine that the grant program is specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon exports. Our findings in this regard remain unchanged from the Preliminary Determination. See 74 FR at 56586.

Because Xinhua received the grant in 2007, we conducted the "0.5 percent expense test" as described under 19 CFR 351.524(b)(2). Because the grant that Xinhua received in 2007 was greater than 0.5 percent of its total export sales for 2007, we have allocated the grant over the AUL established for this proceeding. See 19 CFR 351.524(b)(1). We allocated the grant to the POI using the methodology described under 19 CFR 351.524(d)(1). We divided the benefit allocated to the POI by Xinhua's total export sales for the POI. On this basis, we calculated a total net subsidy rate of **0.03** percent ad valorem for the Xinhua Companies.

H. Rebates for Export and Credit Insurance Fee

In its questionnaire response, Fasten I&E reported that it received grants during the POI from the GOC in connection with export and credit insurance fees it incurred.

We determine that the grants received by Fasten I&E constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, we determine that the program is contingent upon export activity and therefore is specific under section 771(5A)(B) of the Act. Our findings in this regard remain unchanged from the Preliminary Determination. See 74 FR at 56586.

The grants that Fasten I&E received under the program during the POI were less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt). Specifically, we divided the grants amounts received by Fasten I&E by the company's total export sales during the POI. On this basis, we calculated a total net subsidy rate of **0.04** percent ad valorem for the Fasten Companies.

I. Income Tax Benefits for FIEs Based on Geographic Location

This program provides tax incentives for enterprises located in special zones. The GOC states that the program was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The GOC states that the program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Specifically, pursuant to Article 7 of the FIE Tax Law for productive FIEs established in a coastal economic

development zone, special economic zone, or economic technology development zone, the applicable enterprise income tax rate is 15 or 24 percent, depending on the zones in which productive FIE are located, as opposed to the standard 30 percent income tax rate.

We determine that this program constitutes a financial contribution in the form of revenue forgone and confers a benefit equal to the amount of tax savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act. Because eligibility under this program is limited to firms located within designated geographical regions, we determine that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act. We note that the Department has found this program countervailable in previous CVD proceedings. See, e.g., CFS from the PRC Decision Memorandum at "Reduced Income Tax Rates for FIEs Based on Location." Our decision to countervail this program remains unchanged from the Preliminary Determination. See 74 FR at 56586.

Under 19 CFR 351.509(b), in the case of an income tax reduction program, the Department normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the reduction. Normally, this date is the date on which the firm in question filed its tax return.

Fasten Steel, Walsin, and Hongyu Metal received an income tax reduction under the program with respect to the tax returns they filed during the POI. Therefore, we determine that these companies received countervailable benefits under this program during the POI. No other mandatory respondent reported receiving benefits under this program during the POI.

In accordance with 19 CFR 351.509(a), to calculate the benefit, we subtracted the income tax rates the companies paid under the program from the income tax rate that the firms would have paid absent the program and multiplied the difference by the firms' taxable income.

To calculate the net subsidy rate for Fasten Steel, we divided the benefit by the combined total sales of Fasten Steel and Fasten I&E for the POI. To calculate the net subsidy rate for Walsin, we divided the total benefit by Walsin's total sales for the POI. Next, as explained in the "Attribution" section, we multiplied the total subsidy rate for Walsin by its respective share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. Regarding Hongyu Metal, we divided the benefit it received under the program by the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we calculated a total net subsidy rate of **0.10** percent ad valorem for the Fasten Companies.

The Fasten Companies claim in their September 22, 2009, supplemental questionnaire response that the GOC terminated the Tax Benefits for FIEs Based on Geographic Location program. We continue to find, however, that the record lacks sufficient information to conclude that the program has been terminated. Our conclusion is therefore unchanged from the Preliminary Determination. See, 74 FR at 56586-87.

J. Two Free, Three Half Tax Exemptions for FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs that are "productive" and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed "productive" if they qualify under Article 72 of the

Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. Hongyu Metal received benefits under this program that are attributable to the POI.

We determine that the exemption or reduction in the income tax paid by "productive" FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is consistent with the Department's practice. See CFS from the PRC Decision Memorandum at "Two Free/Free Half Program." Our approach in this regard is unchanged from the Preliminary Determination. See 74 FR at 56587.

To calculate the benefit from this program, we treated the income tax exemption claimed as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then compared the tax rate paid to the rate that otherwise would have been paid by Hongyu Metal and multiplied the difference by Hongyu Metal's taxable income. We attributed the benefit received to the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we determine a countervailable subsidy of **0.03** percent ad valorem for the Fasten Companies.

K. Local Tax Exemptions and Reduction Programs for "Productive" FIEs

Pursuant to Article 9 of the FIE Tax Law and Article 71 of Decree 85 of the Council of 1991, local provinces can establish eligibility criteria and administer the application process for local income tax reductions or exemptions for FIEs, effectively extending the tax exemptions or reductions that are allowed to FIEs by the national Two Free, Three Half program. In its questionnaire response, Hongyu Metal indicated that it received benefits under this program and its tax return filed during the POI confirms it benefitted from this program. Hongyu Metal reported receiving benefits under this program.

We determine that the exemption or reduction in the local income tax paid by "productive" FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The Department has also found this program to be countervailable in prior CVD proceedings involving the PRC. See Tires from the PRC Decision Memorandum at "Tax Subsidies to FIEs in Specially Designated Geographic Areas, and Local Income Tax Exemption and Reduction Programs for 'Productive' FIEs"; see also CFS from the PRC Decision Memorandum at "Local Income Tax Exemption and Reduction Program for "Productive" FIEs." Our approach in this regard remains unchanged from the Preliminary Determination. See 74 FR at 56587.

To calculate the benefit to Hongyu Metal from this program, we treated the income tax exemption claimed by Hongyu Metal as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that otherwise would have been paid by Hongyu Metal (the standard local rate is 3 percent) and

multiplied the difference by Hongyu Metal's taxable income. We attributed the benefit received to the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we determine a countervailable subsidy of **0.01** percent ad valorem for the Fasten Companies.

L. Federal Provision of Electricity for LTAR

As discussed above in the "Adverse Facts Available" section, we find that the GOC has failed to cooperate to the best of its ability and, therefore, we find that the GOC provided electricity to respondents during the POI in a manner that constitutes a financial contribution and is specific within the meaning of sections 771(5)(D)(iv) and 771(5A)(D)(iv) of the Act, respectively.

In the Preliminary Determination, we explained that, where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. See 74 FR at 56588. We further explained in the Preliminary Determination that, while respondents provided some information with respect to their electricity usage and payments, we did not have on the record information that could meaningfully be compared to the appropriate benchmarks. Id. For example, we did not have information from respondents indicating the electricity rates that they paid at off-peak, normal, and peak periods. Therefore, we relied on the highest subsidy rate calculated for the same or similar program in a China CVD investigation, which was an ad valorem subsidy rate of 0.07 percent from LWTP from the PRC.

Subsequent to the Preliminary Determination, we obtained information from the Fasten Companies regarding their monthly electricity usage at the off-peak, normal, and peak periods. We also obtained from the GOC additional electricity rate schedules for municipalities and provinces throughout the PRC. The information obtained from the GOC indicates that the Fasten Companies' electricity payments consist of two components: 1. a variable rate cost; and 2. a transmitter capacity or maximum demand cost. We have used this additional information from the Fasten Companies and the GOC to measure whether the Fasten Companies acquired electricity for LTAR during the POI.

Specifically, we obtained sufficient usage information from the Fasten Companies regarding their electricity purchases to calculate a company specific benefit. Our benefit methodology for the Fasten Companies is as follows.

To measure whether the Fasten Companies received a benefit under this program, we first calculated the variable electricity cost respondents paid by multiplying the monthly kilowatt hours (KWH) consumed at each price category (e.g., off-peak, normal, and peak) by the corresponding electricity rates charged at each price category in the Province in which respondents are located. Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH respondents consumed at each price category (e.g., off-peak, normal, and peak) by the highest electricity rate charged at each price category, as reflected in the electricity rate schedules submitted by the GOC. To calculate the benefit for each month, we subtracted the variable electricity cost paid by respondents during the POI from the monthly benchmark variable electricity cost.

To measure whether the Fasten Companies received a benefit with regard to their transmitter capacity charge or maximum demand payments, we first multiplied the monthly transmitter capacity or maximum demand rate charged to respondents by the corresponding consumption quantity. Next, we calculated the benchmark transmitter capacity or maximum

demand cost by multiplying respondents' consumption quantities by the highest transmitter capacity or maximum demand rate reflected in the electricity rate schedules submitted by the GOC. To calculate the benefit for each month, we subtracted the transmitter or maximum demand costs paid by respondents during the POI from the benchmark transmitter or maximum demand costs.

We calculated the total benefit received during the POI under this program by summing the monthly benefits stemming from the Fasten Companies' variable rate payments and transmitter capacity/maximum demand payments.

To calculate the net subsidy rate pertaining to electricity payments made by Fasten Corp., we divided the benefit by Fasten Corp.'s total sales for the POI. To calculate the net subsidy rate pertaining to electricity payments made by Hongyu Metal, we divided the benefit by the combined total sales of Hongyu Metal and Fasten I&E for the POI. To calculate the net subsidy rate pertaining to electricity payments made by Walsin, we divided the benefit by Walsin's total sales for the POI. Next, as explained in the "Attribution" section, we multiplied the total subsidy rate for Walsi by its respective share of PC strand that was exported to the United States during the POI by Fasten I&E. We then summed these net subsidy rates. On this basis, we calculated a net subsidy rate of **0.29** percent ad valorem for the Fasten Companies.

In this investigation, however, while the Xinhua Companies provided some information with respect to their electricity usage and payments, we do not have on the record information that would allow us to calculate the benefit in the manner described above. Therefore, we are relying on the subsidy rate calculated using the methodology described above. As a result, we are applying the net subsidy rate calculated for the Fasten Companies to the Xinhua Companies. Accordingly, the net subsidy rate for the Xinhua Companies under this program is **0.29** percent ad valorem.

M. Grants Under the Science and Technology Program of Jiangsu Province

The Fasten Companies reported that Fasten Corp. received a grant during the POI under the science and technology program of Jiangsu province. The Jiangsu Department of Science and Technology and the Jiangsu Science Federation administer the program pursuant to the Administrative Measures on Jiangsu Sci-Tech Public Service Platform (SUKEJI (2006) No. 102; SUCAIJIAO (2006) (No. 22)).

We find that the grant received by Fasten Corp. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. The information in the legislation indicates that the program is not limited to a particular enterprise or industry. Therefore, we find that the program is not de jure specific as described under section 771(5A)(D)(i) of the Act. We further find that the legislation governing the program does not make eligibility contingent on export activity as discussed under section 771(5A)(B) of the Act. However, as discussed in the "Adverse Facts Available" section of the Preliminary Determination, the GOC failed to provide information for this program that is necessary for the Department to conduct its subsidy analysis as it pertains to the issue of de facto specificity, pursuant to section 771(5A)(D)(iii) of the Act. See 74 FR at 56588. Specifically, the GOC failed to provide requested information concerning the manner in which the various grants were distributed across firms and industries. Therefore, we determine as AFA that the grant programs are de facto specific under section 771(5A)(D)(iii) of the Act. Our findings in this regard remain unchanged from the Preliminary Determination. See 74 FR at 56588.

We conducted the "0.5 percent expense test" as described under 19 CFR 351.524(b)(2). Because the grant amount was less than 0.5 percent of the total consolidated sales of the Fasten Corp., we expense the grant to the year of receipt, which is the POI. On this basis, we calculated a net subsidy rate of **0.01** percent ad valorem for the Fasten Companies.

N. Federal, Provincial, and Municipal Level Policy Lending to Producers of PC Strand

The Department is examining whether PC strand producers receive preferential lending through state-owned commercial or policy banks. Record evidence demonstrates that the GOC, particularly at the provincial and municipal levels of government, has highlighted and advocated the development of the PC strand industry and the mandatory respondents in this investigation. Moreover, GOC directives in this regard include financing support. Thus, we determine that loans received by the PC strand industry from state-owned commercial banks (SOCBs) and policy banks were made pursuant to government directives. The Fasten Companies and the Xinhua Companies had loans outstanding during the POI.

At the national level, in the Steel and Iron Industry Development Policy (July 2005) at Article 16, the GOC states that it will "… enhance the R&D, design, and manufacture level in relation to the key technology, equipment and facilities for the Chinese steel industry." To accomplish this, the GOC states it will provide support to key steel projects relying on domestically produced and newly developed equipment and facilities, through tax and interest assistance, and scientific research expenditures. See GOC's August 26, 2009, questionnaire response at Exhibit 5, page 6.

Turning to the provincial and municipal levels, the excerpts below demonstrate the support these governments have shown for the PC strand industry and the respondents in this investigation.

> *Outline of Eleventh Five-year Program (Guihua) for Industrial Structural Adjustment in Jiangsu*: "Emphasize the development of fine metal products such as high-strength pc strand, automobile tire steel cords, and non-ferrous deep processed products." See GOC's August 26, 2009, questionnaire response at Exhibit 16, page 9.
>
> *Outline of the Development Program (Guihua) for Metallurgical Industries within the Eleventh Five-year Period in Jiangsu*: "In the metal product industry of our province, a large set of metal products enterprises have been formed with Fasten Group as vanguard and with Jinyang Group Co. Ltd., Jiangsu Xingda Steel Tyre Cord Co., Ltd., and Nantong Steel Rope Factory etc. as backbone enterprises." See GOC's August 26, 2009, questionnaire response at Exhibit 22, at page 2.
>
> *Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu*: "We shall strengthen the guidance of industrial policies, the support from credit policy and the regulation by fiscal and taxation policies to guide the direction of investments." See GOC's August 26, 2009, questionnaire response at Exhibit 23 pages 4 – 5.

Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu: "Improve the funding ability and enlarge the capital accumulation by the ways of enlarging credit granting, increasing loans, …" See GOC's August 26, 2009, questionnaire response at Exhibit 23, page 13.

Eleventh Five-year Plan (Guihua) for Structural Adjustjment and Development of the Jiangxi Metallurgical (Iron & Steel) Industries: "We shall vigorously boost the construction of competitive sheet material and wire rod relied on Xinyu Iron and Steel…" GOC's August 26, 2009, questionnaire response at Exhibit 18, page 9.

Outline of the Tenth Five-year Plan (Jihua) of Social and Economic Development on Xinyu Municipality: "For the iron and steel industry, we should, by taking Xinyu Iron & Steel Co., Ltd., as the flagship, focus on improving the conditions of key equipments, optimizing the process and technological structure, reinforcing the basic management, adjusting the product structure, and expanding the production capacity." See GOC's August 26, 2009, questionnaire response at Exhibit 14, page 14.

Development Program (Guihua) of Xinyu Metallurgical (Iron & Steel) Industries (2008 – 2012): "…exerting the efforts to support Xinyu Iron & Steel Co., Ltd. to increase capital stock and raise funds for project construction…" See GOC's August 26, 2009, questionnaire response at Exhibit 20, page 13.

Development Program (Guihua) of Xinyu Metallurgical (Iron & Steel) Industries (2008 – 2012): "… fourthly, suggesting the provincial government to carry out the favorable policies concerning finance and tax revenue for the metallurgy (steel and iron) enterprises . . ." See GOC's August 26, 2009, questionnaire response at Exhibit 20, page 16.

In addition, in Tires from the PRC and the OCTG from the PRC, the Department found that in 2005, the GOC implemented the Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the Eleventh Five-Year Plan. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies. For "encouraged" projects, Decision 40 outlines several support options available to the government, including financing. See Tires from the PRC Decision Memorandum at Comment E.1; see also Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009) (OCTG from the PRC) and accompanying Issues and Decision Memorandum (OCTG from the PRC Decision Memorandum) at Comment 21.

Finally, we examined the loan documentation provided by the GOC and noted language for certain loans which also reflects the banks' conclusions that lending to this industry is consistent with the GOC's industrial policy goals. As this information is business proprietary,

it is discussed in a separate memorandum. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Excerpts from Internal Loan Documents of Mandatory Respondents," (October 26, 2009), of which the public version is on file in the CRU of the Commerce Building.

We find that, with respect to the information discussed above, the information clearly indicates state support and, specifically, credit or financing support for the producers of PC strand. In these circumstances, it is the Department's policy to find a policy lending program that is specific to the industry and, moreover, based on the analysis developed in CFS from the PRC, that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC. See Citric Acid from the PRC Decision Memorandum at Comment 5; see also CFS from the PRC Decision Memorandum at Comment 8.

Therefore, on the basis of the record information described above, we determine that the GOC has a policy in place to encourage the development of production of PC strand through policy lending. Therefore, the loans to PC strand producers from Policy Banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (see section 771(5)(E)(2)). Finally, we determine that the loans are de jure specific because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the PC strand industry. Our approach in this regard remains unchanged from the Preliminary Determination. See 74 FR at 56588 – 56589.

With respect to the Fasten Companies, to calculate the benefit under the policy lending program, we compared the amount of interest the mandatory respondents paid on their outstanding loans to the amount they would have paid on comparable commercial loans. See 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the "Subsidies Valuation - Benchmarks and Discount Rates" section above.

We have attributed benefits under this program to total sales.[13] In calculating the net subsidy rate for the mandatory respondents, we followed the methodology described in the attribution sections. Specifically, for the Fasten Companies, we attributed subsidies received by the Fasten Corp. to its total consolidated sales. We attributed subsidies received by Fasten I&E to its total sales. We attributed subsidies received by Hongsheng to the combined total sales of Hongsheng, Fasten Steel and Hongyu Metal, and Fasten I&E. We attributed subsidies received by Fasten Steel to the combined total sales of Fasten Steel and Fasten I&E. We attributed subsidies received by Hongyu Metal to the combined sales of Hongyu Metal and Fasten I&E. We attributed subsidies received by Walsin by its total sales. We then apportioned the resulting subsidy rate by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E.[14] Our approach in this regard remains unchanged from the Preliminary Determination. See 74 FR at 56589 – 56590.

---

13 We note that information examined at verification indicates that the Fasten Companies have used and characterized some of its loans as "packing credits" and "export financing." While there is insufficient information on this record to support a conclusion that these loans should be treated as export-contingent loans, and countervailed as export subsidies, we will continue to examine this issue as it arises in any future segments of this proceeding.

14 In deriving the share of PC strand produced by Fasten Steel and Walsin that was exported by Fasten Steel I&E during the POI, we did not include the sales volume of Company X.

As explained above, we are applying a single, total AFA net subsidy rate to the Xinhua Companies because each company failed to properly report all loans on which interest payments were outstanding during the POI and because at least some of the loans that were reported could not be verified. Specifically, pursuant to the Department's practice, we are assigning a total AFA for the Xinhua Companies that is equal to the total net subsidy rate calculated for the Fasten Companies under this program. See LWTP from the PRC Decision Memorandum at "Selection of Adverse Facts Available Rate."

On this basis, we calculated a total net subsidy rate of **1.25** percent ad valorem for the Fasten Companies and **1.25** percent ad valorem for the Xinhua Companies.

O. Income Tax Credits for Purchases of Domestically-Produced Equipment by Domestically Owned Firms

Xingang reported receiving an income tax deduction on the tax return it filed during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999 pursuant to "Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects." The GOC states that under the program a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year. The GOC further states that pursuant to the "Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises," the program was terminated effective January 1, 2008.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(C) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods. We note that the Department found this program countervailable in Line Pipe from the PRC. See Line Pipe from the PRC Decision Memorandum at "Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies." Our approach in this regard is unchanged from the Preliminary Determination. See 74 FR 56590.

To calculate the net subsidy rate, we divided the benefit by the combined 2008 sales of Xingang. On this basis, we calculated a net countervailable subsidy rate of **0.41** percent ad valorem for the Xingang Companies.

P. Various Grant Programs

Respondents self-reported receiving various lump sum cash grants from the GOC. Therefore, we sent a questionnaire to the GOC regarding these programs. Specifically, we asked the GOC to provide information on the purposes of the various programs and to provide information that is necessary for our specificity analysis, such as whether receipt of the grants were contingent upon exports or limited to certain enterprises or industries. Further, concerning our specificity analysis, we also asked the GOC to provide the distribution of benefit under each of the programs. As discussed below, in its questionnaire responses, the

GOC responded to the Department's questions in varying degrees concerning the manner in which the programs operate and provided the corresponding laws and regulations. Based on the information provided by the GOC, we determine that the grants listed below constitute financial contributions in the form of a direct transfer of funds, within the meaning of section 771(5)(D)(i) of the Act. We further find that the programs confer a benefit under section 771(5)(E) of the Act.

1. Grant Programs Treated as Export Subsidies

We find that information on the record indicates that the programs listed below are contingent upon export activity. Therefore, for those programs, we find that they are specific under section 771(5A)(B) of the Act.

a. Fasten Corp.

(1). Assistance for Technology Innovation – R&D Project

Fasten Corp. reported receiving a grant under this program. The information in the Fasten Companies' questionnaire response indicates that the program is contingent upon exports. Therefore, to calculate the net subsidy rate, we divided the grant amount by Fasten Corp.s' total export sales for the POI. On this basis, we calculated a net subsidy rate of **0.02** percent ad valorem for the Xinhua Companies.

(2). Assistance for Optimizing the Structure of Import/Export of High-Tech Products

Fasten Corp. reported receiving a grant under this program. Though the GOC claimed that the program is not contingent upon export performance, the source documents provided by the GOC lead us to conclude that the program is contingent upon exports sales and, therefore, specific under section 771(5A)(B) of the Act. Therefore, to calculate the net subsidy rate, we divided the grant amount by the consolidated export total sales of Fasten Corp. during the POI. On this basis, we calculated a net subsidy rate of **0.02** percent ad valorem for the Fasten Companies.

2. Grant Programs Treated as Domestic Subsidies Pursuant to AFA

Regarding the programs listed below, though the GOC provided information concerning the nature of the programs and indicated that the programs were not contingent upon exports, the GOC failed to respond to the Department's questions concerning the distribution of benefits. Thus, as explained in the "Adverse Facts Available" section, we find that the GOC has failed to respond to the best of its ability. Therefore, for those programs for which we lack the necessary information, in accordance with section 776(b) of the Act, we are assuming, under AFA, that the programs are de facto specific as domestic subsidies within the meaning of section 771(5A)(D)(iii) of the Act.

a. Xinyu

(1). Jiangxi Provincial Environmental Protection Special Fund: Project Grants for Desuphuration by Wet Process of HPF Coal Oven Gas

Xinyu reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Xinyu's receipt of funds under the program was de facto specific as a domestic subsidy under section 771(5A)(D)(iii) of the Act. Therefore, to calculate the net subsidy rate, we divided the grant amount by Xinyu's total sales for the POI. On this basis, we calculated a net subsidy rate of **0.01** percent ad valorem for the Xinhua Companies.

