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

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China

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Background

On December 14, 2009, the Department of Commerce ("the Department") published the Preliminary Determination of this investigation.[1] The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and/or rebuttal comments from parties:

General Issues
Comment 1 Double Counting/Overlapping Remedies

Company-Specific Issues
Comment 2 Xiamen Municipal Science and Technology Grant Program - Specificity
Comment 3 International Market Developing Fund Grants for SMEs - Specificity
Comment 4 Calculation of Yama's Sales Denominator
AFA

[1] For this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short cites as well as a guide to: (i) acronyms and abbreviations of terms; (ii) acronyms or short cites for responses and department memorandum, and (iii) short cites for court and agency decisions..

Comment 5 Inclusion of Terminated Programs in the AFA Rate Calculation

All Others Rate
Comment 6 All-Others Rate Calculation

Use of Facts Otherwise Available and AFA

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

GOC

For reasons explained in the "Analysis of Comments" section below (Comment 2: Xiamen Municipal Science and Technology Grant Program - Specificity), we find the use of "facts otherwise available" is warranted, pursuant to section 776(a)(2)(A) of the Act, with regard to the specificity determination for this program because the GOC withheld requested information about usage of the program. Because the GOC did not act to the best of its ability by refusing to provide information that would allow for a de facto specificity analysis using accurate and verifiable data, we have employed an adverse inference in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that this program is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.

Changtai

As explained in the Preliminary Determination, Changtai did not provide the requested information necessary to determine a CVD rate.[2] Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, we determine that it is appropriate to base the CVD rate for Changtai on facts otherwise available. Moreover, as explained in the Preliminary Determination, by failing to submit a response to the Department's initial questionnaire, Changtai did not cooperate to the best of its ability in this investigation.[3] Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, to ensure that Changtai does not obtain a more favorable result than had it fully complied with our request for information.

For the final determination and consistent with the Department's recent practice, we are computing a total AFA rate for Changtai, generally using program-specific rates determined for the cooperating respondent or in past cases. Specifically, for programs other than those

[2] See Preliminary Determination, 74 FR at 66093.
[3] Id.

involving income tax exemptions and rate reductions, we will apply the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there is no identical program match within the investigation, we will use the highest non-de minimis rate calculated for the same or similar program in another PRC CVD investigation. Absent an above-de minimis subsidy rate calculated for the same or similar program, we will apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by Changtai. See, e.g., KASR from the PRC IDM at 4-5.

Also, as explained in Lawn Groomers from the PRC Final Determination, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not intend to include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies.[4] The GOC failed to provide verifiable information demonstrating that Changtai is located in Fujian Province and has no facilities or cross-owned affiliates in any other province in the PRC, as requested. Therefore, the Department makes the adverse inference that Changtai has facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs alleged prior to the selection of mandatory respondents.

Loans: For the "Policy Loans to Narrow Woven Ribbons Producers from SOCBs" program, we have applied the highest non-de minimis subsidy rate for any loan program in a prior PRC CVD investigation. This rate was 8.31 percent for the "Government Policy Lending Program." See LWTP from the PRC – Amended Final.

Grants: Yama did not use "State Key Technology Program Fund," "Famous Brands," "Export Assistance Grants," "Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province," and "Technology Development Grants for Enterprises Located in Zhejiang Province" programs. The Department has not calculated above de minimis rates for any of these programs in prior investigations and, moreover, all previously calculated rates for grant programs from prior PRC CVD investigations have been de minimis. Therefore, for each of these programs, we have determined to use the highest calculated subsidy rate for any program otherwise listed, which could conceivably have been used by Changtai. This rate was 13.36 percent for the "Government Provision of Land for Less Than Adequate Remuneration." See LWS from the PRC IDM at 14-18.

Tax Credits and VAT/Tariff Reductions and Exemptions: For the three tax credit and rebate programs,[5] which Yama did not use, we have determined to use the highest non-de minimis rate for any tax credit or rebate program from a PRC CVD investigation. The rate we selected is 1.51 percent, which was the rate calculated for respondent Gold East Paper (Jiangsu) Co., Ltd. ("Gold East") for the "Value-added Tax and Tariff Exemptions on Imported Equipment," program. See CFS from the PRC IDM at 13-14. We are also investigating VAT and tariff reduction programs.

[4] See Lawn Groomers from the PRC Initiation Checklist.

[5] "Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises;" "Preferential Tax Policies for Research and Development for FIEs;" and "Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Equipment.

For three VAT/Tariff Reduction and Exemptions programs which Yama did not use, we are also applying the 1.51 percent rate calculated in CFS from the PRC.[6]

Income Tax Rate Reduction and Exemption Programs: For the six income tax rate reduction or exemption programs,[7] we have applied an adverse inference that Changtai paid no income tax on the return filed during the POI (i.e., calendar year 2008). The standard income tax rate for corporations in the PRC is 30 percent, plus a three percent provincial income tax rate. Therefore, the highest possible benefit for these seven income tax programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (i.e., the seven programs combined provided a 33 percent benefit).

For further explanation of the derivation of the AFA rates, see AFA Calculation Memo. Consistent with this final determination, we will include the following two subsidy programs in the calculation of Changtai's AFA rate:[8]

- Xiamen Municipal Science and Technology Grant Program
- International Market Development Fund Grants for SMEs

For both programs in this investigation, the Department has used the rates calculated for Yama in this investigation (which is 0.39 percent).

