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Investigation
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DATE: September 10, 2010

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
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 Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe ("Seamless Pipe") from the People's Republic of China

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Background

On March 1, 2010, the Department of Commerce ("the Department") published the Preliminary Determination of this investigation.[1] On August 13, 2010, the Department released the Hengyang Post-Preliminary Analysis and the TPCO Post-Preliminary Analysis. The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits from the programs under investigation. 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 in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

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

Use of Facts Otherwise Available and Adverse Facts Available

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.

For this final determination, we find that we must rely on facts available in eight areas. First, with respect to the provision of steel rounds for LTAR, the GOC withheld certain information on the respondents' steel rounds producers necessary for determining whether the producers are "authorities." Second, also with respect to the provision of steel rounds for LTAR, the GOC failed to provide requested information regarding the extent of state ownership in the industry producing steel rounds in the PRC. With respect to electricity for LTAR, the GOC withheld necessary information on how electricity cost increases are reflected in retail price increases. In respect to certain grants received by TPCO, the GOC failed to provide information that we requested on the grants. Regarding CRC China, we found that the GOC, and Hengyang, failed to provide complete information on CRC China or its subsidiaries. With respect to the provision of coking coal for LTAR, the GOC withheld necessary information that we requested, including supplier ownership and related documents, identification of government or CCP officials, and other information regarding the potential role of CCP officials in a company's decision making process. With respect to the export restrictions on coke, the GOC withheld necessary information on, among other areas, the basis for the coke export restrictions; domestic policies to regulate domestic production of coke; statistical data on coke exports, imports, and production in the PRC; and the application process for allocations under the coke export quota. In regard to deed tax exemptions, the GOC failed to provide the requested information concerning these exemptions in the GQR or subsequent questionnaire responses. We address each of these findings below.

Whether Individual Steel Rounds Suppliers are "Government Authorities": In the Preliminary Determination, we found that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available."[2] Moreover, we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information because the GOC did not provide information we requested and did not explain why it could not provide the information. This included information on the suppliers' ownership; owners, board members, or managers; corporate decision-making process; and shareholder rights, priorities, and privileges.[3] Consequently, an adverse inference is warranted in the application of facts available.[4] Circumstances have not changed since the Preliminary Determination.

With respect to the GOC's failure to provide requested information about ownership of the producers of steel rounds purchased by the respondents, we are assuming adversely that all of the

[2] See sections 776(a)(1) and (a)(2)(A) of the Act and Preliminary Determination at 9165-67.
[3] Id.
[4] See section 776(b) of the Act.

respondents' non-cross-owned suppliers of steel rounds are "authorities."

Extent of State Ownership in the PRC Steel Rounds Industry: In the Preliminary Determination, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information and determined that an adverse inference was warranted in the application of facts available.[5] Circumstances have not changed since the Preliminary Determination. Therefore, for the reasons discussed in the Preliminary Determination, we are continuing to use an adverse inference in applying facts available.

Based on the GOC's failure to provide the requested information about the production and consumption of steel rounds or billets generally, we determine that the GOC has failed to act to the best of its ability and, consequently, that an adverse inference is warranted in accordance with section 776(b) of the Act. With respect to the GOC's failure to provide requested information about the production and consumption of steel rounds or billets generally, we are assuming adversely that the GOC dominates the market in the PRC for this input. Accordingly, it is reasonable to conclude that the market for this input is significantly distorted, and, hence, that use of an external benchmark is warranted.

Electricity: In the Preliminary Determination, we found that the GOC did not provide a complete response to the Department's InitQ regarding the alleged provision of electricity for LTAR.[6] Specifically, we requested that the GOC explain how electricity cost increases are reflected in retail price increases. The GOC responded that it was gathering this information, but it did not request an extension for submitting this information after the original questionnaire deadline date. On January 14, 2010, we reiterated our request for this information and notified the GOC that this information would be accepted if the GOC submitted it by January 25, 2010. However, the GOC's subsequent supplemental questionnaire responses did not address the missing information. Accordingly, necessary information is not on the record.

Based on the GOC's withholding of the requested information, we determine that the GOC has failed to act to the best of its ability and, consequently, that an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we are assuming that in providing electricity to the respondent companies, the GOC is providing a financial contribution within the meaning of section 771(5)(D) of the Act that is specific within the meaning of section 771(5A) of the Act.

GOC – TPCO's Other Subsidies: In the Preliminary Determination, we found certain subsidies countervailable.[7] We requested that the GOC provide information about these grants in the January 27, 2010 supplemental questionnaire. Although the GOC responded that it was gathering this information, it did not request an extension from the Department for submitting this information, nor did it submit the information in a timely manner.

Based on the GOC's refusal to provide the requested information concerning these grants, we find that necessary information is not on the record and that the GOC did not provide requested

[5] See Preliminary Determination at 9165-67.
[6] Id. at 9167-68.
[7] Id. at 9168.

information by the submission deadline. Accordingly, the use of facts otherwise available is appropriate. See sections 776(a)(1) and (2)(B) of the Act. Also, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not respond by the deadline dates, nor did it explain why it was unable to provide the requested information. As a result, we determine that an adverse inference is warranted in the application of facts available. See section 776(b) of the Act.

We determine that these subsidies are 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. See 19 CFR 351.504(a). We determine, in the absence of a response from the GOC, that the subsidies received under this program are limited to TPCO. Hence, we find that these subsidies are specific under section 771(5A)(D)(i) of the Act.

CRC China: In the Hengyang Post-Preliminary Analysis, we found that the GOC, and Hengyang, failed to provide complete information on CRC China or its subsidiaries.[8] Thus, we had no information to determine the ownership structure of CRC China or its subsidiaries, or to determine whether CRC China or its subsidiaries received countervailable subsidies. We also could not determine whether CRC China and/or its subsidiaries have other cross-owned affiliates (e.g., producers of seamless pipe) that received countervailable subsidies. We received no timely filed information since the Hengyang Post-Preliminary Analysis.[9]

With respect to CRC China and its subsidiaries, we determine that necessary information is not on the record, that Hengyang and the GOC have not provided necessary information, and, thus, that we must rely on "facts available." See sections 776(a)(1) and (a)(2)(A) and (B) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information because the GOC withheld requested information about CRC China, its subsidiaries, and their participation in subsidy programs. Consequently, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act.

In applying an adverse inference, the statute permits the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation under subtitle IV; (3) any previous review under section 751 of the Act or determination under section 753 of the Act; or (4) any other information placed on the record. See section 776(b)(4) of the Act.

With respect to the GOC's failure to provide responses to questions from the original questionnaire about CRC China's ownership structure, we are assuming adversely that CRC China and its subsidiaries identified by Hengyang are cross owned with Hengyang. We are basing this on Hengyang's statements on the record that CRC China is the ultimate owner of the subsidiaries that have directly owned stakes in the responding Hengyang companies.[10]

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8 See Hengyang Post-Preliminary Analysis at 3, 5-8.

9 As we discuss below in Comment 22, on June 2, 2010, Hengyang attempted to submit information on CRC China in response to the Hengyang First Supplemental Questionnaire. We rejected this submission because it was untimely.

10 See HQR at Volume 5, pages 5-6.

Further, with respect to the GOC's failure to provide information on subsidies that CRC China and its subsidiaries received, we are assuming adversely that CRC China and its subsidiaries received countervailable subsidies. We are basing this on our findings in the Preliminary Determination, the Hengyang Post-Preliminary Analysis, and this final determination that the respondents in this investigation have received countervailable subsidies under investigation.

With respect to the GOC's failure to provide information on subsidies that CRC China and its subsidiaries received, we are assuming adversely that CRC China and its subsidiaries received countervailable subsidies. We are basing this on our findings in the Preliminary Determination, Hengyang Post-Preliminary Analysis, TPCO Post-Preliminary Analysis, and this final determination that the respondents in this investigation received subsidies under investigation, and that those subsidies are countervailable.

We determine that CRC China together with its subsidiaries benefitted from all countervailable programs that at least one respondent in this investigation has used because we do not have information on the record concerning which programs CRC China and its subsidiaries actually used, but do have information that exporters or producers of seamless pipe and their cross-owned companies did use and benefit from these programs. For each of these programs, we are applying the highest rate that we calculated for that program for the responding Hengyang companies as a whole, or for the other respondent, TPCO. Specifically, we are applying the highest calculated rate for the identical program in this investigation if either Hengyang or TPCO used the program.

Whether Individual Coking Coal Suppliers Are Government "Authorities": In the Hengyang Post-Preliminary Analysis, we found that for suppliers the GOC identified as having some direct corporate ownership or less-than-majority state ownership, the GOC failed to provide articles of association for each level of ownership back to the ultimate individual or state owners.[11] For these suppliers and suppliers that the GOC claimed are directly owned 100 percent by individuals, the GOC failed to identify the owners, members of the board of directors, or managers who were also government or CCP officials during the POI.[12]

In addition to not identifying any government and CCP officials who were owners, members of the board of directors, or managers of the coking coal suppliers during the POI, the GOC also failed to answer other questions about the CCP that are relevant to our determination of whether the suppliers are government authorities within the meaning of section 771(5)(B) of the Act.

Based on the GOC's refusal to provide the information we requested,[13] we determine that the GOC has withheld necessary information that we requested and, thus, that the Department must rely on "facts available" in making our determination.[14] Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information because the GOC did not make an effort to obtain the information we requested.

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[11] See Hengyang Post-Preliminary Analysis at 18-19. At pages 10-11 of the G4SR, the GOC stated, "{t}he GOC believes that this request creates an unreasonable burden on the GOC to prove the ownership of the producers."
[12] See Hengyang Post-Preliminary Analysis at 18-19.
[13] For a discussion of questions asked to, and unanswered by the GOC, see Hengyang Post-Preliminary Analysis at 13-19.
[14] See sections 776(a)(1) and (a)(2)(A) of the Act.

Consequently, an adverse inference is warranted in the application of facts available.[15] Thus, we determine, as AFA, that all of Valin Xiangtan's non-cross-owned suppliers of coking coal are "authorities" within the meaning of section 771(5)(B) of the Act. We also determine that cross-owned seamless pipe producers have received a financial contribution from the government in the form of the provision of a good (i.e., coking coal).[16]

Export Restrictions on Coke: In the Preliminary Determination, the Department found export restrictions on coke to be not countervailable based on an initial analysis of information on the record at the time.[17] After the Preliminary Determination, we requested additional information on this program from the GOC. The GOC failed to answer certain questions from the supplemental questionnaires, which we described in the TPCO Post-Preliminary Analysis and Hengyang Post-Preliminary Analysis.[18]

In the TPCO Post-Preliminary Analysis and Hengyang Post-Preliminary Analysis, we found that the GOC withheld necessary information that was requested of it and concluded that we must rely on "facts available."[19] Further, we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and determined that an adverse inference was warranted in the application of facts available.[20] Circumstances, and thus our analysis, have not changed since the Hengyang and TPCO Post-Preliminary Analyses.

Based on the GOC's refusal to provide the information we requested, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our final determination. See sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information because it should have been able to obtain the requested information, but failed to provide it. Thus, we determine that an adverse inference is appropriate under section 776(b) of the Act because in deciding not to cooperate, the GOC has failed to act to the best of its ability to comply with our repeated requests for information.

In drawing an adverse inference, we determine that the GOC's export restraints on coke constitute a financial contribution (i.e., provision of goods) to PRC producers of downstream goods that incorporate coke within the meaning of sections 771(5)(B) and (D)(ii) of the Act. Moreover, as an adverse inference, we determine that GOC's export restraints on coke are specific to producers of seamless pipe in the PRC within the meaning of section 771(5A) of the Act. Accordingly, we determine that, through these export restraints, the GOC is providing inputs to downstream producers of seamless pipe.

Deed Tax: In the Hengyang Post-Preliminary Analysis, we determined that Hengyang Valin and

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[15] See section 776(b) of the Act.
[16] See section 771(5)(D)(iii) of the Act and 19 CFR 351.525(b)(6)(ii).
[17] See Preliminary Determination at 9179.
[18] See TPCO Post-Preliminary Analysis at 3-9; see also Hengyang Post-Preliminary Analysis at 25-30.
[19] See TPCO Post-Preliminary Analysis at 9; see also Hengyang Post-Preliminary Analysis at 30.
[20] See TPCO Post-Preliminary Analysis at 9; see also Hengyang Post-Preliminary Analysis at 31.

Valin Xiangtan each received benefits under this program.[21] Eligibility for receiving the benefit for both Hengyang Valin and Valin Xiangtan came from being new enterprises formed by the merger or restructuring of other companies, and having land transferred to them from former SOEs involved in the merger or restructuring. We asked the GOC to update its response to the initial questionnaire regarding the benefits received by Hengyang Valin and Valin Xiangtan. However, the GOC stated that it has no record of either company receiving benefits from this program and, therefore, did not provide a response to any parts of the original questionnaire with respect to this program.[22]

Because the GOC withheld the requested information concerning these exemptions, necessary information is not on the record. Accordingly, the use of facts otherwise available is appropriate.[23] Also, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information.[24] The GOC stated that it had no records that the respondents received benefits under this program, but did not respond to the general program questions in Appendix 1 of the original questionnaire to account for Hengyang's reported use of the program.[25]

We determine that these deed tax exemptions confer a countervailable benefit on Hengyang. The deed tax exemptions are a financial contribution in the form of revenue forgone.[26] In the absence of a response from the GOC, we find, as an adverse inference, that the subsidies received under this program are limited to Hengyang. Hence, we find that these subsidies are specific under section 771(5A)(D)(i) of the Act.

Government Policy Lending, TPCO: In its InitQ at Section III A-1, the Department requested that TPCO "report all loans to your company from banks or lending institutions on which interest payments were outstanding during the POI." At verification, TPCO identified certain loans that had not been included in its questionnaire responses. TPCO and TPCO International failed to report loans that had principal balances that were paid off during the POI.[27] We verified the total principal of these loans, as well as the reported information for these companies' remaining loans.[28] However, because these loans were omitted in the questionnaire responses, we did not have a full understanding of the loans provided to these companies until verification, at which point it was too late in the proceeding to request and analyze further information, if necessary, to fully evaluate the loans in question.

Based on TPCO's failure to report these loans, we determine that TPCO withheld information that the Department had requested. Accordingly, the use of facts otherwise available is appropriate.[29] Furthermore, TPCO failed to act to the best of its ability because it did not report information that was in its possession and, consequently, an adverse inference is warranted in

[21] See Hengyang Post-Preliminary Analysis at 21-23.
[22] See G4SR at 1.
[23] See sections 776(a)(1) and (a)(2)(B) of the Act.
[24] See section 776(b) of the Act.
[25] See G4SR at 1.
[26] See section 771(5)(D)(ii) of the Act.
[27] See TPCO Verification Report at Exhibit 1-A and 1-E.
[28] See TPCO Verification Report at 9-10.
[29] See section 776(a)(2)(A) of the Act.

accordance with section 776(b) of the Act.

To determine an AFA rate to apply to TPCO's initially-unreported loans, we are assigning the highest calculated rate for the policy lending program as a whole for Hengyang or for TPCO. We are weight-averaging this rate with the calculated rate for TPCO's reported loans based on the total principal amount outstanding during the POI.

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."[30] 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."[31]

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 concerning the subject merchandise."[32] The Department considers information to be corroborated if it has probative value.[33] 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 need not prove that the selected facts available are the best alternative information.[34]

Steel Rounds for LTAR

To corroborate the Department's treatment of the companies that produced the steel rounds and billets purchased by the mandatory respondents as authorities and our finding that the GOC dominates the domestic market for this input, we are relying on CWLP from the PRC. In that case, the Department determined that the GOC owned or controlled the entire hot-rolled steel industry in the PRC.[35] Evidence from the Iron and Steel Works of the World Directory 2007 shows that many steel producers in the PRC are integrated, producing both long products (rounds and billets) and flat products (hot-rolled steel).[36] Consequently, the finding from CWLP from the PRC is relevant and government ownership in the hot-rolled steel industry is a reasonable proxy for government ownership in the steel rounds and billets industry. Further, the finding from CWLP from the PRC is reliable because the POI for CWLP from the PRC (i.e., 2007) is

30 See Semiconductors From Taiwan - AD at 8932.
31 See SAA accompanying the URAA, H. Doc. No. 103-316,, at 870 (1994).
32 See e.g., SAA, at 870.
33 See e.g., SAA, at 870.
34 See e.g., SAA, at 869.
35 See CWLP from the PRC IDM at Comment 1.
36 See Steel Rounds Memo.

proximate to the POI of this investigation.[37] Thus, the finding provides a reliable representation of the GOC hot-rolled steel industry over this time period.

Electricity

Regarding the GOC's provision of electricity, we are relying for corroboration purposes on the Department's finding regarding the GOC's provision of electricity for LTAR in KASR from the PRC. Specifically, in KASR from the PRC, the Department drew an adverse inference under section 776(b) of the Act and determined that the GOC provided a financial contribution that is specific.[38] Therefore, the finding from KASR from the PRC is relevant because it covers the same allegation (i.e., the GOC's provision of electricity). Furthermore, the finding is reliable because the POI in KASR from the PRC (i.e., 2007) is proximate to the POI in this investigation.[39]

Subsidies Valuation Information

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. IRS's 1977 Class Life Asset Depreciation Range System.[40] 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) direct that the Department will attribute subsidies received by certain other companies to the combined sales of the recipient and other 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 Department's regulations states that this standard will normally be met where there is a majority voting ownership 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. According to the CVD Preamble, relationships captured by the cross-ownership definition include those where

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[37] See CWLP from the PRC IDM at 1.
[38] See KASR from the PRC IDM at 5-6 and Comment 11.
[39] Id. at 1.
[40] See U.S. IRS Publication 946 (2008), How to Depreciate Property, at Table B-2: Table of Class Lives and Recovery Periods.

> 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.[41]

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.[42]

Our attribution analysis for each company is listed below.

TPCO

TPCO responded to the Department's original and supplemental questionnaires on behalf of itself, TPCO Iron, an input supplier, Yuantong, a company involved in the production of subject merchandise, TPCO International, a trading company that sells subject merchandise, and Charging, an input supplier. Consistent with the Preliminary Determination, we determine that these companies are "cross-owned" with TPCO within the meaning of 19 CFR 351.525(b)(6)(vi) because of TPCO's substantial ownership position in each of them.[43]

Consistent with the Preliminary Determination and pursuant to 19 CFR 351.525(b)(6)(iii), we are attributing subsidies received by TPCO to the consolidated sales of TPCO and its subsidiaries (net of inter-company sales).[44] TPCO Iron, Yuantong, and Charging are consolidated into TPCO's sales; thus, we are attributing subsidies received by TPCO Iron, Yuantong, and Charging to TPCO's consolidated sales (net of inter-company sales).[45] For TPCO International, we have cumulated TPCO International's subsidy benefits with TPCO's subsidy benefits. See 19 CFR 351.525(c). We have used TPCO's consolidated sales net of inter-company sales as the denominator for subsidies to TPCO International.[46]

We address parties' comments on the attribution of subsidies to TPCO in Comment 29, below.

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41 See CVD Preamble at 65401.
42 See Fabrique.
43 See Preliminary Determination at 9168.
44 Id.
45 Id.
46 Id.

Hengyang

In its HQR, Hengyang filed questionnaire responses on behalf of Hengyang MPM, Hengyang Trading, Hengyang Valin, Resources Steel, Special Pipe, Xigang Group, and Xigang Seamless. We addressed the responses for these companies in the Preliminary Determination. In its February 23 Response, Hengyang filed questionnaire responses on behalf of Hunan Valin, Valin Group, Valin Xiangtan, and Sifang. We addressed the responses for these companies in the Hengyang Post-Preliminary Analysis.

For the Preliminary Determination, we attributed subsidies received by Hengyang MPM, Hengyang Valin, Xigang Seamless, or Special Pipe (i.e., subject merchandise producers) to their combined sales, excluding the sales between them, in accordance with 19 CFR 351.525(b)(6)(ii).[47] Because Sifang was also a producer of subject merchandise, we are, for this final determination and consistent with the Hengyang Post-Preliminary Analysis, attributing subsidies received by Hengyang MPM, Hengyang Valin, Xigang Seamless, Special Pipe, or Sifang to the combined sales (excluding intercompany sales) of these five subject merchandise producers, in accordance with 19 CFR 351.525 (b)(6)(ii).

For the Preliminary Determination, we attributed subsidies received by Resources Steel to the combined sales of Resources Steel, Xigang Seamless, and Special Pipe (less intercompany sales), per 19 CFR 351.525(b)(6)(iv).[48] For this final determination, we are attributing subsidies received by Resources Steel to the combined sales of Resources Steel and the five subject merchandise producers (i.e., Hengyang MPM, Hengyang Valin, Xigang Seamless, Special Pipe, and Sifang), per 19 CFR 351.525(b)(6)(iv). See Comment 24, below, for a discussion regarding the use of the subject merchandise producers in this denominator.