(2). Jiangxi Provincial Environmental Protection Special Fund: Grant to Converter, One-Time De-Dusting

Xinyu reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Xinyu's receipt of funds under the program was de facto specific as a domestic subsidy under section 771(5A)(D)(iii) of the Act. Therefore, to calculate the net subsidy rate, we divided the grant amount by Xinyu's total sales for the POI. On this basis, we calculated a net subsidy rate of **0.01** percent ad valorem for the Xinhua Companies.

(3). Xinhu Municipal Environmental Protection Special Fund: Grants for Pollution Control Facilities and Construction

Xinyu reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Xinyu's receipt of funds under the program was de facto specific as a domestic subsidy under section 771(5A)(D)(iii) of the Act. Therefore, to calculate the net subsidy rate, we divided the grant amount by Xinyu's total sales for the POI. On this basis, we calculated a net subsidy rate of **0.02** percent ad valorem for the Xinhua Companies.

(4). National Environmental Protection and Resources Saving Program: Grants for the Optimization of Energy Systems

Xinyu reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Xinyu's receipt of funds under the program was de facto specific as a domestic subsidy under section 771(5A)(D)(iii) of the Act. Therefore, to calculate the net subsidy rate, we divided the grant amount by Xinyu's total sales for the POI. On this basis, we calculated a net subsidy rate of **0.03** percent ad valorem for the Xinhua Companies.

b. Fasten Corp.

(1). 2008 National Science & Technology Support Fund

Fasten Corp. reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Fasten Corp.'s receipt of funds under the program was de facto specific as a domestic subsidy under section 771(5A)(D)(iii) of the Act. Therefore, to calculate the net subsidy rate, we divided the grant amount by the consolidated total sales of Fasten Corp. for the POI. On this basis, we calculated a net subsidy rate of **0.45** percent ad valorem for the Fasten Companies.

(2). Important Structural Adjustment Program of Jiangsu Province

Fasten Corp. reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Fasten Corp.'s receipt of funds under the program was de facto specific as a domestic subsidy under section 771(5A)(D)(iii) of the Act. Therefore, to calculate the net subsidy rate, we divided the grant amount by the consolidated total sales of Fasten Corp. for the POI. On this basis, we calculated a net subsidy rate of **0.01** percent ad valorem for the Fasten Companies.

3. Grant Programs Treated as Export Subsidies Pursuant to AFA

Respondents reported receiving grants under the programs listed below. The Department sent supplemental questionnaires to the GOC regarding this subsidy program. Rather than respond to the Department's questions concerning the program, the GOC claimed that respondents mistakenly reported having received cash grants under the program. Other than statements in the narrative section of its questionnaire response, the GOC did not substantiate its claims regarding these programs. Further, in their questionnaire responses respondents included copies of payment vouchers they received from the GOC indicating receipt of payments equal to the grant amounts reported in the narrative of their questionnaire responses. Therefore, in light of the information contained in respondents' questionnaire responses indicating receipt of funds under the programs and given that the GOC did not substantiate it claims of non-use, we find that, by failing to submit questionnaire responses for these programs, the GOC has not cooperated to the best of its ability. Therefore, for the programs listed below, because we lack any specificity information whatsoever from the GOC, we are assuming that the programs are contingent upon export sales and are specific under section 771(5A)(B) of the Act.

a. Xinyu

(1). Jiangxi Provincial Wall Material Renovation Special Fund: Special Subsidies for New Wall Materials

Xinyu reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Xinyu's receipt of funds under the program was contingent upon export sales. Therefore, to calculate the net subsidy rate, we divided the grant amount by Xinyu's total export sales for the POI. On this basis, we calculated a net subsidy rate of **0.01** percent ad valorem for the Xinhua Companies.

(2). Jiangxi Provincial Bulk Cement Special Fund: Transformation of Bulk Cement Facilities and Equipment

Xinyu reported receiving a grant under this program. As AFA, we are assuming, pursuant to section 776(b) of the Act that Xinyu's receipt of funds under the program was contingent upon export sales. Therefore, to calculate the net subsidy rate, we divided the grant amount by Xinyu's total export sales for the POI. On this basis, we calculated a net subsidy rate of **0.01** percent ad valorem for the Xinhua Companies.

II. Programs Determined Not To Provide Countervailable Benefits During the POI

A. Subsidy Programs That Do Not Provide a Numerically Significant Benefit

Regarding programs listed below, benefits from these programs result in net subsidy rates that are less than 0.005 percent ad valorem when attributing the benefit to Xinyu's total consolidated sales. We sent supplemental questionnaires to the GOC in which we asked it to indicate and to provide information as to whether benefits provided under the programs listed below were contingent upon export performance. In its October 19, 2009, questionnaire response, the GOC indicated that the benefits Xinyu received under programs listed below were not contingent upon export performance. The GOC supported its questionnaire responses with English translations of the applicable regulations. Therefore, even if one assumes that programs listed below are countervailable as domestic subsidies, the resulting net subsidy rates are less than 0.005 percent ad valorem and, thus, are not numerically significant. Consistent with our past practice, we therefore have not included these programs in our net countervailing duty rate calculations. See, e.g., CFS from the PRC Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 70 FR 39998 (July 12, 2005), and accompanying Issues and Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration," ("Uranium from France") (citing Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada, 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at "Other Programs Determined to Confer Subsidies").

1. Xinyu

a. Jiangxi Provincial Special Science Fund: Heavy Plate Production Line & Research on Technical Application

b. Jiangxi Provincial Special Science Fund: Gas Desulfurization of Coke Oven, Development and Application of Tar Purification Technology

c. Xinyu Municipal Science Planning Program, 3-Item Funds: Research and Development of Steel Products, Process, and Technology

d. Xinyu Municipal Science Planning Program, 3-Items Funds: Development And Application Of Power Generation Process With Residual Heat From Boiler

e. Jiangxi Provincial Science and Technology Awards: Technology Advancement Award

f. Xinyu Municipal Science and Technology Awards: Technology Advancement Award

g. Xinyu Municipal Science And Technology Awards: Technology Progress Award For BOF - Quality Hard-Line 35-75.65 Steel

h. Xinyu City Intellectual Property Research Program: Strategic Research Council for Intellectual Property of Xinyu Iron and Steel Industry

i. Jiangxi Provincial Environmental Protection Special Fund: Transformation Grant HPF Gas Desulfurization System

j. Jiangxi Provincial Environmental Projection Special Fund: Reconstruction Project Grants for Transportation System of Good Mine and Tailings

k. Jiangxi Provincial Energy Savings Special Fund Program: Grants for Energy-Saving and Emissions: Reducing Coke Oven 1580mm Sheet Items

l. Treasury Bond Fund Grant (Also Referred to as Resource Saving and Environmental Protection Program)

2. Xingang

Stamp Exemption on Share Transfers Under Non-Tradable Share Reform

Benefits from this program result in a net subsidy rate that is less than 0.005 percent ad valorem when attributing the benefit to total sales. We sent a supplemental questionnaire to the GOC in which we asked the GOC to indicate and to provide information as to whether benefits provided under the programs were contingent upon export performance. In its October 19, 2009, questionnaire response, the GOC indicated that the benefits Xingang received under the program were not contingent upon export performance. The GOC supported its questionnaire responses with English translations of the applicable regulations. Therefore, even if one assumes that this program is countervailable as a domestic subsidy, the resulting net subsidy rate is less than 0.005 percent ad valorem and, thus, is not numerically significant. Consistent with our past practice, we therefore have not included this program in our net countervailing duty rate calculations.

3. Various Firms

Provision of Water for LTAR

B. Programs That Do Not Provide a Numerically Significant Benefit Regardless of Whether Measured As Domestic or Export Subsidy

Respondents self-reported receiving lump sum grants under the subsidy programs listed below. The Department sent supplemental questionnaires to the GOC regarding these subsidy programs. Rather than respond to the Department's questions concerning these programs, the GOC claimed that respondents mistakenly reported having received cash grants under the program(s). Other than statements in the narrative section of its questionnaire response, the GOC did not substantiate its claims regarding these programs. Further, respondents in their questionnaire responses include copies of payment vouchers they received from the GOC indicating receipt of payments equal to the grant amounts reported in the narrative of their questionnaire responses.

However, assuming arguenndo that the grant programs listed below are countervailable, the benefit amounts are not large enough to result in a net subsidy rate that is numerically significant (i.e., larger than 0.005 percent ad valorem). Our findings in this regard holds regardless of whether the Department uses a total sales or total export sales denominator.

1. Xinyu

a. Jiangxi Provincial Science and Technology Support Fund: Development and Application for the Comprehensive Utilizations of Industrial Waste in Metallurgical Industry

b. Xinyu City "Final Battle to Complete Industry GGP 50 Billion Award"

2. Fasten Corp.

a. Award for Wuxi Municipal Level R&D Center

b. Natural Science Fund of Jiangsu Province

C. Subsidy Programs For Which Benefits Were Expensed Prior to the POI

As explained in the "Allocation" section, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period. Concerning grant programs 1.a, 1.b, and 2.a, because the amounts of the grants were less than 0.5 percent of the relevant sales denominator, we have expensed the benefits to the years of receipt, all of which occurred prior the POI.

1. Xinyu

a. Interest Subsidy Grant Under Fund for Technology Renovation Project Loans (Also Referred to as Discount Fund Provided in Accordance With Cai Qi (2006)

No. 426 Decree Issued by the Ministry of Finance)

b. Measures Regarding the Management of the Interest Subsidy Fund for Technology Renovation Project Loans

c. Deed Tax Exemption for SOEs

In the Preliminary Determination, we explained that we required additional information concerning this program. See 74 FR at 56591. Regarding the Xinhua Companies, they reported that Xinyu received a deed tax exemption with regard to a land transaction that occurred in 2007. See Xinyu's September 17, 2009 supplemental questionnaire response at 62; see also the Xinhua Companies Verification Report at 17.

Under 19 CFR 351.102(a)(28), an indirect tax is defined as a, ". . . sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge." Therefore, pursuant to 19 CFR 351.102(a)(28), we are treating the deed tax exemption received by Xinyu as an indirect tax and have therefore analyzed this program using the criteria for indirect tax programs, as set forth under 19 CFR 351.510. In the case of a full or partial exemption or remission of an indirect tax or import charge, 19 CFR 351.510(b) states that the Department will normally consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge. Regarding the allocation of benefits from indirect tax exemptions to a particular time period, 19 CFR 351.510(c) states that the Department will "normally allocate (e.g., expense) the benefit of a full or partial exemption, remission . . . to the year in which the benefit is considered to have been received" under sub-paragraph (b).

We find the year in which Xinyu's land transaction occurred, 2007, to be the time Xinyu would have otherwise had to pay the deed tax. Thus, pursuant to 19 CFR 351.510(c), we find any benefits related to the deed tax exemption received by Xinyu to be expensed prior to the POI. Interested Parties did not comment on this program.

2. Fasten I&E

a. Subsidy on VAT Tax Refund for Exports

D. Programs That Did Not Provide Countervailable Benefits During the POI

1. Various Firms

Export Incentive Payments Characterized as "VAT Rebates"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." See 19 CFR 351.517(a); see also 19 CFR 351.102(b)(28) (for a definition of "indirect tax"). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied

with respect to the production and distribution of like products when sold for domestic consumption. Information from the GOC indicates that the VAT levied on PC strand sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of PC strand (5 percent). Thus, we determine that the VAT exempted upon the export of PC strand did not confer a countervailable benefit.

2. Fasten I&E

Rebates of Antidumping Legal Fees

E. Programs Tied to Non-Subject Merchandise

Respondents reported receiving lump sum grants under the subsidy programs listed below. We issued supplemental questionnaires to the GOC regarding these programs. In its response, the GOC provided the applicable laws and regulations. In addition, the GOC provided source documents that indicate the purpose of the program(s) and the activities upon which receipt of the grants are contingent. Based on the information submitted by the GOC, we find that the programs listed below are tied to non-subject merchandise. As such, we have not included benefits under these programs in our subsidy calculations.

1. Xingang

Heavy and Middle Plate Project Program

Xingang self-reported receiving a grant under this program. The source documents provided by the GOC indicate that receipt of this grant pertains to Xingang's production of heavy and middle plate steel products. Based on this information, we find that this program is tied to non-subject merchandise.

3. Affiliates of the Xinhua Companies

In the initial questionnaire, the Department instructed the Xinhua Companies to report all parent companies, producers of subject merchandise, and suppliers of inputs primarily dedicated to the production of subject merchandise that were affiliated with Xinhua during the POI. In response to these instructions, the Xinhua Companies provided questionnaire responses for Xinhua, Xinyu, and Xingang. At verification, we confirmed that the Xinhua Companies responded fully to the Department's questions concerning corporate structure. See the Xinhua Companies Verification report at 2, in which the Department examined and confirmed the accuracy of the corporate history and corporate structure information reported by the Xinhua Companies.

In its questionnaire responses, the Xinhua Companies nonetheless self-reported that Boyuan, a mining company that is affiliated with the Xinhua Companies, received a grant under the Fenyi County Government Incentives program. Similarly, the Xinhua Companies also reported that Xinliang Special Steel Co. Limited (Xinliang) reported receiving a tax benefit under the Tax Preferential Policy program. The Xinhua Companies also reported that Hainan Yangpu Wanquan Co., Ltd. (Hainan) reported receiving a tax benefit under the Refund and

Return of Tax program. Further, the Xinhua Companies reported that Xingang Cement Ltd. (Xingang Cement) received VAT deductions. Boyuan is a mining company. Xinlian and Hainan are steel producers. Xingang Cement is a cement producer. As indicated in the questionnaire responses of the Xinhua Companies and confirmed at verification, Boyuan, Xinlian, Hainan, and Xingang Cement are not parents of Xinhua or suppliers of an input to Xinhua that is primarily dedicated to the production of subject merchandise. See the Xinhua Companies Verification report at 2. Thus, we find that the receipt of subsidies by Boyuan, Xinlian, Hainan, and Xigang Cement under the Fenyi County Government Incentives, Tax Preferential Policy, Refund and Return of Tax, and VAT Deduction programs to be tied to non-subject merchandise.

III. Programs For Which We Lack Necessary Information To Make a Determination

A Xingang

Pollution Charge Refund Program

Xingang self-reported receiving a lump sum cash grant under this program. In our November 3, 2009, questionnaire, we intended to ask the GOC to provide information concerning this program. However, we inadvertently committed a formatting error in the text of the questionnaire such that it was unclear as to whether the Department was directing the GOC to respond to questions concerning this program. As a result of this inadvertent error, we did not receive a response from the GOC regarding this program. Thus, we lack the necessary to make a determination regarding this program. If this investigation results in a CVD order, we will examine this program in subsequent administration review(s).

B. Fasten Corp.

Fasten Corp. self-reported receiving a lump sum cash grants under each of the following programs. If benefits under these programs are allocated over Fasten Corp.'s total sales, they program do not result in total net subsidy rates that numerically significant. However, the programs do result in net subsidy rates that are greater than 0.005 percent ad valorem if allocated over Fasten Corp.'s total exports. We did not solicit from the GOC the specificity information we need to make a determination as to whether these programs are export contingent. If this investigation results in a CVD order, we will examine these programs in subsequent administration review(s).

1. Assistance for the Development of Company Owned Brand

2. Wuxi Tengfei Award

3. Award for Provincial R&D Platform

4. Intellectual Property Fund of Jiangsu Province

5. Technology Innovation Program of Wuxi

IV. Programs Determined To Be Not Used

A. Treasury Bond Loans

B. Provision of Electricity and Water at LTAR for FIEs and "Technologically Advanced" Enterprises by Jiangsu Province

C. Import Tariff and VAT Refunds to Promote the Development of Equipment Manufacturing in China

D. State Key Technology Fund

E. Exemptions for SOEs from Distributing Dividends to the State

F. Grants to Loss-Making SOEs

G. Income Tax Exemptions for Export-Oriented FIEs

H. Local Income Tax Exemption and Reduction Programs for "Productive FIEs

I. Preferential Tax Programs for Foreign-Invested Enterprises Recognized as High or New Technology Enterprises

J. VAT Refunds for FIE's Purchasing Domestically-Produced Equipment

K. Honorable Enterprise Program

L. Preferential Loans for Key Projects and Technologies

M. Reduction in or exemption from Fixed Assets Investment Orientation Regulatory Tax

N. Preferential Loans for SOEs

V. Programs Determined Not To Exist

A. Income Tax Exemption for Investment in Domestic Technological Renovation

VI. Analysis of Comments

Comment 1: Whether the Imposition of Countervailing Duties on the Same Imports that are Subject to Commerce's NME AD Methodology is Contrary to Law

The GOC contends that the Department's application of the CVD law in this investigation is contrary to law and cannot stand in the absence of a meaningful and effective accounting for the double-remedy. The GOC submits that the Department should address this fundamental and unlawful contradiction by terminating the CVD investigation.

The GOC argues that in Georgetown Steel Corporation v. the United States, 801 F.2nd 1308, 1318 (Fed. Cir. 1986) (Georgetown Steel), the U.S. Federal Circuit Court of Appeals specifically held that the U.S. antidumping law is the "proper method for protecting the American market against selling by nonmarket economies at unreasonably low prices" and that Congress – and not the Department or the courts – may provide additional remedies if the antidumping remedy is deemed inadequate. The GOC then states that Congress has explicitly acknowledged that Georgetown Steel stands for "the reasonable proposition that the CVD law cannot be applied to imports from non-market economy countries." See Uruguay Round Agreements Act, Statement of Administrative Action (SAA) H.R. Doc. No. 103-316, vol. 1 at 926 (1994). The GOC argues that this investigation highlights the interpretation in Georgetown Steel, explaining that the Department preliminarily determined that there is no way to measure the alleged subsidies to the Chinese PC strand industry with reference to a benchmark reflecting actual supply and demand conditions within China, and thus there is no way of measuring the deviation of misallocation caused by the alleged governmental intervention. The GOC concludes that this fundamental and unsupportable contradiction is inherent in the AD context that China remains a "non-market economy."

Petitioners take issue with respondents' contention that the Department is precluded from conducting a CVD investigation against China. They contend that respondents misconstrue the Federal Circuit's holding in Georgetown Steel. Petitioners argue that the Georgetown Steel court did not find that the CVD law prohibits the application of the CVD law to all NME countries, but simply sustained the Department's "broad discretion," under the facts of that case, to exercise its discretion not to apply the CVD law to the countries at issue. Id. at 1308, 1316-18. They maintain that the Commerce Department has routinely concluded that Georgetown Steel does not bar application of the CVD law to China. See, e.g., CFS from the PRC Decision Memorandum at Comment 1.

Petitioners contend that the U.S. Court of International Trade has concurred, finding that "{t}he Georgetown Steel court only affirmed {the Department's} decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs." See Government of China v. United States, 31 CIT 451, 460-61, 483 F. Supp. 2d 1274, 1282 (2007). Further, they argue that the Protocol of Accession with China expressly allows for the application of the CVD law to China even while China remains classified as an NME. See World Trade Organization, Protocol on the Accession of the People's Republic of China, pt. I, § 15d (Nov. 23, 2001); see also 22 U.S.C. §6941(5) (legislative directive that the U.S. government must monitor and enforce its rights under the agreements on the accession of China to the WTO).

Department's Position: We disagree with the GOC regarding the Department's authority to apply the CVD law to the PRC. The Department's positions on the issues raised are fully explained in multiple cases. See e.g., OCTG from the PRC Decision Memorandum at Comment 1. Congress granted the Department the general authority to conduct CVD investigations. See e.g., sections 701 and 771(5) and (5A) of the Act. In none of these provisions is the granting of this authority limited only to market economies. For example, the Department was given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy . . . ." See section 701(a) of the Act. Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to market economies, but is defined broadly to apply to a foreign country, among other entities. See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME." See Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984) (Wire Rod from Poland) and Wire Rod from Czechoslovakia; Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984) (Wire Rod from Czechoslovakia). The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants." See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government has eliminated price controls on most products . . . ." See Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China, "Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy" (March 29, 2007) (Georgetown Steel Memorandum) discussed in CFS from the PRC. Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the Wire Rod from Poland and Wire Rod from Czechoslovakia cases is not a significant factor with respect to the PRC's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. Georgetown Steel does not rest on the absence of market-determined prices, and the recent decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC. In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC. See Georgetown Steel Memorandum at 5.

As the Department explains in the Georgetown Steel Memorandum, extensive PRC government controls and interventions in the economy, particularly with respect to the

allocation of land, labor and capital, undermine and distort the price formation process in the PRC and, therefore, make the measurement of subsidy benefits potentially problematic. See Georgetown Steel Memorandum at 5; see also Memorandum to David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China, "Status as a Non-Market Economy" (August 30, 2006) (Lined Paper Memorandum) at 22. The problem is such that there is no basis for either outright rejection or acceptance of all the PRC's prices or costs as CVD benchmarks because the nature, scope and extent of government controls and interventions in relevant markets can vary tremendously from market-to-market. Some of the PRC prices or costs will be useful for benchmarking purposes, i.e., are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of the PRC's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law is not applicable to the PRC.

The CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel. See Georgetown Steel, 801 F.2d at 1308. The issue in Georgetown Steel was whether the Department could apply CVDs (irrespective of whether any AD duties were also imposed) to potash from the USSR and the German Democratic Republic and carbon steel wire rod from Czechoslovakia and Poland. The Department determined that those economies, which all operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to these exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them. See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. While the Department did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department's logic, agreeing that, "Even if one were to label these incentives as a 'subsidy,' in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves." See Georgetown Steel, supra, 801 F.2d at 1316. Noting the "broad discretion" due the Department in determining what constituted a subsidy, the Court then deferred to the Department's judgment on the question.[15] Thus, the CAFC's decision in Georgetown Steel does not preclude the Department from applying the CVD law to exports from NME countries, where it was possible to do so. Rather, in that particular instance, the Federal Circuit deferred to the Department, and affirmed its determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to all NMEs for all time, but only that the Department's decision not to apply the law in that instance was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

15 Specifically, the Federal Circuit stated that: "We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law, or an abuse of discretion.

> {T}he agency administering the countervailing duty law has broad discretion in determining the existence of a "bounty" or "grant" under that law. We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).

See Georgetown Steel, 801 F.2d at 1318 (emphasis added).

The Georgetown Steel Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

Recently, the CIT concurred, explaining that "the Georgetown Steel court only affirmed {the Department}'s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs." See GOC v. United States, 483 F. Supp. 2d at 1282, citing Georgetown Steel, 801 F.2d at 1318. Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was ultra vires.