Corroboration: The Department's practice when selecting information that is adverse is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[9] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[10] Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."[11] The Department considers information to be corroborated if it has probative value.[12] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department

[6] "Import Tariff and VAT Exemptions for FIEs Using Imported Technology and Equipment;" "Import Tariff and VAT Exemptions for Certain Domestic Enterprises Using Imported Technology and Equipment;" and "VAT Rebate for FIE Purchases of Domestically Produced Equipment."
[7] "Preferential Tax Policies for Township Enterprises;" "Preferential Tax Policies for Enterprises with Foreign Investment" ("Two Free, Three Half" Program"); "Tax Subsidies to FIEs in Specially Designated Areas;" "Preferential Tax Policies for Export-Oriented FIEs;" "Tax Program for High or New Technology FIEs", and "Local Income Tax Exemption or Reduction Program for "Productive" FIEs."
[8] See Post-Preliminary Analysis at 2-4.
[9] See Semiconductors From Taiwan - AD, 63 FR at 8932.
[10] See SAA at 870.
[11] Id.
[12] Id.

need not prove that the selected facts available are the best alternative information.[13]

In the absence of record evidence concerning these programs due to Changtai's decision not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy rate for any PRC program from which Changtai could receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which Changtai could actually receive a benefit. Moreover, Changtai's failure to respond to requests for information has "resulted in an egregious lack of evidence on the record to suggest an alternative rate."[14] Due to the lack of participation by Changtai and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

On this basis, we determine that the AFA countervailable subsidy rate for Changtai is 117.95 percent ad valorem. See AFA Calculation Memo. This rate has changed since the Preliminary Determination because of a reclassification of two subsidy programs. See Comment 5: Inclusion of the Terminated Programs in the AFA Rate Calculation.

Subsidies Valuation Information

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is ten years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[15] No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the

[13] Id. at 869.
[14] See Shanghai Taoen, 360 F. Supp. 2d at 1348.
[15] See U.S. Internal Revenue Service Publication 946 (2008), How to Depreciate Property, at Table B-2: Table of Class Lives and Recovery Periods.

Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard.[16] According to the CVD Preamble, relationships captured by the cross-ownership definition include those where:

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . .Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[17]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[18]

Yama responded on behalf of itself and a Chinese affiliate, Yama Trading, a trading company that supplied inputs to Yama during the POI. We determine that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) exists between Yama and Yama Trading.

The supplier relationship between Yama and Yama Trading may fall under 19 CFR 351.525(b)(6)(iv) (subsidies to cross-owned input suppliers) or 19 CFR 351.525(b)(6)(v) (transfer of subsidies). Because Yama consolidates Yama Trading's sales into its own sales, the attribution of Yama Trading's subsidies to Yama is identical under 19 CFR 351.525(b)(6)(iv) or 19 CFR 351.525(b)(6)(v). Under both sections of the regulations, the attribution of Yama Trading's subsidies is to Yama's unconsolidated sales. Thus, we are attributing any subsidies that Yama Trading received to Yama's unconsolidated sales, which includes Yama Trading's sales (net of inter-company sales).

Yama also identified several other affiliated companies, but the company reported and we verified that these affiliates do not produce subject merchandise and do not provide inputs to Yama.[19] Therefore, because these companies do not fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v), we do not reach the issue of whether these companies and Yama are cross-owned and we are not including these companies in our subsidy calculation.

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[16] See CVD Preamble.
[17] See CVD Preamble, 63 FR at 65401.
[18] See Fabrique, 166 F. Supp. 2d at 601-05.
[19] See YVR at 3-4.

Denominator

For the Preliminary Determination, the Department calculated Yama's CVD rate by attributing the subsidies received by Yama and Yama Trading to the combined sales results of Yama and its affiliate in Hong Kong. For this final determination, we have attributed the subsides received by Yama and Yama Trading to Yama's sales only, consistent with 19 CFR 351.525(b)(6)(i). See Comment 4: Calculation of Yama's Sales Denominator.

Analysis of Programs

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

I. Programs Determined To Be Countervailable

A. Preferential Tax Policies for Enterprises with Foreign Investment ("Two Free, Three Half") Program

Under Article 8 of the *FIE Tax Law*, an FIE that is "productive" and is scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.[20] The Department has previously found this program countervailable.[21]

In the Preliminary Determination, we erroneously found that Yama received an income tax rate reduction under the "Tax Subsides to FIEs in Specially Designated Areas" program. Instead, Yama reported and we verified that the company paid no income tax for tax year 2007, which corresponds to the return filed in 2008. See 19 CFR 351.509(b). This exemption from taxes occurred because Yama was in the second year benefits under the "Two Free, Three Half" program. Yama's exemption from the income tax is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[22] We also determine that the exemption afforded by this program is limited as a matter of law to certain enterprises, i.e., "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yama as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax rate Yama would have paid in the absence of the program (30 percent) with the income tax rate the company actually paid (zero percent). We divided Yama's tax savings during the POI by the company's total sales.

On this basis, we determine that Yama received a countervailable subsidy of 0.71 percent ad valorem under this program.

[20] See GOCQR at G-1.
[21] See, e.g., CFS from the PRC IDM at 11–12 and Citric Acid from the PRC IDM at 15–16.
[22] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

B. Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises

Under Article 9 of the *FIE Tax Law*, the provincial governments have the authority to exempt FIEs from the local income tax of three percent.[23] The Department has previously found this program to be countervailable.[24] In Yama's tax return filed for 2007, it reported not paying any local income tax during the POI. See YSQR1 at Exhibit S-1.

Consistent with the Preliminary Determination, we determine that the exemption from or reduction in the local income tax received by "productive" FIEs under this program confers a countervailable subsidy. The exemption or reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient 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 or reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Yama, we treated the income tax savings enjoyed by the company as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the local income tax rate that the company would have paid in the absence of the program (i.e., three percent) with the income tax rate the company actually paid (zero percent). We divided Yama's tax savings during the POI by the by the company's total sales.

On this basis, we determine that Yama received a countervailable subsidy of 0.07 percent ad valorem under this program.