For the Preliminary Determination, we attributed subsidies received by Xigang Group to the consolidated sales of Xigang Group and its subsidiaries, in accordance with 19 CFR 351.525(b)(6)(iii).[49] For this final determination, we are attributing subsidies received by Xigang Group to the consolidated sales of Xigang Group and its subsidiaries, and the two subject merchandise producers not already part of Xigang Group's consolidated sales (i.e., Hengyang Valin and Hengyang MPM), per 19 CFR 351.525(b)(6)(iii). See Comment 24, below, for a discussion regarding the use of the subject merchandise producers in this denominator.

For the Hengyang Post-Preliminary Analysis, we attributed subsidies received by Valin Xiangtan to the combined sales of Valin Xiangtan and Hengyang Valin, excluding sales between them, in accordance with 19 CFR 351.525(b)(6)(iv).[50] For this final determination, we are attributing subsidies received by Valin Xiangtan to the combined sales of Valin Xiangtan and the five subject merchandise producers (i.e., Hengyang MPM, Hengyang Valin, Xigang Seamless, Special Pipe, and Sifang), per 19 CFR 351.525(b)(6)(iv). See Comment 24, below, for a discussion regarding the use of the subject merchandise producers in this denominator.

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[47] Id. at 9170.
[48] Id.
[49] Id.
[50] See Hengyang Post-Preliminary Analysis at 11.

For the Hengyang Post-Preliminary Analysis, we attributed subsidies received by Hunan Valin to the consolidated sales of Hunan Valin and its subsidiaries, per 19 CFR 351.525(b)(6)(iii).[51] For this final determination, we are attributing subsidies received by Hunan Valin to the consolidated sales of Hunan Valin and its subsidiaries, and the three subject merchandise producers not already part of Hunan Valin's consolidated sales (i.e., Xigang Seamless, Special Pipe, and Sifang), per 19 CFR 351.525(b)(6)(iii). See Comment 24, below, for a discussion regarding the use of the subject merchandise producers in this denominator.

For the Hengyang Post-Preliminary Analysis, we attributed subsidies received by Valin Group to the consolidated sales of Valin Group and its subsidiaries, per 19 CFR 351.525(b)(6)(iii).[52] Since the Hengyang Post-Preliminary Analysis, the circumstances have not changed, and we continue to attribute subsidies in this manner.

Benchmarks and Discount Rates

Benchmarks for Short-Term RMB Denominated Loans

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 as a benchmark.[53] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."[54]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in CFS from the PRC,[55] 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. Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. 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.[56]

We are calculating the external benchmark using the regression-based methodology first

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[51] Id.
[52] Id.
[53] See 19 CFR 351.505(a)(3)(i).
[54] See 19 CFR 351.505(a)(3)(ii).
[55] See CFS from the PRC IDM at Comment 10.
[56] See Softwood Lumber from Canada IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

developed in CFS from the PRC[57] and more recently updated in LWTP from the PRC.[58] This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes 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.

Following the methodology developed in CFS from the PRC, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.[59] 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 IMF, and they are included in that agency's 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 AD purposes for any part of the years in question, for example: 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. For example, 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. See Hengyang Preliminary Calc Memo at 4-6; see also TPCO Preliminary Calc Memo at 3-5. For this final determination, we have not made any changes to the benchmark rates from the Preliminary Determination. Because we are using inflation-adjusted benchmarks, we adjusted the respondents' interest payments for inflation. This was done using the PRC inflation figure as reported in the IFS. See TPCO Preliminary Calc Memo at 5 and Hengyang Preliminary Calc Memo at 5.

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.[60] 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

57 See CFS from the PRC IDM at Comment 10.
58 See LWTP from the PRC IDM at 8-10.
59 See The World Bank Country Classification, http://econ.worldbank.org/.
60 See, e.g., LWRP from the PRC IDM at 8.

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.[61] Finally, because these long-term rates are net of inflation as noted above, we adjusted the PRC respondents' payments to remove inflation.

Benchmarks for Foreign Currency-Denominated Loans
For foreign currency-denominated short-term loans, the Department used as a benchmark the one-year dollar interest rates for the LIBOR, plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. See LWTP Decision Memo at 10. For long-term foreign currency-denominated loans, 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.

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

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

I. Programs Determined To Be Countervailable

A. Policy Loans to the Seamless Pipe Industry

The Department is examining whether seamless pipe producers receive preferential lending through state-owned commercial or policy banks. According to the allegation, preferential lending to the seamless pipe industry is supported by the GOC through the issuance of national and provincial five-year plans; industrial plans for the steel sector; catalogues of encouraged industries; and other government laws and regulations. Based on our review of the information and responses of the GOC, we determine that loans received by the seamless pipe industry from SOCBs were made pursuant to government directives.

Consistent with the Preliminary Determination, we find that the GOC has a policy in place to encourage the development of production of seamless pipe through policy lending.[62] Therefore, the loans to seamless pipe 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) of the Act). Finally, we determine that the loans are de jure specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government

[61] See Citric Acid from the PRC IDM at Comment 14.
[62] For a discussion of the policies in place, see discussion in Preliminary Determination at 9171-9173.

plans and directives, to encourage and support the growth and development of the seamless pipe industry.

To calculate the benefit under the policy lending program, we used the benchmarks described under "Subsidies Valuation - Benchmarks and Discount Rates" above. See also 19 CFR 351.505(c).

On this basis, we determine that Hengyang received a countervailable subsidy of 1.99 percent ad valorem and TPCO received a countervailable subsidy of 0.91 percent ad valorem.

B. Export Loans from the Export-Import Bank of China

TPCO

On page 20 of the GQR, the GOC reported that the EIBC provided TPCO with three loans that were outstanding during the POI. The GOC claimed that none of the loans related to exportation of subject merchandise.

Consistent with the Preliminary Determination, we find that one of the loans is a countervailable export loan from the EIBC.[63] As a loan from a government policy bank, this loan constitutes a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act. We further determine that the export loan is specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon export. Also, we determine that the export loan confers a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we compared the amount of interest paid against the export loan to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Benchmarks and Discount Rates" section. To calculate the net countervailable subsidy rate, we divided the benefit by TPCO's export sales value for the POI.

On this basis, we determine the net countervailable subsidy rate to be 0.08 percent ad valorem.

Hengyang

On page 14 of the HQR, Hengyang reported two loans made to Hengyang Valin that are "contingent on the loans being used for anticipated activities that generate exports of high-tech products."[64] On page 15 of the HQR, Hengyang stated that all of Hengyang Valin's exports benefit from these loans. On page 28 of the GQR, the GOC stated, "Hengyang Valin received {proprietary amount of} export contingent loans from {the EIBC}."

Consistent with the Preliminary Determination, we find that Hengyang's loans from the EIBC that were outstanding during the POI are countervailable export loans.[65] As loans from a government policy bank, these loans constitute a direct financial contribution from the

[63] See Preliminary Determination at 9173. We have addressed the proprietary details of this loan in the TPCO Preliminary Calculation Memo.
[64] See HQR at 14.
[65] See Preliminary Determination at 9173.

government, pursuant to section 771(5)(D)(i) of the Act. We further determine that the export loans are specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon export. Also, we determine that the export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Benchmarks and Discount Rates" section. To calculate the net countervailable subsidy rate, we divided the benefit by Hengyang's export sales value for the POI.

On this basis, we determine the net countervailable subsidy rate to be 1.06 percent ad valorem.

C. Provision of Steel Rounds for Less than Adequate Remuneration

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA for portions of our analysis regarding the GOC's provision of steel rounds and billets to seamless pipe producers. First, as a result of the GOC's failure to provide requested ownership information for the companies that produced the steel rounds and billets purchased by the mandatory respondents in this investigation, we are treating all non-cross-owned producers of steel rounds and billets as "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we determine that seamless pipe producers have received a financial contribution from the government in the form of the provision of a good. See section 771(5)(D)(iii) of the Act.

Also, as explained under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the PRC market for steel rounds and billets. Because of the predominant role played by GOC authorities in the production of steel rounds and billets, we determine that the prices actually paid in the PRC for steel rounds and billets during the POI are not appropriate tier one benchmarks under section 351.511(a)(2)(i) of our regulations. See also CVD Preamble at 65337.

To determine whether this financial contribution results in a subsidy to the seamless pipe producers, we followed 19 CFR 351.511(a)(2) for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for the steel rounds and billets. Consistent with the methodology outlined and explained in the Preliminary Determination, the Department continues to rely on the benchmark price that we used in OCTG from the PRC, with one exception. The benchmark price used in OCTG from the PRC is a compilation of the following prices: export prices from SBB for billet from Latin America, Turkey, the Black Sea/Baltic region; SBB East Asia import prices; and two series of London Metal Exchange prices. As we discuss below in the "Analysis of Comments" section, we have made a change to this benchmark from the Preliminary Determination by removing the SBB East Asia import prices from the benchmark. See Comment 9, below.

The benchmark price from OCTG from the PRC (as adjusted for the SBB East Asia import prices) represents an average of commercially-available world market prices for steel rounds and billets that would be available to purchasers in the PRC. We note that, in addition to OCTG from the PRC, the Department has relied on pricing data from industry publications such as SBB in other recent CVD proceedings involving the PRC. See, e.g., CWP from the PRC IDM at 11 and LWRP from the PRC IDM at 9. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate an overall benchmark.

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. Regarding delivery charges, we have included the freight charges that would be incurred to deliver steel rounds to the respondents' plants. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of steel rounds and billet into the PRC. We have compared these prices to the respondents' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to the respondents' plants.

Comparing the adjusted benchmark prices to the prices paid by the respondents for their steel rounds and billet, we determine that the GOC provided steel rounds and billet for LTAR, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. See 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC at page 91 of the GQR stated, "Steel rounds (billets in round shape that can be used to produce seamless pipe) are {used} by the seamless pipe industry." Section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its specificity analysis on an industry or enterprise basis. Therefore, consistent with OCTG from the PRC, we determine that this subsidy is specific because the recipients are limited in number.[66]

Consistent with the Preliminary Determination, we find that the GOC conferred a countervailable subsidy on TPCO and Hengyang through the provision of steel rounds for less than adequate remuneration. To calculate the benefit, we took the difference between the world market price, adjusted for delivery, and what each respondent paid for steel rounds, including delivery charges, during the POI.

On this basis, we calculated a net countervailable ad valorem subsidy rate of 4.77 percent for TPCO and 2.51 percent for Hengyang.

D. Provision of Electricity for Less Than Adequate Remuneration

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are basing our determination regarding the government's provision of electricity in part on AFA.

[66] See section 771(5A)(D)(iii)(I) of the Act; see also OCTG from the PRC IDM at 15 and Comment 12.

Consistent with the Preliminary Determination, we find that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A) of the Act.[67] To determine the existence and amount of any benefit from this program, we relied on the companies' reported information on the amounts of electricity they purchased and the amounts they paid for electricity during the POI. We compared the rates paid by TPCO and Hengyang for their electricity to the highest rates that they would have paid in the PRC during the POI. Specifically, we have selected the highest rates for "large industrial users" for the peak, valley and normal ranges. The valley and normal ranges were selected from the GQR at Exhibit 85, Electricity Sale Rate Schedule of Zhejiang Grid. The peak rate is the electricity rate for Dongguan City as reported in the GOC's March 12, 2009 supplemental questionnaire response at Exhibit S2-4 in the CVD investigation of "Certain Kitchen Appliance Shelving and Racks from the People's Republic of China."[68] This benchmark reflects the adverse inference we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity and cost increases in this investigation.

On this basis, we determine the countervailable subsidy to be 1.53 percent ad valorem for TPCO and 4.22 percent ad valorem for Hengyang.

E. The State Key Technology Project Fund

TPCO reported that it received funds from the State Key Technology Renovation Fund in 2003. In Exhibit V-1 of the GQR, the GOC provided the notice for implementation of the fund. The notice states that the purpose of the program is to "support the technological renovation of key industries, key enterprises and key products…" The notice also states, "The enterprises shall be mainly selected from large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises of the industries."

Consistent with the Preliminary Determination, we find that TPCO received a countervailable subsidy under the State Key Technology Renovation Fund.[69] We find that this 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. See 19 CFR 351.504(a). Further, we determine that the grant provided under this program is limited as a matter of law to certain enterprises; i.e., large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises. Hence, we find that the subsidy is specific under section 771(5A)(D)(i) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. See 19 CFR 351.524(b). Because the grant exceeded 0.5 percent of TPCO's sales in the year the grant was approved (i.e., 2003), we have allocated the benefit over the 15-year AUL using the discount rate described under the "Benchmarks and Discount Rates" section above.

On this basis, we determine the countervailable subsidy to be 0.01 percent ad valorem for TPCO.

[67] See Preliminary Determination at 9174.
[68] See Electricity Rate Data.
[69] Id. at 9175.

F. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area

TPCO reported that it used three programs for companies in the TBNA. TPCO received a grant under the Science and Technology Fund Program and paid reduced income taxes under the Accelerated Depreciation Program.[70] TPCO also reported that it purchased land-use rights and rented land-use rights for different plots of land within the TBNA during the POI and prior to the POI.[71]

Science and Technology Fund
The GOC's measures for the Science and Technology Fund, which the GOC provided at 134 of the GQR, describe the fund's purpose as follows: 1) promote the construction of the science-technology infrastructure in TBNA; 2) enhance science-technology renovation and service abilities; 3) improve the business environment of renovation entrepreneurship; and 4) construct a new science-technology renovation system. On page 138 of the GQR, the GOC stated that eligibility for the program is limited to enterprises within the TBNA Administrative Committee's jurisdiction.

Consistent with the Preliminary Determination, we find that TPCO received a countervailable subsidy during the POI under the TBNA Science and Technology Fund Program. We find that this 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. See 19 CFR 351.504(a). We further determine that grants under this program are limited to enterprises located in a designated geographic region (i.e., the TBNA). Hence, the grants are specific under section 771(5A)(D)(iv) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. See 19 CFR 351.524(b). Because the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI, we have expensed the entire amount to the POI. See 19 CFR 351.524(b)(2).

On this basis, we determine the countervailable subsidy to be 0.03 percent ad valorem for TPCO.

Accelerated Depreciation Program
Regarding the Accelerated Depreciation program, the GOC circular for the program (Exhibit 109 of the GQR) stipulates that enterprises in the TBNA may shorten the depreciation period of certain fixed assets by a maximum of 40 percent of the present depreciation period. On page 147 of the GQR, the GOC stated that eligibility for the program is limited to enterprises within the TBNA.

Consistent with the Preliminary Determination, we find that TPCO received a countervailable subsidy during the POI under the Accelerated Depreciation Program.[72] The Accelerated Depreciation Program constitutes a financial contribution in the form of revenue forgone that is

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[70] See TQR at 78.
[71] Id. at 45.
[72] See Preliminary Determination at 9175.

otherwise due within the meaning of section 771(5)(D)(ii) of the Act, with the benefit equaling the income tax savings (see 19 CFR 351.509(a)). The program affected TPCO's income taxes for the 2007 tax year. Thus, under the normal standard in 19 CFR 351.509(b), TPCO received a benefit from this program in 2008, when it filed its 2007 annual tax return. Further, we determine that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we divided the reduction in TPCO's income taxes resulting from the program by TPCO's consolidated sales, in accordance with 19 CFR 351.524(c)(1) and 19 CFR 351.525(b)(6)(iii).

On this basis, we determine the countervailable subsidy to be 0.58 percent ad valorem for TPCO.

Land

Regarding land, TPCO and its reporting cross-owned affiliates are all located in the TBNA, and TPCO, TPCO Iron, and Yuantong have purchased "granted" land-use rights within the TBNA. At page 86 of the GQR, the GOC reported that TPCO obtained its land-use rights in accordance with Article 11 of Decree 21 of the Ministry of Land and Resources. Article 11, at Exhibit 73 of the GQR, establishes provisions for the "agreement-based assignment of the right to use state-owned land." Article 11 states that the "agreement-based assignment of the right to use state-owned land" refers to the land user's right to use state-owned land for a certain period, and to the land user's payment of a fee to the state for the land-use right. TPCO and TPCO Iron purchased their land-use rights from the Dongli District Land and Resource Administration Bureau, and Yuantong purchased its land-use rights from the Tianjin Port Bonded Zone Land and Resource Administration Bureau.

As discussed in the Preliminary Determination, 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.[73] The Department also found that when the land is provided preferentially in an industrial park located within the seller's (e.g., county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific (see section 771(5A)(D)(iv) of the Act).[74] In the instant investigation, the TBNA is a designated area within the jurisdictions that provided land-use rights to TPCO and its cross-owned affiliates since December 11, 2001.

Consistent with LWS from the PRC and the Preliminary Determination, we find that the provision of land-use rights to TPCO within the TBNA constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. Also consistent with LWS from the PRC and the Preliminary Determination, we find that the provision of the land-use rights to TPCO within the TBNA is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. Therefore, we find that TPCO's purchases of granted land-use rights within the TBNA give rise to countervailable subsidies to the extent that the purchases conferred a benefit.

[73] See LWS from the PRC IDM at Comment 8.
[74] Id. at Comment 9.

To determine whether TPCO 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 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 usable tier one benchmarks do not exist.[75] The Department also found that tier two benchmarks (world market prices that would be available to purchasers in the PRC) are not appropriate.[76] See 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier three and found that the sale of land-use rights in the PRC 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.[77] See 19 CFR 351.511(a)(2)(iii). There is insufficient new information on the record of this investigation to warrant a change from the findings in LWS from the PRC and the Preliminary Determination.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are comparing the price that TPCO 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, the PRC. Specifically, we are comparing the price TPCO paid to sales of certain industrial land in industrial estates, parks, and zones in Thailand, consistent with LWS and the Preliminary Determination.

To calculate the benefit, we computed the amount that TPCO would have paid for its granted land-use rights and subtracted the amount TPCO actually paid for each purchase. For purchases in which the subsidy amount exceeded 0.5 percent of TPCO's sales in the year of purchase, we have used the discount rate described under the "Benchmarks and Discount Rates" section above to allocate the benefit over the life of the land-use rights contract. For these purchases, we divided the amount allocated to the POI by TPCO's consolidated sales during the POI. For purchases in which the benefit was less than 0.5 percent of TPCO's consolidated sales in the year of the purchase, we have expensed the entire amount to the year in which TPCO purchased the land-use rights. See 19 CFR 351.524(b)(2).

On this basis, we determine the total countervailable subsidy for all of TPCO's land-use rights purchases to be 0.11 percent ad valorem during the POI.

TPCO also reported that it leased certain land parcels within the TBNA from TPCO Holding during the POI. See pages 45-46 of the TQR. Consistent with the Preliminary Determination, we find that TPCO Holding was an authority within the meaning of section 771(5)(B) of the Act at the time of the lease agreements and throughout the POI.[78] Moreover, we determine that TPCO's lease of land within the TBNA constitutes the provision of a good within the meaning of section 771(5)(D)(iii). Also consistent with the Preliminary Determination, we determine that the subsidy is de facto specific because it is limited to TPCO (section 771(5A)(D)(iii)(I) of the

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[75] Id. at Comment 10.
[76] Id. at section IV.A.1, "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration."
[77] Id. at Comment 10.
[78] See Preliminary Determination at 9169 and 9176.

Act). Therefore, we find that TPCO's leases give rise to a countervailable subsidy to the extent that the leases conferred a benefit.[79]

To calculate the benefit, we are following the same steps outlined above for the purchase of land-use rights. Specifically, we are comparing the rent TPCO paid to industrial rental rates for factory space in Thailand during the POI. We are attributing the subsidy to TPCO's consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we determine the countervailable subsidy to be 2.56 percent ad valorem for TPCO.

We address parties' comments on this program in Comments 14 through 17, below.

G. Other Subsidies Received by TPCO

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are basing our determination regarding the government's provision of other subsidies received by TPCO in part on AFA.

Consistent with the Preliminary Determination, we determine that TPCO received countervailable subsidies.[80] We find that these subsidies are 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. See 19 CFR 351.504(a). We determine, in the absence of a response from the GOC, that the subsidies received under this program are limited to TPCO. Hence, we find that these subsidies are specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we used our standard methodology for non-recurring grants. See 19 CFR 351.524(b). Because the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI, we have expensed the entire amount to the POI. See 19 CFR 351.524(b)(2).

On this basis, we determine the countervailable subsidy to be 0.03 percent ad valorem for TPCO.