The GOC's and the Xinhua Companies' argument that the intent of Congress was that the CVD law does not apply to NMEs is also flawed. Since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." See 22 U.S.C. § 6943(a)(1) (emphasis added). The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general, and the PRC in particular. In that same trade law, Congress explained that "{o}n November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning the terms of the People's Republic of China's eventual accession to the World Trade Organization." See 22 U.S.C. § 6901(8). Congress then expressed its intent that the "United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO." See 22 U.S.C. § 6941(5). In these statutory provisions, Congress is referring, in part, to the PRC's commitment to be bound by the SCM Agreement as well as the specific concessions the PRC agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department. In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the

Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO," contemplates the application of the CVD law to the PRC. See 22 U.S.C. § 6941(5). Neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law. However, the Accession Protocol, to which the PRC agreed, is relevant to the PRC's and our international rights and obligations. Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced.

Comment 2: Whether the Simultaneous Application of CVD Market Benchmarks and the AD Surrogate Value Methodology Unlawfully Double-Counts the Remedy for Domestic Subsidies

The GOC argues that the Department's application of the CVD law to China, while simultaneously treating it as an NME under the AD law, results in the unlawful imposition of double remedies on Chinese imports. The GOC argues that the Court of International Trade decision in GPX states that:

> Commerce has a choice. The unfair trade statutes . . . give Commerce the discretion not to impose CVDs as long as it is using the NME AD methodology. Thus, Commerce reasonably can do all of its remedying through the NME AD statute, as it likely accounts for any competitive advantages the exporter received that are measurable. If Commerce now seeks to impose CVD remedies on the products of NME countries as well, Commerce must apply methodologies that make such parallel remedies reasonable, including methodologies that will make it unlikely that double counting will occur.

See GOC's March 16, 2010, case brief quoting, GPX International Tire Corporation v. United States, 645 F.Supp.2d at 1243. The GOC contends that the Department has taken no such steps to apply any new methodologies in the instant investigation, and, as a result, unfairly and unlawfully imposed a double remedy on the same exports.

The GOC argues that the Department's use of third-country, unsubsidized market surrogate values to measure respondents' normal value in the parallel antidumping investigation in this proceeding, based on the Department's designation of China as a NME results in a remedy that fully captures and accounts for any additional domestic subsidy "margin" found for respondents in this CVD investigation. The GOC argues that the statute does not authorize the Department to assess duplicative remedies for the same injurious conduct and, citing previous cases, that the Department and the courts have repeatedly affirmed this fundamental principle.

The GOC maintains that sound economic and legal analysis show that the application of third-country surrogate value methodology to determine the antidumping normal value benchmark will always result in a dumping margin calculation that provides a full remedy for any domestic subsidy provided in the exporting country. The GOC states that Department's "non-market economy" antidumping approach requires the Chinese producer to recover the surrogate value of all its production inputs, overhead, G&A expenses, financial expenses, and profit, all of which are computed using unsubsidized market values. The GOC contends that, in contrast, the Department's "market economy" methodology relies on the producer's actual home market costs and prices – which already reflect the benefit of any domestic subsidies that the producer may have received – to determine normal value. The GOC argues that normal value is already reduced by the amount of any domestic subsidy, and the domestic subsidy does not create a dumping margin. The GOC argues that, in LEU from France, the Department explicitly recognized that domestic subsidies do not affect dumping margins that are based on actual home market costs and prices, precisely because domestic subsidies lower prices in both the U.S. market and the domestic market of the exporting country equally. See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 69 FR 46501, 46505 (August 3, 2004) (LEU from France).

The GOC also argues that sound economic theory demonstrates that, necessarily, as domestic subsidies lower domestic prices and U.S. export prices equally, the use of non-subsidized third-country market benchmarks – rather than the actual, subsidized home market costs and prices – to determine normal value fully accounts for any degree of subsidization that might exist in the non-market economy country.

The GOC argues that, indeed, double counting occurred in the CVD and AD preliminary determinations of these PC Strand investigations. Specifically, the GOC contends that the Department preliminarily determined in instant investigation that respondents received wire rod and electricity inputs at LTAR and received "preferential" government loans. In the preliminary determination of its concurrent AD investigation, the Department valued the factors of production for these same inputs and financing in its AD margin calculation using the market value of these factors in a non-subsidized market economy third country. The GOC thus contends that the Department imposed a direct remedy in the AD preliminary determination to the extent that the U.S. price failed to cover a non-subsidized market benchmark price for these inputs, and, at the same time, imposed a duplicative remedy in the CVD preliminary determination in this case for precisely the same conduct: U.S. prices on the same export shipments allegedly did not reflect third-country, non-subsidized market benchmarks for the same production and financing inputs that were already benchmarked against third country market prices in the AD calculation.

The GOC argues that, in contrast, double-counting does not exist in a CVD investigation when a market-economy methodology is used in the parallel AD investigation. The GOC states that, to the extent any export subsidies were found in the CVD case, a direct adjustment to the AD duties is required by both WTO rules and U.S. law, noting that WTO rules specify that no product can be subjected to both antidumping and countervailing duties "to compensate for the same situation of dumping or export subsidization." See WTO General Agreement on Tariffs and Trade, Art. VI.5. The GOC then argues that these provisions reflect the notion that an export subsidy enables a foreign producer to lower the price of its export sale to the United States by the amount of the subsidy, thereby also creating a price differential

between its home market and U.S. sales in the amount of the subsidy. The GOC contends that the adjustment to U.S. price in the AD case would eliminate the double remedy.

The GOC argues that, for domestic subsidies in a market economy case, no comparable adjustment is required for two simple reasons. First, the GOC contends that a domestic subsidy does not affect the dumping margin because it does not create a differential between home market prices and export prices and that it lowers both equally. The GOC argues that this is precisely why the statute explicitly requires an offset for export subsidies in AD cases, but does not require such an offset for domestic subsidies. The GOC explains that the statute presumes that export subsidies, like domestic subsidies, are fully reflected ("passed-through") in both home market and export sales prices, and, because domestic subsidies, unlike export subsidies, are fully captured on both sides of the AD calculation, no offset is required in the AD calculation for such domestic subsidies. The GOC maintains that the statute already provides for an offset for the effect of domestic subsidies on home market prices by allowing the use of lower domestic prices in the AD normal value calculation – prices that are lower as the result of fully reflecting the domestic subsidy.

Second, the GOC contends that the domestic subsidy does not create dumping margins through application of the home market sales-below-cost test, because the domestic subsidies reduce production costs. The GOC contends that Department previously has recognized these principles:

> The treatment of CVDs that arise out {of} domestic subsidies {in a market economy} contrasts with the statutory treatment of CVDs that relate to export subsidies. The reason for the difference in treatment is that export subsidies are assumed to increase dumping margins by lowering the export price, but not the domestic price in the exporting country. Consequently, collecting both a CVD on an export subsidy and also the increase in the dumping margin resulting from that subsidy would constitute a double remedy for the export subsidy. Adding the CVD to the initial U.S. price lowers the margin by the amount the subsidy is presumed to have increased it, thereby preventing a double-remedy. On the other hand, domestic subsidies {in a market economy} are assumed not to affect dumping margins, because they lower prices in both the U.S. market and the domestic market of the exporting country equally. As a result, there is no need for an adjustment to prevent a double remedy.

See GOC's March 16, 2010 case brief quoting, LEU from France, 69 FR at 46,506.

The GOC thus argues that, in a market economy case, where the Department is investigating both subsidies and dumping, there can be no double-counting or double remedy in the case of domestic subsidies, because the normal methodologies used eliminate the problem. The GOC argues that no comparable methodology or mechanism exists in NME cases to avoid double counting of domestic subsidies. The GOC contends that a domestic subsidy is considered to lower the export price, but the home market price, which also is presumptively lowered by the amount of the subsidy, is not used at all in the dumping calculation, adding that the factors of production are unaffected by the domestic subsidy, because they are valued using non-subsidized market economy prices.

The GOC concludes that the Court in the recent GPX case stands for the proposition that the Department cannot impose a CVD remedy on exports from a country on which it also imposed an AD remedy based on its normal NME methodology.

The Xinhua Companies argue that, by conducting a CVD investigation and an AD investigation using the NME methodology on a country that the Department designates as a NME, the Department is likely to double count any net subsidy determined by the CVD investigation. Citing GPX, the Xinhua Companies argue that the Court of International Trade has already ruled that the Department cannot apply simultaneously to NME countries both the AD law and the CVD law. The Xinhua Companies contend that, given that the Department has used its normal NME methodology and has made no effort in the AD investigation to account for the likely double counting of domestic subsidies, the Department's conduct of the CVD investigation is contrary to law. Arguing that the companion AD investigation takes into account any price distortions caused by potential government subsidization, The Xinhua Companies urge the Department to terminate the CVD investigation.

Petitioners disagree with respondents' claims that subjecting China to both countervailing duties and antidumping duties on the same product double counts the duties and is impermissible under the court's holding in GPX and that the Department should terminate this CVD investigation. Petitioners first argue that respondents have cited to no statutory authority that would permit the Department to terminate the CVD investigation or to adjust the CVD calculations to prevent double counting. Petitioners contend that the statute contemplates only an adjustment to AD duties, not to countervailing duties, and then only for export subsidies identified. See 19 U.S.C. §1677a(c). They state that the Department has consistently recognized that, if there were to be any adjustment to prevent an incidence of alleged double remedies, an adjustment would have to occur in the context of an antidumping investigation. See, e.g., Racks from the PRC Decision Memorandum at Comment 2; see also Citric Acid from the PRC Decision Memorandum at Comment 2. They then argue that extension of this concept to all subsidies in China, as respondents propose, would provide China with preferential treatment to all other countries with no legal justification.

Petitioners further argue that the GPX case on which respondents rely does not preclude application of the CVD law to China, does not hold that a double remedy necessarily occurs when both countervailing duties and antidumping duties are applied, and does not require either termination of a CVD case or setting a CVD rate to zero in this context as respondents urge. Rather, they contend that the GPX court held that "Commerce may have the authority to apply the CVD law to products of an NME-designated country. . ." and that the "potential" for double counting may exist where both countervailing and antidumping duties are imposed, not that there necessarily was double counting in such instances. See GPX, 645 F. Supp. 2d at 1240. Petitioners also note that the most recent GPX decision is not a final decision, and litigation is still pending. Thus, they argue that the question of how, if at all, double counting occurs or can lawfully be addressed remains unresolved.

Petitioners conclude that respondents have cited to nothing that would require the Department to terminate this investigation due to an alleged potential for double counting. They argue that the GPX case on which respondents rely does not require termination of a CVD case against an NME country where a parallel dumping case exists.

Department's Position: The respondents have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double remedies or to make

an adjustment to the CVD calculations to prevent an incidence of alleged double remedies. If any adjustment to avoid a double remedy is possible, it would only be in the context of an AD investigation. We note that this position is consistent with the Department's decisions in recent PRC cases. See, e.g., OCTG from the PRC Decision Memorandum at Comment 2, Citric Acid from the PRC Decision Memorandum at Comment 2, and Racks from the PRC Decision Memorandum at Comment 2.

The respondents' reliance on GPX as authoritative is misplaced because the CIT has not yet reached a final and conclusive decision in that litigation, nor have all appellate rights been exhausted. Nevertheless, the Department does not agree that GPX supports the arguments set forth by the GOC. Contrary to the respondents' claim that GPX absolutely precludes the Department from simultaneously applying the CVD law and the NME methodology under the AD law, the Court in GPX clearly stated that "Commerce may have the authority to apply the CVD law to products of an NME-designated country . . ." See GPX 645 F. Supp 2d. at 1240. Moreover, GPX did not find that a double remedy necessarily occurs through concurrent application of the CVD statute and NME provision of the AD statute, only that the "potential" for such double counting may exist. See GPX 645 F. Supp. 2d at 1242-43.

Comment 3: Whether the Department May Place the Burden on Respondents to "Prove" the Double-Counting of Remedies

The GOC contends that, in recent CVD investigations, the Department has concluded that respondents "had not demonstrated that a double remedy will result from this investigation." See, e.g., Tires from the PRC Decision Memorandum at Comment A.3. The GOC argues that, if the Department takes such a position in the final determination of this investigation, it would not only be contrary to fundamental principles of administrative due process, but would also, in light of the Court's direct refutation of this conclusion in GPX, constitute an error directly contradicting U.S. law as interpreted by the federal courts.

The GOC first argues that imposition of a burden of proof in a CVD or AD investigation is contrary to law, maintaining that respondents have no burden of proof to establish the existence of a double remedy any more than petitioners have a burden to establish the absence of a double remedy. The GOC then contends that, instead, the Department has a statutory duty to investigate the issue and gather the relevant evidence necessary to decide the issue and that any conclusion that respondents have "failed to demonstrate" that a double remedy would result from the Department's actions in these parallel investigations would reflect an unlawful abdication of the Department's responsibility as the investigative agency.

As authority, the GOC cites the recent Court of International Trade decision in GPX. The GOC argues that the Court's holding is clear that, if the Department is not prepared to, or is unable to, conduct an analysis and gather evidence sufficient to determine the extent of double counting, "it must terminate the CVD investigation and "refrain from imposing CVDs on NME goods." See the GOC's March 16, 2010, case brief citing GPX, 645 F. Supp.2d at 1243. The GOC states that attempting to shift responsibility to the parties to "prove" the existence of double counting in an individual case is legally insufficient and thus contrary to law.

Second, the GOC argues that Department's conclusion in recent CVD cases that there is a "burden" on parties to demonstrate the existence of double counting effectively creates an evidentiary presumption that lacks any lawful or factual basis. The GOC contends that not only has the Department failed to provide the parties in this investigation the lawfully required

notice of such a presumption and an adequate opportunity to present relevant rebuttal evidence, the presumption itself lacks any economic or legal foundation. See, e.g., British Steel plc v. United States, 879 F. Supp. 1254, 1316-17 (CIT 1995) (fundamental fairness dictates that Commerce give parties due notice of decision to adopt presumption and opportunity to submit evidence to rebut the presumption). The GOC maintains that sound economic principles as well as the text and structure of the U.S. statute demonstrate plainly that application of the Department's NME third-country surrogate value methodology to determine the AD normal value benchmark will always result in a dumping margin calculation that provides a full remedy for any domestic subsidies provided in the exporting country.

The GOC concludes that there is no lawful basis for the Department to assess duties on any domestic subsidies that may be determined to exist for respondents in this investigation, as the amount of any such subsidies are fully captured in the Department's calculation of respondents' dumping margins using the "non-market economy" surrogate value methodology in the parallel antidumping investigation in this case. The GOC argues that the Court has stated that if it is "too difficult for Commerce to determine whether, and to what degree double counting is occurring, Commerce should refrain from imposing CVDs on NME goods." The GOC urges the Department, therefore, to terminate this CVD investigation on PC Strand from China.

Petitioners state that respondents' position is that, in the absence of the Department's ability to prove no double counting, full double counting of all subsidies should be presumed. Petitioners then argue that such an approach is inconsistent with longstanding law on burdens of proof in trade cases.

Petitioners contend that nothing in the law permits an offset to antidumping duties for domestic subsidies identified in a CVD proceeding and that only export subsidies may lawfully be deducted to avoid double counting. See 19 U.S.C. §1677a(c). They then argue that, even were such a deduction possible, the appellate court has recognized that the burden of proof in presenting information rests with the party in possession of the necessary information. See Zenith Elecs. Corp. v. United States, 988 F.2d 1573, 1583 (Fed. Cir. 1993); see also Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1336 (Fed. Cir. 2002) ("Ta Chen bore the burden of creating an accurate record."). Petitioners therefore maintain that, where respondents allege that the subsidies they have received overlap with the calculation of the antidumping duties, the burden rests on respondents to demonstrate that double counting has occurred, noting that neither petitioners nor the Department possesses the information necessary to ascertain whether double counting has occurred.

According to petitioners, the GPX Court stated that Commerce is not to place a burden on respondents in this context and should undertake its own investigation (645 F. Supp. 2d at 1242-43). Petitioners respectfully submit that the GPX holding is inconsistent with the holding of the Federal Circuit on the burden of proof issue and, as such, should not be followed. Petitioners argue that it is illogical and unlawful to suggest that the Department must refrain from imposing statutorily mandated countervailing duties when it finds that unfair subsidies exist merely because there is a "potential" for double counting that has not been demonstrated to exist. Petitioners also note that the GPX decision is not final, as no final order has been issued nor have appellate rights been exhausted.

Department's Position: The parties have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double counting or to make an

adjustment to the CVD calculations to prevent double counting. If any adjustment to avoid a double remedy is possible, it would only be in the context of an AD investigation. We note that this decision is consistent with the Department's approach in recent CVD proceedings involving the PRC. See, e.g., Citric Acid from the PRC Decision Memorandum at Comment 3.

Comment 4: Whether the Department's Application of a December 11, 2001 "Cut-Off" Date for Examining Alleged Subsidies Is Appropriate

The GOC submits that the Department's choice of December 11, 2001, the date on which China joined the WTO, as the date from which the Department will identify non-recurring subsidies in this investigation, is unlawful. The GOC argues that the Department's selected date would subject Chinese exports to the CVD law with respect to alleged subsidies received prior to when China would have had a reasonable expectation that the United States would apply the CVD to China. More importantly, this cut-off date is contrary to the Department's precedent of refusing to examine alleged subsidy benefits received prior to when the Department determines that the CVD law applies to a particular country. The GOC further submits that, for purposes of appropriate notice to the recipients of alleged subsidies, the Department's cut-off date should be no earlier than January 1, 2005, the start of the period of investigation in CFS from China, in which the Department purported to determine that economic and market conditions had changed sufficiently to permit the identification of subsidies in China.

The GOC contends that Department has a long-standing practice of not countervailing alleged subsidy benefits received prior to when the Department determines that the CVD law applies to a particular country. The GOC argues that, in Sulfanilic Acid from Hungary, the Department did not countervail programs received by the Hungarian respondent before the Department granted Hungary market economy ("ME") status. See Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002) (Sulfanilic Acid from Hungary) and accompanying Issues and Decision Memorandum at Comment 1.

The GOC argues that this approach is supported by the Department's final CVD regulations, contending that the preamble states that where the Department "determines that a change in status from non-market to market is warranted, subsidies bestowed by that country after the change in status would become subject to the CVD law. See Preamble, 63 FR at 65360 (emphasis added). Thus, the GOC maintains that Department's own practice and policy dictate that subsidies cannot be bestowed on a country until the Department determines that the particular country is a market economy.

The GOC further argues that the Court of International Trade has also found that "Commerce's adoption of a December 11, 2001 cut-off date was arbitrary and unsupported by substantial evidence." See GPX 645 F. Supp. 2d. at 1246. The GOC states that, in GPX, the Court suggested that no uniform cut-off date is appropriate in China CVD cases and explained that "while the approach of making specific findings for specific programs may be difficult for Commerce to administer, the AD and CVD laws as enacted by Congress function best by distinguishing between NME and ME countries" and that "if Commerce chooses to recognize a gray area, it must adjust its methodology accordingly." See GPX at 1249-1250 (emphasis added).

The GOC concludes if the Department uses a cut-off date for administrative convenience, the cut-off date must be consistent with its practice and policy of not countervailing subsidies until the country has graduated to market economy status. The GOC contends that the Department effectively "graduated" China to market economy status when it made its decision to apply the CVD law to China in CFS from China, which covered the period beginning January 1, 2005. Thus, the GOC contends that the date must be consistent with its long-standing NME/ME country practice of not examining subsidies before a country had become subject to application of the CVD law, either as a result of a country's graduation to ME status or as a result of the Department's decision, nevertheless, to apply the CVD law to China.

The GOC concludes by arguing that the Department should reverse its Preliminary Determination to countervail Xinhua's purchase of granted land-use rights located within the Xinyu Hi-Tech Economic Development Zone in 2004. The GOC argues that this transaction occurred prior to January 1, 2005, the earliest date for which the Department first concluded (in CFS from China) that the CVD law should apply to exports from China.

Petitioners disagree with the GOC's position that the Department may not countervail any non-recurring subsidies received prior to January 1, 2005, the date on which China joined the WTO. However, petitioners argue that the Department nonetheless has selected an incorrect cut-off date of December 11, 2001. Petitioners argue that the GPX case held that the Department was wrong to refuse to countervail subsidies received prior to December 11, 2001, as the application of this uniform cut-off date in all cases arbitrarily causes Commerce to impose fewer duties than the net subsidies bestowed by the GOC. They contend that GPX court stated that the Department is required to identify and measure subsidies that exist under its normal AUL allocation methodology and a bright-line test does not accomplish this goal. They argue that, consistent with the Court's holding, the Department should revise its methodology to measure and countervail all subsidies that fall within the AUL established for PC strand.

In its rebuttal comments, the GOC argues that the Department's arbitrary assignment of December 11, 2001, the date on which China joined the WTO, as the date from which the Department will identify non-recurring subsidies in this investigation is unlawful. The GOC contends that the Department's selected date would subject Chinese exports to the CVD law with respect to alleged subsidies received prior to when China would have had a reasonable expectation that the United States would apply the CVD law to China. The GOC reiterates that this cut-off date is contrary to the Department's precedent of refusing to examine alleged subsidy benefits received prior to the point in time when the Department determines that the CVD law applies to a particular country.

The GOC states that these same precedents and underlying reasoning apply with equal force to petitioners' unfounded argument that a cut-off date earlier than December 11, 2001 should be used. The GOC urges that the Department should reject petitioners' argument, asserting that, for reasons of appropriate notice to the recipients of alleged subsidies, the Department's cut-off date should be no earlier than January 1, 2005, the start of the period of investigation in CFS from China. The GOC maintains that the December 11, 2001, cut-off date, or any earlier date, is plainly inconsistent with the Department's logic for continuing to treat China as an NME for antidumping purposes even as it has now determined to apply the CVD law to China.

The GOC urges the Department to reject petitioners' argument that it should countervail two- parcels of land granted in 1996. Furthermore, the Department should reverse its Preliminary Determination to countervail Xinhua's purchase of granted land-use rights located within the Xinyu Hi-Tech Economic Development Zone in 2004, a date well before the Department's decision to apply the CVD law to China.

In their rebuttal comments, petitioners argue that December 11, 2001, is an arbitrary cut-off date is that should be re-examined based on the CIT's opinion in GPX. They contend that in GPX, the CIT found that application of a uniform cut-off date would arbitrarily result in the imposition of less duties than the net subsidies received and that the application of a uniform cut-off date would be inconsistent with the Department's rationale for examining NME's on a case by case basis. Petitioners argue that, as instructed by the Court, the Department should apply its normal AUL allocation methodology and countervail all subsidies to PC strand production undertaken by the Fasten and Xinhua Companies during the AUL period. Petitioners contend such an approach would capture subsidies related to two parcels of land on which Xinhua's PC strand production facilities were located during the POI. Petitioners claim GOC authorities granted the land parcels to Xinhua Metal Products Joint Stock Co., Ltd., and Xingang in 1996.

Department's Position: Consistent with recent PRC CVD determinations we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date. See, e.g., OCTG from the PRC Decision Memorandum at Comment 3; see also Racks from the PRC Decision Memorandum at Comment 3.