C. Xiamen Municipal Science and Technology Grant Program

Yama and the GOC reported that Yama received a grant pursuant to Xiamen Municipality's *Measures for Administration of Science and Technology Projects of Xiamen* (Xiakejifa {2008} No. 17).[25] The purpose of this program is to improve the development of new products by promoting scientific and technological achievements, cooperation in production and research, construction of key technology infrastructure platforms, industrialization of high-tech industry, pre-decision research and other relevant scientific and technological activities in the city of Xiamen.[26]

Companies seeking assistance submit applications to the Xiamen Municipal Science & Technology Bureau, which reviews and approves the applications.[27] Under the program regulations, the applicant must: (1) have managers who place a high priority on technology transformation and industrialization; (2) be registered in Xiamen city; (3) show improvement of Xiamen's economic and social development and scientific and technological progress; (4) have

[23] See GOCQR at Exhibit G-1.
[24] See, e.g., CFS from the PRC IDM at 12-13 and Citric Acid from the PRC IDM at 21.
[25] See YSQR3 at 1-6; and GOCSQR2 at 2–9 and exhibit A-1.
[26] See GOCSQR2 at 2.
[27] Id.

employees who have basic scientific and technological knowledge; and (5) have no record of credit problems.[28]

Consistent with the Post-Preliminary Analysis, we determine Yama received a countervailable subsidy during the POI under the Xiamen Municipal Science and Technology Grant program. The grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[29] Moreover, because the GOC withheld requested information about the recipients of grants under this program, we determine that the use of "facts otherwise available" is warranted, pursuant to section 776(a)(2)(A) of the Act. By refusing to provide information that would allow for a de facto specificity analysis using accurate and verifiable data, the GOC has failed to act to the best of its ability and, therefore, we have employed an adverse inference in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that this program is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act. For a full discussion of the Department's AFA determination, see Comment 2, "Xiamen Municipal Science and Technology Grant Program - Specificity," below.

Yama's grant was approved in 2008 and received by the company in that same year. Consistent with 19 CFR 351.524(b)(2), we determine that this non-recurring benefit was less than 0.5 percent of Yama's total sales in 2008. Therefore, we have expensed the entire benefit in the POI, dividing by Yama's total sales.[30]

On this basis, we determine the countervailable subsidy to be 0.39 percent ad valorem for Yama.

D. International Market Development Fund Grants for SMEs

Yama and the GOC reported that Yama received grants from the Xiamen Trade Development Bureau pursuant to *Measures for the Administration of International Market Developing Funds of Small- and Medium-sized Enterprises (Trial Implementation)* (Cai Qi No. 467 (2000)); and *Circular of the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Finance on Printing and Distributing the Detailed Rules for the Implementation of the Measures for the Administration of International Market Developing Funds of Small- and Medium-sized Enterprises*.[31] The purpose of this joint national and local program is to assist SMEs to explore business opportunities in the international market.[32]

Companies seeking assistance submit applications to their Xiamen Trade Development Bureau, which reviews and approves the applications.[33] Under the program regulations, the applicant must have: (1) legal enterprises involved in the import and export businesses; (2) an export value during the previous year of 15,000,000 U.S. dollars or less; and (3) employees who specialize in foreign trade and economic businesses and have definite work assignments and

[28] Id. at 4.
[29] See 19 CFR 351.504(a).
[30] See 19 CFR 351.524(b)(2).
[31] See YSQR3 at 10-12; GOCSQR2 at 15.
[32] See GOCSQR2 at 15.
[33] Id.

market developing plans.[34]

Consistent with the Post-Preliminary Analysis, we determine Yama received a countervailable subsidy during the POI under the International Market Development Fund Grants for SMEs program. The grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[35] We further determine that the grants are specific under section 771(5A) (A) and (B) of the Act because receipt of the grants is contingent upon export performance. See Comment 3, "International Market Development Fund Grants for SMEs – Specificity," for a further discussion of specificity.

Yama's grant was approved in 2008 and received by the company in that same year. Consistent with 19 CFR 351.524(b)(2), we determine that this non-recurring benefit was less than 0.5 percent of Yama's total sales in 2008. Therefore, we have expensed the entire benefit in the POI, dividing by Yama's total sales.[36]

On this basis, we determine the countervailable subsidy to be 0.39 percent ad valorem for Yama.

II. Alleged Programs For Which the Department is Deferring Investigation to Any Future Administrative Review

A. Xiamen Promotion of Domestic Market Grants

Subsequent to our Post-Preliminary Analysis, we verified that certain grants originally reported as having been provided under the International Market Development Fund Grants for SMEs were in fact reported under the Xiamen Promotion of Domestic Market Grants program.[37] For the reasons explained in the Department's Position for Comment 3, we are deferring any possible further examination of these programs to a future administrative review, pursuant to 19 CFR 351.311(c)(2).

III. Program Determined To Be Not Used or To Not Provide Benefits During the POI

A. Jimei District Tax Bonus Prize

Yama and the GOC reported that the company received a grant from the Jimei District Government under the Tax Bonus Prize program during the POI.[38] Yama and the GOC explained that these prizes were awarded to praise and encourage larger tax payers located in Jimei District of Xiamen City.[39]

[34] See GOCSQR2 at 18.
[35] See 19 CFR 351.504(a).
[36] See 19 CFR 351.524(b)(2).
[37] See YVR at 2 and GOCVR at 4.
[38] See YSQR3 at 7-9 and GOCSQR2 at 9-14.
[39] See YSQR3 at 7 and GOCSQR2 at 11.

Based on our analysis, any benefit to Yama under this program would be less than 0.005 percent ad valorem. As such, consistent with our past practice, we would not include this program in our CVD rate.[40] Therefore, without prejudice to whether this is a countervailable subsidy, we determine that Yama received no benefit from this program during the POI.

Based upon responses and factual information submitted by the GOC and Yama, we determine that Yama did not apply for or receive benefits during the POI under the programs listed below.

A. Loan Programs

1. Policy Loans to Narrow Woven Ribbon Producers from State-owned Commercial Banks

B. Grant Programs

2. The State Key Technology Renovation Project Fund

3. Famous Brands Program

4. Export Assistance Grants

5. Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province

6. Technology Grants for Enterprises Located in Zhejiang Province

C. Tax Credits and VAT/Tariff Reductions and Exemptions

7. Import Tariff and VAT Exemptions for FIEs Using Imported Technology and Equipment

8. Import Tariff and VAT Exemptions for Certain Domestic Enterprises Using Imported Technology and Equipment

9. VAT Rebate for FIE Purchases of Domestically Produced Equipment

10. Preferential Tax Policies for Research and Development for FIEs

11. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Equipment[41]

[40] See, e.g., CFS from the PRC IDM at 15.

[41] "Preferential Tax Policies for Research and Development for FIEs" and "Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Equipment" were classified as "Income Tax Rate Reduction and Exemption Programs" in the Preliminary Determination. For the purposes of this final determination, we are reclassifying them as "Tax Credits and VAT/Tariff Reductions and Exemptions Programs."

12. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises

D. Income Tax Rate Reduction and Exemption Programs

13. Preferential Tax Policies for Township Enterprises[42]

14. Tax Subsidies to FIEs in Specially Designated Areas

15. Preferential Tax Policies for Export-Oriented FIEs

16. Tax Program for High or New Technology FIEs

Analysis of Comments

Comment 1: Double Counting/Overlapping Remedies

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,[43] the CAFC specifically held that CVD law does not apply to NMEs. The GOC then states that Congress has explicitly acknowledged that "the CVD law cannot be applied to imports from non-market economy countries."[44] The GOC contends that in GPX, the CIT found that "it is not clear…how the CVD and AD law may work together in the NME context, if at all, and Georgetown Steel explains that at least with respect to the old-style NME countries, the AD statute was intended to cover the ground."[45] The GOC further asserts that the CIT explained that the CVD and NME AD statutes are unclear as to how to account for the overlap between the statutes, but this lack of direction does not allow the Department to disregard the double counting risk resulting from simultaneous application of the CVD and AD statutes.[46] The GOC argues that the GPX decision holds that the Department's earlier reasoning, as applied in CFS from the PRC and subsequent investigations, was unlawful, and the CIT has remanded this reasoning with orders to develop a methodology that avoids double counting. Thus, says the GOC, the Department may not maintain the same reasoning in the final determination of the instant investigation.

The GOC and Yama argue that the Department's application of the CVD law to the PRC, while

[42] "Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises" and "Preferential Tax Policies for Township Enterprises" were classified as "Indirect Tax Credit and VAT Tariff Reduction and Exemption Programs" in the Preliminary Determination. For the purposes of this Final Determination, we are reclassifying them as "Income Tax Rate Reduction and Exemption Programs."
[43] See Georgetown Steel, 801 F.2d at 1318.
[44] See SAA at Vol. 1 at 926.
[45] See GPX, 645 F. Supp. 2d at 1239.
[46] Id.

simultaneously treating it as an NME under the AD law, results in the unlawful imposition of double remedies on Chinese imports. The GOC and Yama contend that the CIT 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.[47]

The GOC and Yama maintain that the CVD remedy is duplicative because, under the NME AD methodology, normal value is determined on the basis of presumptively unsubsidized input values, which accounts for any alleged subsidies to those inputs. The GOC and Yama contend that the CIT found:

> Unlike the {market economy} context where private decision-making is expected to control the setting of prices, the NME AD statute was designed to account for government intervention in an NME country's economy, including resulting price distortion…The NME AD statute overlaps with the functioning of the CVD statute, which is to counteract any unfair advantage gained by government intervention over the manufacture, production, or export of…merchandise imported…into the United States…Thus, the AD and CVD law when applied to NME countries both work to correct government distortion of market prices.[48]

The GOC asserts that the potential risk for double remedies that arises through simultaneous application of the CVD and NME AD statutes has been identified by various expert observers, including the U.S. Government Accountability Office, which found that, "sound economic reasoning suggests that there is potential for domestic subsidies to be double counted in the event that Commerce applies CVDs to NME country products while continuing to use third-country information to calculate antidumping duties on those same products."[49]

The GOC maintains that, to the extent any export subsidies are found in the CVD investigation, a direct adjustment to the AD duties is required under both WTO rules and the U.S. statutory provision implementing those rules.[50] The GOC further explains that these provisions reflect the

[47] See GOC Case Brief, quoting GPX, 645 F. Supp. 2d at 1243.
[48] Id., quoting GPX, 645 F. Supp.2d at 1242.
[49] Id., quoting GAO Report.
[50] The GOC references General Agreement on Tariffs and Trade, Art. VI.5, which states no product may be subject to both AD and CVD remedies to compensate for the same situation of dumping or export subsidization, and section

principle that, when an export subsidy enables a foreign producer to lower the price of its export sale to the United States, this price differential should be reflected only in the CVD rate, and not in the AD rate. In the case of domestic subsidies, the GOC continues, no comparable adjustment is required because such subsidies do not create a differential between home market prices and export prices; rather, they are presumed to lower both prices equally. Accordingly, the GOC states, the AD statute requires no offset for domestic subsidies. The GOC argues that, in Uranium from France AD Final Results, [51] 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. However, the GOC maintains that no comparable methodology exists in NME cases to avoid double counting of domestic subsidies.
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."[52] 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 CIT's direct refutation of this conclusion in GPX, constitute an error directly contradicting U.S. law as interpreted by the federal courts.

The GOC argues the Department cannot require respondents to prove double counting exists. The Department could require petitioners to establish the absence of a double remedy. The GOC 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 CIT decision in GPX. The GOC argues that the CIT'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."[53]

The GOC also 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.[54]

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 the respondents in this investigation, as the amount of any such subsidies are fully captured in the Department's calculation of the respondents' dumping margins using the NME surrogate value methodology in the parallel AD

772(c)(1)(C) of the Act, which provides that the price used to establish export price and constructed export price shall be increased by the amount of any CVD imposed on the subject merchandise to offset an export subsidy.
[51] See Uranium from France AD Final Results, 69 FR at 46505.
[52] See, e.g., OTR Tires from the PRC IDM at Comment A.3.
[53] See GOC Case Brief, quoting GPX, 645 F. Supp. 2d at 1243.
[54] See, e.g., British Steel, 879 F. Supp. at 1316-17.

investigation in this case. The GOC argues that the CIT 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."[55] Based on this, the GOC and Yama contend that the Department should terminate this CVD investigation to avoid the imposition of a double remedy on importers of NWR from the PRC, or it should adjust its calculations in the final determination in the companion AD investigation of NWR to account for the amount of any subsidies found to exist.

Petitioner disagrees with the GOC's and Yama's arguments, asserting that GPX did not find that the Department could not simultaneously apply the CVD law and its NME methodology, but rather issued a remand to the Department to ensure that there is no double counting of the duty remedy. Petitioner notes that the Department submitted its remand results in GPX to the CIT on April 26, 2010, wherein the Department offset the CVD duties against the AD cash deposit rate. Petitioner further asserts that any final decision in GPX is not binding on the Department in this investigation.