H. Tariff and VAT Exemptions for Imported Equipment

Enacted in 1997, the *Circular of the State Council 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 so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission or its provincial branch provides a certificate to enterprises that receive the exemption. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.

We determine that VAT and tariff exemptions on imported equipment confer a countervailable

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[79] See OTR Tires from the PRC IDM at Comment F.12.
[80] See Preliminary Determination at 9168 and 9176; and the TPCO Preliminary Calculation Memo because the details of these subsidies are BPI.

subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of the VAT and tariff savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

As described above, FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. In CFS from the PRC, the Department found the beneficiaries of this program to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. See CFS from the PRC IDM at Comment 16 (discussing and affirming the preliminary determination that this program is specific under section 771(5A)(D)(iii)(I) of the Act despite the fact that the "pool of companies eligible for benefits is larger than FIEs.") No information has been provided in this investigation to demonstrate that the beneficiary companies are a non-specific group. Therefore, consistent with the determination in CFS from the PRC, and the Preliminary Determination, we find that the VAT and tariff exemptions extended under this program are provided to a group of industries and that the subsidy is specific.

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 the benefits to the year in which 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).

In the instant investigation, TPCO, Hengyang Valin, and Hengyang MPM have provided a list of VAT and tariff exemptions that they received for imported capital equipment during the 15-year AUL period. In light of our determination to find subsidies only after December 11, 2001, we have not examined VAT and tariff exemptions prior to this date.[81] To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. See 19 CFR 351.524(b). For certain years prior to the POI, TPCO and Hengyang reported VAT and tariff exemptions that were more than 0.5% of their sales. Based on TPCO's and Hengyang's information, we determine that the VAT and tariff exemptions were for capital equipment. We have allocated the benefit over the 15-year AUL using the discount rate described under the "Benchmarks and Discount Rates" section above.

For TPCO and Hengyang, the total amount of VAT and tariff exemptions received for capital equipment during the POI did not exceed 0.5% of their POI sales. Thus, we have expensed the entire amount to the POI. See 19 CFR 351.524(b)(2).

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[82] Specifically, we used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for the POI. We are attributing the subsidy to TPCO to the consolidated sales of TPCO, per 19 CFR 351.525(b)(6)(iii). For the

[81] See Preliminary Determination at 9165. As discussed at Comment 4, below, 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.

[82] See 19 CFR 351.524(b).

benefits to Hengyang Valin and Hengyang MPM, we are attributing the subsidy to the combined sales of the cross-owned subject merchandise producers (i.e., Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang), per 19 CFR 351.525(b)(6)(ii).

On this basis, we determine that a countervailable benefit of 0.18 percent ad valorem exists for TPCO, and that a countervailable benefit of 0.31 percent ad valorem exists for Hengyang.

I. Income Tax Credits for Domestic Equipment

According to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation {Projects}* (CAI SHU ZI {1999} No. 290), 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.[83] The Department has previously found this program countervailable.[84]

Hengyang reported that Hengyang MPM received this benefit during the POI.[85]

Consistent with the Preliminary Determination, we find these income tax credits for the purchase of domestically produced equipment are countervailable subsidies.[86] The tax credits are a financial contribution in the form of revenue forgone by the government and provide a benefit to the recipients in the amount of the tax savings.[87] We further determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Hengyang MPM as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings by the combined total sales of Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang, minus inter-company sales, during the POI, in accordance with 19 CFR 351.525(b)(6)(ii).

On this basis, we determine that a countervailable subsidy of 0.34 percent ad valorem exists for Hengyang under this program.

J. Two Free, Three Half

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.[88] The Department has

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[83] See GQR at 51.
[84] See, e.g., OCTG from the PRC IDM at 18, see also CWLP from the PRC IDM at 25–26.
[85] See HQR at 24.
[86] See Preliminary Determination at 9177.
[87] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[88] See GCOR at Exhibit P-1.

previously found this program countervailable.[89] Hengyang reported that Special Pipe and Resources Steel used this program during the POI.[90]

Consistent with the Preliminary Determination, we find that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy.[91] The exemption/reduction 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.[92] We also determine that the exemption/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, we treated the income tax savings enjoyed by Special Pipe and Resources Steel 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 the above companies would have paid in the absence of the program with the income tax rate the company actually paid. We divided Special Pipe's tax savings during the POI by the combined sales of Special Pipe, Xigang Seamless, Hengyang Valin, Hengyang MPM, and Sifang (exclusive of inter-company sales), per 19 CFR 351.525(b)(6)(ii). We divided Resources Steel's tax savings during the POI by the combined sales of Resources Steel, Special Pipe, Xigang Seamless, Sifang, Hengyang Valin, and Hengyang MPM (exclusive of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv).

On this basis, we determine that Hengyang received a countervailable subsidy of 0.09 percent ad valorem under this program.

K. Local Income Tax Exemption for Productive FIEs

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.[93] Hengyang reported that Seamless Pipe and Resources Steel used this program during the POR.[94]

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.[95] 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.

[89] See, e.g., OCTG from the PRC IDM at 16, CFS from the PRC IDM at 11–12, and Citric Acid from the PRC IDM at 15–16.
[90] See HQR at Volume 5, page 37.
[91] See Preliminary Determination at 9177.
[92] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[93] See GCOR at Exhibit P-1.
[94] See HQR at Volume 5, page 39.
[95] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

To calculate the benefit for Special Pipe and Resources Steel, we treated the income tax savings enjoyed by the companies 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 companies would have paid in the absence of the program (i.e., three percent) with the income tax rate the companies actually paid (i.e., zero percent).

For Special Pipe, we divided the company's tax savings received during the POI by the combined POI sales of Special Pipe, Xigang Seamless, Hengyang Valin, Hengyang MPM, and Sifang, minus inter-company sales, per 19 CFR 351.525(b)(6)(ii). For Resources Steel, we divided the company's tax savings received during the POI by the combined sales of Resources Steel, Special Pipe, Xigang Seamless, Sifang, Hengyang Valin, and Hengyang MPM (exclusive of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv).

On this basis, we determine that Hengyang received a countervailable subsidy of 0.02 percent ad valorem.

L. Debt Forgiveness

TPCO

Consistent with the Preliminary Determination, we determine that the GOC forgave debt owed by TPCO and, thus, provided a financial contribution to TPCO in the form of a direct transfer of funds (section 771(5)(D)(i) of the Act). On pages 26-27 of the TQR, TPCO reported that in 2006 and 2008 it settled claims related to loans that continued to be outstanding after a debt-to-equity transaction occurring in 2001. TPCO settled debt held by China Orient Asset Management Corporation and Cinda. See Preliminary Determination at 9178. The benefit to TPCO is the amount of the debt forgiven (19 CFR 351.508(a)). Additionally, we determine that this subsidy is de facto specific because it is limited to TPCO (section 771(5A)(D)(iii)(I) of the Act).

Forgiveness of part of the debt occurred in 2006, and approval for forgiveness of the remainder of the debt occurred in 2008. To calculate the countervailable subsidy for the debt forgiveness approved in each year, we used our standard methodology for non-recurring benefits. See 19 CFR 351.524(b). Because the amount of the 2006 portion of the debt forgiveness exceeded 0.5 percent of TPCO's sales in 2006, we have allocated the benefit over the 15-year AUL using the discount rate described under the "Benchmarks and Discount Rates" section above. We attributed the subsidy amount for the POI to TPCO's consolidated sales, per 19 CFR 351.525(b)(6)(iii). On this basis, we determine the countervailable subsidy to be 0.04 percent ad valorem for TPCO.

For the debt forgiveness approved in 2008, the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI. Thus, we have expensed the entire amount to the POI. See 19 CFR 351.524(b)(2). On this basis, we determine the countervailable subsidy to be 0.07 percent ad valorem for TPCO.

Hengyang

In the HQR at Volume 5, pages 24-27, Hengyang reported that Xigang Group and Resources

Steel underwent loan restructurings since December 11, 2001, through the POI.

Consistent with the Preliminary Determination, we determine that through this settlement the GOC forgave debt owed by Xigang Group and Resources Steel and, thus, provided a financial contribution to Xigang Group and Resources Steel in the form of a direct transfer of funds (section 771(5)(D)(i) of the Act).[96] The benefit to Xigang Group and Resources Steel is the amount of the debt forgiven (19 CFR 351.508(a)). Additionally, we determine that this subsidy is de facto specific as it is limited to Xigang Group and Resources Steel (section 771(5A)(D)(iii)(I) of the Act).

Approval for forgiveness of debt occurred in 2005, 2006, 2007, and 2008. To calculate the countervailable subsidy for the debt forgiveness approved in each year, we used our standard methodology for non-recurring benefits.[97] Because the amount of the 2005 portion of Xigang Group's debt forgiveness exceeded 0.5 percent of Xigang Group's sales in 2005**,** we have allocated the benefit over the 15-year AUL using the discount rate described under the "Benchmarks and Discount Rates" section above. We attributed the subsidy amount for the POI to Xigang Group's consolidated sales plus the sales of Hengyang Valin and Hengyang MPM, , less intercompany sales, per 19 CFR 351.525(b)(6)(iii).

For Xigang Group's debt forgiveness approved in 2006, the benefit was less than 0.5 percent of Xigang Group's consolidated sales plus the sales of Hengyang Valin and Hengyang MPM, less intercompany sales, per 19 CFR 351.525(b)(6)(iii). Thus, we have expensed the entire amount to 2006. See 19 CFR 351.524(b)(2).

For Xigang Group's debt forgiveness approved during the POI, the benefit was less than 0.5 percent of Xigang Group's consolidated sales during the POI plus the sales of Hengyang Valin and Hengyang MPM, less intercompany sales, per 19 CFR 351.525(b)(6)(iii). Thus, we have expensed the entire amount to the POI.[98]

For Resources Steel's debt forgiveness approved during the POI, the benefit was less than 0.5 percent of the combined sales of Resources Steel, Special Pipe, Xigang Seamless, Sifang, Hengyang Valin, and Hengyang MPM (exclusive of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv). Thus, we have expensed the entire amount to the POI.[99]

On this basis, we determine the countervailable subsidy to be 0.54 percent ad valorem for Hengyang.

M. Deed Tax

Hengyang Valin and Valin Xiangtan each reported receiving benefits under this program.[100] Eligibility for receiving the benefit for both Hengyang Valin and Valin Xiangtan came from

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96 See Preliminary Determination at 9178; see also Hengyang Preliminary Calc Memo at 9.
97 See 19 CFR 351.524(b).
98 See 19 CFR 351.524(b)(2).
99 Id.
100 See H3QR at 11-14; see also H4QR at 4-7; see also Hengyang Post-Preliminary Analysis at 21-23.

being new enterprises formed by the merger or restructuring of other companies, and having land transferred to them from former SOEs involved in the merger or restructuring. The GOC stated that it had no records that the respondents received benefits under this program and did not respond to the general program questions in Appendix 1 of the original questionnaire to account for Hengyang's reported use of the program.[101]

Consistent with the Hengyang Post-Preliminary Analysis, we determine that these deed tax exemptions confer a countervailable benefit on Hengyang. The deed tax exemptions are a financial contribution in the form of revenue forgone. See section 771(5)(D)(ii) of the Act and19 CFR 351.509(a)(1). In the absence of a response from the GOC, we find, as an adverse inference, that the subsidies received under this program are limited to Hengyang. Hence, we find that these subsidies are specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we relied on the amount that Hengyang Valin and Valin Xiangtan each reported that it would have paid in deed tax. For Hengyang Valin, we divided the benefit reported for 2003 by the combined 2003 sales of the subject merchandise producers (i.e., Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang). See 19 CFR 351.525(b)(6)(ii). Because the portion of deed tax exemption in 2003 exceeded 0.5 percent, we have allocated the benefit for each year over the 15-year AUL using the discount rate described under the "Benchmarks and Discount Rates" section above. We attributed the subsidy amount for the POI to the combined sales of Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang, minus inter-company sales, in accordance with 19 CFR 351.525(b)(6)(ii).

For Valin Xiangtan, we divided the benefit reported in 2005 for Valin Xiangtan by the combined sales of Valin Xiangtan, Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang, less intercompany sales, per 19 CFR 351.525(b)(6)(iv). Because this is a one-time exemption of a direct tax, the benefit is non-recurring. See 19 CFR 351.524(c)(2)(i). The percentage is less than 0.5 percent; therefore, we have expensed the entire amount to 2005. See 19 CFR 351.524(b)(2).

On this basis, we determine the countervailable subsidy to be 0.02 percent ad valorem for Hengyang.

N. VAT Exemptions for Central Region

Hengyang reported that it received VAT refunds on purchases of equipment by Hengyang Valin and Hengyang MPM.[102] The GOC states that eligibility for this program is extended to normal VAT tax payers that participate in any of eight industries, including the metallurgy industry, the equipment manufacture industry, and new and high technology industry.[103] The GOC also identified location as a requirement for the program, which is extended to 26 municipalities of six provinces in the Central Region of the PRC.[104]

[101] See G4SR at 1.
[102] See HNSAQR at 9.
[103] See G4SR at 2.
[104] Id.

Consistent with the Hengyang Post-Preliminary Analysis, we determine that VAT exemptions granted to selected industries in the central region of the PRC confer a countervailable subsidy.[105] The exemptions are a financial contribution in the form of revenue forgone by the GOC that is otherwise due and they provide a benefit to the recipient in the amount of the VAT exemption. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). Further, we find these exemptions to be specific to certain regions within the PRC and, therefore, specific under section 771(5A)(D)(iv) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which 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).

Henygang reported that the benefits received under this program were tied to the capital assets of Hengyang Valin and Hengyang MPM.[106] Thus, to calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. See 19 CFR 351.524(b). For 2007, Hengyang reported VAT refunds to Hengyang Valin and Hengyang MPM that were less than 0.5% of the combined sales of all subject merchandise producers (i.e., Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang) in 2007. Therefore, we have expensed the entire amount to 2007. See 19 CFR 351.524(b)(2).

For the POI, Hengyang reported VAT refunds to Hengyang Valin and Hengyang MPM that were each less than 0.5% of the combined sales of all subject merchandise producers (i.e., Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang) in the POI. Therefore, we have expensed the entire amounts to the POI.

On this basis, we determine the countervailable subsidy to be 0.31 percent ad valorem for Hengyang.

O. Provision of Coking Coal for LTAR

As discussed under "Use of Facts Otherwise Available and Adverse Facts Available," above, we are relying on AFA for our analysis regarding the GOC's provision of coking coal to Valin Xiangtan. Specifically, we are treating all of Valin Xiangtan's non-cross-owned suppliers of coking coal as "authorities," within the meaning of section 771(5)(B) of the Act. Therefore, we find that Valin Xiangtan has received a financial contribution in the form of the provision of a good.[107]

In the absence of necessary information from the GOC, we find, as an adverse inference, that the subsidies received under this program are limited to Hengyang. Hence, we find that these

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[105] See Hengyang Post-Preliminary Analysis at 24-25.
[106] See HNSAQR at 13.
[107] See section 771(5) (D)(iii) of the Act.

subsidies are specific under section 771(5A)(D)(i) of the Act.

To determine whether this financial contribution results in a subsidy to the seamless pipe producers, we followed 19 CFR 351.511(a)(2) for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for coking coal. The potential benchmarks listed in this regulation, in order of preference are: (1) market prices from actual transactions within the country under investigation for the government-provided good (e.g., actual sales, actual imports, or competitively run government auctions) ("tier one" benchmarks); (2) world market prices that would be available to purchasers in the country under investigation ("tier two" benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price ("tier three" benchmarks). 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.[108]

Beginning with tier one, we must determine whether there is reason to conclude that the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the CVD 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."[109] The CVD Preamble further recognizes that distortion can occur when the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market.

To determine whether these companies received a benefit, the Department determines whether the input was provided at LTAR. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511. Regarding the coking coal industry in general, the GOC said that state-owned enterprises account for 63% of total market share in terms of domestic production of coking coal. Further, Petitioners placed on the record evidence that coking coal exports were subject to a 10 percent tariff in 2008 and a five percent tariff in 2007, and that the GOC had export quotas in place on coking coal during the POI.[110] Export tariffs and quotas can increase the domestic quantity of good subject to the tariffs and quotas that is available in the PRC with the result that they suppress domestic prices. Finally, statistics in the G1CCR show that imports of coking coal accounted for only 0.66 percent of domestic coking coal consumption in the PRC during the POI.[111] Consequently, in light of these factors, we find it reasonable to conclude that actual transaction prices in the PRC are significantly distorted as a result of the government's involvement in the market. See CVD Preamble at 65337. As a result of the GOC's predominant role in the market, we find that actual transaction prices in the PRC may not be used as a viable

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[108] See Softwood Lumber from Canada IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[109] See CVD Preamble at 65348, 65377.
[110] See Initiation Checklist at 29.
[111] See G1CCR at 2 and 3. The GOC identified the volume of domestic coking coal consumption in the PRC during the POI as 1,036.39 million metric tons. The GOC also identified the import volume during the POI as 6,857,248,455 kilograms. Thus, the import share of domestic consumption is: (6,857,248.455 metric tons / 1,036,390,000 metric tons) = 0.66 percent.

tier-one benchmark. See CVD Preamble at 65377; 19 CFR 351.511(a)(2)(ii).

Turning to tier two benchmarks, i.e., world market prices available to purchasers in the PRC, Petitioners placed on the record price information from the Coke Market Report regarding the global coke and coking coal markets.[112] The world market benchmark price that we used is an average of the Canadian monthly export price and the United States' monthly export price from the Coke Market Report.

The benchmark price represents an average of commercially-available world market prices for coking coal that would be available to purchasers in the PRC. We note that the Department has relied on pricing data from industry publications such as the Coke Market Report in other recent CVD proceedings involving the PRC. See, e.g., OCTG from the PRC IDM at 14, CWP from the PRC IDM at 11, and LWRP from the PRC IDM at 9. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate an overall benchmark.

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. Regarding delivery charges, we have included the freight charges that would be incurred to deliver coking coal to the respondents' plants. We have also added the VAT applicable to imports of coking coal into the PRC.[113] We have compared these prices to the respondents' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to the respondents' plants. For this final determination, we continue to use the methodology as laid out in the Hengyang Post-Preliminary Analysis to determine the benefit.[114]

Comparing the adjusted benchmark prices to the prices paid by the respondents for their coking coal, we determine that the GOC provided coking coal for LTAR, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. See 19 CFR 351.511(a).

On this basis, we find that Valin Xiangtan received a countervailable subsidy of 5.51 percent ad valorem.

P. Export Restrictions on Coke

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are basing our determination regarding export restrictions on coke on AFA.

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[112] See Petitioner's FIS at Exhibits 1 and 2.

[113] Under 19 CFR 351.511(a)(2)(iv), the Department also adds import duties to the benchmark. The GOC has stated that import duties were zero for coking coal during the POI. Therefore, we are not adding import duties to the benchmark. See G3SR at 8.

[114] See Hengyang Post-Preliminary Analysis at 20-21.

In drawing an adverse inference, we recommend determining that the GOC's export restraints on coke constitute a financial contribution (i.e., provision of goods) to PRC producers of downstream goods that incorporate coke within the meaning of sections 771(5)(B) and (D)(ii) of the Act. Moreover, as an adverse inference, we recommend finding that GOC's export restraints on coke are specific to producers of seamless pipe in the PRC within the meaning of section 771(5A) of the Act. Accordingly, we recommend determining that, through these export restraints, the GOC is providing inputs to downstream producers of seamless pipe.

To calculate the benefit during each month of the POI, we used monthly world market prices from the Coke Market Report at Exhibit 1 of U.S. Steel's Factual Information Submission pursuant to 19 CFR 351.511(a)(2)(ii) because there is no other usable benchmark on the record that we can use pursuant to 19 CFR 351.511(a)(2)(i). In order to determine the monthly benchmark, we used the monthly price range from each month's report. For example, the report for February lists a price range (on free on board terms) of $490-$510 per metric ton for 12 / 12.5 percent ash coke. We used the midpoint of the report's monthly range (i.e., $500) as our benchmark for February. Consistent with 19 CFR 351.511(a)(2)(iv), we added international delivery charges, import duty, VAT, and Chinese inland freight.[115]

On this basis, we find a countervailable subsidy of 2.75 percent ad valorem for TPCO and 7.11 percent ad valorem for Hengyang.

Q. Preferential Loans Characterized as a Lease Transaction

TPCO reported that it held two leases from finance companies during the POI.[116]

In CFS from Korea,[117] we treated leases as loans. Consistent with CFS from Korea, we treated these leases as loans in the TPCO Post-Preliminary Analysis. Circumstances have not changed since the TPCO Post-Preliminary Analysis.[118]

Consistent with the TPCO Post-Preliminary Analysis and the "Policy Loans to the Seamless Pipe Industry" section above, we determine that these leases constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and that they provide a benefit equal to the difference between what TPCO paid on the leases and the amount TPCO would have paid on comparable commercial loans (see section 771(5)(E)(2) of the Act). Finally, we determine that the leases are de jure specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the seamless pipe industry.