We have selected this date because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership. See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001). The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

We disagree with the GOC that adoption of the December 11, 2001, date is unfair because parties did not have adequate notice that the CVD law would be applied to the PRC prior the start of the POI in CFS from the PRC, which was January 1, 2005. The initiation of CVD investigations against imports from the PRC and possible imposition of countervailing duties was not a settled matter even before the December 11, 2001, date, much less January 1, 2005. Specifically, in 1992, the Department initiated a CVD investigation on Lug Nuts from the PRC. See Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 877 (January 9, 1992) (Lug Nuts

from the PRC Initiation). In 2000, Congress passed PNTR Legislation which authorized funding for the Department to monitor, "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." See 22 U.S.C. §6943(a)(1). Thus, the GOC and PRC exporters were on notice that CVDs were possible well before January 1, 2005.

We further disagree that Sulfanilic Acid from Hungary is controlling here. The Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.

Regarding petitioners' concern that adoption of a December 11, 2001, cut-off date for application of CVD law to the PRC is improper, we note that the Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on the economic conditions in the PRC. Therefore, the Department is fully within its authority in not applying the countervailing duty law to the PRC prior to December 11, 2001. See Georgetown Steel, 801 F.2d. at 1318.

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find countervailable subsidies in the PRC. Many reforms in the PRC, such as the elimination of price controls on most products were put in place before the PRC acceded to the WTO. See Georgetown Steel Memorandum at 5. However, the Department has identified certain areas such as in the credit and land markets where the PRC economy continues to exhibit non-market characteristics. Id. at 3. These examples only serve to demonstrate that economic reform is a process that occurs over time. This process can also be uneven: reforms may take hold in some sectors of the economy or areas of the country before others.

We have rejected the approach of making specific findings for specific programs, opting instead for a uniform date of application based on the economic changes that have occurred across the entire Chinese economy. The cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the end of 2001, subsidies in the PRC could be identified and measured.

Petitioners have further argued that our AUL regulations require that we investigate subsidies given during the AUL period. For the reasons explained above, if subsidies cannot be meaningfully identified and measured before December 11, 2001, then these regulations are inapplicable.

Lastly, reliance on GPX is misplaced because that decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. For these reasons, and consistent with OCTG from the PRC and other recent the PRC CVD cases, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession. See OCTG from the PRC Decision Memorandum at Comment 3.

Comment 5: Whether the GOC Failed to Cooperate in Providing Ownership Information for Producer A in a Manner that Warrants the Application of AFA[16]

16 The identity of Producer A Is business proprietary. For the name of Producer A, see the Memorandum to the File, "Identity of Producer A and Producer B" (May 14, 2010), from Eric B. Greynolds, Program Manager, Office 3, Operations, of which the public version is on file in room 1117 of the CRU.

Petitioners contend that the GOC failed to act to best of its ability when providing ownership information for Producer A. Petitioners argue that, despite the Department's repeated requests, the GOC failed to provide information concerning Producer A's parent companies and shareholders, as well as its annual reports. Petitioners dispute the GOC's claim that it was not able to provide the annual reports for Producer A because the firm is a non-publicly traded firm. Citing to the GOC's supplemental questionnaire response, petitioners contend that the annual reports for Producer A were in the possession of the GOC and therefore could have been supplied to the Department. See the GOC's January 11, 2010, supplemental questionnaire response at 1.

Petitioners urge the Department to discount the GOC's claims that the GOC was not able to provide information concerning the owners of Producer A because the owners were based outside of mainland China. Petitioners argue that the mere fact that Producer A is partially owned by foreign owners does not establish that Producer A is not a GOC authority. Petitioners argue that OCTG from the PRC makes clear that foreign ownership does not necessarily mean that a company will not be treated as a GOC authority. See OCTG from the PRC Decision Memorandum at Comment 8. Petitioners further contend that the GOC has access to ownership information of foreign firms that own Chinese steel companies. Petitioners argue that various industrial plans issued by the GOC have designated the steel industry as a "pillar industry" and add that Article 23 of the Iron and Steel Policy prohibits "any foreign investment in the iron and steel industry of China" from obtaining a controlling interest of a steel producer. Petitioners argue that the GOC therefore must necessarily be aware of the identities and level of shares that foreign firms hold in Chinese steel companies in order to enforce Article 23. Concerning Producer A, petitioners further contend that the GOC failed to provide requested information concerning the firm's domestic shareholders.

Petitioners argue that in OCTG from the PRC the Department, under identical circumstances, applied AFA against the GOC and, as such, determined that all of the respondents' input suppliers were GOC authorities that provided a financial contribution. See OCTG from the PRC Decision Memorandum at "Use of Facts Otherwise Available and Adverse Facts Available." Petitioners assert that the GOC's refusal to provide the requested information in the instant investigation has prevented the Department from fully evaluating whether Producer A is a GOC authority. Petitioners argue that due to the GOC's failure to cooperate the Department must therefore apply AFA and assume that Producers A is a GOC authority.

The GOC argues that it fully cooperated with regard to the Department's questions concerning Producer A. The GOC notes that the Department's verifiers examined the information supplied by the GOC and found the information to be complete and accurate in all respects. The GOC contends that the Department should therefore treat Producer A as a private producer in its final LTAR calculations.

Rebutting the GOC's arguments, petitioners argue that nothing collected or review at verification controverts the Department's preliminary finding that Producer A is a government-owned firm that acted as a GOC authority during the POI.

In its rebuttal comments, the GOC contests petitioners' claims that the facts of the instant investigation mirror those of OCTG from the PRC. The GOC notes that OCTG from the PRC involved the alleged provision steel rounds for LTAR, an input that is not at issue in the instant investigation. Regarding wire rod, the input that is at issue in the instant investigation, the GOC notes that in Racks from the PRC, which also examined the alleged

provision of wire rod for LTAR, the GOC similarly submitted a substantial amount of information in response to the Department's requests. The GOC argues that, as in the instant investigation, petitioners in Racks from the PRC accused the GOC of failing to cooperate and urged the Department to assume under AFA that all input producers were GOC authorities. The GOC explains that in Racks from the PRC the Department declined to apply AFA to the GOC as requested by petitioners. See Racks from the PRC Decision Memorandum at Comment 7. The GOC claims that the facts of the instant investigation are effectively the same as those the Department encountered in Racks from the PRC. Specifically, the GOC points out that it responded fully to each of the Department's requests for information, which include supplemental questionnaire responses submitted after the Preliminary Determination. For example, the GOC states that it provided capital verification reports, articles of association, and business registration forms for twenty-one wire rod suppliers and twelve annual reports for wire rod suppliers. The GOC explains that it was not able to provide annual reports for certain wire rod suppliers because they were privately-held companies that did not make their financial statements publicly available. The GOC dismisses petitioners' claims that the GOC's inability to provide annual reports in such instances may serve as grounds for the application of AFA. The GOC notes that the Court has found that a respondent cannot be held to have failed to act to the best of its ability when it did not fully respond to a question "because it was not able to obtain the requested information." See Manesmannrohren-Werke AG v. United States, 77 F. supp. 2d 1302, 1316. Lastly, the GOC reiterates its argument that the Department successfully verified the ownership information submitted by the GOC and found "no discrepancies" in the information submitted. As such, the GOC argues that assuming that all producers that supplied wire rod to respondents during the POI acted as GOC authorities is not warranted.

DOC Position: As discussed below in Comment 7, based on information on the record we find that Producer A was ultimately owned by a GOC authority and, thus, have determined that Producer A was itself a GOC authority during the POI capable of providing a financial contribution. Because we have reached this conclusion by means of information on the record of the investigation, the issue of whether to resort to the use of AFA, as it applies to the ownership status of Producer A, is moot.

Comment 6: Whether the GOC Failed to Cooperate in Providing Ownership Information for Producer B in a Manner that Warrants the Application of AFA[17]

Petitioners claim that the GOC's questionnaire responses regarding Producer B's ownership, demonstrates the GOC's unwillingness to cooperate to the best of its ability. Petitioners claim that the GOC first refused to provide information regarding Producer B's shareholders. According to petitioners, only in response to a supplemental questionnaire did the GOC identify the owners of Producer B. However, petitioners contend, when pressed for details regarding the owners of Producer B, the GOC claimed in a subsequent supplemental questionnaire response it had misidentified Producer B's owner and identified a different owner for Producer B. Then, according to petitioners, verifiers from the Department learned that the owner of Producer B initially reported by the GOC, in fact, held a stake in Producer B for

17 The identity of Producer B Is business proprietary. For the name of Producer A, see the Memorandum to the File, "Identity of Producer A and Producer B" (May 14, 2010), from Eric B. Greynolds, Program Manager, Office 3, Operations, of which the public version is on file in room 1117 of the CRU.

nearly all of the POI. Petitioners contend that the Department's findings at verification contradict the GOC's questionnaire responses and demonstrate that the GOC withheld information from the Department. Based on the GOC's lack of cooperation to supply the requested information and based on the standard the Department applied in OCTG from the PRC, petitioners urge the Department to apply AFA against the GOC and assume that Producer B constitutes a GOC authority.

The GOC claims that it provided the Department with ownership information for Producer B. See, e.g., the GOC's September 23, 2009, questionnaire response at Exhibit S-19. The GOC argues that the Department thoroughly verified the information concerning Producer B that was supplied by the GOC and that the Department reported that it "did not find any discrepancies" regarding its verification of the producer. See GOC Verification Report at 3 – 4. Therefore, the GOC maintains that the Department should conclude that the GOC cooperated with the Department regarding Producer B and continue to treat Producer B as a private producer in its LTAR calculations.

Rebutting the GOC's arguments, petitioners maintain that though the Department found no discrepancies during its verification of Producer B, such findings say nothing about whether the information that was submitted was sufficient to establish that Producer B was not controlled by the GOC. Petitioners argue that the GOC's failure to submit requested information regarding the ownership status of Producer B along with information placed on the record by petitioners demonstrates that Producer B acted as a GOC authority during the POI.

In rebutting petitioners' arguments, the GOC reiterates the points it makes in Comment 5 above.

DOC Position: We disagree with petitioners that the GOC has failed to act to the best of its ability in providing ownership information for Producer B and Producer B's owners. The GOC provided the articles of association, capital verification report, and business registration form for Producer B in its first supplemental questionnaire response. See the GOC's September 23, 2009, supplemental questionnaire response at Exhibits S-27 through S-29. In addition, the GOC provided ownership status information concerning the corporate owner of Producer B in its eighth supplemental questionnaire response, including the owner's articles of association, capital verification report, business registration form, and organization chart. See the GOC's December 23, 2009, supplemental questionnaire response at Exhibits S-8 through S-11. In its December 23, 2009, submission, the GOC also responded to the Department's questions concerning the extent to which individual shareholders and employees of Producer B were employed by or affiliated with the GOC. Id at 5 through 19. At verification, the Department confirmed that the source documents indentifying Producer B's ownership status were in order and reflected the POI. See the GOC Verification Report at 1 through 4. In addition, the verifiers confirmed the identities of the owners of Producer B and verified how the GOC determined which company officials are Communist Party officials and/or members of legislative bodies. Id. at 4 through 5.

Petitioners contend that, in spite of the GOC's efforts, the Department should nonetheless resort to the use of AFA with respect to Producer B because the GOC initially claimed it had mistakenly identified a corporation as a parent of Producer B in its December 23, 2009, response only to ultimately report that the corporation in question was, in fact, a partial owner of Producer B during a portion of the POI. First, we note that the GOC managed to correct the error and at verification was able to identify the entities that owned Producer B

during the POI. See GOC Verification Report at 2 through 4. Further, even if one assumes that the corporate parent in question was state-owned and a GOC authority, the corporation's ownership level, combined with the shares of Producer B owned by a labor union (which the Department treats as a GOC authority), constitute a minority share of Producer B. Thus, absent any other information indicating government control, we determine that there is insufficient basis to warrant a finding of government control that would render Producer B a GOC authority.[18]

Thus, based on the GOC's numerous responses to the Department's questionnaires and the information and documents the GOC provided at verification, we find that the application of AFA is not warranted.

Comment 7: Whether Record Evidence Demonstrates that Producer A is a GOC Authority

Petitioners contend that despite the GOC's failure to provide the information requested by the Department, record evidence demonstrates that Producer A was a GOC authority during the POI. According to petitioners, the Department examines five factors (the five factor test) when determining whether a firm is a government authority: 1. Government ownership; 2. The government's presence on the firm's board of directors, 3. The government's control over the firm's activities, 4. The firm's pursuit of governmental policies or interests, and 5. Whether the firm was created by statute. See OCTG from the PRC Decision Memorandum at Comment 8. Petitioners claim that Producer A's parent company is controlled by a state-owned enterprise. See petitioners' October 6, 2009, submission at 4 and Exhibit 1. Petitioners claim that the GOC has not submitted any information to refute the information in the October 6, 2009 submission regarding the ownership status of the parent of Producer A.

The GOC explains that it provided detailed and accurate information for respondents' wire rod suppliers, including Producer A. The GOC explains that this information included capital verification reports, articles of association, and business registration forms. The GOC also states that it supplied annual reports for wire rod suppliers that were publicly-traded as well as information on producers' shareholders.

The GOC states that the Department conducted a thorough verification of the information the GOC supplied and that the verifiers found no discrepancies during their review of the ownership information. Specifically, the GOC claims that the Department verified the methodology used by the GOC to ensure the accuracy and completeness of the GOC's ownership information. See GOC Verification Report at 1 – 2. The GOC further claims that the Department verified that the GOC cross-checked the ownership information obtained from various State Administration for Industry and Commerce (SAIC) offices against a national list

18 Regarding Producer B, petitioners also argue that membership in the Chinese Communist Party (CCP) and in certain legislative and consultative bodies by certain corporate officials (including Producer B's single largest shareholder) renders those individuals GOC authorities, which when combined with the ownership of other corporate shareholders that petitioners contend are GOC authorities, results in Producer B being a GOC authority. For the reasons discussed in Comment 8 below, we find that the record of this case lacks the necessary information to support a finding that the individual shareholders of Producer B are affiliated with the GOC in a manner that makes them GOC authorities. Thus, absent a finding of government control concerning these individual shareholders and absent any other information indicating government control of Producer B, any remaining shares held by GOC authorities or potential GOC authorities are, in themselves, an insufficient to conclude that Producer B is a GOC authority. The Department will continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC.

of wire rod producers from the China National Statistics Bureau. Id. at 2. Regarding the SAIC offices, the GOC claims that the Department also verified the manner in which the local SAICs maintain companies' ownership information, such as capital verification reports, articles of association, business registration forms, FIE joint venture certificates, and certificates of approval for foreign investment. Id. Thus, the GOC urges the Department to take into account the substantial information the GOC provided regarding the ownership of the respondents' wire rod suppliers, including Producer A, as well as the Department's successful verification of said information and, thus, reject petitioners' arguments that Producer A was a GOC authority during the POI.

On April 14, 2010, the Department placed on the record of the investigation publicly available information concerning the owners of Producer A's parent company. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations (April 14, 2010) (New Information Memorandum). On April 21 and 26, 2010, interested parties submitted comments and clarifying information concerning the information the Department placed on the record.

In its April 21, 2010, comments to the New Information Memorandum, the GOC argues that a state-owned firm did not acquire a majority ownership of the parents of Producer A until the last week of the POI, as evidenced by new information contained in the GOC's submission. Thus, the GOC argues that the Department has no basis for finding that the parents of Producer A were owned by the GOC and therefore no basis to conclude that Producer A is ultimately owned by a GOC authority. As such, the GOC contends, the Department cannot conclude that wire rod produced by Producer A and sold to respondents constitutes a financial contribution as defined by the Act.

Additionally, the GOC argues that the parent of Producer A abides by fiduciary duties pursuant to Hong Kong law that prohibit it from acting in a manner that is contrary to the commercial objectives of the corporation. As such, argues the GOC, there is no basis to assume that the parent of Producer A would permit Producer A to sell wire rod for LTAR to respondents at the behest of the GOC.

Lastly, the GOC objects to the Department's placement of new information on the record of the instant investigation at such a late stage. It argues that there is no justification to wait until the eleventh hour to introduce new information on the record. The GOC argues that the Department's last minute approach deprives the GOC and respondents of a meaningful opportunity to respond and defend their interest.

The respondent companies did not submit any comments on April 21, 2010, regarding the New Information Memorandum.

In their April 21, 2010, comments, petitioners argue that the New Information Memorandum provides further evidence that Producer A was ultimately owned by a GOC authority, which in turn, renders Producer A a GOC authority that was capable of providing a financial contribution to respondents during the POI.

In their April 26, 2010, comments, petitioners argue that the Department should reject the new information submitted by the GOC in its April 21, 2010, submission which purportedly indicate that the owners of Producer A were not majority-owned by a state-owned firm until the last week of the POI. Petitioners point out that the Department repeatedly sought information from the GOC concerning the ownership status of Producer A's parents but that the GOC failed to submit any of the requested information. Petitioners further argue that, in light of the Department's preliminary finding that Producer A was a GOC authority, the GOC cannot

credibly claim that it was not on notice that any such information was relevant to the Department's determination. Thus, contend petitioners, only after the Department issued the New Information Memorandum which suggests that the owners of Producer A are state-owned did the GOC suddenly acquire the ability to submit its own new information concerning the ownership status of Producer A's owners. Petitioners argue that the GOC's actions demonstrate that information concerning the owners of Producer A were available to the GOC at the time of the Department originally requested it but simply was not submitted. According to petitioners, one can only assume that the GOC's failure to place the requested information on the record until now was a strategic decision. As such, argue petitioners, there is no good reason or good cause to allow the GOC to belatedly submit its new information on the record at such a late stage in the investigation. Petitioners add that the GOC's decision to submit requested information at the time it was originally requested has deprived them of the ability to fully address, comment, and rebut the information.

In their April 26, 2010, comments, petitioners further argue that the Department's New Information Memorandum, coupled with information utilized in the Preliminary Determination, demonstrates that Producer A is a GOC authority, regardless of whether the Department's accepts the new information regarding Producer A that is contained in the GOC's April 21, 2010, comments. Petitioners point out that the GOC does not dispute that a state-owned held a substantial percentage of Producer A prior to the last week of the POI. Further, petitioners argue that there is no requirement that a firm be majority-owned by the GOC to be a government authority.

Petitioners argue that the GOC's information concerning the laws and rules applicable to Hong Kong companies is also inapposite to the Department's determination. Petitioners contend that the various rules applicable to Hong Kong companies do not demonstrate that Producer A does not operate as a state-owned enterprise in light of other information demonstrating that the owners of Producer A are themselves owned by a state-owned firm.

The GOC and the respondent firms did not submit any additional comments on April 26, 2010.

DOC Position: In the Preliminary Determination, we found that Producer A was a GOC authority capable of providing a financial contribution. Our finding in this regard was based on information supplied by petitioners which indicated that the parent of Producer A was, in turn, owned by a firm that was owned by a SASAC. See petitioners' October 6, 2009, submission at page 4 -5, Exhibit 1.

Subsequent to the Preliminary Determination, we sought information from the GOC regarding the owners of Producer A's parent company. The GOC submitted information that identified the owners of Producer A's parent company. See the GOC's December 23, 2009, questionnaire response at S8-28 through S8-36. The information in the GOC's December 23, 2009, questionnaire response indicated that the owners of Producer A's parent company were based outside of the PRC. The GOC claimed that for this reason, it was unable to provide information on those firms' ownership status. Id.

First, regarding the manner in which foreign ownership of input suppliers impacts the extent to which such suppliers are GOC authorities, we note that in OCTG from the PRC the Department found that:

> Foreign ownership or registry of an owner does not necessarily mean that a company will not be treated as an authority. Foreign companies can be owned by the GOC or GOC-controlled companies.

See OCTG from the PRC Decision Memorandum at Comment 8. Second, as indicated above, the Department placed information regarding the owners of Producer A on the record. See New Information Memorandum. We received comments and clarifying information from the GOC and petitioners on April 21 and 26, 2010. Based on the information in the new Information Memorandum as well as on information included in interested parties' April 21, and 26, 2010, comments, we find that the corporate owners of Producer A's parent company are linked to a SASAC and, therefore, are subject to GOC control. As such, we find that Producer A, by virtue of this ownership chain, is ultimately under the control of a SASAC.

Although not previously acknowledged, in its April 21, 2010, submission, the GOC states that a firm owned by the GOC increased its ownership share of the parent of Producer A to 57.56 percent during the last week of December 2008.[19] In making this statement, the GOC makes apparent that, by increasing its level of ownership, the state-owned firm owned shares in the parent of Producer A during the POI before the state-owned firm became the majority owner. While the GOC has not specified the level of ownership the state-owned firm held in the parent of Producer A during the duration of the POI, we determine we determine for purposes of this investigation that in the absence of data to the contrary, there is sufficient evidence to establish that the state-owned firm owned a significant share of the parent of Producer A during the POI, thereby rendering the parent of Producer A a GOC authority during the POI. Accordingly, we further determine that Producer A, in turn, operated as a GOC authority capable of providing a financial contribution during the POI.

Regarding the GOC's objection to the Department's decision to place new information on the record after interested parties' submission of case and rebuttal arguments, we agree that late additions are not ideal; however, in this instance, the release of the New Information Memorandum was pertinent to an issue being decided in the final determination, was limited in scope, and came to light in sufficient time to afford procedural protections and allow all parties to comment.

Comment 8: Whether Record Evidence Demonstrates that Producer B is a GOC Authority

Petitioners argue that record evidence indicates that Producer B was a government authority during the POI. Petitioners argue that the GOC restructured Producer B from a state-owned to a privately-held company in a manner that left board member, directors, and controlling shareholders unchanged. In this way, petitioners argue, the GOC was able to maintain its control over the operations of Producer B.

Petitioners note that in OCTG from the PRC, the Department determined that a firm may be found to be a GOC authority due to company officials' (e.g., board members and shareholders) affiliations with the GOC. See OCTG from the PRC Decision Memorandum at

---

19 In its November 30, 2009, supplemental questionnaire, the Department requested that the GOC identify the owners of Producer A's parent companies. In its December 23, 2009, questionnaire response, the GOC indicated that it was not able to obtain the requested information because the parent companies were registered in Hong Kong. It was not until April 21, 2010, after the Department issued the New Information Memorandum, that the GOC provided information concerning the ownership status of the owners of Producer A.