Petitioner maintains that, in the GPX Remand, the Department disagreed with the CIT's reading of Georgetown Steel and argued that economic developments in the PRC made it possible for the United States to identify subsidies. Petitioner asserts that the Department further disagreed in the GPX Remand that applying the CVD law and its NME methodology required any alleged legal inconsistencies, while reiterating its position that the AD and CVD law are entirely separate with separate goals.[56]

Department's Position: The GOC and Yama 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 IDM at Comment 2, Citric Acid from the PRC IDM at Comment 2, and KASR from the PRC IDM at Comment 2. Moreover, to the extent respondents consider that an adjustment is warranted to avoid the imposition an actual double remedy, they bear the burden of proposing a manner in which the Department may calculate that adjustment, supported by substantial record evidence.[57]

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 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 . . ."[58] Moreover, GPX did not find that a double remedy necessarily occurs through

[55] See GOC's Case Brief, quoting GPX, 645 F. Supp. 2d at 1243.
[56] See Petitioner Rebuttal Brief, referencing GPX Remand at 8-11, and 19.
[57] See Fujitsu, 88 F.3d at 1040 ("Commerce has reasonably placed the burden to establish entitlement to adjustments on [respondent], the party seeking the adjustment and the party with access to the necessary information.").
[58] See GPX, 645 F. Supp. 2d at 1240.

concurrent application of the CVD statute and NME provision of the AD statute, only that the "potential" for such double counting may exist.[59]

The Department also disputes the GOC's interpretation of and reliance upon Georgetown Steel. In Georgetown Steel, the CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME.[60] The issue in Georgetown Steel was whether the Department could apply CVDs (irrespective of whether any ADs were also imposed) to potash from the Union of Soviet Socialist Republics 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.[61] 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."[62] Noting the "broad discretion" due the Department in determining what constituted a subsidy, the CAFC then deferred to the Department's judgment on the question.[63] Thus, Georgetown Steel did not hold that the Department was free not to apply the CVD law to exports from NME countries, where it was possible to do so. The CAFC simply deferred to the Department's determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

Comment 2: Xiamen Municipal Science and Technology Program - Specificity

The GOC and Yama argue that the Department should not countervail subsidies received under this program because any subsidies are not provided to a specific industry or enterprise. The GOC disputes the Department's finding in the Post-Preliminary Analysis that there was no indication that the GOC had attempted to develop industry usage data. According to the GOC, it was unable to compile the requested data because applicants are not required to provide such details.[64] The GOC maintains that the Department has not disputed that the S&T Program is broadly available to all entities within Xiamen and not limited to any particular industry or sector.[65] The GOC claims that during verification it demonstrated that industry sector information was not requested in the grant applications and that these grants were provided to a broad array of companies.[66]

The GOC argues that the purpose of the S&T Program is to develop new products by promoting

[59] Id. at 1242-43.
[60] See Georgetown Steel, 801 F.2d at 1318.
[61] See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373.
[62] Georgetown Steel, 801 F.2d at 1316.
[63] Id. at 1318.
[64] See GOCSQR4 at 1.
[65] See id. at 2-3.
[66] See GOCVR at exhibit 2.

scientific and technological achievements, cooperation in production and research, construction of key technology infrastructure platforms, industrialization of hi-tech industry, pre-decision research, and other relevant scientific and technological progress in the city of Xiamen.[67] There are no restrictions prohibiting certain types of industries from applying.

Petitioner argues that the GOC withheld information and refused to cooperate with the Department's reasonable requests for information that would allow it to determine whether the S&T Program was de facto specific. Petitioner states that the GOC failed to provide information within its control on industry usage. Accordingly, Petitioner argues that the Department correctly applied an adverse inference and found this program to be de facto specific.

Department Position:

As in the Post-Preliminary Analysis, we find the subsidies given under this program to be de facto specific. The GOC reported that the program is not limited to a particular industry or sectors.[68] The GOC also stated that it does not keep records of approved applications.[69] Instead, according to the GOC, the program is open to a variety of fields. In response to the Department's requests to provide information regarding the assistance provided to the various industries under this program, the GOC responded that it does not routinely maintain this information.[70] The GOC has acknowledged, however, that it retains the approved applications[71] and our review of the application shows that applicants are asked to describe their main product.[72] In a supplemental questionnaire, the Department specifically requested that the GOC prepare previously requested industry usage information, using information about applicants' main products in the approved applications.[73] The GOC responded that firms are not required to fill in their industrial information on the application and, as such, the GOC was unable to provide the information requested by the Department.[74]

Even assuming that the industrial product information is not required in the application, we have no indication that the GOC reviewed the applications or otherwise attempted to develop the requested information regarding industry usage of this program. Furthermore, Yama's application clearly includes this information and at verification, the GOC explained that industry information is used to identify applicants in "high-polluting industries."[75] Moreover, the Department asked to review other companies' applications for assistance under this program at verification, but the GOC declined to permit this on privacy grounds.[76] Thus, we were not able to confirm the GOC's claim that industry information was not included in the applications.

Because the GOC has withheld this information and did not provide evidence to the contrary, we continue to determine that the use of "facts otherwise available" to be warranted, pursuant to

[67] See GOCSQR2 at 2.
[68] See GOCSQR2 at 6.
[69] Id. at 6-8.
[70] Id. at 8.
[71] See GOCSQR2 at 3 and GOCVR at 2-3.
[72] See GOCSQR2 at exhibit A-2.
[73] See GOC Third Supplemental Questionnaire at 1, Questions 2 and 3.
[74] See GOCSQR4 at 1.
[75] See GOCVR at 2.
[76] Id.

section 776(a)(2)(A) of the Act. Moreover, because the GOC did not act to the best of its ability by refusing to provide information that would allow for a de facto specificity analysis using accurate and verifiable data, we have employed an adverse inference in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that this program is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.

Comment 3: International Market Development Fund Grants for SMEs – Specificity

Yama and the GOC argue that the grants given under this program are not contingent upon export performance and, therefore, not de facto specific. Yama and the GOC maintain that the purpose of this program is simply to encourage SME development. Yama notes that its affiliate, Yama Trading, obtained a grant under this program and had no exports during the POI.