To calculate the benefit, we used the benchmarks described under "Subsidies Valuation - Benchmarks and Discount Rates" above. See also 19 CFR 351.505(c).

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[115] TPCO reported purchases of coke by TPCO Iron in the TQR at Exhibit 50. For Hengyang's prices, see H4QR at Exhibit S4-08.
[116] See TNSAQR at 1.
[117] See CFS from Korea IDM at 24.
[118] See Preliminary Determination at 9171-9173.

On this basis, we find a countervailable subsidy of 0.01 percent ad valorem for TPCO.

II. Program Determined To Be Not Countervailable

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 (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. On page 39 of the GQR, the GOC reported that the VAT levied on seamless pipe sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of seamless pipe (13 percent). We verified these percentages at the Hengyang and TPCO verifications. See TPCO Verification Report at pages 22-23; see also Hengyang Verification Report at pages 27-28. There is, therefore, no excess VAT exemption. Thus, we determine that the VAT exempted on the export of seamless pipe is not countervailable.

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

A. Sub-central Government Programs to Promote Famous Export Brands and China World Top Brands

TPCO reported that it received a grant under this program in 2007. On page 50 of the TQR, TPCO stated that the program relates to TPCO's trademark and does not relate to any specific merchandise.

We determine that the total amount of the grant was less than 0.5 percent of TPCO's consolidated and unconsolidated sales in 2007. Thus, without prejudice to whether this is a countervailable subsidy, we have allocated the benefit exclusively to 2007 pursuant to 19 CFR 351.524(b)(2). As a result, we determine that TPCO received no benefit from this program during the POI.

B. Exemptions for SOEs From Distributing Dividends to the State

In the HQR at Vol. 5, page 23, Hengyang reported a potential exemption under this program. All of the details of this potential exemption, including the Hengyang company that received the benefit, are business proprietary. Thus, we have addressed the information in the Hengyang Preliminary Calc Memo.

We determine that the benefit from this potential exemption was less than 0.5 percent of the sales in the year of approval, which was prior to the POI. Thus, without prejudice to whether this is a countervailable subsidy, we have allocated any benefit exclusively to the year of approval pursuant to 19 CFR 351.524(b)(2). As a result, we determine that Hengyang received no benefit from this program during the POI.

C. Other Programs

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

1. Preferential Loan Programs

a Treasury Bond Loans to Northeast
b. Preferential Loans for State-Owned Enterprises
c. Preferential Loans for Key Projects and Technologies
d. Preferential Lending to Seamless Pipe Producers and Exporters Classified as “Honorable Enterprises”
e. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program

2. Equity Programs

a. Debt-to-Equity Swap for TPCO
b. Equity Infusion in TPCO
c. Loan and Interest Forgiveness for SOEs

3. Tax Benefit Programs

a. Preferential Income Tax Policy for Enterprises in the Northeast Region
b. Forgiveness of Tax Arrears For Enterprises in the Old Industrial Bases of Northeast China
c. Reduction In or Exemption from Fixed Assets Investment Orientation Regulatory Tax
d. Preferential Tax Programs for Foreign-Invested Enterprises Recognized as High or New Technology Enterprises
e. Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises

4. Tariff and Indirect Tax Programs

Stamp Exemption on Share Transfers Under Non-Tradable Share Reform

5. Land Grants and Discounts

Provision of Land to SOEs for Less Than Adequate Remuneration

6. Provision of Inputs for Less than Adequate Remuneration

Provision of Electricity and Water at Less than Adequate Remuneration to Seamless Pipe Producers Located in Jiangsu Province

7. Grant Programs

a. Foreign Trade Development Fund (Northeast Revitalization Program)
b. Export Assistance Grants in Zhejiang Province
c. Program to Rebate Antidumping Fees in Zhejiang Province
d. Grants to Loss-Making SOEs
e. Export Interest Subsidies in Liaoning Province

8. Other Regional Programs

High-Tech Industrial Development Zones

Analysis of Comments

General Issues

Comment 1 Application of CVD Law to the PRC

The GOC, TPCO, and Hengyang argue that, as a matter of law, the Department lacks the authority to conduct a CVD investigation against the PRC while simultaneously treating the PRC as an NME for AD purposes. The GOC points to Georgetown Steel, arguing that the findings of the Court in that decision continue to be relevant and instructive today.

In Georgetown Steel, the CAFC examined the purpose of the countervailing duty law, the nature of non-market economies and the actions Congress has taken in other statutes that specifically address the question of exports from those economies. The CAFC concluded that:

> Congress ... has decided that the proper method for protecting the American market against selling by non-market economies at unreasonably low prices is through the antidumping law... . If that remedy is inadequate to protect American industry from such foreign competition – a question we could not possibly answer – it is up to Congress to provide any additional remedies it deems appropriate.[119]

According to the GOC, events subsequent to Georgetown Steel confirm the conclusions of that ruling. In particular, the GOC claims that Congress has acquiesced in an unambiguous statutory scheme that prohibits application of the CVD law to NMEs. First, the GOC points out, the AD

[119] See Georgetown Steel at 1318 (emphasis added).

and CVD provisions are different sections of a single act, the Tariff Act of 1930, and are even under the same subtitle, Subtitle IV – Antidumping and Countervailing Duties."[120] This structure, according to the GOC, reflects the fact that Congress has always considered the AD and CVD laws to operate in tandem.[121] Additionally, the GOC points to the TAA of 1979,[122] which aligned the procedural requirements for AD and CVD investigations. Importantly, in the GOC's view, the current structure of the Act establishes that the AD and CVD provisions are governed by the same definitions.[123] Consequently, the definition of the term "nonmarket economy" applies to both the AD and CVD laws, and according to the GOC, the Department ignores this when it claims that AD and CVD remedies are wholly separate and distinct from each other. The GOC also notes that the courts have recognized that the AD and CD provisions comprise a single, integrated statutory scheme.[124]

Next, the GOC describes various enactments by Congress since Georgetown Steel that solidified this statutory structure. First, in the OTCA of 1988, Congress left section 303 of the Act undisturbed.[125] The GOC finds this important because of Congress' awareness of the significance the Department and the CAFC attached to the fact that the CVD law had not changed since 1897. While section 303 of the Act was subsequently repealed by the URAA, the GOC states that Congress did not materially alter the specific statutory provision governing the application of CVDs, which continues to make no reference to NMEs.[126]

The GOC next discusses the OTCA of 1988. According to the GOC, in this instance, the Congress specifically acted with the understanding that the CVD law did not apply to NME countries and debated whether to give Commerce discretion in this regard, but decided not to do so. In particular, the GOC points to the House Ways and Means Committee marked-up H.R. 3,[127] section 157 of which would have "allow(ed) the administering authority discretion in determining, on a case-by-case basis, whether a particular subsidy can, as a practical matter, be identified and measured in a particular non-market economy country."[128] The GOC further contends that the Committee clearly understood the CAFC's unambiguous holding in Georgetown Steel.[129]

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[120] See section 701 of the Act.
[121] See also Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (placing both the AD and CVD provisions under the same title designed to provide "Relief from Unfair Trade Practices").
[122] See TAA of 1979 at 144.
[123] See section 771 of the Act.
[124] See Allegheny Ludlum at 1365, 1368 ("{u}nder the statutory scheme established by the Tariff Act of 1930 … American industries may petition for relief from imports that are sold for less than fair value ('dumped'), or which benefit from subsidies provided by foreign governments." (emphasis added).
[125] See OCTA at 1184.
[126] See section 701 and 771(5) of the Act.
[127] The GOC notes H.R. 3 was the predecessor to H.R. 4848, which ultimately became law on August 23, 1988 under the short title "Omnibus Trade and Competitiveness Act of 1988."
[128] See OTCA – House Report at 138 (emphasis added).
[129] Id. ("In a recent court case ... the U.S. Court of Appeals for the Federal Circuit upheld the Department of Commerce's refusal to apply the countervailing duty law in two investigations of carbon steel wire rod imports from Poland and Czechoslovakia, by holding that the countervailing duty law does not apply to nonmarket economy countries." (citing Georgetown Steel) (emphasis added)).

The measure, including section 157, was adopted by the full House, and moved to the House and Senate conference. The resulting conference committee report indicated not only the conferees' understanding of the state of the law,[130] but also that Congress decided to eliminate section 157. These actions, the GOC contends, provide important guidance on Congressional understanding and intent in the aftermath of the Georgetown Steel opinion. This conclusion is reinforced, according to the GOC by the URAA's SAA which commented that Georgetown Steel stood for the "reasonable proposition that the CVD law cannot be applied to imports from nonmarket economies."[131]

The GOC also discusses an amendment to the AD law which it contends is also important for discerning Congressional intent. Specifically, the GOC points to the statutory definition for "nonmarket economy country," which was added to the statute by the OTCA of 1988.[132] According to the GOC, the definition that was adopted flowed directly from the Department's historical definition of an NME in the CVD context.[133]

Referring once more to the legislative history of the OTCA of 1988, the GOC finds it significant that the conference committee rejected the House provision that would have allowed Commerce to apply the CVD law to NMEs and adopted a definition of NME that matched the Department's descriptions of NMEs in the CVD context. In the GOC's view, this debate and its resolution reflect a continuing Congressional intent to address imports from NMEs under the NME provisions of the AD law, not the CVD law.

Finally, in its discussion of post-Georgetown Steel enactments, the GOC points to Congress' instruction to the Department concerning appropriate surrogate values for determining dumping by an NME exporter, under NME AD methodology. The GOC contends that Congress' direction to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized,"[134] makes Congress' intent that the NME AD provisions constitute a hybrid remedy addressing both aspects of dumping and distortions. According to the GOC, the CIT reached a similar conclusion in affirming the Department's decision to reject market purchases by an NME respondent from a country determined to have subsidized the merchandise in question.[135]

The GOC acknowledges that courts are sometimes hesitant to look to Congressional acquiescence as Congress speaking directly on an issue,[136] but argues that the Department has wrongly treated this as an outright prohibition. Citing Rapanos, the GOC notes that this does not mean courts will never find such acquiescence to be significant and binding upon agencies.[137]

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[130] See OTCA – House and Senate Conference Report at 628.
[131] See SAA at 926 (emphasis added).
[132] See section 771(18) of the Act, which was added as part of the OTCA of 1988, at § 1316(b).
[133] See Wire Rod from Czechoslovakia at 19374.
[134] See OTCA – House and Senate Conference Report at 590.
[135] See China Nat'l Mach. v. United States at 1238 ({G}iven that the overarching purpose of the antidumping and countervailing duty law is to counteract dumping and subsidies, the court cannot conclude that Congress would condone the use of any value where there is "reason to believe or suspect" that it reflects dumping or subsidies.).
[136] See, e.g., Bob Jones. at 600 ("Ordinarily, and quite appropriately, courts are slow to attribute significance to the failure of Congress to act on particular legislation").
[137] See, e.g., Rapanos at 750 ("To be sure, we have sometimes relied on congressional acquiescence when there is evidence that Congress considered and rejected the 'precise issue' presented before the Court") (emphasis in

To the contrary, according to the GOC, Congressional acquiescence is binding when: (i) Congress considered and rejected the "precise issue" presented before the Court;[138] (ii) Congress was aware of "what was going on," i.e., must have understood the current interpretation at issue;[139] and (iii) Congress "affirmatively manifests its acquiescence" through subsequent legislative action confirming the meaning of the acquiescence.[140] The GOC argues that, as discussed above, all three factors are clearly present in this case: (i) Congress expressly considered and rejected a proposal to grant the Department the power to apply CVD provisions to NME countries;[141] (ii) Congress was aware of the Department's interpretation, upheld in Georgetown Steel, that the CVD law did not apply to NMEs,[142] and (iii) Congress "affirmatively manifested its acquiescence" through subsequent legislative actions such as the SAA, a new statutory definition of NME, and new surrogate value instructions.[143] The GOC distinguishes this situation from others in which Congressional acquiescence was claimed but not actually present.[144] For example, the GOC notes in Solid Waste, the Supreme Court found that the respondent's claim of Congressional acquiescence could not stand because Congress' alleged legislative rejection occurred nine years prior to the agency interpretation at issue.[145] By contrast, the GOC argues, Congressional rejection of an amendment to grant the Department the power to apply the CVD law to NMEs properly occurred after the Department's and the CAFC's interpretation that Commerce lacked such power.

The GOC also disputes prior arguments by the Department that legislation extending PNTR to the PRC and the PRC's WTO Accession Protocol demonstrate Congress' understanding that "the Department already possesses the legal authority to apply the CVD law to NME's…"[146] The GOC counters that there is nothing in the PNTR legislation expressly recognizing the Department's authority to apply U.S. CVD law to NMEs, nor in the legislative history accompanying the PNTR legislation, which references subsidies only in terms of the PRC's broader WTO subsidy commitments.[147] Rather, the only reference to the U.S. CVD laws in the text of the PNTR legislation is the provision authorizing additional appropriations to the Department for the purpose of, inter alia, "defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."[148] The GOC argues that this reference merely acknowledges the Department's then-existing practice of applying CVD law to the PRC and other NMEs where the industry under investigation has been found to be operating as a MOI.[149] The GOC contends that: (i) this was Congress' and the Department's understanding of the U.S. CVD law in NME cases at the time

original) (citing Bob Jones at 600).

[138] See Bob Jones at 600 and Rapanos at 750.

[139] See Bob Jones at 600-601.

[140] Id. at 601.

[141] See OTCA – House Report at 138.

[142] Id.

[143] See SAA at 926; section 771(18) of the Act; and OTCA – House and Senate Conference Report at 590.

[144] See GOC Case Brief at 20.

[145] See Solid Waste at 159, 169-170.

[146] See KASR from the PRC IDM at 27.

[147] See Permanent Normal Trade Relations with the People's Republic of China, H.R. Rep. 106-632 (May 22, 2000).

[148] See Pub. L. No. 106-286 (October 10, 2000) at § 413(a)(1), codified at 22 U.S.C. § 6943(a)(1).

[149] See, e.g., Fans from the PRC at 10012 ("the Department is free to apply the CVD law to an MOI located within an NME").

the PNTR legislation was passed;[150] and (ii) the Department continued to rule that the CVD law should not be applied to NME countries even after the PNTR legislation.[151] Given that the Department itself believed that the statutory framework prohibited application of CVD duties to NME countries at the time of the PRC's WTO accession in December 2001, the GOC concludes that Congress could not have believed that the PNTR legislation authorized the imposition of CVD duties against NME countries.

U.S. Steel contends that virtually all of the arguments made by the GOC regarding the applicability of the CVD law to NMEs have already been dismissed by the Department and the GOC has provided no basis to reconsider them.

First, according to U.S. Steel, Georgetown Steel does not bar the Department from applying the CVD law to NMEs. Citing to CFS from the PRC, U.S. Steel points out that the Department has concluded that section 701 of the Act does not limit the agency's authority to conduct CVD investigations only to market economy countries.[152] The Department also found that the CAFC granted the agency broad discretion in determining whether it could apply the CVD law to NMEs and sustained the agency's decision not to apply the law on that basis.[153] According to U.S. Steel, the CIT has twice affirmed this conclusion. In GPX I, and again in GPX II, the CIT ruled that it was unclear whether the CAFC found a single permissible interpretation of the statute or whether it was deferring to the agency's discretion.[154]

Second, U.S. Steel addresses the GOC's claims that the statutory scheme prohibits application of the CVD law against NMEs because the AD and CVD provisions act in tandem. U.S. Steel contends that even if this were true - which it is not - the GOC never explains why this indicates that the CVD law may not be applied against imports from the PRC. Nevertheless, according to U.S. Steel, AD and CVD remedies are separate and distinct from one another. U.S. Steel points out that the courts have long recognized that the AD law is intended to offset unfairly low prices in the U.S. market, whereas the CVD law is intended to offset unfair economic advantages bestowed on companies as a result of subsidies provided by a foreign government.[155] [156] [157] U.S. Steel further points out that counsel for the GOC, which also represents TPCO in the instant investigation, stated in TPCO's Case Brief that, "{b}y clear Congressional intent, these remedies address very different types of behavior and harm… "[158]

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[150] See, e.g., RL30175: China's Accession to the World Trade Organization: Legal Issues, Jeanne J. Grimmett, Legislative Attorney, American Law Division, Congressional Research Service (June 2, 2002) at n.48 ("The Department of Commerce will nonetheless apply CVD law to imports from NME countries if the goods under investigation are produced by an MOI").
[151] See Sulfanilic Acid from Hungary at 60223.
[152] See CFS from the PRC IDM at Comment 1.
[153] Id. (citing Georgetown Steel at 1318).
[154] See GPX I at 1289-90 and GPX II at 1237.
[155] Compare Badger-Powhatan at 656 with Zenith at 455-56 .
[156] U.S. Steel also dismisses the GOC's contention that the SAA language reaffirmed Congress' adoption of Georgetown Steel, agreeing with the Department's position on this issue as stated in CFS from the PRC IDM at Comment 1 and arguing that, read in context, the statement only meant that subsidies could not be identified and measured in the command economies that were at issue in Georgetown Steel.
[157] U.S. Steel further argues that the adoption of the NME definition in the OCTA of 1988 is irrelevant, stating that this definition for AD purposes has nothing to do with whether the CVD law should be applied to the PRC.
[158] See TPCO Case Brief at 5 (Public Version) (emphasis added).

Third, U.S. Steel dismisses the GOC's claim that Congress has reaffirmed the statutory scheme that does not permit application of the CVD laws through its post-Georgetown Steel actions. U.S. Steel asserts that the GOC makes no reference whatsoever to the language of the statute - relied upon by the Department in CFS from the PRC and discussed above – as providing a basis for treating NMEs differently from market economies under the CVD law.[159] Instead, U.S. Steel claims, the GOC relies on the fact that Congress has taken no action to change the law after Georgetown Steel. U.S. Steel asserts that the Department already addressed this argument convincingly CFS from the PRC, where the Department stated its general grant of authority to conduct CVD investigations is sufficient and that no further action by Congress is needed.[160] U.S. Steel additionally points to the Department's reliance on the PNTR legislation and China's Accession Protocol,[161] and it disputes the GOC's argument that the PNTR refers only to situations where the industry under investigation has been found to be operating as a market-oriented industry. U.S. Steel argues that the language of the legislation does not set out, or even hint at, any such limitation because it describes countervailing duty measures.[162]

In this connection, U.S. Steel also points out that the Department has already commented on the weight to be given to congressional inaction under traditional rules of statutory construction, and U.S. Steel cites with approval the Department's reliance on Solid Waste at 170 and Butterbaugh v. DOJ at 1342. In particular, with respect to Congress' rejection of section 157 leading up to the OCTA of 1988, U.S. Steel agrees with the Department that given the Department's then-existing statutory authority, the proposed amendment was unnecessary.[163] U.S. Steel contends that the GOC fared no better with its "congressional inaction" argument in GPX II, as the CIT stated in that case that "{a}bsent some indication otherwise, Congress' silence is just that - silence."[164]

Finally, U.S. Steel disputes the GOC's claim that the courts have established a three-part test to determine whether Congress has acquiesced in an agency's interpretation of the law such that it is binding law. First, U.S. Steel states, the GOC's cited support, Bob Jones, contains no reference to such a test. Instead, according to U.S. Steel, the GOC's three-part "test" is a misleading contrivance because Congressional inaction is rarely used to divine congressional intent, as discussed above. Second, U.S. Steel notes that in Bob Jones, the Court sustained - rather than overturned - a longstanding ruling by the IRS that a school without a racially non-discriminatory policy as to students was not a "charitable" corporation. Thus, unlike here, the Court was not being asked to find that an agency's preceding application of the law prevented the agency from later applying the law differently when the circumstances had changed. Third, the Court in Bob Jones noted that it was not a case involving "an ordinary claim of legislative acquiescence."[165] U.S. Steel notes that only one month after the IRS announced its position, Congress held hearings on the issue and that "exhaustive hearings" there were 13 bills introduced

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159 See CFS from the PRC IDM at Comment 1.
160 See CFS from the PRC IDM at Comment 1.
161 Id.
162 See 22 U.S.C. § 6943(a) (2006).
163 See CFS from the PRC IDM at Comment 1.
164 See GPX II at 1239 (quoting Groff at 1354).
165 See Bob Jones at 600.

to overturn the IRS's interpretation, none of which were passed by Congress (and none of which even emerged from the relevant congressional committee).[166] These actions clearly distinguish the Department's situation for that in Bob Jones. Fourth, U.S. Steel states that the Court rested its decision, in part, not on congressional acquiescence by inaction, but on the fact that Congress had affirmatively acquiesced in the IRS's interpretation in recent legislation that barred tax-exempt status to social clubs whose charters provided for discrimination on the basis of race or color.[167] U.S. Steel notes that Congress has not enacted any analogous legislation here.