Comment 8. Petitioners argue that that Producer B's largest shareholder has significant affiliations with the GOC. Petitioners claim that Producer B's largest shareholder was a representative to the Chinese Communist Party's National Party Conference, which they claim is a powerful organ of the GOC. See the GOC's January 25, 2010, supplemental questionnaire response at 2. Petitioners further claim that company officials at Producer B were members of such GOC legislative and consultative bodies as the Jiangsu Provincial People's Congress (PPC), the Zhangjiagang PPC, and the Jinfeng Town PPC. Petitioners claim that the significance of these bodies are documented in the "Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China (2004 Revision) (Local PC Law). See the GOC's January 25, 2010, supplemental questionnaire response at Exhibit S8-7. Petitioners contend that the Local PC Law states that local people's congresses are "local organs of state power" that are responsible for all aspects of society, including the implementation of state plans.

Petitioners further argue that the GOC exerts control over Producer B through a labor union, which petitioners claim was a significant shareholder of Producer B during the POI. Petitioners note that the Department has previously determined that labor unions are GOC authorities. See CWP from the PRC Decision Memorandum at Comment 7.

Petitioners contend that Producer B's pursuit of GOC policies and interests constitutes additional evidence that Producer B is a GOC authority. For example, petitioners argue that the GOC ensured Producer B's compliance with Article 23 of the Iron and Steel Plan by prohibiting a foreign firm from obtaining a controlling interest in Producer B. See petitioners' October 14, 2009, submission at Exhibit 2, which discusses Article 23, a provision that petitioners claim prevents foreign firms from obtaining a controlling interest in Chinese steel companies. Citing to proprietary information, petitioners claim that the chairman of Producer B admitted that allowing the sale to go forward would violate the GOC's industrial policy. See petitioners' October 14, 2009, submission at Exhibit 3. Petitioners further argue that the GOC has prevented Producer B from issuing new shares and from publicly listing its stock. See petitioners' October 14, 2009, submission at Exhibit 2 and 3. Petitioners also contend that Producer B has merged with other Chinese steel makers in accordance with the GOC's industrial policies. See petitioners' October 14, 2009, submission at Exhibit 2. Petitioners assert that the GOC provided Producer B with funds to carry out these mergers. See petitioners' October 14, 2009 submission at 4.

Reiterating the arguments made in Comment 7 above, the GOC urges the Department to consider the substantial ownership information the GOC provided regarding Producer B as well as the Department's successful verification of said ownership information when determining whether Producer B was a GOC authority during the POI. In the case of Producer B, the GOC notes that the Department's verifiers successfully traced its ownership information from submitted data through SAIC records to relevant source documents, including individual share transfer agreements, shareholder resolutions, amendments to articles of association, business registration forms, and electronic files in SAIC offices. See the GOC Verification Report at 3. In each instance, claims the GOC, the verifiers found no discrepancies. Id. Further, concerning Producer B, the GOC argues that the verifiers were able to trace the history of the company's ownership from its initial establishment in 1996, through the original transfer of partial ownership in 2001, to the complete divestiture of SOE ownership later in the decade. Id. at 2 – 3. Through this process, argues the GOC, the Department was able to confirm that Producer B was a privately-held company well before the POI. The GOC contends that the Department's

verification findings indicate that Producer B was majority owned by a group of private individuals and that the remaining shares are owned by Producer B's employees, as represented by their labor union, and an unaffiliated private company. Id. at 2 – 4 and Exhibit 1.

The GOC further asserts that Producer B's shareholders made board appointments through lawful resolutions and that the board has the sole authority to appoint members of the firm's senior management, as provided by the firm's articles of association. See the GOC Verification Report at Exhibit 1, at I-35 – I-37. The GOC further notes that the Department verified that the labor union has no position on the board of Producer B and no role in the firm's management and, at most, is only able to vote its minority share at shareholder meetings. Thus, asserts the GOC, petitioners' claim that the GOC has been "dictating" Producer B's "investment and production decisions" is without merit. This is especially true, argues the GOC, when one considers that the majority of Producer B's shares are held by private individuals along with minority shares held by a privately-held firm.

The GOC also takes issue with petitioners' claims that senior management at Producer B are subject to GOC control by virtue of their supposed affiliation with the GOC. The GOC argues that the Department verified that none of Producer B's management holds any position in the government. See GOC Verification Report at 5 – 6. The GOC further asserts that a company official's participation in the National Party Conference does not make the company official a GOC official. On this point, the GOC notes that the company official in question participated in the National Party Conference, which is part of the Communist political party, and not the National People's Congress, which is a national law making body in China. Id. at 5.

The GOC further contends that the notion that mere membership in the Communist party somehow makes one subject to GOC control is ludicrous. The GOC makes the same argument with respect to membership of Producer B's lower level management in local town, municipal, or provincial People's Congresses. According to the GOC, members of these local Congresses are elected every five years by adult citizens of the respective municipality and the elected members, in turn, elect members of the municipal and provincial Congresses. The GOC adds that these legislative bodies meet annually to debate, discuss, and vote on issues brought by other Congressional members. The GOC argues that, if anything, membership in these municipal and provincial level bodies by certain lower management employed by Producer B affords Producer B some opportunity to participate in the direction and control of its government, not the other way around. Lastly, the GOC reiterates its assertion that government officials in China are prohibited by the Civil Servant Law from undertaking in any profit making activity or holding a concurrent post in an enterprise or any other profit-making organization. See GOC Verification Report at 5, Exhibit 5.

DOC Position: In this investigation, the GOC submitted information indicating that during the POI, individuals, as opposed to corporations, owned the majority of Producer B' shares. As discussed in Comment 6 above, the Department verified that the GOC submitted accurate ownership information regarding Producer B. The broader question before the Department is whether the fact that certain individual owners or managers of a company are officials of the GOC or CCP, or are part of various legislative/consultative bodies (e.g., the local town, municipal, Provincial People's Congresses, and National Party Conference) s relevant to an analysis of government control over the company. On this matter, we disagree with petitioners

that there is sufficient evidence on the record of this investigation to reach a conclusion with respect to Producer B.

Regarding petitioners' claim that the management of Producer B remained unchanged from Producer B's time as an SOE to its current form, we find that the mere fact that some of Producer B's management staff has stayed with the firm after the firm's conversion from an SOE is not sufficient, in and of itself, to warrant a finding that the firm is a GOC authority.

Similarly, we find unpersuasive petitioners' claims that Producer B operated as a GOC authority during the POI because of its tendency to following GOC industrial policies. We do not find that the particular national industrial policies at issue in this case are a sufficient basis to on which to conclude that this producer is a government authority.

Concerning petitioners' claims that a labor union's ownership of Producer B constitutes ownership by the GOC, we agree. As discussed in Comment 6 above, it is the Department's practice to treat labor unions as GOC authorities. See, e.g., CWP from the PRC Decision Memorandum at Comment 7; see also the Memorandum to Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Business Proprietary Information Memorandum for the Final Determination," (May 29, 2008), of which the public version reiterates that it is the Department's practice to treat labor unions as GOC authorities. However, because information on the record of the instant investigation indicates that the labor union does not own a majority of Producer B, we find that the labor union's ownership does not serve as a basis to determine that Producer B operated as a GOC authority during the POI.

In the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies. However, we find that the record lacks the necessary broader information regarding, e.g., the role that these organs play in China in forming and implementing such things as government industrial policies, or CCP initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that this record information provides an insufficient basis on which to conclude than the relationships between individual owners and the GOC or CCP evince government control over Producer B. The Department will continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC.

Comment 9: Whether the GOC Failed to Indicate Whether Certain Wire Rod Suppliers Were Producers or Trading Companies

The GOC argues that it provided the Department all of the data the Department requested with respect to respondents' wire rod suppliers. The GOC contends that neither the initial questionnaire nor any supplemental questionnaire to the GOC requested that the GOC supply any additional information to the Department regarding the producers that supplied trading companies. Nevertheless, according to the GOC, the Department concluded in the Preliminary Determination that the GOC failed to supply the requested information, namely that the GOC failed to indicate whether their wire rod suppliers were producers or trading companies. See 74 FR at 56582. The GOC argues that the Department's conclusion in this

regard is unsupported by record evidence. As such, the GOC contends that the Department should not apply AFA as it pertains to this issue in the final determination.

Petitioners counter that in the initial questionnaire the Department clearly instructed respondents to identify each supplier and, "if different than the supplier," identify each producer. See the Department's July 16, 2009, initial questionnaire at Attachment II. Petitioners further argue that the Department indicated in the initial questionnaire that it expected the GOC to supply the Department with information on respondents' wire rod suppliers and instructed the GOC to work with the respondent companies "to ensure that you have a complete list of each of the respondents' producers and/or suppliers." Id. at II-13. Petitioners contend the GOC ignored the Department's instructions. Petitioners further argue that the GOC ignored the Department's supplemental questions on this topic that the Department issued after the Preliminary Determination. Therefore, petitioners urge the Department to continue to apply AFA as it pertains to this issue.

DOC Position: In the Preliminary Determination, we found that the GOC had failed, in certain instances, to indicate whether input suppliers were wire rod producers or trading companies that resold wire rod produced by another firm. See 74 FR at 56580. Therefore, as AFA, we made the following assumptions:

> 1. In instances in which a mandatory respondent identified an input supplier as a private company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a trading company, and;
>
> 2. In instances in which the mandatory respondent indentified an input supplier as a state-owned company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a producer.

Id.

These adverse assumptions had the effect of increasing the amount of benefits attributed to the mandatory respondent in question.

However, subsequent to the Preliminary Determination, we have been able to ascertain the extent to which the respondents' wire rod suppliers were producers or trading companies. Therefore, we no longer find it appropriate to apply AFA in the manner advocated by petitioners and described in the Preliminary Determination.

Comment 10: Whether SOEs and Firms Majority-Owned by the GOC Constitute Government Authorities

The GOC, the Fasten Companies, and the Xinhua companies contend that the Department, in keeping with its practice, must utilize the five factor test when determining whether an entity is a government authority capable of providing a financial contribution as described under section 771(5)(D) of the Act. See e.g., Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) (DRAMS from Korea) and accompanying Issues and Decision Memorandum (DRAMS from Korea Decision Memorandum) at "The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002." They argue that proper application of the five factors test demonstrates that wire rod producers whom the Department preliminarily considered authorities, based solely on the existence of government ownership, do not satisfy the applicable standards. The GOC, the Fasten Companies, and the Xinhua companies further argue that the Department should not, per se, consider SOEs or firms that are majority-owned by the state to be GOC authorities. They contend such an approach contradicts the Department's prior findings. See, e.g., DRAMS from Korea Decision Memorandum at "The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002."

The GOC, the Fasten Companies, and the Xinhua companies argue that SOEs operate independently of the GOC, have separate legal status from that of the GOC, and managers operate state-owned firms free of GOC interference. They argue that the 1993 Company Law codifies SOEs' independence from the state and that SASACs were established in 2003 to solidify the separation of state ownership from SOEs. In addition, they contend that the prices of steel inputs, such as wire rod, are not regulated by the state. The GOC, the Fasten Companies, and the Xinhua companies argue that the 1998 Price Law establishes autonomous enterprise operators which have the right to determine prices under market regulations.

Petitioners assert that in Racks from the PRC, the Department faced a similar argument regarding whether a majority-owned company was an authority within the meaning of section 771(5)(B) of the Act. According to petitioners, in Racks from the PRC, the Department clarified its position by establishing a rebuttable presumption that where a government is the majority owner of an enterprise, it controls the enterprise. See Racks from the PRC Decision Memorandum at Comment 4. Petitioners claim that the presumption can only be rebutted if an interested party demonstrates that majority ownership does not result in control of the enterprise. Id. Absent evidence to rebut the presumption, petitioners argue, the Department has stated it need not examine the other factors in the five factor test once majority government ownership is established. See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, 74 FR 47210, 47213 (September 15, 2009) (OCTG from the PRC Preliminary Determination). Petitioners argue that in the instant investigation the GOC and respondents have not submitted evidence to rebut the presumption that entities that are majority-owned by the GOC are GOC authorities.

DOC Position: In Racks from the PRC, the Department stated its policy with respect to application of the five factors test. See Racks from the PRC Decision Memorandum at Comment 4; see also OCTG from the PRC Decision Memorandum at Comment 9. The aspect

of that policy that is relevant here is the Department's treatment of enterprises that are majority-owned by the government as "authorities" within the meaning of section 771(5)(B) of the Act.

The GOC argues that the prices of steel inputs, such as wire rod, are not regulated by the state, as evidenced by the 1993 Company Law, and, thus, the Department erred in its preliminary finding that majority state-owned firms are GOC authorities capable of providing a financial contribution. The Department addressed this same argument in Racks from the PRC:

> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the "financial contribution" being provided by an authority and "benefit." If firms with majority government ownership provide loans or goods or services at commercial prices, i.e., act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loans or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.

See Racks from the PRC Decision Memorandum at Comment 4.

Thus, following the reasons set forth in Racks from the PRC, we have continued to treat majority state-owned input producers as GOC authorities capable of providing wire rod for LTAR.

Comment 11: Whether Private Resellers of Wire Rod Should Be Treated as Government Authorities

The Fasten and Xinhua Companies claim that in the Preliminary Determination the Department found that privately-held resellers of wire rod, including those operating in the absence of any GOC ownership whatsoever, were nevertheless treated as GOC authorities. They argue that privately-held resellers of wire rod can in no way be defined under the statute as GOC entity.

DOC Position: As explained in the Preliminary Determination, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. See 74 FR at 56581 - 56582. In the Preliminary Determination, we found that, in some instances, the GOC and the respondent firms were not able to provide the requested information. Id. Therefore, in the Preliminary Determination, the Department resorted to the use of FA within the meaning of sections 776(a)(1) and (2) of the Act. Id. Specifically, in order to ascertain the amount of wire rod produced by GOC authorities that was sold to the respondent firms by the trading companies in question, the Department, as FA, assumed that the percentage of wire rod supplied by these domestic trading companies that was produced by government authorities was equal to the ratio

of wire rod produced by SOEs during the POI, as indicated by aggregate wire production data supplied by the GOC. See Preliminary Determination, 74 FR at 56582.

Thus, in the Preliminary Determination, the Department did not find that trading companies without government ownership were, nonetheless, operating as GOC authorities. Rather, because the Department lacked, in certain instances, information on actual producers of the wire rod that was sold by the trading companies, the Department applied FA in order to ascertain the amount of wire rod produced by GOC authorities. See 74 FR at 56582. We note, our approach in this regard was consistent with the Department's practice. See, e.g., CWP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration;'' see also LWRP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration.''

However, as explained in the "Provision of Wire Rod for LTAR" section, upon further review and examination of the information supplied by the Fasten and Xinhua Companies, we find that the wire rod purchase data supplied by the Fasten Companies and the Xinhua Companies reflect purchases made directly from wire rod producers, as opposed to wire rod trading companies. As a result, the application of FA under the provision of wire rod for LTAR program, as discussed in the Preliminary Determination, is not necessary.

Further, as explained above in the "Adverse Facts Available" section, in the case of the Xinhua Companies, at verification Xinhua divulged additional wire rod purchases for two of its factories. Regarding these previously unreported wire rod quantities, for those wire rod suppliers for which we lack ownership information, we are assuming, as AFA, that the suppliers are state-owned producers that acted as GOC authorities during the POI and, as such, we have included the suppliers' sales of wire rod in the benefit calculation.

Comment 12: Whether the Provision of Wire Rod to PC Strand Producers is Specific

The GOC contests the Department's preliminary decision that the GOC's provision of wire rod to respondents is specific under section 771(5A)(D)(iii)(I) of the Act because the industries named by the GOC are limited in number. See Preliminary Determination, 74 FR at 56583. The GOC contends that record evidence in fact demonstrates that a wide range of industries utilize wire rod such that the specificity requirements are not met under U.S. law. The GOC notes that the list of industries that use wire rod provided in this investigation by the GOC is not exhaustive, merely illustrative. The GOC argues that record evidence demonstrates that wire rod sales are not directed to a specific group of industries or enterprises and that the GOC does not restrict the prices charged to consumers in China. See the GOC's August 24, 2009, questionnaire response at 44 – 46 and Exhibit 57. Thus, the GOC asserts that the Department must reverse its preliminary finding and conclude that the provision of wire rod is not specific to PC strand producers during the POI.

Petitioners argue that in the Preliminary Determination the Department addressed and rejected the points raised by the GOC in its case brief regarding whether the provision of wire rod to PC strand producers is specific. See Preliminary Determination, 74 FR at 56583. Specifically, petitioners argue that, the Department, in its Preliminary Determination, notes that it has determined in prior CVD investigations involving the PRC that the provision of wire rod is to steel producers is specific. Petitioners claim that the GOC provides no legal authority or precedent to overturn the Department prior findings and, thus, the Department has no reason to alter its approach from the Preliminary Determination.

DOC Position: The Department has addressed the GOC's arguments in this regard in prior CVD investigations involving the PRC. For example, in Racks from the PRC, the Department explained that it examined information supplied by the GOC regarding the end uses for wire rod. The Department concluded that while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. See Racks from the PRC Decision Memorandum at "Provision of Wire Rod for LTAR." In Racks from the PRC, the Department concluded that the industries named by the GOC were limited in number and, hence, the subsidy was specific. Id. We have conducted the same analysis in the instant review based on information supplied by the GOC. Our analysis yields the same result as that reached in Racks from the PRC, namely that the provision of wire rod for LTAR program is specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 13: Whether the Benchmark for the Wire Rod for LTAR Program Should Reflect All Delivery Charges, Including Shipping and Insurance Costs

Petitioners state that in the Preliminary Determination, the Department calculated a world market benchmark price for wire rod that did not fully capture the various charges imposed by the Chinese government on imports, because these charges were not on the record at the time the Department issued its Preliminary Determination. They argue that, for the final determination, the Department should revise its calculation of the market-determined benchmark price for wire rod to account for the cost of shipping and insurance. They contend that doing so ensures that the benchmark price accurately reflects the price that a company would pay if it imported wire rod and that such a revised calculation is consistent with the Department's regulations and established practice.

Petitioners argue that the Department is required to adjust benchmark prices to include delivery charges under 19 CFR 351.511(a)(2)(iv):

> In measuring adequate remuneration (using either an "actual market-determined price" or "world market price" benchmark), the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.

Citing several cases, they argue that the Department has consistently applied this requirement in countervailing duty investigations and administrative reviews. The argue that, in this case, in addition to the VAT and import charges that the Department included in the benchmark price at the Preliminary Determination, the Department should add delivery charges, such as international and domestic freight charges, to the benchmark price. They state that international freight charges for shipping "iron, steel, iron and steel articles, metal" from Los Angeles, California to Shanghai, China were submitted in Exhibit 12 of petitioners' January 15, 2010, submission.

Petitioners further argue that the Department should adjust its calculations to include insurance costs on goods imported goods into China. They argue that, in its "Rules Regarding the Determination on Customs Value of Imported and Exported Goods" (Customs Value

Rules), the Chinese government sets forth the methodologies used by Chinese Customs authorities during the POI to determine the value of imported goods. Petitioners call attention to Articles 38 and 39 of the Customs Value Rules:

> **Article 38** The cost of transport for imported goods shall be calculated on the basis of charges that are actually paid. Where the cost of transport is unascertainable, however, Customs shall calculate the cost en facto for transportation or on the basis of the freight rate or freight amount for the carriage of the goods published by the Shipping Industry at the time of importation.
>
> **Article 39** The cost of insurance for imported goods shall be calculated in the fact that the charges are actually paid. If the insurance for imported goods is unascertainable or does not occur in practice, Customs shall calculate the cost of insurance on the basis of 3% of the sum of C & F. The formula shall be expressed as follows:
>
> The cost of insurance = (Cost of Goods + Freight) x 3%

Petitioners thus contend that, because an importer of wire rod into China is required by the Chinese government to pay a transportation-related insurance charge of three percent of the cost of goods plus freight, the Department should add the cost of insurance to the benchmark price according to the following calculation: cost of insurance = (benchmark price + international freight) x 0.03. They conclude that for purposes of the final determination, the Department should adjust the benchmark prices for wire rod to include all delivery charges -- international freight charges, domestic freight charges, and insurance charges -- in addition to the import duties, as required under 19 CFR 351.511(a)(2)(iv).

The GOC and the respondent firms did not comment on this issue.

Department's Position: As stated in the Preliminary Determination, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. See 74 FR at 56583. Thus, in the Preliminary Determination, the Department expressed its intention to include such delivery prices as ocean freight in the derivation of the benchmark used to determine whether GOC authorities sold wire rod to respondents for LTAR. However, at the time of the Preliminary Determination, the Department lacked the necessary data. Id. We note that the inclusion of delivery charges, such as ocean freight, in tier-two (world market price) benchmarks is in accordance with the Department's practice. See, e.g., Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

Subsequent to the Preliminary Determination, petitioners submitted ocean freight data. Specifically, petitioners submitted onto the record of the investigation price quotes from Maersk Line for shipping iron and steel products from Los Angeles, California to Shanghai, China in each month of the POI. See petitioners' January 8, 2010, submission. In accordance with 19 CFR 351.511(a)(2)(iv), we have added these ocean freight costs to our wire rod

benchmark price. In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we have continued to include import duties and VAT, as reported by the GOC, to the wire rod benchmark. See Preliminary Determination, 74 FR at 56583.

Regarding petitioners' request that the Department also add the cost of insurance to the wire rod benchmark, we disagree. As explained in the Preliminary Determination and consistent with the approach Racks from the PRC, we find that there is insufficient evidence on the record to warrant a change to the benchmark for wire rod to reflect the cost of insurance. See 74 FR at 56583; see also Racks from the PRC Decision Memorandum at Comment 9. Petitioners argue that the PRC customs authorities require an importer of wire rod to pay insurance charges. However, the evidence cited by petitioners only establishes that the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data. The Department will consider in future determinations the propriety of including insurance as a delivery charge provided interested parties provide information that is more compelling than what has been presented in the instant investigation and in Racks from the PRC.

Regarding petitioners' request that the Department also add inland freight to the wire rod benchmark and to the wire rod prices respondents paid to domestic suppliers that sold wire rod produced by GOC authorities, we agree in principal that such an adjustment should be made. See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) (HRC from India) and accompanying Issues and Decision Memorandum (HRC from India Decision Memorandum) at Comment 13. The Court of International Trade affirmed the Department's approach HRC from India in this regard. See United States Steel Corp. v. United States. 2009 Ct. Int'l Trade Lexis 156, 25, Slip Op. 2009-152 (Dec. 30, 2009). However, the record of the instant investigation does not contain the requisite information concerning inland freight rates to support such an adjustment to the benchmark price and the prices respondents paid to GOC authorities. We note that respondents reported the wire rod prices paid to GOC authorities net of inland freight. Thus, inland freight costs are absent from both benchmark and government wire rod prices. We will collect information concerning inland freight in any subsequent administrative reviews.