The GOC argues that any company located within Xiamen may apply for these grants and that there are no requirements that the company export or plan to export. The GOC contends that the requirements for eligibility are that a company must be able to manage export or import operations and that the value of the company's exports may not exceed 15 million RMB.[77] Moreover, the GOC claims that with the Department's conclusion in its Post-Preliminary Analysis that attending the trade shows "directly resulted" in increased export sales has no basis in the record evidence.[78]

Yama and the GOC argue that two of the nine grants originally reported as being under this program were actually grants given by a local government agency in Xiamen for the "promotion of the domestic market." Therefore, Yama and the GOC argue that they are not related to export promotion and, therefore, not specific under the law.

Department's Position:

We continue to find that these grants are contingent upon export performance and, thus, specific under section 771(5A)(A) and (B) of the Act. Under the program regulations, the applicant must have: (1) legal enterprises involved in the import and export businesses; (2) an export value during the previous year of 15,000,000 U.S. dollars or less; and (3) employees who specialize in foreign trade and economic businesses and have definite work assignments and market developing plans.[79] Yama's applications for assistance show Yama received several grants under this program to offset the costs of attending international trade shows and indicate that the program is designed to attract foreign buyers.[80]

We disagree with the GOC that attending the trade shows did not directly result in increased export sales. As shown on one of its applications placed on the record, Yama reported that it was successful in increasing its export sales at a trade show.[81] Therefore, based on the record

[77] See GOCSQR2 at 17-18.
[78] See Post-Preliminary Analysis at 4.
[79] See GOCSQR2 at 18.
[80] See YSQR3 at Exhibit 5.
[81] See YSQR3 at Exhibit 5, page 6.

evidence, we find that these grants are contingent upon exportation and are, therefore, specific under section 771(5A)(A) and (B) of the Act.

Regarding the two small domestic market promotion grants, we find that because we only learned of this program at verification, therefore, pursuant to 19 CFR 351.311(c)(2), we are postponing any specificity finding until a subsequent administrative review if a CVD order is imposed.

Comment 4: Calculation of Yama's Sales Denominator

Yama argues that the Department should use the sales value booked in the company's consolidated financial statements as the denominator when calculating the CVD rate for Yama in the final determination. These consolidated results include sales data from an affiliate in Hong Kong and reflect the total sales value as billed to the U.S. customer. According to Yama, the Department verified the revised consolidated sales value presented as a minor correction at verification and found no discrepancies. Yama argues that the sales figures in the unconsolidated financial statements show an artificial intra-company transfer price. Furthermore, Yama states, the Department verified actual sales invoices which record the sales value charged by Yama to its unaffiliated customers and tied these sales values to the consolidated financial statements.

Citing CFS from the PRC, Yama argues that the Department has a longstanding practice of using the actual sales value on an FOB basis rather than the intra-company sales value in determining the subsidy margin. Yama points out that Gold East's situation in that case is identical to Yama's: (1) the price on which the alleged subsidy is based differs from the U.S. invoiced price; (2) Yama and its Hong Kong affiliate consolidate their financial statements; (3) the U.S. invoice price that is booked only in the Hong Kong affiliate's unconsolidated financial statement and in the consolidated financial statements of Yama establishes the customs value to which CVD duties are applied; (4) there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the final U.S. price that accompanies the shipment; (5) the merchandise is shipped directly to the United States; and (6) the invoices can be tracked as back-to-back invoices that are identical except for the price.

According to Yama, in CFS from the PRC the Department agreed with Gold East and used the actual sales price to the U.S. customer rather than the intra-company transfer price as the denominator in its calculations. Moreover, Yama states that the Department agreed with Gold East by citing two prior cases: Antifriction Bearings from Thailand, and Uranium from France. In those cases, Yama argues that the Department noted that failure to make the adjustment would result in the collection of CVDs in amounts greatly exceeding the subsidy.

The GOC argues that the Department should use the revised sales revenue amounts provided by Yama as part of minor corrections presented at verification and subsequently verified by the Department.

Department's Position:

We have not used the "consolidated" sales reported by Yama as the denominator in our subsidy calculations for this final determination. Under the Department's regulations at 19 CFR 351.525(a), the Department calculates subsidy rates by dividing the amount of the benefit by the sales value of the products to which the subsidy is attributed under paragraph (b) of section 19 CFR 351.525. The Department's regulations further state that subsidies will normally be attributed to the products produced by the corporation that received the subsidy. See 19 CFR 351.525(b)(6)(i). While exceptions to this rule are provided in 19 CFR 351.525(6)(b)(ii)-(v), Yama and its Hong Kong affiliate do not meet those exceptions. Therefore, we have attributed the subsidies received by Yama and Yama Trading to Yama's unconsolidated sales.[82] See also Lawn Groomers from the PRC Preliminary Determination, 73 FR at 70974, unchanged in Lawn Groomers from the PRC Final Determination.

Yama is correct that the Department has used a different calculation in certain cases when the entered value of the merchandise into the United States differs from the export price from the country under investigation because the sale to the United States is made through an affiliated third-country reseller who marks up the price it pays to the affiliated producer of subject merchandise. See Antifriction Bearings from Thailand and CFS from the PRC IDM at Comment 21. However, contrary to Yama's claim, the Department has not used the consolidated sales reflecting the affiliated reseller's prices, but instead has adjusted the subsidies calculated by the ratio of the sales value of exports from the country under investigation and the sales value to the United States. See CFS from the PRC at 9. The adjustment requires specific verifiable information beyond the consolidated sales, which Yama did not provide. Therefore, we have not made the adjustment.[83]

Comment 5: Inclusion of Terminated Programs in the AFA Rate Calculation

The GOC asserts that in calculating the AFA rate for Changtai, the Department included amounts for the State Key Technology Fund Program and seven Indirect Tax Credit and VAT/Tariff Reduction and Exemption Programs. The GOC claims that the State Key Technology Fund Program was terminated in 2003, long before the POI, and that three of the seven other programs were terminated during the POI. Specifically, these three programs are: (1) Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Equipment; (2) VAT Rebates for FIE Purchases of Domestically Produced Equipment; and (3) Preferential Tax Policies for Township Enterprises. The GOC claims it provided record information proving that these programs were terminated in their entirety.[84] The GOC argues that the termination of these programs qualifies as program-wide changes for purposes of 19 CFR 351.526, and that the Department should adjust its calculation of Changtai's AFA rate accordingly.