U.S. Steel concludes by arguing that Congressionally-mandated refinements to the NME AD methodology do not evince any Congressional intent that the CVD law not be applied to NMEs. In particular, U.S. Steel asserts that changes regarding valuation of the factors of production in applying the NME AD methodology has nothing to do with and does nothing to correct subsidies conferred by the NME itself, so the fact that Congress issued this directive is entirely irrelevant to the issue at hand.

Department's Position

We disagree with the GOC, TPCO and Hengyang 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.[168]

Congress granted the Department the general authority to conduct CVD investigations.[169] 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 . . . ."[170] 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.[171]

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."[172] 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."[173] Thus, the Department based its

166 Id (emphasis added by U.S. Steel) .
167 Id. at 601.
168 See OCTG from the PRC IDM at Comment 1; see also CFS from the PRC IDM at Comment 1; CWP from the PRC IDM at Comment 1; LWRP from the PRC IDM at Comment 1; LWS from the PRC IDM at Comment 1; OTR Tires from the PRC IDM at Comment A.1; LWTP from the PRC IDM at Comment 1; CWLP from the PRC IDM at Comment 16; CWASPP from the PRC IDM at Comment 4; KASR from the PRC IDM at Comment 1.
169 See e.g., sections 701, 771(5), and 771(5A) of the Act.
170 See section 701(a) of the Act.
171 See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").
172 See Wire Rod from Poland and Wire Rod from Czechoslovakia.
173 See e.g., Wire Rod from Czechoslovakia at 19373.

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 have eliminated price controls on most products . . . ."[174] 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.[175]

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. As explained in the Georgetown Steel Memorandum, Georgetown Steel does not rest on the absence of market-determined prices, and the decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC.[176] 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.[177] 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.[178]

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.[179] 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 cannot be applied 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.[180] The issue in Georgetown Steel was whether the Department could apply CVD laws (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 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.

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174 See Georgetown Steel, discussed in CFS from the PRC.
175 See e.g. Wire Decking from the PRC.
176 See Georgetown Steel Memorandum at 4-5.
177 Id. at 5.
178 Id.
179 Id.; see also Lined Paper Memorandum at 22.
180 See Georgetown Steel at 1316.

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.[181] 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."[182] 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.[183] Thus, Georgetown Steel did not hold that the Department could choose not to apply the CVD law to exports from NME countries, where it was possible to do so. Instead, 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.

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 was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

> {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 at 842-845.

Georgetown Steel 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.

The GOC's 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."[184] 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

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[181] See e.g. Wire Rod from Czechoslovakia at 19373.
[182] See Georgetown Steel at 1316.
[183] Id. at 1318.
[184] See 22 U.S.C. § 6943(a)(1) (emphasis added).

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."[185] 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."[186] 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 Supreme Court's analysis in Bob Jones of Congressional action (or inaction) has no bearing on the case before us. Specifically, in Bob Jones, the Court considered a number of factors in deciding whether to uphold the application of an IRS ruling that a non-profit, private school that engaged in racially discriminatory practices did not constitute a section 501(c)(3) non-profit entity for tax purposes. Among the factors the Court considered was Congress' behavior in light of the IRS Ruling that educational entities that discriminated on the basis of race could not qualify for 501(c)(3) status. From this case, the GOC derives a three-prong test to determine the meaning of Congressional inaction. However, this test overly simplifies the Supreme Court's robust analysis of the Congressional environment surrounding racial discrimination.[187] Furthermore, recognizing that "{n}onaction by Congress is not often a useful guide" the Supreme Court considered the circumstances before it exceptional and, accordingly examined whether Congressional inaction might be construed as acquiescence in that particular case.[188] Similar exceptional circumstances are not present in this case.

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.[189] 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

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185 See 22 U.S.C. § 6901(8).

186 See 22 U.S.C. § 6841(5).

187 See, e.g., Bob Jones at 599 ("Failure of Congress to modify the IRS rulings of 1970 and 1971, of which Congress was, by its own studies and by public discourse, constantly reminded, and Congress' awareness of the denial of tax-exempt status for racially discriminatory schools when enacting other and related legislation make out an unusually strong case of legislative acquiescence in and ratification by implication of the 1970 and 1971 rulings." (emphasis added)).

188 See, e.g., id. ("In view of its prolonged and acute awareness of so important an issue, Congress' failure to act on the bills proposed on this subject provides added support for concluding that Congress acquiesced in the IRS rulings of 1970 and 1971." (emphasis added)).

189 See CFS from the PRC at Comment 1.

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.[190] 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. Further, Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced, a direction codified in U.S. law.

In sum, the Department has authority to apply the CVD law to NMEs under U.S. law. Further, the Department's decision to apply the CVD law to the PRC, as explained in the Georgetown Steel Memorandum, is within the Department's discretion and in accordance with law. Accordingly, the Department's application of the CVD law in this proceeding is appropriate.

Comment 2 Whether Application of the CVD Law to NMEs Violates the Administrative Protection Act

The GOC asserts that the Department's imposition of CVDs on imports from the PRC violates the APA. The GOC states that the APA requires formal rulemaking to amend binding rules and that the Department is not exempt from this process when it engages in rulemaking.[191] The GOC contends that a binding rule emerged: (i) in 1984, when the Department adopted its position not to apply the CVD law to NME countries after a specific notice and comment period;[192] (ii) in 1993, when the Department issued the "General Issues Appendix," which was a written statement that resolved various issues related to the CVD law;[193] or (iii) when the Department codified its position when it specifically limited the scope of its authority in new CVD regulations to exclude NMEs. The GOC argues that calling a "rule" a "practice" or "policy," as the Department did in OTR Tires from the PRC, does not immunize the Department's action from APA requirements because it is the nature and effect of the action, not the labels, which govern.[194]

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[190] See 22 U.S.C. § 6941(5).
[191] See 5 U.S.C. § 553(c) (opportunity to participate in the process; 5 U.S.C. § 551(5) (providing that rulemaking includes formulation, amendment or repeal of a rule); The CIT has confirmed that "the rights and duties of parties to antidumping and countervailing duty proceedings before Commerce" do not fall into an excepted category under the APA; Carlisle Tire at 423.
[192] See Textiles from the PRC at 46601. The Department published a notice stating:

> In the view of the novelty of issues raised by the petition, we invite written comments and participation in a conference to which *all persons* interested in these issues are invited;

No preliminary of final determination was reached in Textiles from the PRC because the petition was eventually withdrawn and the case was terminated. However, the hearing and related briefs from the Textiles from the PRC case were considered in other pending CVD cases against NMEs in which the Department found that the CVD law did not apply; Wire Rod from Poland Prelim.
[193] See Certain Steel Products from Austria at 37217.
[194] See OTR Tires from the PRC IDM at 45.

U.S. Steel argues that the Department's application of the CVD law to imports from the PRC does not violate the APA and points out that the Department effectively and properly disposed of all of the claims raised by the GOC in CFS from the PRC.[195]

Department's Position

The Department disagrees with the GOC that our decision to apply the CVD law to NMEs is subject to the APA's notice-and-rulemaking procedures because those procedures do not apply to "interpretative rules, general statements of policy or procedure, or practice."[196] The Department's position on this issue is fully explained in CFS from the PRC,[197] and the GOC has raised no new arguments here.

Comment 3 Double Counting/Overlapping Remedies

Citing GPX II, the GOC contends that the Department's application of the CVD law to the PRC while simultaneously treating the PRC as an NME for AD purposes results in the unlawful imposition of a double remedy on Chinese imports.[198] Therefore, according to the GOC, any time the Department finds both subsidies and dumping in cases where the CVD law and NME AD methodology are applied, and no methodologies are utilized to make a double remedy unlikely, a double remedy must be presumed. Moreover, the GOC argues, the Department may not shift the burden of proving a double remedy on respondents as the CIT has already concluded that placing such a burden on respondents is unreasonable.[199]

The GOC points to the CIT's observation that it is unclear how or whether the AD and CVD laws can work together in the NME context[200] and claims that the Department's continual resort to using external benchmarks because it cannot use Chinese prices shows the two cannot be reconciled. The GOC claims further that the Department's frequent resort to external benchmarks is consistent with the Department's findings regarding the nature of NMEs in the investigations underlying Georgetown Steel[201] and the statutory definition of "nonmarket economy."[202] At the same time, the GOC contends, the Department's finding in this and prior CVD cases against the PRC are inconsistent with the Department's assessment in the Georgetown Steel Memorandum of the PRC's status as a transitioning NME. In that memo, the Department states that it is now able to determine the transfer of a specific financial contribution and benefit from the government to producers, based on the PRC's development.[203] Yet, the GOC argues, the Department remains almost universally unable to measure any benefit with market benchmarks from within the PRC, and it is unclear how these circumstances are different from those described in Wire Rod from Czechoslovakia.

[195] See CFS from the PRC IDM at Comment 2.
[196] Id. (citing 5 U.S.C. § 553(b)(3)(A)).
[197] See CFS from the PRC IDM at Comment 2.
[198] See GPX II at 1243.
[199] Id.
[200] Id.
[201] See Wire Rod from Czechoslovakia at 19371.
[202] See section 771(18) of the Act.
[203] See Georgetown Steel Memorandum at 10.

TPCO argues that antidumping law is intended to offset unfairly low prices in the U.S. market,[204] while the CVD law is intended to offset unfair economic advantage bestowed by a government, whether manifested in price, production cost, or some other competitive benefit.[205] TPCO further argues that the statute provides safeguards to prevent the threat of double-counted remedies when AD and CVD laws are applied in tandem. This is explicit in the requirement to reduce AD margins for export subsidies.[206] TPCO asserts that this is necessary because both remedies have the same purpose of protecting U.S producers from low-priced imports.

TPCO next points to the statutory definition of "nonmarket economy" to argue that prices and costs in NMEs are so distorted by government intervention that no market truly exists. According to TPCO, this broad distortion would necessarily include any countervailable subsidies. And, TPCO argues, to account for the distortion, the Department ignores producer prices and costs in the NME resorting instead to market economy benchmarks to establish normal value.[207] Thus, TPCO believes it fair to characterize the NME AD methodology as a hybrid remedy addressing both dumping and subsidies.

TPCO continues that both the AD and CVD methodologies examine cost and, specifically, the cost of operating in an undistorted commercial setting where market-determined benchmarks are used to ascertain market costs. When both AD and CVD duties are imposed, TPCO claims that the two duties are being applied to remedy substantially overlapping phenomena. And, while the outcomes of the two approaches may differ in terms of the level of duties applied, this occurs because of different methods, not different purposes. TPCO points out that for market economy countries, where margins of dumping are typically determined based on a comparison of prices or costs in the home market in the United States, the Department does not need to account for any subsidy benefit manifesting itself through lower prices or costs in the dumping calculation, as that can be left to a CVD remedy.

TPCO next argues that the Department bears the burden of demonstrating no double remedy when it applies the NME AD methodology and the CVD simultaneously. Beyond input subsidy issues, TPCO states that it is largely impossible to illustrate an overlap given the fact that there is no way to determine from surrogate financial ratios used in the NME AD case where countervailable subsidies that are offset in the NME AD normal value calculation begin or end. It may be difficult to disentangle the overlap where the NME AD remedy is formed from a crude and broad examination of the effect of market distortions and the CVD remedy is derived from a more precise examination of the benefit derived from countervailable subsidies, but that is not a basis to find the two remedies compatible or distinct according to TPCO.

Finally, TPCO argues that in GPX II, the court directed the Department to develop a methodology to address the double remedy that occurs through the simultaneous application of

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[204] See Badger-Powhatan at 656.
[205] See Zenith at 455-56 .
[206] See section 772(c)(1)(C) of the Act.
[207] See section 773(c) of the Act. TPCO also points out that in valuing factors of production, Congress has instructed the Department to avoid using any prices which it has reason to believe are suspect may be dumped or subsidized. See OTCA of 1988 at 590.

the NME AD methodology and the CVD law.[208] Because the Department has not done so, TPCO urges the Department to follow the alternative provided by the court, i.e., of not imposing CVDs on NME goods.[209]

Hengyang explains that the Department rejects Chinese values for inputs and instead uses market economy factor prices to calculate normal value because prices in the PRC are "tainted" by government involvement. Similarly, the Department uses general, administrative and financial ratios developed in a market economy to remove any indirect government involvement from the normal value. Thus, according to Hengyang, when normal value is calculated under the NME AD methodology, it is free of government influence and is market oriented. Consequently, Hengyang argues, the imposition of both antidumping duties and countervailing duties against the same product in an NME context is double counting.

Hengyang also points to the CIT's findings in GPX II and GPX III: (i) that there is an overlap in the functions of the AD and CVD laws for NMEs;[210] (ii) that application of both leads to a significant potential for double counting;[211] and, (iii) the Department cannot put the burden on respondents to provide specific evidence of a double remedy.[212] Therefore, in accordance with GPX III, the Department must not impose countervailing duties in this investigation.[213]

U.S. Steel argues that GPX II is not a final decision and that in its recent determination pursuant to remand, the Department sought to comply with the instructions issued by the court "under protest."[214] In doing so, the Department repeatedly emphasized its strong disagreement with the conclusions reached by the court in GPX II. U.S. Steel further argues that the manner in which the Department complied with the court's instructions, offsetting the calculated CVD rate against the AD cash deposit rate determined by the Department,[215] indicate the Department's awareness that its remand decision would be subject to an appeal to the CAFC by the domestic producers. U.S. Steel notes that the CIT subsequently overturned the Department's remand decision and remanded the case to the Department with instructions to not impose CVDs on the respondents.[216] U.S. Steel argues that this decision is flawed and unpersuasive because it is based on the court's erroneous conclusions in its initial decision. U.S. Steel further argues that the court's decision is unlawful under Nippon Steel[217] because the court remanded the case to the Department with instructions as to how to decide it. Thus, U.S. Steel contends, GPX II should not be relied upon because it is not a final decision and is fundamentally flawed.

U.S. Steel next argues that the decision in GPX II did not abide by the required standard for review. That standard, as summarized by the CIT in Ad Hoc Shrimp,[218] requires the court to first

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208 See GPX II at 1243.
209 Id.
210 See GPX II and GPX III.
211 See GPX II at 1243.
212 Id.
213 GPX III at 3.
214 See GPX Remand Determination at 7-9.
215 Id. at 8-11.
216 See GPX III.
217 See Nippon Steel at 1359.
218 See Ad Hoc Shrimp at 1297.

examine whether Congress has addressed the precise question and, if so, to give effect to Congress' direction. If not, then the court should defer to the administering agency unless the agency's position is arbitrary, capricious, or manifestly contrary to the statute.

U.S. Steel argues that both aspects of this standard of review are violated by the Court's finding in GPX II. First, U.S. Steel disagrees with the Court's finding that Congress' intent with respect to the double remedy issue is unclear. In particular, because the statute speaks only to the adjustment of AD duties for export subsidies,[219] U.S. Steel argues that Congress did not intend any similar adjustment be made when domestic subsides are at issue. Second, even if Congress' intent was not clear, U.S. Steel claims that the court erred in finding the agency's position unreasonable. In particular, U.S. Steel argues that the purposes of the AD and CVD laws are completely separate and the NME AD methodology is not intended to remedy subsidies; and, the manner in which the CVD and AD laws are administered does not lead to a double remedy. Regarding the latter, U.S. Steel contends that in reaching this conclusion, the court relied on the false presumption that domestic subsidies have no effect on the calculation of normal value under the NME AD methodology.

U.S. Steel then turns to the claims made by TPCO, addressing them in large part by restating U.S. Steel's arguments as summarized above. Not addressed above is TPCO's claim regarding the burden of showing that a double remedy exists. U.S. Steel contends as a threshold matter that the Department need not, and should not, permit respondents to attempt to demonstrate that a domestic subsidy entails a double remedy because the statute does not contemplate adjustments to the dumping margin to offset the effect of a domestic subsidy. U.S. Steel asserts that the Department does not permit respondents in market economies to request such adjustments, and there is no reason for the Department to treat the PRC any differently.

Department's Position

We disagree with the GOC, TPCO and Hengyang. First, their reliance on GPX II is misplaced because this decision is not final. Second, the respondents have not cited to any statutory authority for not imposing CVDs so as to avoid the alleged double remedies or for making 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 the AD investigation. We note that this position is consistent with the Department's decisions in recent PRC cases.[220]

Regarding the GOC's arguments about the Department's use of external benchmarks, we note that this is not unique to cases against NMEs. The Department addressed this argument in KASR from the PRC, citing multiple instances in which it relied on out-of-country benchmarks to measure subsidies in market economies.[221]

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[219] See section 772(c)(1)(C) of the Act.
[220] See, e.g., Wire Decking from the PRC IDM at Comment 1, OCTG from the PRC IDM at Comment 2, Citric Acid from the PRC IDM at Comment 2, KASR from the PRC IDM at Comment 2, and Magnesia Bricks from the PRC IDM at Comment 2.
[221] See KASR from the PRC IDM at Comment 1.

Regarding TPCO's claims about the overlapping nature of the NME AD methodology and the CVD law, the Department has explained that the AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices.[222]

Comment 4 Cutoff Date for Identifying Subsidies

In their respective case and rebuttal briefs, both the GOC and U.S. Steel take issue with the cut-off date of December 11, 2001, used by the Department in determining whether the GOC has bestowed measurable countervailable subsidies on Chinese producers. The GOC argues that the Department should use a cutoff date of April 9, 2007, the date the Department first preliminarily applied CVD law to the PRC, or at the earliest, January 1, 2005, because it was the beginning of the POI in CFS from the PRC. Conversely, U.S. Steel contends that the Department should not apply any cutoff date. First, we have summarized the GOC's position and U.S. Steel's rebuttal comments, then U.S. Steel's affirmative comments and the GOC's rebuttal comments.

As an initial matter, the GOC states that in GPX II the CIT found the Department's cutoff date of December 11, 2001, to be "arbitrary and unsupported by substantial evidence."[223] The GOC contends that it had been well settled that CVD law could not apply to NMEs such as the PRC. The GOC states that this understanding changed with the publication of the CFS from the PRC Preliminary Results on April 9, 2007. The GOC argues that to apply a cutoff date prior to this date would ignore the fundamental requirement of due process and fairness because parties would have no reason to expect CVD law would apply prior to this date. Therefore, the GOC contends that such a dramatic change in practice should only apply prospectively.

The GOC also contends that the Department's use of December 11, 2001, conflicts with its past practice of applying the CVD law only after finding that a country is no longer an NME. The GOC alleges that in Sulfanilic Acid from Hungary, the Department said that the CVD law does not apply to a country while it is still considered an NME.[224] The GOC also asserts that this understanding is represented in the CVD Preamble. The GOC states that in cases where the Department applies the CVD law to a country that was considered an NME, there is a clear cut-off date because the Department makes a formal determination that the country is no longer considered an NME. The GOC offers that the Department stated this in Georgetown Steel. Further, the GOC contends the Georgetown Steel Memorandum did not provide sufficient analysis of any market conditions prior to January 1, 2005, to support the use of the Department's December 11, 2001, cut-off date. Moreover, the GOC cites the Lined Paper Memorandum as a determination by the Department that the PRC had not completed its transition to a market economy by 2005. Thus, the GOC states that the analysis contained in the Lined Paper Memorandum requires a cut-off date no earlier than January 1, 2005.

In its rebuttal comments, U.S. Steel refutes the GOC's arguments that the use of December 11, 2001, ignores due process and fairness, and that the date is inconsistent with the Department's prior practice in Sulfanilic Acid from Hungary. U.S. Steel claims both arguments were addressed and rejected in CWP from the PRC, and the Department should not revisit these issues

[222] See KASR from the PRC AD Final IDM at Comment 1.
[223] See GPX II at 1246.
[224] See Sulfanilic Acid from Hungary IDM at 8, 14.

in this proceeding. U.S. Steel also claims that the Department's determination in CFS from the PRC makes clear the Department's position that it was able to identify and measure subsidies while treating the PRC as an NME for purposes of AD law, and that this determination is not in conflict with the Lined Paper Memorandum cited by the GOC.