Comment 14: Whether the Department Should Include Wire Rod Prices from the CRU Monitor and AMM Monitor in the LTAR Benchmark

In its January 11, 2010, submission, the Fasten Companies argued that the Department should include data from the CRU Monitor in its derivation of the benchmark used in the wire rod for LTAR program. First, petitioners disagree with the Fasten Companies' position that the Department should use data from the CRU Monitor rather than AMM data to calculate a tier two benchmark price for wire rod used in the evaluation of whether Chinese PC strand producers obtained wire rod for LTAR from GOC authorities. Petitioners contend that the AMM data is superior to the CRU Monitor data and that the record demonstrates conclusively that high carbon wire rod from the United States would be, and in fact is, available in China. They also assert that the data placed on the record by the Fasten Companies demonstrate that the CRU Monitor data do not cover the type of high carbon wire rod used by Fasten and the other Chinese respondents to produce PC strand.

Petitioners argue that the Department's regulations require that the Department use a

world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. See 19 CFR 351.511(a)(2)(ii). They contend that the Fasten Companies' claims that the AMM prices represent U.S. market prices and that the United States ships a statistically insignificant amount of high carbon wire rod to China and the Far East are misplaced. Petitioners argue that the only thing that the Department's standard requires is a demonstration that Chinese producers could have purchased the necessary high carbon wire rod from the United States at such prices.

Petitioners note that the Fasten Companies' attempt to claim that exports of high-carbon wire rod from the United States to the PRC during the POI were insignificant, as evidenced by U.S. export data for HTSUS 7213.91.4500, the tariff schedule item for high carbon wire rod (i.e., wire rod with a carbon content of 0.6 percent or more). However, petitioners contend that data show that the United States exported a significant amount of high carbon wire rod, over 35,000 metric tons, in 2008, and thus, the United States was a significant exporter of high carbon wire rod to which Chinese producers could have availed themselves. More specifically, they argue that the data show that, in 2008, 1,136 metric tons of this high-carbon steel wire rod were shipped to the Far East, including China and that this establishes that U.S.-produced high-carbon wire rod was available to Chinese producers. Petitioners surmise that U.S. exports of high carbon wire rod to China in 2008 were relatively small in part due to Chinese government policies that the Department has recognized prevent Chinese companies from importing wire rod.

Petitioners also argue that in their January 11, 2010, submission, the Fasten Companies misinterpret Racks from the PRC as standing for the proposition that the low level of exports of high carbon wire rod from the United States should lead the Department not to use wire rod prices emanating from the United States. Petitioners contend that in Racks from the PRC, the Department refused to exclude certain data where "there is no record information to suggest wire rod is not traded between Europe, North America, and Asia." See Racks from the PRC Decision Memorandum at Comment 8. Petitioners then argue that in the instant investigation, the record evidence proffered by the Fasten Companies establishes that such trade exists.

Petitioners argue that, while the AMM price data for wire rod are indeed reflective of U.S. pricing for wire rod, there is no record evidence to suggest that this pricing data are not reflective of world market prices for wire rod. Petitioners contend that the Fasten Companies did not place any such comparative pricing data on the record to demonstrate that such prices are not reflective of export prices in other markets.

Petitioners contend that based on the totality of the evidence of record the Fasten Companies have not presented valid grounds from disqualifying the AMM price data relied upon by the Department in the Preliminary Determination as a benchmark to measure whether wire rod was provided to Chinese PC strand producers for LTAR. Petitioners maintain that the Department should continue to rely on AMM price data as a benchmark for the Final Determination.

Second, petitioners argue that the Fasten Companies have proffered certain CRU Monitor price data for "high carbon" wire rod as a benchmark for the LTAR analysis that do not cover the type of high carbon wire rod used to produce PC strand. Petitioners contend that the Fasten Companies recognized that the type of high carbon wire rod that is used to produce PC strand has a carbon content that exceeds 0.6 percent. Petitioners argue that similarly the record demonstrates that respondents produce PC strand from high carbon wire rod made to the

SWRH 82B standard which, as the name implies, has an average carbon contend of 0.82 percent.

Petitioners explain that the product definitions just below the CRU Monitor data placed on the record by the Fasten Companies state expressly that the high carbon rod the CRU Monitor reports is for the "HC (1045) quality" and that this type of wire rod, as the name demonstrates, contains only 0.45 percent carbon, far less than the 0.82 percent carbon that the 82B standard requires and also well below the 0.60 percent level cited by respondents. Petitioners further explain that Grade 1045 wire rod, despite its designation in the CRU Monitor as a "high carbon" rod, cannot be used to produce PC strand and argue that respondents' submission of January 11, 2010, citing the 0.60 percent minimum carbon standard for wire rod used in PC strand, attests to this. Petitioners therefore argue that the record demonstrates that the "HC 1045 quality" wire rod is not like the high carbon SWRH 82B standard wire rod used by respondents and is not an appropriate benchmark for the LTAR analysis.

Petitioners conclude that the Department should not use the CRU Monitor data to calculate a tier two benchmark price for wire rod but should continue to use the AMM data that it used for the Preliminary Determination. They argue that at a minimum, the Department should average the CRU Monitor and AMM pricing data, consistent with 19 CFR 351.511(a)(2)(ii).

Respondents argue that AMM wire rod pricing data submitted by petitioners do not satisfy the Department's own regulatory requirements. They argue that the Department's regulations require that when a tier two benchmark is employed to determine whether an input is provided at LTAR, the Department should use a "world market price where it is reasonable to conclude that such a price would be available to purchasers in the country in question." See 19 CFR section 351.511(a)(2)(ii). They contend that the AAM data relied upon by the Department in the Preliminary Determination provide prices that are limited to the North American market only and are not reflective of prices in Asia or any other markets outside North America.

Respondents further argue that record evidence establishes that wire rod is not typically traded between North America and Asia and that this evidence shows that less than 4 percent of total U.S. exports or wire rod and just 1 percent of EU wire rod exports were destined for the Asian or Far Eastern markets. They also point out that the Department's own Preliminary Determination noted extremely low levels of imports from all foreign sources, not only American imports, into the Chinese market and that these imports accounted for only 0.91 percent of the volume of wire rod available in the Chinese market during the POI. They contend that given the absence of a viable volume of steel wire rod imports into China, North American pricing for wire rod cannot be used as a tier two benchmark because it is not reasonable to conclude that such price would be available to purchasers in China.

Respondents contrast the administrative record in this investigation with the Department's determination in Racks from the PRC. Respondents contend that, in Racks from the PRC, Department dismissed arguments that prices from Europe and North America should be excluded because the record information did not support a finding that wire rod was not traded between Europe, North America, and Asia. See Racks from the PRC Decision Memorandum at Comment 8. By contrast, they argue that this record contains compelling evidence that wire rod imports into China from North America are statistically insignificant. They contend that, consequently, the Department should solely rely upon the CRU Monitor

prices for high carbon steel wire rod of non-CIS origin available for sale in Far Eastern markets as the tier-two benchmark.

Department's Position: Respondents placed on the record monthly prices for high carbon wire from various countries and regions that were published in a publication titled the CRU Monitor. These prices include f.o.b. prices for high carbon wire rod from producers in the United Sates and delivered prices in Germany, France, Italy, the United Kingdom, and Spain. The data also include f.o.b. export prices for high carbon wire rod from the European Union and c. & f. prices from non-CIS (Commonwealth of Independent states) countries to port in the Far East. Petitioners placed monthly prices for high carbon wire rod from producers in the United States that they obtained from the AMM. Respondents did not provide any ocean freight and handling rates. Petitioners placed detailed monthly ocean fright and handling rates on the record for shipments of iron and steel products from Los Angeles to Shanghai. Neither party provided inland freight rates for shipments in China.

We have reviewed pricing and shipping data provided by the Respondents and the Petitioners and have considered both parties' comments. Pursuant to 19 CFR 351.511(a)(2)(iv), it is incumbent upon the Department, to the extent possible, to use delivered prices for benchmark purposes. Because the record contains ocean freight and handling rates for shipments from the United States to China, we have determined to construct the tier-two benchmark using only the prices on the record for high carbon wire rod from the United States. Accordingly, we calculated the benchmark for high carbon wire rod by taking the simple average of the monthly high carbon wire rod prices from the United States provided by both parties and adding the amounts for ocean freight and handling that were placed on the record by Petitioners. We then added import duties and VAT charges of 5 percent and 17 percent respectively, as there is evidence on the record that these rates apply to imports of wire rod into China.

With regard to petitioners' argument that the prices placed on the record by respondents pertain to wire rod of low quality that is not suitable for purposes of the wire rod benchmark, we do not agree. The CRU Monitor lists prices for "mesh W. rod", which it defines as "wire rod mesh/industrial quality (below 1023)" and prices for "HC W. rod," which it defines as "HC (1045) quality."[20] Concerning the prices from the AMM, the Xinhua companies stated in its response to one of the Department's supplemental questionnaires, that the grade of wire rod it purchased during the POI was the same grade as the type of high grade wire rod cited in the AMM. Therefore, we find there is sufficient evidence to conclude that the prices placed on the record by both petitioners and respondents reflect prices for high carbon wire rod. Because record evidence indicates that respondents use high grade wire rod (as opposed to lower grade wire rod) to produce PC strand, we have used the prices listed for high grade wire rod from the AMM and the CRU monitor in our wire rod benchmark calculations.

We do not agree with respondents' argument that the CRU Monitor prices for high carbon steel wire rod of non-CIS origin available for sale in Far Eastern markets should be used exclusively as the tier-two wire rod benchmark. We find that evidence on the record indicates that the non-CIS prices constitute delivered prices for high grade wire rod to locations in the "Far East," locations that may include countries other than the PRC. In other words, the price series does not break out prices delivered to the PRC from those prices delivered to other non-

20 We conclude that it is reasonable to assume that HC W. rod stands for high-carbon wire rod.

CIS origin, "Far East" countries. Therefore, we conclude that this price series may include high grade wire rod prices that are delivered and, thus, available in the PRC, as well as prices that are delivered to other non-CIS origin, "Far east" countries and, thus, not available in the PRC. Because we have concluded that this price series may include high grade wire rod prices that are not available in the PRC, we have not included the price series in our wire rod benchmark calculation.

We further disagree with respondents' argument that the AMM wire rod pricing data submitted by petitioners do not satisfy the Department's own regulatory requirements. The Xinhua Companies acknowledged that they purchased a wire rod of the same grade as that contained in the AMM data submitted by petitioners. See the Xinhua Companies' December 9, 2009, supplemental questionnaire response at 10. Further, concerning the AMM data, we find that the use of prices of high grade wire rod from the United States, in conjunction with ocean freight rates from the United States to the PRC, yields a benchmark price that is available to producers in the PRC, as described under 19 CFR 351.511(a)(2)(ii).

Comment 15: Whether to Use an In-Country Benchmark to Measure Benefits Under the Provision of Wire Rod for LTAR Program

The GOC objects to the Department's preliminary decision to use a tier-two wire rod benchmark for valuing the adequacy of remuneration, arguing that pursuant to the Act (19 USC 1677(5)(E)(iv)), the Department's regulations (19 CFR 351.511(a)(2)), and a NAFTA panel report, ((the Matter of Certain Softwood Lumber Products from Canada, NAFTA USA-CDA-2002-1904-03 (June 3, 2004) at 23), the preference is to use a tier-one benchmark. The GOC acknowledges that under the Preamble the Department is authorized to "resort to the next alternative in the hierarchy when it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market." However, according to the GOC, the Department failed to demonstrate that prices are significantly distorted as a result of government involvement in the market. In particular, the GOC claims that the Department failed to take into consideration the actual structure of the market to determine whether the GOC involvement distorts prices. In support of using a tier-one benchmark, the GOC notes that over 50 percent of wire rod production in China was manufactured by private companies and, therefore the government does not account for the majority of the wire rod market in China. See Memo to the File, "Information Concerning Share of Wire Rod Produced" (October 26, 2009). The GOC further argues that there is no evidence that any "government impact" brings "downward distortion to private firms' prices" or that prices of private suppliers are "distorted" by the GOC's control of SOEs. The GOC claims that, on the contrary, competitive market principles set the prices of wire rod in China. Thus, the GOC argues that according to the CVD law, the Department in the final determination must rely on in-country prices as the benchmarks to properly determine the benefits of the alleged wire rod for LTAR program.

Petitioners assert that the Department's rejection of a tier one benchmark for valuing the adequacy of remuneration is in accordance with the law. Petitioners argue that the Department properly found that the prices for wire rod in China were distorted because of the GOC involvement in the market. They argue that the GOC's claims about the lack of the government influence on wire rod prices in China is not supported by record evidence because the fact that state owned firms account 46 percent of wire rod production in China is sufficient enough to have effect on wire rod prices and to bring distortion to the wire rod market in China.

Petitioners also argue that due to the inaccurate manner in which FIEs are defined, as previously determined by the Department in Racks from the PRC, the 46 percentage figure is very likely understated. See Racks from the PRC Decision Memorandum at Comment 15. Further, petitioners claim that the record of this investigation does not support the use of a tier-one benchmark. According to petitioners, the GOC failed to provide requested information regarding the ownership of certain wire rod producers, therefore the Department was not in a position to fully examine the extent to which the GOC was able to exercise its control over the wire industry.

Department's Position: The GOC's arguments regarding this matter have been previously addressed and rejected by the Department. See, e.g., Racks from the PRC Decision Memorandum at Comment 8; Line Pipe from the PRC Decision Memorandum at Comment 5, and CWP from the PRC Decision Memorandum at Comment 7. The Department's long-standing practice is to utilize a benchmark outside of the country of provision when the government has an overwhelming involvement in the sale of the good in question. See e.g., Line Pipe from the PRC Decision Memorandum at Comment 5. Out of country benchmarks are required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence). See CWP from the PRC Decision Memorandum at Comment 7. The Department reached a similar conclusion in Softwood Lumber from Canada:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

See Softwood Lumber from Canada Decision Memorandum at Comment 34.

As discussed above, the GOC has reported that SOEs accounted for a significant share of wire rod production in the PRC during the POI, a percentage that is nearly the same as that observed in Racks from the PRC, in which the Department declined to use in-country wire rod benchmarks due to the distortive effect caused by the market share held by state-owned wire rod producers. See Racks from the PRC Decision Memorandum at Comment 8. As the Department has explained, in instances in which the government or state-owned firms account for a significant portion of production of the good in question, it is reasonable to conclude that domestic prices for comparable goods are effectively determined by the government provided prices. Furthermore, in such instances, the Department has found that it is not necessary when determining the viability of a tier-one benchmark to "look beyond the degree of state-ownership" in the PRC and "consider the actual nature and structure of the industry. For example, in CWP from the PRC the Department rejected the GOC's contention that, in instances in which the government accounts for a significant portion of production of the good in question, the Department needed to examine whether there is a single or uniform government-set price, whether the industry in question is highly fragmented, whether state-owned producers operate the same as private producers, whether private investment in the

industry in question is growing, and whether a functioning market exists as evidenced by day-to-day price fluctuations. See CWP from the PRC Decision Memorandum at Comment 7.

In addition to the government's ownership share of the market, we find that the presence of an export tariff and export licensing requirements instituted during the POI is further evidence of the GOC's predominant role and contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they otherwise would be. Moreover, the very low share of the domestic market that is supplied by imports, 0.91 percent, is further evidence that the government plays a predominant role through its involvement in the market.

Furthermore, we note that the Department's position is not driven by a finding of collusion between private and state-owned wire rod producers. Rather, because of its substantial market presence, the GOC becomes a price leader, with which private firms are forced to compete. Private wire rod suppliers are essentially competing, not with other private producers, but with GOC-controlled entities. Therefore, consistent with the Softwood Lumber from Canada, we are following our established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of the predominant role of the government in the market.

Comment 16: Whether Benefits Under the Provision of Wire Rod Program Should Be Attributed to Sales of Fasten I&E and Hongshen

Petitioners argue that the Department's finding in the Preliminary Determination to attribute wire rod subsidy in part to sales of Fasten I&E is inconsistent with the statue. They contend that the record demonstrates that none of the attribution rules under 19 CFR 351.525(b)(6) can be applicable to Fasten I&E. According to the petitioners, Fasten I&E is only a trading company. They argue that Fasten I&E did not produce subject merchandise during the POI, it is not a holding company or parent company for Fasten Steel, Hongyu or Hongsheng, and it did not transfer subsidies to Fasten Steel of Hongyu. Therefore, petitioners contend, benefits under the wire rod for LTAR program should not be attributed to Fasten I&E. Further, even though petitioners admit that Fasten I&E is a company cross-owned with Fasten Corp. and Hongsheng, they argue that the facts of the case do not satisfy the requirements set for under 19 CFR 351.525(b)(6)(ii) through (v).

Petitioners argue against the Department's preliminary decision regarding the wire rod sold to Hongsheng for LTAR, where the Department divided Hongsheng's benefit by combined total sales of Hongsheng, Fasten Steel, Hongyu Metal, and Fasten I&E. Petitioners contend that the wire rod for LTAR subsidy should only be attributed to the sales of Fasten Steel and Hongyu Metal because Hongsheng, which is not a producer, merely served as a conduit for transferring the subsidy to the producers of subject merchandise. See 19 CFR 351.525(b)(6)(iii). Petitioners add that the Department cannot attribute subsidies to Hongsheng under the input supplier attribution regulation, 19 CFR 351.525(b)(6)(iv), because Hongsheng did not produce the input product as required by the regulations.

The Fasten Companies state that there is no basis for the argument made by petitioners not to include Hongsheng's sales in the sales denominator, because the record in this case does not support petitioners' claim. The Fasten Companies argue that information on the record indicates that Hongsheng is the parent company to both Fasten Steel and Fasten I&E and according to the 19 CFR 525(b)(6)(iii), the Department should attribute any subsidy received

by Hongheng to the sales of the parent company and its subsidiaries. Further, the Fasten Companies reject petitioners' argument that Hongsheng "only served as the conduit for the transfer of the subsidy to the subsidiary," and note there is no basis for such a "gratuitous" argument. According to the Fasten Companies, evidence on the record indicates that Hongsheng, contrary to the GOC's claims, is not a "shell" company but a "substantial company" with purchasing and sales Departments, involved in financing of its business operations. The Fasten Companies further argue that there is no evidence on the record that "any benefit that Hongsheng received through its purchases of wire rod from the GOC or from the receipt of policy loans were transferred to Fasten Steel and Hongyu Metal.

The Fasten Companies contend that petitioners misunderstand the basis for the Department's findings in the Preliminary Determination when they argue Fasten I&E's sales should be excluded from the sales denominator of the net subsidy rate calculation attributable to Hongsheng's purchases of wire rod, because Fasten I&E is neither a holding a parent or holding company for either Hongsheng, Fasten Steel or Hongyu Metal. The Fasten Companies assert that the basis for the Department's determination was, pursuant to 19 CFR 525(b)(6)(iv), Fasten I&E is cross- owned with Fasten Corp. and Hongsheng by virtue of Fasten Corp.'s majority ownership in each company and, thus, is cross-owned with Fasten Steel and Hongyu Metal. The Fasten Companies argue this must be reflected in the sales denominator.

Therefore, the Fasten Group claims that in the final determination, the Department should follow its methodology as applied in the Preliminary Determination and use the total combined sales of Fasten Steel, Hongyu Metal, Hongsheng, and Fasten I&E, to calculate the net subsidy rate for wire rod at LTAR.

Department's Position: As explained below in Comment 17, the Department has refrained from limiting the attribution of the benefit under the provision of wire rod for LTAR program to sales of products made from wire rod. Thus, we have continued to attribute the benefits under the provision of wire rod for LTAR program a total sales denominator, which includes the sales of Fasten Steel and Hongyu Metal as well as other members of the Fasten Companies.

Fasten Steel and Hongyu Metal are the two members of the Fasten Companies that produce PC strand. However, Fasten Steel and Hongyu Metal did not export PC strand to the United States during the POI. Rather, the two firms exported their merchandise through Fasten I&E, a company the Department has determined is cross-owned with Fasten Steel and Hongyu Metal. Thus, we find that petitioners fail to explain how the Department can limit the attribution of the wire rod subsidy to the sales of Fasten Steel and Hongyu Metal when the two entities reported no sales of subject merchandise to the United States during the POI and when all sales of subject merchandise to the United States were made by and through Fasten I&E.

Concerning Hongsheng, as explained in the "Analysis of Programs" section, we have examined whether Hongsheng purchased wire rod for LTAR.[21] As stated in the Preliminary Determination, Hongsheng did not produce the wire rod that it sold to Fasten Steel and Hongyu Metal during the POI. See 74 FR at 56579. Rather, Hongsheng acquired the inputs from other producers. Id. Under 19 CFR 351.511(B), the Department deems benefits under a LTAR program to have been received at the point at which the good is purchased. Thus, in the case of the Fasten Companies, the benefit was received when Hongsheng paid GOC authorities for the wire rod and not when Hongsheng sold the wire rod internally to Fasten Steel and Walsin.

21 Concerning Walsin, during the POI it purchased its wire rod inputs from suppliers other than Hongsheng.

Furthermore, the approach suggested by petitioners (i.e., treating the timing of receipt of the benefit as the point at which Hongsheng sold the wire rod internally to) is problematic because the volume of wire rod Hongsheng acquired from GOC authorities will not necessarily coincide with the volume of wire rod Hongsheng sold internally to Fasten Steel and Walsin. Furthermore, petitioners do not address how the Department could match the volumes Hongsheng sold internally to Fasten Steel and Walsin with the prices Hongsheng paid to GOC authorities.

Therefore, we have continued to attribute subsidies received by Hongsheng under the provision of wire rod for LTAR program to sales of Hongsheng, Hongyu Metal, Fasten Steel, and Fasten I&E. Id.

Comment 17: Whether the Wire Rod Sold for LTAR Should be Attributed Only to Sales of Wire Rod

Petitioners contend that the GOC has controlled the wire rod industry and market in China to support downstream producers that consume wire rod in the production of higher-value-added products through the provision of preferentially priced wire rod. In support of its contention, petitioners cite to the GOC's imposition of export tariffs and export licensing requirements on wire rod exports, which they contend are designed to ensure low prices for wire rod in the domestic market. Thus, petitioners contend that, at the time the benefit under the provision of wire rod for LTAR program is bestowed, the GOC intends for the wire rod that is sold to be used by high, value-added producers, such as PC strand producers. As such, petitioners argue that the subsidy is tied to sales of wire rod and thus, the benefit under the program should be attributed solely to sales of products produced from wire rod. Absent sales data that are limited to products made from wire rod, petitioners argue that the Department may use the sales of Fasten Steel and Hongyu Metal as a proxy because the record establishes the two firms produce goods from wire rod.