Petitioner contends that the rates for these four programs should not be removed from the AFA calculation. According to Petitioner, even if these programs were terminated, there is no record

[82] See CVD Preamble, 63 FR at 65402.
[83] The burden to establish entitlement to an adjustment is on the party seeking the adjustment because that party has access to the necessary information. See SAA at 829; Lawn Groomers from the PRC Preliminary Determination, at 70974, unchanged in Lawn Groomers from the PRC Final Determination.
[84] See GOCQR at 4, 20, 22, and Exhibit O3.

evidence that Changtai did not receive residual benefits from these programs during the POI and afterwards. According to Petitioner, the GOC has not addressed the issue of residual benefits, and the Department has determined in previous CVD investigations that these same or similar programs may provide residual benefits within the meaning of 19 CFR 351.526(d)(1).[85]

Department's Position:

We have not removed these amounts from the AFA rate calculated for Changtai. The Department's treatment of terminated programs is discussed at 19 CFR 351.526(d). Specifically, that regulation states that a program-wide change consists of not only the termination of the program, but also a determination that: (1) no residual benefits continue to be received under the program; or (2) no substitute program has been introduced. In the initial questionnaire issued to the GOC, we asked if there were any anticipated changes regarding the alleged subsidy programs or whether they had been terminated; and if so, to identify and discuss any similar replacement program. In support of its claim that the "Tax Benefits for FIEs" in Encouraged Industries that Purchase Domestic Equipment" program was terminated, the GOC provided a copy of the *Circular On Relevant Issues With Respect to Ceasing Implementation Of Income Tax Credit to Purchase of Domestically Produced Equipment By Enterprises (GUOSHUIFA {2008} No. 52)*.[86] However, the GOC did not address our inquiry regarding the establishment of a replacement program. In the Department's view, the GOC has not demonstrated that the program was terminated without residual benefits or that no replacement program has been introduced.

The GOC also failed to provide this information for both the "State Key Technology Fund" and "VAT Rebates for FIE Purchases of Domestically Produced Equipment" programs. Moreover, the Department has found in other proceedings that the benefits from these subsidy programs may be allocated over time, thus potentially giving rise to residual benefits. See, e.g., OCTG from the PRC IDM at 15 and Citric Acid from the PRC IDM at 17-18. Given the 10-year allocation period in this case, and the claimed termination dates of these two programs (2003 and 2008, respectively), residual benefits could easily exist. Therefore, consistent with 19 CFR 351.526(d)(1), we have not adjusted the cash deposit rate for Changtai.

Finally, regarding the "Preferential Tax Policies for Township Enterprises" program, the Department erroneously identified this as an "Indirect Tax Credit and VAT/Tariff Reduction and Exemption Program" in our preliminary calculation of AFA. Instead, as alleged, this is an income tax rate reduction program.[87] As explained above under "Use of Facts Otherwise Available and Adverse Facts Available" the Department assigns a single, adverse amount of 33 percent to cover all of these types of subsidies, with the result that the AFA rate does not vary with the number of income tax rate reduction programs being investigated. Thus, regardless of whether certain income tax rate reduction subsidies are terminated, the fact that other income tax rate reduction subsidies continue means that we will continue to apply the single adverse rate. In this case, the Department is investigating numerous income rate reduction programs for which there is no termination claim.

[85] See, e.g., Wire Decking from the PRC IDM at Comments 16-20; Lawn Groomers from the PRC Final Determination IDM at Comment 7; Citric Acid from the PRC IDM at Comment 17.
[86] See GOCQR at exhibit O-3.
[87] See NWR Initiation Checklist at 18.

Comment 6: All-Others Rate Calculation

The GOC and Bestpak argue that the Department's simple-average of Yama's preliminary de minimis rate and Changtai's AFA rate, resulted in a punitive all-others rate of 59.49 percent. The GOC and Bestpak contend this all-others rate is unreasonable because it does not give precedence to Yama's verified rate and it effectually applies total AFA, in part, to non-investigated companies. The GOC argues that the principle of reasonableness in selecting an all-others rate is grounded in statute and case law.[88] The GOC also notes that including AFA rates in the all-others rate violates Article 9.4 of the WTO Agreement on the Implementation of Article VI of GATT 1994.[89] The GOC and Bestpak assert that the Department should calculate a reasonable rate by: (1) relying solely on Yama's verified rate as the all-others rate; (2) assigning an all-others rate that represents the lowest net subsidy rate allowed by law, or two percent ad valorem; or (3) adjusting the calculation for certain subsidy programs. Bestpak further asserts that Changtai's rate should not be included in the all-others calculation due to insufficient corroboration. Finally, Bestpak argues that if the Department does not assign Yama's rate as the all-others rate, the case record should be reopened to review additional respondents because the Department did not investigate a large group of exporters within the meaning of section 777A of the Act.

Petitioner disputes these arguments.

Department's Position:

As the Department has found Yama's rate to be greater than de minimis for this final determination, the all-others rate is now Yama's rate. Therefore, since we are not averaging the AFA rate with Yama's calculated rate, Bestpak's and the GOC's comments are moot.

[88] See section 705(c)(5)(A)(i) of the Act; see also, China Kingdom; Shakeproof; Yantai; and De Cecco.
[89] See AB Report on AD Measures – Hot-Rolled Steel from Japan, at paras. 111-130.

Recommendation

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

AGREE ____ DISAGREE ____

_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AUL	Average useful life
CAFC	Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
Changtai	Changtai Rongshu Textile Co., Ltd.
CIT	Court of International Trade
CVD	Countervailing Duty
Department	Department of Commerce
FIE	Foreign-Invested Enterprise
FOB	Free on Board
GOC	Government of the People's Republic of China
IDM	Issues and Decision Memorandum
NWR	Narrow Woven Ribbons
NME	Non-market economy
POI	Period of Investigation
PRC	People's Republic of China
RMB	Renminbi
SMEs	Small- and Medium-sized Enterprises
SOE	State-Owned Enterprise
SOCB	State-Owned Commercial Bank
S&T	Science and Technology
VAT	Value-Added Tax
WTO	World Trade Organization
Yama	Yama Ribbons and Bows Co., Ltd.
Yama Trading	Xiamen Yama Import and Export Co., Ltd.