In its case brief, U.S. Steel argues that the Department should examine and countervail non-recurring subsidies conferred prior to December 11, 2001, and not apply any cutoff date to limit its analysis. U.S. Steel contends that section 701 of the Act requires that the Department apply U.S. CVD law to subsidies that benefit imports of any country into the United States, regardless of WTO membership status. U.S. Steel also points to the SCM Agreement[225] and to the WTO accession documents signed by the PRC contending that nothing in these documents precludes the Department from examining subsidies provided prior to the PRC's accession to the WTO. U.S. Steel claims that when the Department first found in CFS from the PRC that the PRC was subject to U.S. CVD law, the Department looked to "major reforms that occurred well in advance of, and wholly unrelated to, the PRC's accession to the WTO."[226] Therefore, U.S. Steel claims that there is no basis to refuse to countervail subsidies granted prior to the PRC joining the WTO.

U.S. Steel also contends that the justification put forth by the Department in CWP from the PRC[227] for not countervailing subsidies prior to December 11, 2001, was based solely on the administrative difficulty in identifying subsidies on a program-by-program basis prior to the PRC's WTO accession. U.S. Steel claims that this justification has recently been rejected by the CIT in GPX II, where U.S. Steel contends the CIT directed the Department to develop a methodology to examine each pre-WTO accession subsidy. U.S. Steel notes that in its GPX Remand Determination, the Department examined subsidies on a case-by-case basis, and determined that certain subsidies were countervailable prior to December 11, 2001. U.S. Steel urges the Department to follow the analysis outlined in GPX II and evaluate the alleged non-recurring subsidies granted by the GOC to TPCO and Hengyang prior to December 11, 2001.

Regarding the subsidies alleged in this investigation, U.S. Steel contends that TPCO received subsidies as part of a restructuring that began in 1999. U.S. Steel argues that these subsidies are outlined in TPCO's 1999 "Debt-to-Equity Swap Agreement," which U.S. Steel contends shows credit-oriented and land use subsidies granted by the GOC starting in 1999. U.S. Steel points to the GPX Remand Determination, which U.S. Steel states establishes that the Department can evaluate and countervail land related subsidies dating back to 1999, and credit-oriented subsidies dating back to 1996. Accordingly, U.S. Steel maintains that the Department should include any benefits provided by the GOC as part of TPCO's 1999 restructuring.

With respect to Hengyang, U.S. Steel contends that Hengyang identified two instances where it acquired land use rights prior to December 11, 2001. In accordance with the GPX Remand Determination, where U.S. Steel contends the Department determined it can countervail and measure land use subsidies beginning in 1999, U.S. Steel argues that the Department should countervail all land use rights that were given to Hengyang for LTAR after 1998.

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[225] See SCM Agreement, at Annex IV, para 7.
[226] Id.
[227] See CWP from the PRC IDM at Comment 2.

Both the GOC and TPCO address U.S. Steel's argument that the Department should not apply a cutoff date in measuring subsidies in their respective rebuttal comments. First, the GOC and TPCO contend that the Department should not rely on GPX II or the ensuing GPX Remand Determination, because the Department's remand determination was rejected by the CIT. In support of this assertion, the GOC and TPCO point to GPX III.[228] Moreover, the GOC and TPCO contend that the Department has not taken the necessary steps, including seeking comments from parties, in this proceeding to allow the Department to depart from its settled practice of applying a uniform cutoff date in this proceeding. The GOC and TPCO additionally argue that the Department's analysis in the GPX Remand Determination should not be followed here because that analysis was not focused on the economic conditions present in the PRC, which the GOC and TPCO contend is the relevant analysis, but rather on the "context of the government bestowal."[229] As such, the GOC and TPCO maintain that the Department continue to apply a cutoff date in measuring subsidies provided by the GOC, and urge the Department to use the dates outlined in the GOC's affirmative comments as the cutoff date.

Department's Position

Consistent with recent PRC CVD determinations (e.g., CWP from the PRC, LWTP from the PRC, LWRP from the PRC, LWS from the PRC, OTR Tires from the PRC, KASR from the PRC, and OCTG from the PRC), 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.

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.[230] 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 to January 1, 2005, (the start of the POI in CFS from the PRC), or April 9, 2007 (the date of the Department's preliminary results in CFS from the PRC). Moreover, initiation of CVD

[228] See GPX III at 28.
[229] See GPX Remand Determination at 25.
[230] See Report on the Accession of China.

investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001, date. For example, in 1992, the Department initiated a CVD investigation on Lug Nuts from China. In 2000, Congress passed PNTR Legislation (as discussed in Comment 1) 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."[231] 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.

The GOC points to the Lined Paper Memorandum as proof that the Department had determined that the PRC had not yet completed its transition to market-economy status by 2005. As we acknowledged above, economic reform is a process that occurs over time, and it may progress faster in some sectors of the economy or areas of the country than in others. Nevertheless, we have concluded that the cumulative effects of the many reforms implemented prior to the PRC's WTO accession led to economic changes allowing us to identify and to measure subsidies bestowed upon producers/exporters in the PRC after December 11, 2001.

Regarding U.S. Steel's concern about the adoption of a December 11, 2001, cut-off date, we reiterate that economic changes that occurred leading up to and at the time of WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing the PRC with preferential treatment. 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.[232]

We disagree with U.S. Steel's argument that the selection of a fixed cut-off date is arbitrary. 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.[233] At the same time, the Department has identified certain areas such as in the credit and land markets where the PRC economy continues to exhibit non-market characteristics.[234] 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. Faced with the evolving nature of economic reform, the Department nevertheless must effectively administer the countervailing duty law, requiring a reasonable

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[231] See 22 U.S.C. § 6943(a)(1) (emphasis added).
[232] See Georgetown Steel at 1318.
[233] See Georgetown Steel Memorandum at 5.
[234] Id. at 3.

determination of the point at which subsidies can be measured in the PRC. The selection of the December 11, 2001, cut-off date, representing the point at which the PRC undertook significant legal obligations under the WTO Subsidies Agreement, was a reasonable, and not an arbitrary, determination. 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.

U.S. Steel contends that section 701 of the Act directs the Department to determine and countervail illegal subsidies without exception, and further that the statute does not specify a fixed date from which the Department will find countervailable subsidies. These arguments ignore that the imposition of CVD law requires the Department to be able to identify and to measure subsidies. The Department addressed the virtually identical concerns in Wire Rod from Czechoslovakia.[235] Specifically, we examined whether any political entity is exempted per se from the countervailing duty law and found that none were, but then went on to address the additional question of whether the law could be applied to non-market economy countries like Czechoslovakia. We concluded that state intervention in that economy, such as government control of prices, did not allow us to identify specific NME government actions as bounties or grants. The Department's analytical approach in Wire Rod from Czechoslovakia was upheld by the CAFC in Georgetown Steel.[236] The Court found that the Department had the discretion not to apply the CVD law where subsidies could not meaningfully be identified or measured. In the instant investigation, our analysis has led us to conclude that the economic changes that occurred leading up to and at the time of WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers.

Regarding the GOC's and U.S. Steel's reliance on GPX II, such reliance is misplaced because that decision is not final.

For these reasons, and consistent with CWP 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.[237]

Comment 5 Scope of the Investigation

Salem, as U.S. importer of seamless mechanical tubing, contends that mechanical tubing, including aviation, hydraulic and bearing tubing, should be excluded from the scope because (1) Petitioners do not produce these products and never intended that the investigation cover these products; and (2) these are custom products made to strict engineering standards and not made according to standard pipe sizes, unlike seamless pipe which is a commodity product made to less strict engineering requirements and made only in certain standard sizes. Salem adds that aviation, hydraulic and bearing tubing are a type of mechanical tubing, thus if mechanical tubing

[235] See Wire Rod from Czechoslovakia at 19371.
[236] See Georgetown Steel at 1318.
[237] See CWP from the PRC IDM at Comment 2; see also LWRP from the PRC IDM at Comment 4.

is excluded from the scope, aviation, hydraulic and bearing tubing must also be excluded from the scope.

According to Salem, Petitioners' concerns regarding circumvention should not lead to including products within the scope that Petitioners intentionally excluded from the scope. Salem states that importers are willing to submit to testing by CBP to ensure that imported products identified as mechanical tubing were produced to mechanical tubing specifications. Additionally, Salem states that the Department and CBP could require written evidence that the products have been tested and found to conform to the stated specifications.

Salem maintains that including products within the scope that Petitioners intended to exclude could raise questions in the ITC's proceeding.

Salem suggests the following possibilities for exclusionary language in the scope: (1) adopt the scope language in the petition; (2) state that "All mechanical, boiler, hydraulic, aviation, bearing, condenser and heat exchange tubing are excluded from the scope of this investigation, except for such products described above when they conform to the dimensional requirements, i.e., outside diameter and wall thickness of ASTM A-53, ASTM A-106 or API 5L"; or (3) state that "Specifically excluded from the scope of the investigation are:

- Boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM l-335, ASTM A-589, ASTM l-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications;
- Mechanical tubing that conforms to the A-519 standard for cold-drawn seamless tubing that is not produced to the specific commodity specifications of seamless pipe;
- Seamless aviation tubing conforming to AMS-T-6736A and AMS 2253E specifications;
- Seamless hydraulic tubing conforming to SAE J524 specifications; and,
- Seamless bearing tubing conforming to ASTM A295, AMS 6440, and AMS 2253E specifications.

TAI, a U.S. importer of mechanical tubing, argues that the Department should exclude from the scope of the investigation all seven types of tubing products (i.e., mechanical, boiler, bearing, condenser, heat exchange, hydraulic, and aviation) *whether or not* they overlap with the dimensional requirements of certain seamless pipe because the ITC has specifically excluded these products from its final investigation and is not determining whether the U.S. tube-producing industry is being materially injured by imports of tubing. TAI asserts that the Department cannot enlarge the scope of its investigation because the statute requires the Department and the ITC to reach determinations regarding the same kind of merchandise and there is no evidence on the record that tubing products are the same class or kind of merchandise as seamless pipe.

TAI maintains that the record contains substantial information indicating that mechanical tubing and the different subclasses of mechanical tubing (e.g., aviation, hydraulic, bearing) are different from the subject merchandise and should be excluded from the scope of the investigation.

TAI notes that Petitioners expressly excluded mechanical and boiler tubing products from the scope of the investigation except when they were produced to seamless pipe specifications and used in seamless pipe applications. TAI states that Petitioners also noted before the ITC that they "never intended that the scope of these investigations include any imports used as mechanical tubing." Thus, TAI believes that Petitioners should not oppose excluding other special types of mechanical tubing (e.g., bearing tubing) from the scope of the investigation. TAI adds that Petitioners have not opposed any of the scope modifications involving excluding mechanical tubing proposed by interested parties in this investigation.

TAI also states that it does not object to excluding ASTM A-335 pipe from the scope of this investigation.

TAI believes that the confusing scope language has led the CBP to suspend liquidation of entries of tubing products, and also required the payment of antidumping and countervailing duties, and the posting of bonds. TAI believes that CBP needs to be instructed that additional tubing products are excluded from the investigation.

U.S. Steel contends that the scope of the investigation should not be modified to exclude mechanical, boiler, condenser, heat exchange, aviation, hydraulic, and bearing tubing that overlap with the dimensional requirements of the ASTM A-53, ASTM A-106, or API 5L specifications. U.S. Steel states that it does not object to excluding all boiler and mechanical tubing so long as the scope of the investigation contains end-use language. U.S. Steel recalls that it agreed to the use of a dimensional requirement exception only as an alternative proposal to the end-use requirement in response to the Department's concerns about the practicality of the end-use requirement.[238] U.S. Steel expresses concern that in the absence of end-use language, Chinese producers and exporters could circumvent any resulting AD or CVD orders for products under investigation.

U.S. Steel states it does not object to the exclusion of aviation, hydraulic and bearing tubing from the scope, provided that these exclusions are handled in a manner that precludes circumvention. U.S. Steel states that it would agree to Salem's proposed language to exclude aviation, hydraulic and bearing tubing from the scope of the order, if the following changes were made:

1.) the term "ASTM 1-335" (which is presumably meant to be ASTM A-335) should be deleted and the term "ASTM 1-795" should be read "ASTM A-795"
2.) the phrase "that is not produced to the specific commodity specifications of seamless pipe" in the second bullet should be replaced with "except when such

[238] See U.S. Steel Rebuttal Brief at 101.

products conform to the dimensional requirements, i.e., outside diameter and wall thickness, of the ASTM A-53, ASTM A-106 or API 5L specifications"

3.) the last three bullets in Salem's proposed language should include the following language after the word "specifications": "except when such products conform to the dimensional requirements, i.e., outside diameter and wall thickness, of the ASTM A-53, ASTM A-106 or API 5L specifications."

U.S. Steel argues that the Department should disregard TAI's scope comments in TAI's August 25, 2010 case brief on procedural grounds. U.S. Steel observes that the Department set a June 30, 2010 deadline for interested party comments on a proposed modified scope.[239] U.S. Steel contends that because TAI made scope arguments in its August 25, 2010 case brief that differed from the comments it submitted on June 30, 2010, its August 25, 2010, case brief should be considered two months late and rejected accordingly.

Department's Position

The record of this investigation indicates that mechanical, boiler, condenser, heat exchange, aviation, hydraulic, and bearing tubing (the tubing at issue) differ from seamless standard, line, and/or pressure pipes in that seamless pipes are commodity products made to standard pipe sizes (outside diameter and wall thickness) whereas the tubing at issue is custom designed to meet a customer's needs and is generally not produced with the standard pipe diameters and wall thicknesses found in seamless standard, line, and pressure pipes. Thus, generally the physical characteristics of the tubing distinguish the product from seamless standard, line, and pressure pipes. However, this is not the case where the tubing at issue conforms to the dimensional requirements, i.e., outside diameter and wall thickness, of seamless pipe specifications. Such a scenario raises questions as to whether the product is sufficiently distinct from seamless standard, line, and pressure pipes to be excluded from the scope of the investigation. Concerns over dimensional overlap primarily involve mechanical, boiler, condenser and heat exchange tubing. Thus, we have excluded from the scope of the investigation all mechanical, boiler, condenser, and heat exchange tubing, except when such products conform to the dimensional requirements, i.e., outside diameter and wall thickness of ASTM A-53, ASTM A-106 or API 5L specifications. We have also excluded from the scope of the investigation all pipes meeting aerospace, hydraulic, and bearing tubing specifications. We have determined that the specifications of these products sufficiently distinguish them from subject merchandise and thus we have excluded them from the scope of the investigation. Moreover, the tight dimensional requirements of aerospace and hydraulic specifications and the high carbon content of bearing tubing distinguish these products from subject merchandise and make it unnecessary to limit the exclusion of these products to only those products that do not conform to the dimensional requirements, i.e., outside diameter and wall thickness of ASTM A-53, ASTM A-106 or API 5L specifications. Lastly, based on Petitioners' request, we have excluded from the scope of the investigation all pipes meeting the chemical requirements of ASTM A-335, whether finished or unfinished.

[239] The Department set June 30, 2010 as the deadline for the submission of comments on modified scope language which it issued in a letter on June 23, 2010.

With regard to TAI's concern that CBP has suspended liquidation on merchandise not properly covered under the scope of this investigation, the Department believes that modifications in the scope discussed above will clarify for CBP what should be covered.

The Department finds that an exception to the exclusion of tubing products named above based on end-use would be almost impossible to administer. Therefore, we have adopted the alternative approach of retaining in the scope any mechanical, boiler, condenser, and heat exchange tubing which conform to the dimensional requirements, i.e., outside diameter and wall thickness of ASTM A-53, ASTM A-106 or API 5L specifications. These products are otherwise excluded from the scope.

We disagree with U.S. Steel's contention that TAI's case brief scope arguments should be rejected as late. The Department's June 30, 2010, deadline for comments on the scope modification was for comments only and did not preclude the submission of arguments on scope in the case briefs. For certain cases, the Department has established a separate briefing schedule for a particular issue such as scope, but we did not set a separate briefing schedule for scope issues in the instant investigation. In this case, we set deadlines for scope comments on June 30, 2010, and again on August 23, 2010, to encourage parties to put relevant information on the record. TAI's case brief arguments while different in some respects from what it had argued on June 30, 2010, relied on factual information already on the record. Therefore, we retain TAI's August 25, 2010 scope comments on the record.

Provision of Steel Rounds for LTAR

Comment 6 Application of AFA in Determining the Benchmark for Steel Rounds

In the Preliminary Determination, the Department found that the GOC withheld necessary information regarding the production of steel rounds in the PRC and that the GOC had not acted to the best of its ability to comply with the Department's requests for information. Consequently, the Department applied AFA in determining that the GOC dominates the steel round industry and, accordingly, domestic prices for steel rounds in the PRC could not be used as a benchmark for calculating the benefit conferred through the GOC's provision of steel rounds.

The GOC claims that it was unlawful for the Department to rely on AFA because, as the GOC explained in its questionnaire responses, the requested information regarding steel rounds was not available. The GOC points to the CIT's decision in Mannesmannrohren-Werke to argue that the Department cannot even apply "facts available," when a respondent does not provide information that does not exist.[240]

Therefore, instead of using world-market prices, a tier two benchmark, the GOC argues that the Department should rely on the tier one benchmark of market prices from actual transactions in the PRC. The GOC states that, under the law and the Department's regulations, the Department can only resort to world market prices when actual market prices in the country in question are unavailable. Moreover, according to the GOC, the Department recognized in Softwood Lumber

[240] See Mannesmannrohren-Werke at 1321.

from Canada (1992) and Softwood Lumber from Canada (1983) the practical impossibility of using prices outside the jurisdiction in question and the agency has been reminded of the importance of using in-country benchmarks in international fora (see Softwood Lumber Products – 2003 NAFTA Panel Decision[241] and AB Report on Softwood Lumber.[242]

When the Department determined to rely on AFA the GOC claims that the agency ignored data on the record that would have allowed it to construct a reasonably accurate cross-section of the Chinese steel rounds industry in terms of ownership status. According to the GOC, this data shows that SOE providers of steel rounds do not constitute a substantial portion of the Chinese steel rounds market. Specifically, according to the GOC, the Department should have relied upon TPCO's and Hengyang's experience in purchasing steel rounds. According to the GOC, these two companies are among the largest seamless pipe producers in the PRC and their purchases of steel rounds during the POI were not trivial. Thus, the GOC claims, looking at TPCO's and Hengyang's suppliers would provide the Department with an accurate picture of the Chinese steel rounds industry and would demonstrate that SOEs accounted for far less than a majority of Chinese production, thereby allowing the Department to use an in-country benchmark. Moreover, the GOC contends that relying upon TPCO's and Hengyang's suppliers for making this determination would be consistent with the Department's preference in other contexts to use sampling techniques in order to conserve investigative resources. TPCO also asks the Department to use this information to establish the benchmark for steel rounds. TPCO incorporates by reference the GOC's arguments regarding the Department's use of adverse facts available.

U.S. Steel argues that the Department should continue to rely on AFA and reject Chinese domestic prices as the benchmark for government-provided steel rounds. U.S. Steel claims that, as in OCTG from the PRC, the GOC never attempted to explain what efforts, if any, it undertook to try and obtain the data requested by the Department, what alternative information was available, and whether a further extension of time or other accommodation would enable it to provide that information. Consequently, as the agency did in OCTG from the PRC, the Department should apply AFA.

Additionally, according to U.S. Steel, the GOC has failed to provide any support for its claim that the prices for steel rounds reported by Hengyang and TPCO represent actual market-determined prices between private parties. Moreover, U.S. Steel contends, through its export restrictions on steel rounds, the GOC further distorts domestic prices in the PRC for this product. U.S. Steel cites as support KASR from the PRC, where the Department found that export restraints contribute to distortion of the domestic market in the PRC by increasing supply and, thereby, lowering prices.[243]

Department's Position

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," the Department has continued to apply AFA and has used external prices as its benchmark for

241 See Softwood Lumber Products – 2003 NAFTA Panel Decision, at 34.
242 See AB Report on Softwood Lumber at paragraph 103.
243 See KASR from the PRC IDM at 15.

determining the existence and extent of the benefit conferred by the GOC's provision of steel rounds for LTAR. In the Preliminary Determination, we described the requested information and explained that the GOC simply responded to the Department's questions in this regard stating that "no such information is available."[244] The GOC provided no indication of what efforts it made, if any, to develop the requested information. The GOC did acknowledge that certain steel round producers might be members of China Iron & Steel Association,[245] but the GOC provided no indication that it sought the requested information from them or from any other source. Thus, the Department doesn't know – because the GOC provided no response in this regard – whether data exists that might provide a reliable measure of the share of steel rounds accounted for by SOEs and other government-controlled producers. Therefore, as AFA, it was reasonable for the Department to conclude that prices within the PRC were distorted by the GOC's involvement in the market.

The GOC has argued that the Department should use the ownership information and the amounts supplied by the producers that sold steel rounds to the respondents as a proxy for information regarding the industry as a whole. We have not done this because, for the reasons explained in our "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are treating all the respondents' suppliers of steel rounds as authorities for this final determination. Thus, to the extent that this measure could serve as a proxy, it supports our decision to reject domestic steel rounds prices in the PRC as benchmarks.