The Fasten Companies state that if in the final determination, the Department continues to find that this program is countervailable, the Department should continue to calculate the subsidy rate by dividing the appropriately calculated net benefit attributable to Hongsheng's purchases of wire rod by the total combined sales of Hongsheng, Fasten Steel, Fasten I&E, and Hongyu Metal. The Fasten Companies assert that petitioners' argument to exclude the total sales made by Hongsheng and Fasten I&E from the sales denominator, and include only Hongyu Metal's and Fasten Steel's total sales of products that were made from wire rod in the sales denominator is without merit. The Fasten Companies contend that petitioners' argument is based on incomparable "apples to oranges" analogy, because according to the Fasten Companies, petitioners "seek to have the benefit attributable to all of Hongsheng's purchases of steel wire rod at LTAR divided by only a small portion of the sales of merchandise produced by from such purchases of wire rod." See The Fasten Group's Rebuttal Brief at 3. The Fasten Companies state that even though neither Hongsheng nor Fasten I&E were involved in the production of subject of merchandise, they both purchased raw material inputs for resale to companies within the Fasten Companies and sold subject and non-subject merchandise produced by companies that are Fasten Companies. Therefore, the Fasten Companies claim the valid "apples-to-apples" comparison is to attribute all of Hongsheng's purchases of steel wire rod at LTAR to the combined total sales values of Hongsheng, Fasten I&E, Fasten Steel, and Hongyu Metal.

Department's Position: As an initial matter, petitioners' couch their argument in the context of the Fasten Companies, however, we find petitioners' argument must be also be addressed with regard to the Xinhua Companies. Further, the Department addressed this same issue in Racks from the PRC, in which petitioners there urged the Department to attribute subsidy benefits under the provision of wire rod for LTAR program to respondents' sales of products containing wire rod. See Racks from the PRC at Comment 10. As in Racks from the PRC, we disagree with petitioners' argument and have continued to attribute the subsidy benefit to respondents' total sales. The Preamble states:

> Our tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal.

See 63 FR at 65403. The times of bestowal for the wire rod subsidy are the points in time when respondents purchased wire rod from GOC authorities during the POI. As in Racks from the PRC, petitioners in the instant investigation, appear to base their position on a product classification (wire rod containing products) that simply groups together different products that use a common material input. As in Racks from the PRC, we find this classification does not identify a product that the GOC intended to benefit at the time of bestowal of the wire rod subsidy. See, Racks from the PRC Decision Memorandum at Comment 10.

Further, as was the case in Racks from the PRC, information on respondents' respective product lines demonstrate that the GOC could not have intended to benefit specific products produced by respondents at the time of bestowal of the wire rod subsidy. Id. In the case of the Xinhua Companies, Xinhua has three factories: one factory makes PC strand, one factory makes aluminum coated steel wire, and another factory makes steel wire. See Xinhua Companies Verification Report at 3. Further, at verification, the verifiers learned that the steel wire and aluminum coated steel wire factories acquired and utilized wire rod inputs during the POI. Id. at 12. Similarly, in the case of the Fasten Companies, the notes to 2008 financial statements indicate that Fasten Steel produced steel wire, stranded steel wires, and wire ropes while Hongyu Metal's product line included high-grade steel wire helical casing hardware. See Fasten Steel's August 26, 2009, questionnaire response at Note 1, Exhibit 6; see also Hongyu Metal's August 26, 2009, questionnaire response at Note 1, Exhibit 6. Thus, given the variety of the respective product lines of the Xinhua and Fasten Companies, we do not find that the GOC intended to benefit specific products produced by respondents at the time of bestowal of the wire rod subsidy. See Racks from the PRC Decision Memorandum at Comment 10.

Furthermore, concerning the Fasten Companies during the POI they shipped subject merchandise to the United States through Fasten I&E. Thus, petitioners fail to explain how the Department can conceivably limit the attribution of the wire rod subsidy to the sales of Fasten Steel and Hongyu Metal when the two entities reported no sales of subject merchandise to the United States during the POI.

Comment 18: Whether the Department Committed a Ministerial Error for the Fasten and the Xinhua Companies Under the Provision of Wire Rod for LTAR Program And Whether the Department Should Correct the GOC Verification Report for Alleged Errors

The GOC argues that the Department erroneously applied the September wire rod benchmark price for an October sale and an August wire rod benchmark price for a September sale in the preliminary calculations for the Xinhua Companies.

The GOC further explains that the Preliminary Determination states that in situations where a respondent purchases from a private trading company but the ownership of the producer was not known, the Department would apply to the wire rod purchases the ratio of wire rod production by SOEs to total wire rod production during the POI, which was equal to 45.91 percent. See 74 FR at 56582. The GOC contends that in the preliminary calculations for the Xinhua Companies the Department did not apply the 45.91 percent ratio to wire rod purchases from trading companies. See the Xinhua Companies' Preliminary Calculations Memorandum for wire rod purchases identified by control numbers 21, 42, 9, 2, 27, 31, 15, 26, 58, 54, and 48 that concern purchases from Shanghai Yehao Steel Co., Ltd.

In addition, the GOC states that Hongsheng reported a return in its wire rod purchases. The GOC argues that for the Preliminary Determination the Department made a ministerial error by excluding this return from its subsidy determination which resulted in overstating the benefit. The GOC argues that for the final determination the Department should include in its subsidy calculation this return because that will offset one of the wire rod purchases made by Hongsheng during the POI.

Lastly, the GOC claims that the Department should correct certain portions of the GOC Verification Report for what it claims are factual inaccuracies. The GOC points out that the Department incorrectly spelled the names of certain institutions and individuals in the report. The GOC also claims that certain passages of the report contain inaccuracies regarding the manner in which the GOC compiled ownership information for the producers of wire rod examined at verification. In its case brief, the GOC provides text that it contends corrects these errors.

Petitioners do not challenge the first clerical error the GOC alleges with respect to the use of incorrect monthly benchmarks for certain months in valuing a subsidy to Xinhua.

Concerning the second alleged error dealing with wire rod sold to the Xinhua Companies by trading companies, petitioners note that the GOC fails to acknowledge that the application of AFA is applicable in this context. Petitioners argue that, given the dearth of information the GOC has submitted to date in response to the Department's information requests on the ownership status of the firms that produced the wire rod that was purchased by the Xinhua Companies during the POI, the Department should not further diminish the subsidies it has calculated to date for the Xinhua Companies.

With regard to the third alleged clerical error, that a product return to a company was wrongly included in a subsidy calculation and should be deducted, petitioners argue that nothing in the Fasten Companies' questionnaire responses or in the Department's verification report identifies a return of wire rod that was included elsewhere in the calculations justifying an offset for the return in calculating subsidies.

Petitioners also argue that there is no justification for the GOC's requested corrections and edits to the Department's verification report. They state that, while the GOC is free to identify perceived misstatements in that report, the Department's report is a document prepared

by the Department that should not be subject to revision by the very company that is the subject of the verification and the report. They argue that some of the GOC's proposed changes are attempts to alter the characterization of what the Department examined at verification and what it found. They maintain that under no circumstances should the Department alter its verification report at this time to adopt respondents' proposed changes.

Department's Position: We agree with the GOC's first argument that we applied the incorrect wire rod benchmark to certain transactions when calculating the benefit to the Xinhua Companies under the provision of wire rod for LTAR program. We have corrected this inadvertent error in the final calculations.

Regarding the GOC's second argument, the GOC correctly notes the Department's approach in instances in which the GOC and the respondent firm are able to identify the trading company that sold wire rod to respondent but are not able to identify the firm that actually produced the wire rod in question. As the GOC notes, in such instances the Department, as FA, pro-rates the benefit using a ratio of input production by SOEs to the total input production during the POI. See LWRP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration.''

However, as explained above, upon further review of the information supplied by the Fasten and Xinhua Companies, we find that the wire rod purchase data supplied by the Fasten Companies and the Xinhua Companies reflect purchases made directly from wire rod producers, as opposed to wire rod trading companies. As a result, the application of FA under the provision of wire rod for LTAR program, as discussed in the Preliminary Determination, is not necessary.

Regarding the GOC's third alleged ministerial error, the transaction in question involves a negative quantity that the Fasten Companies included in the database containing Hongsheng's purchases of wire rod during the POI. In the Preliminary Determination, the Department excluded this transaction from the subsidy calculations. The Fasten Companies now argue for the first time in their case briefs that the transaction in question represents a return and that the Department should in the final determination deduct the negative benefit that would result from utilizing the negative quantity in the LTAR subsidy calculation from the total benefit calculated under the program.

Even if one assumes that the transaction in question involved Hongsheng's return of merchandise sold to it by a GOC authority, then one must conclude that the Department adopted the correct approach in the Preliminary Determination. During the POI, Hongsheng acquired wire rod from an input producer that the Department considers to be a GOC authority, thereby giving rise to a financial contribution in the form of a provision of a good. According to Hongsheng, later on during the POI it returned the merchandise to the GOC authority and, consequently, negated the financial contribution. Absent the provision of a good by a GOC authority, there is no countervailable subsidy. Thus, the Department correctly excluded the transaction at issue from the subsidy calculation and correctly refrained from treating the transaction as an offset to the benefit.

Regarding the GOC's claim that the GOC Verification Report contains factual inaccuracies and should be altered, we disagree. As an initial matter, we regret that we may have misspelled the names of certain individual and institutions. However, our conclusion is that while interested parties are free to contest and present arguments pertaining to the information and observations contained in verification reports, in the form of case and rebuttal

briefs, the verification report itself constitutes the observations and findings of the Department's verifiers and is not a document that is subject to revision by interested parties.

Comment 19: Whether the Department Erred By Including Intra-Company Sales in the Denominator Used in the Net Subsidy Calculation of the Wire Rod for LTAR Program

Petitioners claim that in the Preliminary Determination, the Department made a ministerial error by failing to exclude certain intra-company sales from the denominator used in the net subsidy rate calculation of the wire rod for LTAR program for the Fasten Companies. Petitioners argue that in the final determination the Department should revise wire rod net subsidy calculation and allocate wire rod subsidy to the combined sales of Fasten Steel and Hongyu that do not include intra-company sales. They argue that the Department's established practice is to deduct these intra-company sales in order to avoid double counting. In support of their argument petitioners site to the LWS from the PRC Decision Memorandum at "Attribution of Subsides and Cross-Ownership." Thus, Petitioners argue that the Department should correct its subsidy calculations for the final results to exclude these intra-company sales.

Department's Position: It is the Department's practice to remove intra-company sales from the sales denominators used to calculate net subsidy rates. See, e.g., CWASPP from the PRC Decision Memorandum at "Adjustment to Net Subsidy Rate" section. Therefore, for the final determination, where intra-company sales are present, we have removed them from the sales denominators used to calculate respondents' net subsidy rate. For further information, see the respondents' final calculation memoranda.

Comment 20: The Suitability of the Benchmark Used to Calculate Benefits Under the Policy Lending Program

The GOC takes issue with the benchmark methodology employed by the Department in the Preliminary Determination. The GOC claims that the Department's regulations do not authorize the use of out of country benchmarks for loans. Accordingly, the GOC asserts that the Department's use of regression analysis in the Preliminary Determination to derive the third country interest rate benchmark is arbitrary and not supported by the record of this case.

Regarding the regression analysis itself, the GOC claims that in the Preliminary Determination the Department erred in using variables that consisted of World Bank governance indicators and lending rates published by the IMF for countries classified by the World Bank as lower-middle income countries for the benchmark interest rates calculation. The GOC further claims that the Department's use of a regression analysis to determine a short-term interest rate for China using a composite governance indicator (GI) factor is invalid. The GOC further contends the data from the IMF constitutes an arbitrary collection of lending rates that are in many cases not actually short-term rates and, in some instances do not even reflect business loans. Additionally, the GOC argues that the Department's rationale for excluding negative inflation-adjusted rates from its calculations is arbitrary and unclear. The GOC adds that the Department offered no reasonable explanation for arbitrarily calculating an adjustment spread between short-and long-term rates using U.S. dollar "BB" bond rates for the Preliminary Determination.

Petitioners note that the Department has already addressed and dismissed the GOC's arguments concerning use of out of country benchmarks in previous CVD investigations involving the PRC. See, e.g., OCTG from the PRC Decision Memorandum at Comment 22, Citric Acid from the PRC Decision Memorandum at Comment 7, and Line Pipe from the PRC Decision Memorandum at Comment 15. Petitioners argue that the Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector. Citing OCTG from the PRC, CFS Paper from the PRC, and Tires from the PRC, petitioners point out that the Department has regularly used an external benchmark based on the regression analysis. See OCTG from the PRC Decision Memorandum at Comment 23, CFS from the PRC Decision Memorandum at Comment 10, and Tires from the PRC Decision Memorandum at Comment F. 4. Further, petitioners point out that the GOC has not placed any new information on the record to warrant changes to the Department's Preliminary Determination. Petitioners conclude that the Department's practice of calculating external benchmark interest rates using a regression analysis is appropriate. Therefore, for the final determination petitioners urge the Department to continue using its regression analysis and the out of country benchmark.

Department's Position: With respect to the suitability of using a regression-based methodology that relies on World Bank governance indicators and lending rates to calculate a short-term benchmark interest rate, the GOC only repeats arguments it has raised previously. We continue to disagree with the GOC's argument that the assumptions underlying the benchmark calculation are flawed. This benchmark interest rate is based on several variables, the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC as well as variables that take into account the quality of a country's institutions (as reflected by World Bank governance indicators). We note that the World Bank governance indicators are factors that are not directly tied to state-imposed distortions in the banking sector. Thus, we have continued to rely on the calculated regression-based benchmark first developed in CFS from the PRC and used in recent CVD investigations involving the PRC (e.g., OCTG from the PRC).

Regarding the GOC's objection to the Department excluding inflation adjusted, negative interest rates from the short-term benchmark, as previously explained, the Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially. See, e.g., OCTG from the PRC Decision Memorandum at Comment 25. Therefore, we have continued to exclude negative real interest rates in calculating our regression-based benchmark rates.

We also disagree with the GOC's objection to the Department's derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar "BB" bond rates. The Department has fully addressed the arguments raised by the GOC regarding the use of the U.S. corporate BB bond rate to derive a long-term external benchmark in prior cases. See, e.g., OCTG from the PRC Decision Memorandum at Comment 27. The Department explained that 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of Aaa to Baa and Caa to C- in deriving a probability of default in the stated formula. However, the there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department determined that a uniform

rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy by the Department. As we have received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we are choosing the highest non-investment rate. See OCTG from the PRC Decision Memorandum at Comment 27.

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed. See Citric Acid from the PRC Decision Memorandum at Comment 13. In this instant case, we have also not received any suggested alternatives. As no new arguments have been presented, we will continue to use the BB corporate bond rate for the final determination in any long-term loan calculations or discount rate calculations.

Regarding the GOC's comments on the "bump-up" the Department applied to the long-term benchmark, we find that because the Department has already adopted an additive long-term adjustment, the GOC's argument regarding applying a "bump-up" to the inflation rate is moot. See Citric Acid from the PRC Decision Memorandum at Comment 15,

Comment 21: Whether GOC Policy Lending Is Specific

The GOC argues against the Department's finding in the Preliminary Determination that loans received by respondents in this proceeding from state-owned commercial banks (SOCB) and policy banks were made pursuant to government policies. Citing to section 771(5A)(D)(i) of the Act, the GOC argues that in order for the Department to find de jure specificity, the Department must lawfully determine whether a subsidy exists and if it is explicitly limited by law to an enterprise or industry. The GOC then asserts that in the Preliminary Determination the Department selectively examined various "isolated sentences" from various five-year plans placed on the record. Instead, argues the GOC, the Department should consider the broad scope and context of these documents. Thus, the GOC argues that the record evidence demonstrates that the loans were general-purpose loans that are not countervailable. Citing to the Iron and Steel Policy, Decision 40 and other documents on the record the GOC argues that the GOC did not provide policy loans to the respondents. In the case of the Iron and Steel Policy the GOC disputes the Department's finding that the decree is a GOC directive to Chinese banks to provide funding to the PC strand industry. In the case of the Iron and Steel Policy, the GOC claims that the Department's preliminary finding that the respondents in this proceeding were the recipients of policy lending under Article 16 is incorrect. According to the GOC, Article 16 does not mention preferential lending. The GOC states that Article 16 merely suggests that the GOC intends to consider policies to bolster specific steel projects through "interest assistance" and that there is no evidence on the record that suggests that the respondents in this proceeding were recipients of such policies. Further, according to the GOC, the information on the record does not reflect a directive to benefit the PC strand industry. The GOC explains that Article 16 "does not have the legal or policy effect to direct other authorities such as tax or investment to offer assistance to any steel project but rather expresses the intention of the GOC regarding the development of steel industry in China. Regarding Decision 40, the GOC explains that it references hundreds of projects and therefore is not de jure specific as it is not limited to a single enterprises or industry, pursuant to section 771(D)(i) of the Act.

The GOC also claims that the Memorandum to the file, from Eric B. Greynolds, Program Manager, Office 3, Operations, "Excerpts from Internal Loan Documents of

Mandatory Respondents" (October 26, 2009) (Internal Loan Document Memorandum) in fact supports the argument that the GOC did not provide policy lending to the PC strand industry. The GOC claims that the Department relied on certain statements cited in the memorandum to make its determination, which in fact demonstrate that commercial banks undertake risk assessment, thereby demonstrating that there is no preferential lending extended explicitly to the Chinese steel industry. The GOC also argues that the Department's reference to Chinese banks following the guidance of government policies is misplaced because commercial banks would not forego revenue and abandon standard risk assessment practices in order to extend preferential policies to various enterprises. In summary, the GOC argues that information on the record does not reflect a directive to benefit the PC Strand industry. Thus, the GOC argues that the Department's preliminary factual findings are not supported by substantial evidence.

Petitioners support the Department's finding in the Preliminary Determination that the GOC's lending to the PC strand industry was de jure specific and that the steel industry has been given preferential lending by the GOC at provincial and municipal levels of government. Petitioners contest the GOC's argument that the evidence on the record cited by the Department in the Preliminary Determination represents isolated references to the steel industry in various five-year plans and does not constitute evidence of a program to provide preferential loans to the PC strand industry. Petitioners point out that on the contrary, there is record evidence in various national, provincial, or local policies cited by the Department in the Preliminary Determination that include specific references to promoting the PC strand industry as an "encouraged" industry. Petitioners reiterate that these documents establish preferential treatment of the PC strand industry in China.

Further, petitioners allege that the GOC chose to focus on a few isolated policy documents in its case brief arguments that aimed at making false assertions as to the Department's preliminary finding. Petitioners counter the GOC's claim that the Department found Article 16 being a "directive to banks" and argue that the Department's intention was not to assert that subsidies were provided under this article, but instead to highlight the language in Article 16, which calls for the development of key technology and supporting "key steel projects through various methods." See OCTG from the PRC Decision Memorandum at Comment the OCTG Decision Memorandum at Comment 21. Petitioners add that even though Article 16 is not considered a directive, it is a major policy statement of the GOC and it would be illogical to presume that the government banks would not conform to the policies.

Next, petitioners take issue with the GOC's claim that Decision 40 "does not direct banks to make preferential loans." Petitioners note that in the Tires from the PRC Decision Memorandum at Comment E1, the Department found that that Decision 40 was directed at a specific catalogue, called "The Directory on Readjustment of Industrial Structure," which outlined objectives that encouraged projects by the GOC and described how these projects will be considered by the government. Petitioners contend that this demonstrates the GOC's continued direction of lending to meet its policy goals.

Petitioners dispute the GOC's argument that its various five year plans and other documents do not demonstrate the "specificity" of a policy lending program to the PC strand industry. Petitioners contest the GOC's argument that the evidence on the record cited by the Department in the Preliminary Determination represents "isolated references" to the steel industry in various five-year plans and does not constitute evidence of a program to provide preferential loans to PC strand industry. In support, petitioners point out that there is substantial record evidence in a form of various national, provincial, or local policies cited by

the Department in the Preliminary Determination that include references to promoting preferential treatment of the PC strand industry as an "encouraged" industry. Petitioners reiterate that these documents establish record evidence about preferential treatment of the PC strand industry.

Finally petitioners contest the GOC's argument that the policy lending program is not specific to the PC strand industry. In response to the GOC's claim that the loans were made according to commercial considerations, petitioners point out that the language of the loans themselves provide evidence that the government policies played a large role in granting these loans. Petitioners contend that this demonstrates the GOC's continued direction of lending to meet it policy goals.

Department's Position: We continue to find that loans received by the PC strand industry from SOCBs and policy banks were made pursuant to government directives. We further disagree with the GOC that this program is not de jure specific.

In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals. Where such plans or policy directives exist, then we will find a policy lending program that is specific to the named industry (or producers that fall under that industry). See, e.g., Citric Acid from the PRC Decision Memorandum at Comment 5. In the Preliminary Determination, the Department provided several examples of how governments at the provincial and municipal levels have shown support for the PC strand industry and to respondents in this investigation. Specifically, the Department referenced nine government plans that mention providing support for the steel industry, the PC strand industry, and even particular PS strand producers (including members of the Fasten Companies and the Xinhua Companies). See Preliminary Determination, 74 FR at 56588 – 56589.

In addition, in the Preliminary Determination we explained that the Department has found in past CVD investigations involving the PRC that the GOC implemented the Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the GOC's Eleventh Five-Year Plan. See, Preliminary Determination, 74 FR at 56589, citing to Tires from the PRC Decision Memorandum at Comment E.1, and OCTG from the PRC Preliminary Determination, 74 FR at 47217. We further explained in the Preliminary Determination that Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects that the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies. See 74 FR at 56589. For "encouraged" projects, Decision 40 outlines several support options available to the government, including financing. See Preliminary Determination, 74 FR 56589; see also Tires from the PRC Decision Memorandum at Comment E1.

Furthermore, in the Preliminary Determination, we explained that loan documentation pertaining to the Fasten and Xinhua Companies contain language which reflects the lending banks' conclusions that lending to the PC strand industry is consistent with the GOC's industrial policy goals. See 74 FR at 56589; see also Internal Loan Document Memorandum, of which the public version is on file in room 1117 of the CRU of the Commerce Building.

Thus, taking all this information into account, we continue to find that the GOC's industrial plans clearly indicate state support and, specifically, credit or financing support for the producers of PC strand. As explained in the Preliminary Determination, in such

circumstances, it is the Department's practice to find a policy lending program to be de jure specific to the industry, as described under section 771(5A)(D)(i) of the Act. See, e.g., Citric Acid from the PRC Decision Memorandum at Comment 5.

In regard to the Steel Plant at Article 16, the intent of the Department in citing the plan was not to assert that subsidies in this proceeding were provided for under this plan for this program, but rather to highlight the language in Article 16, which again calls for the development of "key technology" and supporting "key steel projects" through various methods.

Comment 22: Whether Chinese Banks are Government Authorities

The GOC claims that there is no evidence on the record to find that Chinese commercial banks are government authorities that provide a financial contribution to PC strand producers. The GOC argues that in CFS from the PRC and DRAMS from Korea the Department recognized that state ownership alone does not serve as sufficient basis to establish that Chinese banks are government authorities and even found entities with majority government ownership not be government authorities for purpose of applying CVD law. See CFS from the PRC Decision Memorandum at Comment 8; see also DRAMS from Korea Decision Memorandum at "The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002."