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GOCQR	Response of the Government of the People's Republic of China to the Department's Initial Questionnaire (October 19, 2009)
GOCSQR2	Response of the Government of the People's Republic of China to the Department's Second Supplemental Questionnaire (December 8, 2009)
GOCSQR4	Response of the Government of the People's Republic of China to the Department's Fourth Supplemental Questionnaire (January 6, 2010)
GOC Case Brief	Case Brief of the Government of China (June 1, 2010)
	Petitioner
Petitioner Rebuttal Brief	Narrow Woven Ribbons from the People's Republic of China: Rebuttal Brief of Berwick Offray LLC and its Wholly-owned Subsidiary Lion Ribbons Co. (June 7, 2010)
	Yama
YSQR1	Yama's Response to the Department of Commerce's Initial Supplemental Questionnaire (November 13, 2009)
YSQR2	Yama's Response to the Department of Commerce's Second Supplemental Questionnaire (November 23, 2009)
YSQR3	Yama's Response to the Department of Commerce's Third Supplemental Questionnaire (December 8, 2009)
	Department
AFA Calculation Memo	Memorandum to the File, "Adverse Facts Available Rate" (July 12, 2010)
GOCVR	Memorandum to Susan H. Kuhbach, Office Director, entitled Verification Report of the Xiamen Municipal Government of the People's Republic of China
YVR	Memorandum to Susan H. Kuhbach, Office Director, entitled Verification Report: Yama Ribbons and Bows Co., Ltd. (March 17, 2010)
NWR Initiation Checklist	NWR with Woven Selvedge from the People's Republic of China: Office of AD/CVD Enforcement Initiation Checklist (August 6, 2009)

Post-Preliminary Analysis	Memorandum from Scott Holland and Anna Flaaten, International Trade Analysts, to Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, "Post-Preliminary Findings for Additional Subsidy Programs" (January 20, 2010).
GOC Third Supplemental Questionnaire	Letter from Susan H. Kuhbach to Ministry of Commerce People's Republic of China Re: Countervailing Duty Investigation: *Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China* (December 16, 2009) at 1, Questions 2 and 3

III. LITIGATION TABLE

Short Cite	**Cases**
British Steel	British Steel plc v. United States, 879 F. Supp. 1254, 1316-17 (CIT 1995)
China Kingdom	China Kingdom Import & Export Co., Ltd. v. United States, 507 F. Supp. 2d 1337, 1363 (CIT 2007)
Fabrique	Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d. 593 (CIT 2001)
Georgetown Steel	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)
Fujitsu	Fujitsu Gen. Ltd. v. United States, 88 F.3d 1034 (Fed. Cir. 1996).
GPX	GPX Int'l Tire Corp. v. United States, 645 F. Supp. 2d 1231 (CIT 2009)
GPX Remand	Final Results of Redetermination Pursuant to Remand, GPX International Tire Corporation v. United States (April 26, 2010).
Shakeproof	Shakeproof Assembly Components, Div. of Ill. Toolworks, Inc. v. U.S., 268 F.3d 1376, 1382 (Fed. Circ. 2001)
Shanghai Taoen	Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339 (CIT 2005)
Yantai	Yantai Oriental Juice Co., et al. v. U.S., 27 CIT 477 (CIT 2003)
De Cecco	F.LLI De Cecco di Filippo Fara S. Martino S.p.A. v. U.S., 216 F.3d 1027, 1032 (Fed. Cir. 2000)

IV. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

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

Short Cite	Administrative Case Determinations
	AFBs - Thailand
Antifriction Bearings from Thailand	Ball Bearings and Parts Thereof from Thailand; Final Results of Countervailing Duty Administrative Review, 57 FR 26646 (June 15, 1992)
	CVD Preamble
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)
	Citric Acid and Certain Citrate Salts - PRC
Citric Acid from the PRC	Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (Apr. 13, 2009)
	Coated Free Sheet Paper – PRC
CFS from the PRC	Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007)
	Kitchen Appliance Shelving & Racks – PRC
KASR from the PRC	Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009)
	Laminated Woven Sacks – PRC
LWS from the PRC	Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008)
	Lightweight Thermal Paper – PRC
LWTP from the PRC – Amended Final	Lightweight Thermal Paper from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 70958 (November 24, 2008)
	Off-Road Tires - PRC
OTR Tires from the PRC	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 40485 (July 15, 2008)

	Oil Country Tubular Goods – PRC
OCTG from the PRC	Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009)
	Semiconductors - Taiwan
Semiconductors From Taiwan - AD	Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998)
	Tow-Behind Lawn Groomers and Certain Parts Thereof - PRC
Lawn Groomers from the PRC Initiation Checklist	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation, 73 FR 42324 (July 21, 2008) and Accompanying Initiation Checklist
Lawn Groomers from the PRC Preliminary Determination	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof 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 70971 (November 24, 2008)
Lawn Groomers from the PRC Final Determination	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009)
	Carbon Steel Wire Rod – Czechoslovakia
Wire Rod from Czechoslovakia	Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984)
	Wire Decking - PRC
Wire Decking from the PRC	Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32902 (June 10, 2010)
	Uranium - France
Uranium from France	Low Enriched Uranium from France, 66 FR 65901 (December 21, 2001)
Uranium from France AD Final Results	Notice of Final Results of First Antidumping Administrative Review: Low Enriched Uranium From France, 69 FR 46501 (August 3, 2004)
	Narrow Woven Ribbons - PRC
Preliminary Determination	Narrow Woven Ribbons with Woven Selvedge From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final

	Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 66090 (December 14, 2009)

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

Short Cite	**Full Name**
AB Report on AD Measures – Hot-Rolled Steel from Japan	United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, Report of the Appellate Body, WT/DS 184/AB/R (July 24, 2001), at paras. 111-130.
GAO Report	United States Government Accountability Office, US-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties, GAO-05-474 (June 2005)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)