Comment 7 Government Ownership Should Not be the Dispositive Factor in Determining Whether a Financial Contribution Has Occurred

The GOC contests the Department's presumption that government ownership is the dispositive factor in determining whether a financial contribution occurs when an input producer provides its product to a downstream consumer. According to the GOC, the Department uses this flawed and unsupported presumption as a basis to request enormous documentation from the GOC. In this investigation, the GOC claims it has provided more than 2,500 pages of translated business registrations, capital verification reports, articles of association and annual reports for the suppliers and, yet, the Department deemed this insufficient. The GOC concludes from this that the Department's requests are results-oriented with the intent of producing failure, paving the way for use of adverse facts available.

The GOC argues that government ownership is not a reasonable basis for finding the input supplier to be an authority and, instead, the Department should inquire as to whether the entity is exercising elements of government authority. In support, the GOC points to DRAMS from Korea[246] (in which the Department found that majority government-owned firms were not authorities) and to the AB Report on DRAMS from Korea.[247]

In this investigation, the GOC claims to have shown that government ownership of enterprises in the PRC is independent of traditional government functions because reforms of the past 20 years

[244] See Preliminary Determination at 9165-66.
[245] See GQR at 90.
[246] See DRAMS from Korea IDM at 17.
[247] See AB Report on DRAMS from Korea at paragraph 112, note 179.

have severed any public function from the commercial operations of SOEs.[248] In particular, the GOC cites to the 1986 State-owned Enterprise Bankruptcy Law and the 1988 State-owned Enterprise Law which gave SOEs separate legal status from that of the government and separated ownership from managerial authority. Later, according to the GOC, the 1993 Company Law and the current Corporation Law, established basic rights and obligations among the company, its shareholders, employees, directors and managers, and set strict fiduciary responsibilities for managers that are inconsistent with the provision of inputs for LTAR. To further solidify the separation of state ownership from SOE operations, the GOC contends that the SASAC assumed the role of investor in SOEs on behalf of the government. The Interim Measures for the Supervision and Administration of State-owned Assets of Enterprises (No. 378) reinforce the independence of SOEs and the separation of State ownership from SOE operations.

The GOC additionally points to the 1998 Price Law and the Civil Servants Law of the People's Republic of China. According to the GOC, the former limited government-set and government-guided prices to a narrow band of commodities which does not include steel and established the enterprise operators' autonomy in setting prices, while the latter prohibits government officials from taking any position in a profit driven enterprise.

The GOC takes exception to the Department's inquiry with respect to any connection between CCP affiliation and government authority status under the statute. The GOC claims that the CCP is not a government authority and CCP membership, in and of itself, is not relevant to the analysis of whether an entity is exercising elements of government authority. The GOC equates the Department's questions in this regard with those of a foreign investigating authority seeking information about the number of Republicans or Democrats involved in the managerial functions of U.S. companies and finding companies with a majority of managers or board members affiliated with the party in control of the White House or Congress to be a public body.

The GOC concludes that the Department's onerous requests for documentation and other information are extraneous absent substantial evidence to rebut the basic fact that SOEs in the PRC operate on a commercial basis. Citing Mannesmannrohren-Werke,[249] the GOC contends that the Department must explain why the absence of certain information will significantly affect the progress of an investigation. For the reasons explained above, the GOC claims the Department cannot provide such an explanation for the extraneous questions it has asked and, therefore, cannot apply AFA regarding the ownership of the steel rounds suppliers as it did in the Preliminary Determination.

Finally, even if the Department continues to rely on majority government ownership as a basis for finding the steel rounds supplier to be "authorities," it should not find countervailable the steel rounds purchased from the 19 private/FIE suppliers that are less than 50 percent owned by the government. The Department pointed to missing information in its Preliminary Determination, e.g., whether owners were government officials, but based on the laws cited above, the GOC argues those issues are moot. Moreover, according to the GOC, the ownership information it submitted must be presumed accurate because the Department elected not to verify

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[248] The GOC bases this claim on the various laws and measures described below, which were submitted in GFIS at GOC-Fact-52.
[249] See Mannesmannrohren-Werke at 1313.

it.

TPCO joins the GOC in arguing that the Department should not countervail purchases from private suppliers. TPCO cites to CWP from the PRC[250] and LWRP from the PRC[251] as instances where the Department has not countervailed inputs purchased from private Chinese suppliers.

U.S. Steel contends that the GOC's claims and the evidence it submitted in support of those claims are identical to the claims and evidence rejected by the Department in numerous prior cases.[252] In OCTG from the PRC, for example, the Department explained its legitimate presumption that majority ownership of an enterprise makes that enterprise an authority within the meaning of section 771(5)(B) of the Act.[253] The Department further found that the presumption was not rebutted.[254]

U.S. Steel further objects to the GOC's claim that the Department should not countervail steel rounds provided by "private" suppliers. Again, U.S. Steel contends, the record with respect to the respondents' suppliers is virtually identical to the record in OCTG from the PRC. As in OCTG from the PRC, the Department granted the GOC multiple extensions of time to provide the requested information and documentation, but the GOC provided responses that were completely and utterly inadequate in U.S. Steel's view. Thus, consistent with its finding in OCTG from the PRC, U.S. Steel argues that the Department should find all steel rounds suppliers to TPCO and Hengyang are government authorities.

U.S. Steel continues that separate and apart from OCTG from the PRC, the record of the instant investigation demonstrates that the GOC failed to act to the best of its ability. Specifically for the suppliers owned by a combination of other companies, government entities and/or individuals, U.S. Steel claims that the GOC responses lack, ownership documentation, including articles of association, regarding intermediate and ultimate owners; identification of all owners managers, and directors who were also government or CCP officials during the POI; a narrative discussion of whether and how operational and strategic decisions by the companies' management and board of directors are subject to government review and approval; whether any shares held by government entities have any special rights, priorities, or privileges; whether there are any restrictions on conducting, or acting through, extraordinary meetings of shareholders; whether there are any restrictions on the shares held by private shareholders; and, a narrative discussion of the private shareholders' interest in the company. Specifically, for the suppliers owned by individuals, U.S. Steel contends that the GOC failed to provide source documents demonstrating the supplier's ownership during the POI; information on all the owners, members of the boards, and managers who were government or CCP officials during the POI; and a narrative discussion of whether and how operational and strategic decisions by the supplier's management and board are subject to government review or approval. Given the GOC's failure, U.S. Steel contends that the Department correctly applied AFA with respect to the ownership and

[250] See CWP from the PRC IDM at 11.
[251] See LWRP from the PRC IDM at 9.
[252] See PC Strand from the PRC IDM at Comment 10; Steel Grating from the PRC IDM at Comment 8; and OCTG from the PRC IDM at Comments 8 and 9.
[253] See OCTG from the PRC IDM at Comment 9 (citing and quoting KASR from the PRC IDM at Comment 4).
[254] See OCTG from the PRC IDM at Comment 9.

control the steel rounds suppliers in the Preliminary Determination and should continue to do so for the final determination.

U.S. Steel dismisses the GOC's analogy between membership in the CCP and the Democratic or Republican parties as patently absurd. Citing the Hengyang Post-Preliminary Analysis,[255] U.S. Steel argues that the CCP exerts significant control over individual companies in the PRC. Because the GOC refused to provide any information about the role of CCP officials in the entities supplying steel rounds to the respondents, U.S. Steel contends that the Department was unable to perform any analysis in that regard.

Finally, U.S. Steel also dismisses the GOC's claims that the Department's decision not to verify the GOC responses regarding ownership. Citing Wooden Bedroom Furniture from the PRC, U.S. Steel contends that the Department's practice is not to verify responses that are woefully inadequate.[256] Thus, it concludes, the Department's failure to verify cannot be seen as supporting the GOC's claims.

Department's Position

In KASR from the PRC, the Department established a rebuttable presumption that majority-government-owned enterprises are "authorities" within the meaning of section 771(5)(B) of the Act based on the reasonable proposition that where a government is the majority owner of an enterprise, it controls the enterprise.[257] That presumption can be rebutted where a party demonstrates that majority ownership does not result in control of the enterprise.

The GOC does not, however, seek to rebut this presumption. Rather, the GOC cites to the AB Report on DRAMS from Korea, arguing that the inquiry should not focus on government ownership or control of the entity, but instead whether the entity exercises elements of government authority. We disagree. The evidence submitted by the GOC to support its claim that the steel rounds suppliers are not exercising elements of government authority attempts to show that these suppliers operate as commercial entities. However, as explained in KASR 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

[255] See Hengyang Post-Preliminary Analysis at 19.
[256] See Wooden Bedroom Furniture from the PRC IDM at Comment 4.
[257] See KASR from the PRC IDM at Comment 4.

and, thus, constitutes a financial contribution within the meaning of the Act.[258]

Thus, the Department's approach is consistent with U.S. law and the GOC has not cited to any U.S. court decisions to the contrary. Instead, the GOC has based its argument entirely on the AB Report on DRAMS from Korea, a case addressing a distinct factual scenario. Moreover, WTO reports are without effect under U.S. law unless and until they are implemented pursuant to the statutory scheme provided in the URAA.[259] Accordingly, the AB Report on DRAMS from Korea has no bearing on whether the determination in this case is consistent with U.S. law. The GOC has also cited the factually-distinct DRAMS from Korea administrative proceeding, but that determination preceded KASR from the PRC, and the latter determination addresses the exact point raised here by the GOC.

Having determined that ownership/control is central to deciding whether an enterprise is an authority, the Department looks to whether the enterprise is majority-government-owned or not. As explained above, for majority-government-owned companies, respondents can rebut the presumption that majority ownership results in control, and the GOC has not done so here. For enterprises that are less than majority-owned by the government, including private companies and FIEs, the Department sought information to ascertain whether those enterprises are, nonetheless, controlled by the government. While the GOC provided certain ownership information for these companies, it failed to provide the full information needed. (The missing information is described in the Preliminary Determination.[260]) Accordingly, the Department was unable to determine whether the government did not control these companies. As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," the Department has continued to apply AFA, with the result that all the steel rounds suppliers are being treated as authorities.

Regarding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the steel rounds producers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure.[261] Because the GOC did not respond to our requests for information on this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant.

Finally, with respect to the parties' claims about whether the ownership information submitted by the GOC is verified or not, the Department elected not to verify the information because, as discussed above, significant information needed for our determination was not provided. That does not mean that the limited information that was submitted could not be verified, it simply reflects the Department's expectation that it would not rely on that ownership information for the final determination and, hence, that there was no need to verify it.

Comment 8 Trading Company Suppliers

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[258] Id.

[259] See Corus Staal at 1348-49.

[260] See Preliminary Determination at 9166-67. The Department also asked the GOC questions concerning coking coal suppliers to ascertain whether those companies were controlled by the government. See Hengyang Post-Preliminary Analysis at 13-19.

[261] See Hengyang Post-Preliminary Analysis at 19.

TPCO argues that the Department should not countervail purchases of steel rounds from trading companies absent a finding that those trading companies have provided a financial contribution within the meaning of the statute. TPCO contends that it is insufficient to find a financial contribution only to a trading company and then a benefit to the end user. In effect, according to TPCO, the Department has found an upstream subsidy but no upstream subsidy can exist unless the Department finds that SOE suppliers of steel rounds made a financial contribution and provided a benefit to the trading companies, findings the Department has not made. Without this, the Department must determine that the trading companies are "authorities" or that they have been "entrusted or directed" to provide a subsidy to respondents.

U.S. Steel disputes TPCO's claim citing numerous prior determinations in which the Department found a subsidy to exist where the financial contribution is made to a trading company and the benefit (or some portion of it) is conferred on the respondent.[262]

Department's Position

We disagree with TPCO that we are effectively countervailing an upstream subsidy without making the requisite, underlying determinations.

Section 771A(a) of the Act defines an upstream subsidy as any countervailable subsidy other than an export subsidy that among other requirements, "is paid or bestowed by an authority. . .with respect to a product. . .that is used in the same country as the authority in the manufacture or production of merchandise which is the subject of a countervailing duty proceeding."

In this case, we have determined the subsidy to be the provision of steel rounds for LTAR by an authority, rather than a subsidy "paid or bestowed" by an authority with respect to an input product. In this situation an upstream subsidy analysis is not required by section 771A of the Act. Further, under section 771(5)(B) of the Act, a subsidy is deemed to exist when there is a financial contribution "to a person" and a "benefit is thereby conferred." Consistent with KASR from the PRC,[263] CWP from the PRC,[264] LWRP from the PRC[265] and OTR Tires from the PRC,[266] we find that the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase the steel rounds, while all or some portion of the benefit is conferred on the respondent seamless pipe producers through their purchases of steel rounds from the trading company suppliers. Under these facts, the Department is not required to make a separate finding that the trading companies provided a financial contribution to the respondent seamless pipe producers.

Comment 9 Benchmark Issues

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[262] See, e.g., OCTG from the PRC IDM at Comment 10; KASR from the PRC IDM at Comment 7; and LWRP from the PRC IDM at Comment 8.
[263] See KASR from the PRC IDM at Comment 6.
[264] See CWP from the PRC IDM at 10 and Comment 7.
[265] See LWRP from the PRC IDM at 8.
[266] See OTR Tires from the PRC IDM at 10 and Comment D.4.

A. Benchmarks for Steel Rounds – Pricing Data

In the Preliminary Determination, the Department calculated a steel round benchmark price based upon an average of six available pricing series.[267] U.S. Steel argues that the Department should not include three of these pricing series in the benchmark: 1) the SBB "Semi-Finished / Billet / East Asia import CFR" price series; 2) the "Semi-Finished / Far East billet (65t lots) / LME Cash bid settlement" price series; and 3) the "Semi-Finished / Mediterranean billet (65t lots) / London LME Cash bid settlement" price series. Thus, U.S. Steel maintains that the Department should use the remaining three pricing series as its benchmark (i.e., SBB export prices for billet from Latin America, Turkey, and the Black Sea/Baltic).[268]

Regarding the SBB East Asia price series, U.S. Steel notes that this data reflects import prices to multiple Asian countries on CFR (i.e., customs and freight included) terms. As such, U.S. Steel argues that the prices in this data series reflect prices inclusive of freight to an undetermined number of countries. Therefore, U.S. Steel urges the Department to disregard this data for the final determination. Moreover, U.S. Steel contends that the Department recently excluded a similar price series in its recent determination in PC Strand from the PRC.[269] There, U.S. Steel contends that the Department excluded from its benchmark calculation for high grade steel wire rod a price series for delivered prices of high grade wire rod to locations in the "Far East" on the basis that these prices may be reflective of delivered prices to a number of locations, and thus may have included prices that were not available in the PRC. Therefore, U.S. Steel maintains that the Department should follow this recent determination and exclude the SBB East Asia prices from its benchmark calculation.

Regarding the two sets of LME price data, U.S. Steel argues that the Department should not use this data in the final determination because the prices are for square billets, which are not suitable for seamless pipe production. Moreover, U.S. Steel maintains that its steel round subsidy allegation was focused exclusively on the provision of steel rounds suitable for seamless pipe production, and that this fact is reflected throughout this proceeding as the Department's questionnaires and the respondents' responses have been focused on steel round billets, and not the square billets included in the LME price data. Additionally, U.S. Steel points out that this data series is only available for the second half of the POI, and including this data in one half of the POI would be distortive. Accordingly, U.S. Steel contends that the Department should not include the LME price data in its benchmark calculation.

In their respective rebuttal comments, the GOC and TPCO address U.S. Steel's arguments regarding the SBB East Asia and LME price data. Regarding the SBB East Asia prices, the GOC and TPCO recognize that the Department has reached seemingly conflicting conclusions in OCTG from the PRC and PC Strand from the PRC. However, the GOC and TPCO maintain that the recent decision in PC Strand from the PRC was the result of an erroneous interpretation of the Departments regulations and is not controlling here. Moreover, the GOC and TPCO note

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267 See Preliminary Determination at 9174.

268 As discussed below, U.S. Steel also argues that the Department should make adjustments to these three remaining SBB pricing series based on the quality differences between the merchandise represented in the SBB data and the type of steel round billets used in the production of seamless pipe.

269 See PC Strand from the PRC IDM at Comment 14.

that the pricing series at issue in <u>PC Strand from the PRC</u> was not the exact same pricing series at issue here, and any differences between the two are not discussed in the <u>PC Strand from the PRC</u> decision. Moreover, the GOC and TPCO contend that the relevant question under the Department's regulations is whether it would be reasonable to conclude that the prices at issue would be available to purchasers in the PRC.

The GOC and TPCO then point to our determination in <u>OCTG from the PRC</u>, where they contend the Department reasonably concluded these prices would be available to an importing purchaser in the PRC and included this very price series in the benchmark calculation in that proceeding. The GOC and TPCO maintain that this finding was reasonable, and to follow the Department's finding in <u>PC Strand from the PRC</u> would be to impose an unreasonably high standard of requiring actual shipment routes and rates in adjusting world benchmark prices to reflect prices available to purchasers in the PRC. Finally, the GOC and TCPO argue that the Department's regulations call for averaging multiple price series, and the Department should therefore include this price series in its average.

Regarding the LME data, the GOC and TPCO maintain that the arguments presented by U.S. Steel in this proceeding were squarely rejected by the Department in <u>OCTG from the PRC</u>, and the Department should again reject these arguments. Here the GOC and TPCO contend that U.S. Steel's claim that the LME data is for square billets and not reflective of prices for billets used in seamless pipe production is not supported by the record evidence, and there is no basis to find that the billets included in the LME data are any different than the billets included in the other price series included in the Departments average benchmark calculation. Regarding U.S. Steel's argument that including these series in only six months of the POI is distortive, the GOC and TPCO argue that U.S. Steel has not provided a rationale for why this is distortive; to the contrary, the GOC and TPCO argue that including these prices in the final six months provides for more accurate benchmarks for those months.

Department's Position

When the Department resorts to using a world market price in calculating its benchmark to measure adequate remuneration and there are multiple commercially available market prices, the Department's regulations at 19 CFR 351.511(a)(2)(ii) instruct the Department to "average such prices to the extent practicable." In this case, we have several sets of market prices from which to choose, and find it appropriate to average various prices together to determine a market price for steel rounds. In the <u>Preliminary Determination</u>, we used three series of SBB pricing data reflecting export prices to the PRC for billet from Latin America, Turkey, and the Black Sea/Baltic region, as well as the SBB East Asia import prices and the two series of LME prices.

With respect to U.S. Steel's contention that we should exclude the two LME pricing series because they appear to be for standard billet not suitable for seamless pipe production, we note that we have not limited our analysis to purchases of billet specifically for seamless pipe production. As explained in Comment 9B, we have included all of the rounds purchases in our LTAR calculation. Therefore, we have no basis to exclude the LME prices on these grounds. Also, while it would be preferable to have these prices for the entire POI, U.S. Steel has not explained why the inclusion of this series for a portion of the POI results in distortion. As such, we have included this data in the calculation in the benchmark only in the last six months of the POI.

Regarding the SBB East Asia series, consistent with the Department's recent determination in PC Strand from the PRC, we have excluded this series from our calculation. Although the Department did use this series in its benchmark calculation in OCTG from the PRC, we believe it is appropriate to exclude this series from our calculation in this proceeding. Specifically, these prices represent imported prices to "East Asia," and not specifically the PRC. Thus, this price series potentially includes delivered prices to a number of countries. Additionally, where export prices that are available in the PRC are on the record, the Department does not need to use import prices to unspecified countries in "East Asia." To the contrary, because some of the prices included in this series are likely for prices delivered to countries other than the PRC, there is not record information demonstrating that these prices are available to seamless pipe producers located in the PRC. Moreover, while 19 CFR 351.511(a)(2)(ii) instructs the Department to "average such prices to the extent practicable," we note that we already have several price series included in our benchmark average price, adjusted for freight charges associated with delivering the products to the PRC. Furthermore the SBB East Asia price series is inclusive of freight for shipment to "East Asia," and the data do not allow us to accurately remove the included freight to adjust these prices to reflect delivered prices to the PRC. Our decision to exclude the SBB East Asia price series is therefore reasonable, particularly in light of the fact that we have alternative acceptable sources for our benchmark calculation. Whether or not the SBB East Asia price series would be acceptable in the absence of any other available data is not before us.