The GOC notes that the Department analysis of the banking system in China is distorted because the issue should not be ownership but whether the banks provide services on commercial basis or "fulfill government policies." The GOC further argues that the facts of this case demonstrate that Chinese banks involved in this proceeding operate on market principles and the GOC does not instruct Chinese commercial banks to provide preferential financing to the PC strand industry. Thus, the GOC concludes the Department erred in its Preliminary Determination in treating Chinese commercial banks as government authorities.

Citing to OCTG from the RPC, petitioners argue that the Department previously addressed this argument and dismissed it. See OCTG from the PRC Decision Memorandum at Comment China Decision Memorandum at Comment 20. Petitioners rebut the GOC's argument, by explaining that contrary to the GOC's claims, the Department determined in more recent CVD cases that it is more appropriate to focus on the issue of government ownership rather than on the issue whether banks' activities are commercial in nature because this treatment is more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Id. Petitioners point out that the GOC failed to provide any ownership information that would warrant overturning the Department's preliminary finding. Thus, petitioners argue that the Department should continue to find that government owned banks are government authorities.

Department's Position: The GOC raised the same arguments in OCTG from the PRC. See OCTG from the PRC Decision Memorandum at Comment 20. Our response remains unchanged. The GOC citing, in part to DRAMS from Korea, states that the Department has previously determined that state ownership alone is not sufficient to establish Chinese commercial banks, as government authorities. Reliance on DRAMS from Korea is misplaced because in CORE from Korea, the Department modified its treatment of commercial banks with government ownership with respect to the finding of a financial contribution under section 771(5)(B)(i) of the Act:

> In both the DRAMs Investigation and the CFS Paper Investigation, we accorded different treatment under this section of the Act to government-owned banks that were

> commercial banks and those government-owned banks that acted as policy or specialized banks. Upon further review, we have determined that, with respect to determining whether a government-owned bank is a public entity or authority under the CVD law, it is more appropriate to focus solely on the issue of government ownership and control. This treatment of government-owned commercial banks is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. Furthermore, this treatment of government-owned commercial banks is also more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.

See Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512, January 15, 2009 (CORE from Korea) and accompanying Issues and Decision Memorandum (CORE from Korea Decision Memorandum) at "The GOK's Direction of Credit." Therefore, the Department considers banks that are owned or controlled by the government to be public authorities under the CVD law.

In order to revisit the determination in CFS from the PRC, respondents must provide evidence to warrant a reconsideration of this determination on the Chinese banking sector. For example, the GOC must provide evidence that the government has divested itself of ownership in Chinese banks, demonstrate that real risk assessment is practiced within the Chinese banking sector, address interest rate and deposit rate ceilings and floors set by the government, discuss de jure and de facto reforms within the Chinese banking sector, and address the elimination of policy-based lending within the Chinese banking sector. Such information or argument was not provided in the instant investigation.

Comment 23: Whether The Department Should Apply AFA Available to Unverifiable Information Provided by Xinhua

Petitioners argue that the application of AFA is warranted because, at verification the Xinhua companies were unwilling to provide requested documentation and unable to substantiate: (1) the terms of loans reported by Xingang; (2) electricity payments made by Xingang and Xinyu; and (3) certain grants received by Xingang and Xinyu. Petitioners contend that Xingang failed to report any loans taken prior to 2008 that remained outstanding during the POI in its questionnaire responses and that, at verification, the company was unable to compile the details of the loans taken out in 2007 that were outstanding in 2008 and did not provide requested loan documents for review. They also argue that the Xinhua companies could not provide evidence to verify the electricity purchases made by Xinyu and Xingang during the POI and that grants received by Xingang and Xinyu could not be verified. They also note that the Xinhua companies declined the Department's offer to address outstanding verification issues on February 2, 2010.

Petitioners conclude that, in the final determination, the Department should apply as adverse facts available: (1) the highest calculated rate in any previous proceeding under the policy loans program for the unreported loans received by Xingang; (2) the highest calculated rate in any previous proceeding under the provision of electricity for LTAR program for

electricity provided to Xingang and Xinyu; and (3) the highest calculated rate in any previous proceeding under grant programs for grants received by Xingang and Xinyu.

The Xinhua Companies acknowledge that there were problems at verification with regard to information provided by Xinhua's corporate parents Xingang and Xinyu. They argue that there is no basis for AFA with regard to Xingang for not reporting any loans, explaining that, at verification, the officials explained that Xingang, being a holding company, had no loans and that the two short-term loans it reported were taken out by subsidiaries.

The Xinhua Companies argue that the petitioners' suggestion that the Department apply as AFA for Xinyu's loan the highest net subsidy rate ever found in any previous proceeding is too harsh. They contend that the Department verified the information Xinyu reported for the loans it took out in 2008. They further argue that, with respect to loans taken out in 2007 for which interest was paid in 2008, the Department was able to verify information that permits it to calculate the total amount of interest paid on such loans. They conclude that, using the information Xinyu reported for loans it took out in 2008 and information examined at verification regarding the total amount of interest Xinyu paid in 2008, the Department should devise an AFA rate that better relates to the missing information.

With respect to electricity purchases by the Xinhua companies, the Xinhua Companies argue that the AFA rate applied in the Preliminary Determination should continue to be applied in the final results.

The Xinhua companies also contend that the information provided by Xinyu and Xingang on its various grant programs were not presented to the Department at verification due to time constraints. They argue that any application of AFA should be tempered by the fact that in the Preliminary Determination the Department calculated extremely low individual net subsidy rates for these programs and should not grotesquely magnify the net benefits under these programs in an unreasonable manner.

Department's Position: We agree with petitioners that the application of total AFA is warranted with respect to the Xinhua Companies' use of the policy lending program. As explained above in the "Adverse Facts Available" section, the Xinhua Companies failed to report all of their loans on which interest payments were due during the POI. Furthermore, for Xinhua and Xinyu, the aggregate amount of interest paid during the POI on loans taken out in 2007 constitutes a significant share of the total interest paid during the POI. See the Xinhua Companies Verification Report at 8 – 10. Concerning Xingang, it did not provide the verifiers with any information that would have allowed them to trace any of the loan information contained in Xingang's questionnaire response to its books and records. Id. Therefore, the deficiencies in the loan information supplied by the Xinhua Companies are so great that the application of FA or partial AFA, using the Xinhua Companies' own information, is not appropriate. Therefore, pursuant to the Department's CVD AFA hierarchy, we have computed a single, total AFA rate for the Xinhua Companies that is equal to the total net subsidy rate calculated for the Fasten Companies under the policy lending program.

Concerning the provision of electricity for LTAR, we agree with petitioners that the application of AFA, with regard to the GOC is warranted. As explained above in the "Adverse Facts Available" section, the GOC failed to provide the Department with requested information. As such, we find that the provision of electricity for LTAR program constitutes a financial contribution and is specific under sections 771(5)(D)(iv) and 771(5A)(D)(iv) of the Act. However, we disagree that the Department should apply total AFA when determining

whether respondents received benefits under the program. As explained above in "Federal Provision of Electricity for LTAR" under the "Programs Found To Be Countervailable" section of this determination, subsequent to Preliminary Determination, we obtained additional information from respondents regarding the variable rates they were charged for their electricity usage. In addition, we obtained from the GOC additional electricity rate schedules for municipalities and provinces throughout the PRC. Because we now have this additional information on the record of the investigation, we have revised the approach utilized in the Preliminary Determination. For discussion of the Department's calculation of the benefit, see "Federal Provision of Electricity for LTAR" under the "Programs Found To Be Countervailable" section of this determination.

Regarding the various grant programs received by the Xinhua Companies that petitioners address above, we agree that the application of total AFA is warranted. As explained above in the "Adverse Facts Available" section, in the verification outline, the Department identified certain programs it sought to examine at verification. In the verification outline, the Department further indicated days during which the verification would take place. See the Department's January 21, 2010, Verification Outline at 1 – 2. As indicated in the verification report, due to discrepancies in the information examined at verification, the verifiers concluded the final scheduled day of verification without having completed their examination of this program. See Xinhua Companies Verification Report at 20. As stated in the verification report, the verifiers offered to remain on-site for an extra day in order to allow the Xinhua Companies an opportunity to complete the verification regarding these grant programs, but the Xinhua Companies refused. See the Xinhua Companies Verification Report at 20 (the Department offered to continue the verification on February 2 but the company officials were unwilling to do).

Further, we disagree with the Xinhua Companies that the total AFA rate applied should be tempered by the fact that in the Preliminary Determination the Department calculated extremely low individual net subsidy rates for these programs. When computing the total AFA net subsidy rates computed for these programs, the Department has utilized its standard CVD AFA hierarchy. See LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate" section. The use of the CVD AFA hierarchy results in net subsidy rates for the Xinhua Companies that are higher than those calculated in the Preliminary Determination. However, this fact is the direct result of the Xinhua Companies unwillingness to continue the verification for an extra day. Furthermore, the net subsidy rates calculated for these programs in the Preliminary Determination were based on the assumption that the grant amount information supplied by the Xinhua Companies was reliable. Because we determine that the grant amounts reported by the Xinhua Companies for these programs were not verifiable, there is no basis to compare the rates calculated in the Preliminary Determination to the rates the Department has computed in the final determination.

Comment 24: Whether the Department Should Investigate the PRC's Alleged Undervaluation of its Currency and Find that it Constitutes a Countervailable Export Subsidy

Petitioners argue that the Department should reverse its decision not to initiate an investigation of China's enforced underevaluation of its currency. They argue that, contrary to the Department's finding at initiation, all elements of a countervailable subsidy were alleged and documented in the CVD petition and that the CVD petition explained and documented in

detail how China's currency undervaluation constitutes an export subsidy. They complain that the Department did not explain how the documentation provided by petitioners was insufficient, making it impossible for the petitioners to address the issue.

Petitioners explain that they alleged in the CVD petition that GOC-maintained exchange rates to prevent appreciation of the Chinese currency (RMB) against the U.S. dollar and that the GOC requires foreign exchange earned from export activities to be converted to RMB at the government-prescribed price. They further explain that, when producers in China sell dollars at official foreign exchange banks, as required by law, the producers receive more RMB than they otherwise would if the value of the RMB were set by market mechanisms. Petitioners contend that this enforced undervaluation amounts to a financial contribution in that the GOC's manipulation of its currency to maintain and undervalue RMB represents a direct transfer of funds. They then contend that the program is de facto contingent upon export performance because essentially only exporters receive access to the dollars to convert to RMB. They then argue that a benefit is conferred to the extent that the exporter receives more RMB from the Chinese government in return for the U.S. dollars earned than would be the case if the RMB were not undervalued relative to the U.S. dollar. Petitioners urge the Department to initiate an investigation of China's enforced undervaluation of its currency.

The GOC argues that the Department properly rejected petitioners' request for an investigation of enforced currency undervaluation by the GOC because petitioners did not sufficiently allege elements necessary for the imposition of a countervailing duty and did not support their allegations with reasonably available information. The GOC contends that petitioners have failed to place on the record of this investigation any new factual information beyond the speculation contained in their initial petition.

The GOC supports its position by arguing that the Department has rejected virtually identical arguments in all previous countervailing duty investigations on imports from China, and there is no basis for the Department to change that position here. The GOC cites the investigation of Coated Paper from the PRC Initiation, arguing that the Department examined the very arguments put forward here by petitioners and found them lacking legal and factual justification:

> Petitioners allege that the GOC–maintained exchange rate effectively prevents the appreciation of the Chinese currency (RMB) against the U.S. dollar. Therefore, when producers/exporters in the PRC sell their dollars at official foreign exchange banks, as required by law, the producers receive more RMB than they otherwise would if the value of the RMB were set by market mechanisms. . . . Petitioners describe the benefit conferred as the excess of RMB received, over what would have been received at a market rate ("excess RMB") and alleges specificity within the meaning of Section 771(5A)(B) of the Act by virtue of the fact that 'there is a direct and positive correlation between the export activity/export earnings and the amount of subsidy received.'

See Certain Coated Paper Suitable for High–Quality Print Graphics Using Sheet–Fed Presses from China, 74 FR 53703, 53706 (Oct. 20, 2009) (Coated Paper from the PRC Initiation). The GOC further argues that the Department properly concluded that these claims fail to demonstrate the elements of any countervailable subsidy:

> Section 771(5A)(B) of the Act describes an export subsidy as "a subsidy that is, in law or fact, contingent upon export performance, alone or as 1 of 2 or more conditions." Petitioners have failed to sufficiently allege that the receipt of the excess RMB is contingent on export or export performance because receipt of the excess RMB is independent of the type of transaction or commercial activity for which the dollars are converted or of the particular company or individuals converting the dollars. Consequently, we do not plan on investigating this program because Petitioners have failed to properly allege the specificity element.

Id., 74 FR at 53706.

The GOC concludes that the allegation of "enforced currency undervaluation" simply fails to demonstrate the required elements of a countervailable subsidy under U.S. law, as petitioners here have put forward no new factual information or legal arguments.

Department's Position: As the GOC notes, the Department determined that petitioners' allegations that the GOC manipulates the value of its currency did not provide a sufficient basis upon which to initiate. See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Initiation of Countervailing Duty Investigation, 74 FR 29670 (June 23, 2009) (Initiation) and accompanying Intiation Checklist. Since the Initiation petitioners have not provided, in a timely manner, any new information to further bolster their allegation concerning the alleged subsidy program at issue, nor have they requested clarification of the Department's decision not to initiate. As such, we continue to stand by the Department's decision not to initiation an investigation of the GOC's alleged manipulation of its currency.

Comment 25: Whether Provision of Land by Municipal and Provincial Governments to Respondents Was Countervailable

The GOC argues that the provision of land-use rights to FIEs in Jiangxi Province and the City of Xinyu does not confer a financial contribution because the GOC's sale of such rights does not fall within any categories described by section 771(5)(D)(iii) of the Act. According to the GOC, the Department's finding in the Preliminary Determination that the sale of land use rights is the provision of a good within the meaning of a statue is not adequately reasoned or explained. The GOC claims that the Department's practice is inconsistent with the statue and not supported by the record, therefore, the provision of land cannot be considered a financial contribution.

The GOC also objects to the benchmark used by the Department to measure whether adequate remuneration was received on land sold by the GOC. The GOC contends that the statute requires the Department to consider the use of domestic benchmarks to derive the best possible estimate of land market value in China. The GOC argues that an external land price benchmark, which in this case is a land price in Thailand, is not permissible under the statue because the value of land in another country can be determined only on the basis of the derived demand in that other country.

The GOC adds that even if the Department does not believe that there is a competitive market for land-use rights in China, the GOC claims that the Department should make adjustments to account for many differences in market conditions affecting land values between

what petitioners themselves describe as the "the urban metropolis of Bangkok, Thailand, and the city of Xinyu." See Petitioners' March 16, 2010, Case Brief at 31.

Petitioners reject the GOC's argument that the government's sale of land-use rights is not the provision of a "good" and does not confer a financial contribution under the statute. Petitioners argue that it is appropriate to use an external benchmark to measure adequate remuneration and concur with the Department's selection of land prices in Thailand as the benchmark.

Citing to OCTG from the PRC, Citric Acid from the PRC, Tires from the PRC, and CWP from the PRC, petitioners argue that the Department has previously determined that there is no support for the GOC's claim that a government's provision of land-use rights does not confer financial contribution pursuant to section 771(5)(D)(iii) of the Act. See OCTG from the PRC Decision Memorandum at Comment 15; Citric Acid from the PRC Decision Memorandum at Comment 22; Tires from the PRC Decision Memorandum at Comment H.1.; and CWP from the PRC Decision Memorandum at Comment 22.

According to petitioners the respondent failed to submit any new information that would warrant a change in the Department's final determination. Further, petitioners argue that there is no support for the GOC's claim that land prices in China are consistent with market principles, and in support of their argument petitioners cite to LWTP from the PRC where the Department determined that land prices in China are distorted, not in accordance with market principles, and, therefore, the use of domestic benchmark in China is not warranted. See LWTP from the PRC Decision Memorandum at Comment 12.

Department's Position: The Department's practice of treating land as a good or service is fully consistent with the Act. The Department addressed the same issues raised by the GOC in LWTP from the PRC. In that investigation, the Department explained that it has consistently taken the position that the provision of land is the provision of a good or service and, consequently, a financial contribution under section 771(5)(D)(iii) of the Act. See LWTP from the PRC Decision Memorandum at Comment 12. The Department further explained in LWTP from the PRC that the statutory definition of a financial contribution is written broadly in recognition that governments have a variety of mechanisms at their disposal to confer a financial advantage on specific domestic enterprises or industries. The SAA confirms that the sweep of the statute is intended to be broad to ensure that such mechanisms are subject to the countervailing duty law:

> Section 771(5)(D) lists the four broad generic categories of government practice that constitute a "financial contribution." The examples of particular types of practices falling under each category are not intended to be exhaustive. The Administration believes that these generic categories are sufficiently broad so as to encompass the types of subsidy programs generally countervailed by Commerce in the past, although determinations with respect to particular programs will have to be made on a case-by-case basis.

Id. citing to SAA at 927. We agree with the reasoning set forth in LWTP from the PRC, and adopt that reasoning in response to the arguments raised here.

Further, in LWTP from the PRC, the Department explained that land leases were countervailed by the Department in the past, a fact well known to Congress when it enacted the current CVD law. See LWTP from the PRC Decision Memorandum at Comment 12.

Furthermore, in LWTP from the PRC, the Department explained that it has determined that land prices in the PRC are distorted and, thus, cannot be used as benchmarks. See LWTP from the PRC Decision Memorandum at Comment 12, citing to LWS from the PRC Decision Memorandum at "Government Provision of Land for Less Than Adequate Remuneration" and Comment 10. The Department also determined in LWTP from the PRC that, because of this government involvement and because property rights remain poorly defined and weakly enforced, land prices in China are not in accordance with market principles, as described under 19 CFR 351.511(a)(2)(iii). See LWTP from the PRC Decision Memorandum at Comment 12, citing to LWS from the PRC Decision Memorandum at "Government Provision of Land for Less Than Adequate Remuneration." Therefore, consistent with the Department's practice in LWTP from the PRC, we determine that land values in Thailand provide an accurate benchmark. In determining that Thailand is comparable to China in terms of its prevailing market conditions and, thus, appropriate as our benchmark for land values, the Department analyzed a number of variables, including the economic similarity of Thailand and China in terms of GNI per capita and comparable population density; the perception that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond China; and certain economic and demographic factors. See LWTP from the PRC Decision Memorandum at Comment 12, citing to LWS from the PRC Decision Memorandum at Comment 11.

In the instant investigation, we find that the GOC and the respondent firms have not submitted any information or argument that warrants reconsideration of the Department's previous findings on this matter. Therefore, we have continued to use land prices in Thailand as our benchmark when determining whether the GOC sold land to respondents for LTAR.

Comment 26: Whether the Provision of Electricity Is Not Countervailable Because the Program Provides General Infrastructure Which Does Not Constitute a Financial Contribution

The GOC contends that the Department may not lawfully countervail the provision of electricity in this case because the alleged program constitutes general infrastructure and therefore is not a financial contribution under CVD law or the WTO Agreement on Subsidies and Countervailing Measures. The GOC states that the statute defines financial contribution as "providing goods or services, other than general infrastructure." See section 771(5)(D)(iii) of the Act (emphasis added); see also WTO SCM Agreement, Art. 1.1(a)(1)(iii). The GOC further argues that the record shows that the provision of electricity by the GOC in this case was not specific to the PC Strand industry, as would be required in order to find any program countervailable. See section 771(5A) of the Act. Citing Racks from the PRC, the GOC argues that the Department concluded in a detailed preliminary analysis that the provision of electricity in China does not confer countervailable subsidies.

The GOC urges the Department to follow its long-standing precedent of rejecting petitioners' attempts to claim infrastructure subsidies, arguing that the GOC's provision of electricity to PC Strand producers in this case is general infrastructure and not a financial contribution, and in any event is not specific to the PC Strand industry and therefore not a

countervailable benefit. The GOC cites as authority Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, 51 FR 4206, 4211 (February 3, 1986) (Wire Rod from Saudi Arabia).

The GOC further argues that in the Preliminary Determination, the Department did not find that the GOC has placed restrictions on who may use the power grid and did not specifically find that the power grid was built solely for use by the PC Strand industry; rather, the grid was constructed for use by all companies as well as by the general population, much like the electrical industry which was found not to provide a countervailable benefit in Bethlehem Steel Corp., 223 F. Supp. 2d at 1379-80 (Bethlehem Steel). The GOC states that, in its questionnaire responses in this investigation related to the provision of electricity, it informed the Department that the "uninterrupted (stable), safe, and universal service to the users (in particular residential users) is prioritized as the social responsibility of the grid enterprises."

Finally, the GOC argues that the record evidence also fails to demonstrate that the GOC has given PC Strand producers preferential rates or greater access to the power grids. The GOC states that the only benefits that the PC Strand industry has received from the power grid are those related to the inherent nature and location of the facilities and not from any activity or action of the Government and that, in 2007, the record shows that the NRDC specifically took actions to eliminate all preferential policies even those intended to provide high volume discounts to high energy consuming industries.

The GOC concludes that the Department's preliminary decision to countervail the provision of electricity to the PC Strand industry in China is unlawful and should be reversed in the final determination in this investigation.

Petitioners urge the Department to reject the GOC's position that the preferential provision of electricity to subject producers should not be countervailed as it constitutes general infrastructure and is not specific. They argue that the Department's decision in the Preliminary Determination to countervail the GOC's provision of electricity based on AFA due to the GOC's failure to provide information requested on this program is consistent with the Department's final determinations in Racks from the PRC and OCTG from the PRC, in which the similar refusal of the GOC to provide verifiable information led to application of AFA.

Petitioners contend that, although the GOC asserts that the Department's finding is unlawful, the GOC points to no new information to lead to a different conclusion than that reached in Racks from the PRC and OCTG from the PRC. Petitioners argue that, instead, the GOC argues simply that the record evidence does not demonstrate certain preferences, while ignoring the fact that it has not been forthcoming in supplying critical record evidence on this issue.

Department's Position: As explained above in the "Adverse Facts Available" section, the GOC failed to provide the requested information regarding the provision of electricity for LTAR. As a result the Department is applying AFA and assuming that the provision of electricity by GOC authorities constitutes a financial contribution and is specific under the Act. As such, we need not address the GOC's claims that the provision of electricity constitutes the provision of general infrastructure and, thus, is not countervailable. We note the Department faced the same fact pattern in OCTG from the PRC and reached the same conclusion. See OCTG from the PRC Decision Memorandum at Comment 30.

VII. Recommendation

We recommend that you accept the positions described above.

_____ _____
Agree Disagree

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
Date