B. **Benchmarks for Steel Rounds – Premium Adjustment**

Pursuant to 19 CFR 351.511(a)(2)(i) and (ii), U.S. Steel contends that the benchmark used in the Preliminary Determination should be adjusted upwards to account for the quality differences in the steel rounds used in OCTG production relative to the SBB pricing data, which U.S. Steel maintains, is representative of a basket category of steel billet products of standard commercial quality. In support of this assertion, U.S. Steel cites Hot Rolled from India 2007 IDM at Comment 12, noting that in that case the Department adjusted the benchmark price for iron ore to better match the iron ore purchased by the respondent. U.S. Steel additionally cites Lumber from Canada 03-04 IDM at Comments 23 and 28.

To substantiate and quantify the quality difference in the steel round inputs relative to the SBB standard billets, U.S. Steel points to the Indian import statistics provided by U.S. Steel in its June 3, 2010, New Factual Information submission, as well as statements provided by the GOC in its GQR, which, U.S. Steel claims, demonstrates that the respondents used high quality round billets suitable for seamless pipe production. Regarding the Indian import data, U.S. Steel contends that the Indian HTS number 7207.20.30 is specific to "seamless steel tube quality" steel billets. U.S. Steel additionally asserts that the average price for products under this subheading in 2008 was $1,709 per metric ton. U.S. Steel contends that the Department should divide this figure by the average (freight exclusive) benchmark from the Preliminary Determination to calculate the price difference for seamless pipe quality billets, which equals 2.13. U.S. Steel further argues that the Department should then multiply the monthly (freight exclusive) benchmark by this figure to adjust for the quality differences between seamless pipe quality billets and the standard billets from the SBB data.

In their rebuttal briefs, both the GOC and TPCO maintain that the Department rejected an identical argument in OCTG from the PRC, and urge the Department to again reject any such premium adjustment. Here, the GOC and TPCO argue that the Indian import data appears to be anomalous and unrepresentative of a commercially available world market price for steel rounds. Additionally, the GOC and TPCO argue that there is no record evidence in this proceeding to justify attributing the price differences between the benchmark prices and Indian import data to the product comparability of the two.

Department's Position

Consistent with OCTG from the PRC,[270] we have not made the adjustment requested by U.S. Steel. Notwithstanding the fact that it is unclear that the Indian import data proffered by U.S. Steel is representative of world prices of seamless pipe-specific billet, we note that we have not limited our analysis to strictly billet used the in the production of seamless pipe. Here, the respondents have reported all billet purchases, regardless of the ultimate product they were used to produce, and we have included all purchases in our benefit calculation. Therefore, it would be inappropriate to adjust the benchmark to account for differences in regular and seamless pipe-quality billet where the purchases to which we apply the benchmark include non-seamless pipe steel round purchases.

C. Benchmarks for Steel Rounds – Freight Charges

In our Preliminary Determination we added a freight element to the pricing series for all non-delivered prices included in our benchmark average price so the prices would reflect delivered prices available to a purchaser in the PRC. To calculate this freight charge, we applied the same freight calculation from OCTG from the PRC, where we averaged freight charges provided by Jianli, a respondent in that case, with Maersk pricing data provided by Petitioner, exclusive of a "special equipment surcharge." Here, U.S. Steel argues that the Department should make two adjustments to the freight component: 1) include the special equipment surcharge for "flat rack" containers included in the Maersk freight pricing data, and 2) exclude the freight pricing data provided by a Jianli.

Regarding the special equipment surcharge, U.S. Steel maintains that the flat rack containers associated with this surcharge are commonly used to ship heavy steel cargoes such as steel rounds for use in seamless pipe. Thus, U.S. Steel argues that this charge should be included in our benchmark because this charge is part of the price that a purchaser would pay to import steel rounds. With respect to the Jianli data, U.S. Steel alleges that this data was created specifically for the use in OCTG from the PRC, and asserts that the freight charges included in the data are so low that this data is not reliable. U.S. Steel additionally notes that portions of the Jianli data are proprietary information from the OCTG form the PRC record, and only public portions are available in this case. Thus, U.S. Steel asserts that it is not possible to fully address the deficiencies in the data. Therefore, U.S. Steel urges the Department to exclude this freight data

[270] See OCTG from the PRC IDM at Comment 13

from its benchmark calculation.

The GOC and TPCO address these two arguments in their rebuttal briefs, arguing that both were rejected in OCTG from the PRC, and that Petitioners have placed no new information on the record of this proceeding to justify departing from our determination in OCTG from the PRC. The GOC and TPCO maintain that, as in OCTG from the PRC, there is nothing on the record to establish that steel round billets are shipped in flat rack containers; thus they argue that it would be improper to include this surcharge in our freight calculation. Regarding the Jianli data, the GOC and TPCO maintain that the Department found these prices relevant and reflective of freight charges an importer in the PRC incur, and including this data in our calculation would be consistent with the Department's regulations which favor averaging of multiple benchmarks.

Department's Position

Consistent with our determination in OCTG from the PRC,[271] we have continued to include all of the freight pricing data on the record, including the Jianli data, and have excluded the "flat rack" surcharge from the Maersk data. Regarding U.S. Steel's contention that the Jianli data is not reliable, what we stated in OCTG from the PRC also applies here, in that "there is no information on the record that would lead us to question the accuracy of these submitted ocean freight rates."[272] U.S. Steel argues that the Jianli data was created specifically for use in OCTG from the PRC and the freight charges included are so low as to make the data unreliable. However, in OCTG from the PRC, the Department found Jianli's data to be a relevant price quote provided by a freight provider.[273] Thus, so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark. In addition, in the Steel Rounds Memo at Attachment 26, the rates used for Jianli's data are publicly available to interested parties. Consistent with this determination and the directive of 19 CFR 351.511(a)(2)(ii), which instructs the Department to average prices to the extent practicable, we have continued to include the Jianli data in our freight calculation.

Regarding the "flat rack" surcharge included in the Maersk freight charge data, in OCTG from the PRC, we stated "these charges are not necessarily reflective of what a firm would pay to import the product, in accordance with 19 CFR 351.511(a)(2)(iv)."[274] U.S. Steel states in support of using the "flat rack" surcharge, that "flat rack" containers are "commonly used – and specifically designed – to transport heavyweight steel cargoes such as steel rounds for the production of seamless pipe."[275] However, as TPCO points out, this argument does not establish that "flat rack" containers are required for the shipment of steel rounds, or that they necessarily incur a special charge.[276] Because Petitioners' information discusses the finished pipe products and not the rounds used to make the pipes, we have removed the "flat rack" expense from the Maersk pricing data because these charges are not necessarily reflective of what a firm would

[271] See OCTG from the PRC IDM at Comment 13.
[272] Id.
[273] Id. at Comment 13D.
[274] See OCTG from the PRC IDM at Comment 13
[275] See U.S. Steel Case Brief at 10.
[276] See TPCO Rebuttal Brief at 10.

pay to import the product, in accordance with 19 CFR 351.511(a)(2)(iv). Consistent with OCTG from the PRC, the Department will continue to exclude this surcharge from its calculation.

Government Policy Lending

Comment 10 Whether Chinese Commercial Banks are "Authorities"

The GOC contests the Department's finding that state ownership of Chinese banks establishes them as government authorities within the meaning of section 771(5)(B) of the Act. The GOC notes that the Department previously found entities with majority government ownership not to be government authorities for purposes of the CVD law.[277] The GOC asserts that, instead of ownership, the Department should consider whether Chinese banks act on a commercial basis. According to the GOC, record evidence in the instant proceeding demonstrates that Chinese banks, including those in which the state has an interest, make lending decisions on a commercial basis.

The GOC references three documents to support its claims that lending is made on a commercial basis. First, the GOC cites an article authored by the Vice Chairman of the CBRC (the PRC's independent banking regulator/supervisor), which describes the following recent reforms:

- Increased total assets and adequate reserves held by Chinese banks and financial institutions;
- Stock exchange listings by nine Chinese commercial banks;
- Significant declines of non-performing loans held by major commercial banks;
- Increased profitability of the Chinese banking sector;
- Financial restructuring and share reforms by four of the PRC's five largest state-owned banks; and
- Significant increases of foreign investment and involvement in the PRC's banking system.

Second, the GOC points to the China Monetary Policy Report for the fourth quarter of 2008, which describes shareholding reforms of large state-owned commercial banks.[278] Third, the GOC refers to statements made by outside experts, which describe the following enhancements to the PRC's banks:

- Close cooperation with international financial agencies;
- Establishment of an independent banking regulator/supervisor (CBRC);
- Internal restructuring of almost all major state banks, except the Agricultural Bank of China, including their incorporation under China's Company Law;
- Strategic participation in almost all major Chinese banks by foreign banks as minority investors (up to 19.9% for individual foreign banks) and board members;

[277] Citing DRAMS from Korea IDM at 17 and 61.
[278] See GFIS, Exhibit GOC-Fact-50 at 16 and GOC Case Brief at 53.

- Full recapitalization - often beyond the minimum capital adequacy standard of 8% - of most important state banks;
- Introduction of futures markets, new financial instruments, and new intermediaries;
- Adoption of market-based solutions for making non-tradable public shares in listed companies gradually tradable;
- Development of a primary mortgage market and consumer credit following the accelerated privatization of urban housing; and
- Transfer of responsibility for the issue of most corporate bonds from the NDRC to the CBRC.

TPCO concurs with the GOC.[279]

U.S. Steel argues the Department has repeatedly determined SOCBs are government authorities under the statute.[280] Citing LWTP from the PRC, U.S. Steel asserts that the Department found the Banking Law requires banks to carry out lending under the guidance of state industrial policy.[281] U.S. Steel notes that the Department has rejected claims from the GOC that the banking sector has undergone significant changes.[282] U.S. Steel further argues the GOC has failed to show the Banking Law has changed or SOCBs are not the implementing arm of government policy lending.[283] U.S. Steel states that the information provided by the GOC is identical to that in OCTG from the PRC, and, thus, no such information exists on this record to overturn the Department's prior findings.

Department's Position

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. The cite to DRAMS from Korea, is misplaced because in CORE from Korea, the Department decided to modify our 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. As we noted in CORE from Korea:

> 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

[279] See TPCO Case Brief at 12.
[280] See Citric Acid from the PRC IDM at 12, LWTP from the PRC IDM at Comment 6, OTR Tires from the PRC at Comment E.2, and CFS from the PRC IDM at Comment 8.
[281] See LWTP from the PRC IDM at Comment 6.
[282] See LWTP from the PRC IDM at Comment 6 and OTR Tires from the PRC IDM at Comment E.2.
[283] See OTR Tires from the PRC IDM at Comment E.2.

> 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.[284]

Therefore, the Department considers banks that are owned or controlled by the government to be public authorities under the CVD law. The GOC's arguments and evidence are identical to those previously addressed in OCTG from the PRC. Thus, we do not find basis for reconsideration of our findings.

Comment 11 Whether the Policy Loan Program is De Jure Specific

The GOC argues that the Department's preliminary finding of a policy lending program is not supported by substantial evidence. The GOC alleges that the Department has misconstrued various documents and has unreasonably relied on isolated references to the seamless pipe industry in certain generic planning documents to find de jure specificity.

The GOC asserts that the Department did not explain the foundations of its affirmative finding regarding policy lending, but presumes that the rationale is derived from the recent OCTG from the PRC investigation, in which the finding rests on Article 34 of the Commercial Bank Law. The GOC alleges that the Department failed to read Article 34 of the Commercial Bank Law in greater context, which requires commercial banks to operate in accordance with the principles of safety, liquidity, and profitability, and with full autonomy and sole responsibility for their own risks, profits, and losses. The GOC argues that banks in the United States and other market-driven economies use very similar policies and procedures, and their existence and implementation establish a presumption that Chinese banks are operating on a commercial basis without the level of government involvement that directs "policy lending." Thus, says the GOC, the Department should find that there is no policy lending program, and that the evidence shows that Chinese banks make lending decisions according to commercial considerations.

Next, the GOC contends that, even if the Department wrongly finds that a subsidy program does exist, an alleged subsidy is not de jure specific unless legislation that creates the program "expressly limits" its application to one enterprise or industry. According to the GOC, the Five-Year Plans and other planning documents cited by the Department in its preliminary determination are aspirational and do not direct "policy lending" to seamless pipe producers. As examples, the GOC cites the 10th Metallurgical Plan, the Steel Plan, and Decision 40. The GOC notes that the 10th Metallurgical Plan is exceedingly general. In the case of the Steel Plan, the GOC states that Article 16 merely suggests that the GOC intends to consider policies to bolster specific steel projects through "interest assistance" and there is no evidence on the record that seamless pipe producers were recipients of such policies. For Decision 40, the GOC claims Article 3 emphasizes the role of the market in allocating resources and that Article 17 and 18 should be considered jointly. The GOC explains that Article 17 merely notes that encouraged projects should receive financing and restricted projects mentioned in Article 18 are not to receive financing. Thus, it is not an issue of preferential lending, but which type of project

[284] See CORE from Korea IDM at 12 (emphasis added).

should and should not receive financing. Finally, the GOC asserts Decision 40 references hundreds of projects and, therefore, is not de jure as it is not limited to a single enterprise or industry.

TPCO concurs with the GOC.[285]

U.S. Steel notes that the Department has previously found that the GOC's Five-Year Plans, the Steel Plan, Decision 40, and related national and sub-national policies dictate the lending decisions of Chinese banks. U.S. Steel asserts that the GOC has provided no new information that warrants reconsideration of the Department's findings in the Preliminary Determination. Citing Article 34 of the Steel Plan, U.S. Steel argues that the Department has previously found that any project failing to comply with the development policies for the steel and iron industry will not receive loan or credit support in any form. U.S. Steel contends that the GOC did not provide evidence that any of its preferential lending policies have been modified such that they would not be found to be specific under Section 771(5A)(D)(i) of the Act. Finally, U.S. Steel asserts that, contrary to the GOC's assertion, the statute for de jure specificity is not limited to an industry or single enterprise, but can encompass groups of enterprises or industries.

Department's Position

We continue to find that loans received by the seamless pipe industry from SOCBs were made pursuant to government directives. In the Preliminary Determination, the Department found these loans are de jure specific within the meaning of section 771 of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the seamless pipe industry. Additionally, the Department has previously determined that Article 34 of the Banking Law states that banks shall "carry out their loan business upon the needs of the national economy and the social development and under the guidance of the state industrial policies." See GQR at Exhibit 18; see also OCTG from the PRC at 47218. Thus, we disagree with the GOC and TPCO that this program is not de jure specific.

For the 10th Metallurgical Plan, the plan was not noted because it provided financing or credit support for the Steel Pipe industry, but rather to demonstrate the government's role in the steel industry. Specifically, the plan called for the development of key steel types that were imported, for which "petroleum pipe", a kind of seamless steel pipe,[286] was listed, and the objective of the plan was to encourage enterprise to cooperate with foreign enterprises, particularly in the development of high value added products and high-tech products.[287] Thus, the plan was not cited as a basis for policy lending, but to show that during the 10th Five-Year Plan period, the GOC had deemed "steel tube" a high value added, high-tech product which needed to be developed and encouraged.

In regard to the Steel Plan 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

285 See TPCO Case Brief at 12.
286 See Additional Documents Memo at Attachment 2, page 14.
287 See Preliminary Determination at 9171.

technology" and supporting "key steel projects" through various methods.

Turning next to Decision 40, we note that Article 3 states:

> Adhering to combining market regulation with government guidance. We shall give full play to the fundamental role of the market in allocating resources, strengthen the reasonable guidance of state industrial policies, and realize optimal resource allocation.[288]

Thus, the GOC's claim that Decision 40 emphasizes the market is misplaced. Moreover, examining Article 17 and 18 jointly still does not negate the Department's prior findings in regard to Article 17 and lending.[289] Regarding the GOC's claim on de jure specificity, we note that the Department has found that this plan is specific to certain industries.[290]

We also disagree with the GOC's and TPCO's position that evidence on the record supports that SOCBs acted in according with market principles in procuring the loans to the respondents. As noted in Comment 10, we have determined that it is reasonable to conclude that the Chinese banking sector is distorted and have found the SOCBs and policy banks to be authorities. The GOC's arguments and evidence are identical to those previously addressed in OCTG from the PRC. Thus, we do not find basis for reconsideration of our findings.

Comment 12 Whether the Department Should Use an In-country Benchmark

The GOC argues the Department unlawfully applied an external benchmark and did not follow its regulations by first looking for a comparable commercial loan and, then, if the firm has no comparable loan, using a national average interest rate for comparable commercial loans, pursuant to 19 CFR 351.505(a). The GOC claims there are two primary reasons why the Department must follow this standard.

First, the GOC argues that short-term rates are a function of government intervention through banking regulation, monetary policy, and government macroeconomic policy. As support, the GOC cites to actions by the U.S. Federal Reserve as well as documents on the record outlining the U.S. Federal Reserve and the PBOC actions in handling monetary policy. Thus, the GOC claims the Department appears to view certain actions by governments as non-distorting, but finds the Chinese financial system distortive based on purported Chinese actions. The GOC asserts the Department has not explained this discrepancy and postulates that if the Department applied this unlawful presumption, it would never be able to use domestic benchmarks in any country to calculate subsidy rates.

Second, the GOC states that the Department reliance on deposit caps and lending rate floors as evidence of distortion-creating government intervention is misplaced. Citing a memorandum addressed to then Assistant Secretary Spooner from the U.S. Department of Treasury, the GOC

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288 See Additional Documents Memo at Attachment 1, Decision 40.
289 See CFS from the PRC IDM at Comment 8, LTWP from the PRC at 11-12, and Preliminary Determination at 9171.
290 See CWP from the PRC IDM at Comment 8 and Citric Acid from the PRC IDM at Comment 5.

argues that the U.S. Government's own expert on financial markets explained that deposit rate caps have been used as a tool to support banking sectors in many countries, including the United States. The GOC asserts that the memorandum also concludes that deposit rate caps do not necessarily confer to the banks a benefit that is passed on to the banks' borrowers, and in some countries an interest rate floor on lending is also imposed, which can keep rates companies pay to borrow money high. Thus, concludes the GOC, the Department has yet to reconcile this authoritative commentary on deposit rate caps and interest rate floors with its own findings on market distortions, particularly with regard to a market with as much liquidity as PRC.

TPCO concurs with the GOC.

Citing CWLP from the PRC, U.S. Steel states in rebuttal that the Department has determined interest rates in the PRC do not reflect the rates that would be found in a functioning market and rejected these claims by the GOC.[291] Moreover, the Department rejected claims in a prior investigation that interventions into the banking sector mirrors those of the U.S. Federal Reserve.[292]

Department's Position

The Department continues to find that loan benchmarks must be market-based and that Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector. Consistent with prior determinations, we are not using the SHIBOR rate because it is not a market-determined rate due to the fact that banks which make up SHIBOR are subject to a deposit cap and lending floor rate, considerations which led us to find distortions in the banking sector at large.[293] As noted in CFS from the PRC, foreign banks do not offer a suitable benchmark due to their very small share of credit and operation in niche markets.[294]

The PRC maintains both a deposit rate cap and a lending rate floor. The GOC is correct that various countries have at different times maintained caps on deposit rates or floors on lending rates. What sets the PRC apart, however, is the fact that the PRC maintains both a deposit rate cap and lending rate floor simultaneously, and that the PBOC has set these restrictions in such as a way to guarantee the banks a considerable profit margin on each of their loans. In previous administrative reviews, the PBOC conceded that this floor and cap system sets the PRC apart from other countries and that it is necessary because the banks have not yet fully implemented risk control. See CFS from the PRC IDM at Comment 10. The PBOC's imposition of a guaranteed profit spread for the banks may be an appropriate measure for a banking system as historically weak as the PRC's, it does not reflect a confidence that the banks are able to independently price loans on a commercial basis. As discussed in CFS from the PRC, the banks noted that the primary purpose of the lending rate floor is to prevent the banks from pricing their loans at unsustainably low levels. The lending floor functions as a binding constraint on the banks, which is demonstrated by the fact that most bank loans being issued are around this

291 See CWLP from the PRC IDM at 7.
292 See Citric Acid from the PRC IDM at Comment 7.
293 See CFS from the PRC IDM at Comment 10.
294 Id., see also Citric Acid from the PRC IDM at Comment 7 and Citric Acid Prelim at 54373.

interest rate floor. As such, the GOC is correct that the interest rate floor does have the effect of preventing lending rates from being even lower. Lower rates would not necessarily be market-based, however, since the lending rate floor is in place precisely because the SOCBs individually and collectively are not yet able to fully price their loans on a commercial basis and the banking sector remains distorted by government policies other than the lending rate floor, including the cap on deposit rates.

The Department has fully addressed the arguments raised by the GOC and TPCO regarding the Department's rationale for relying on an external benchmark and its authority to do so in prior cases and the Preliminary Determination.[295] Those decisions apply to the GOC's arguments in this case. We do not find basis for reconsideration of our findings.

Comment 13 External Benchmark Methodology

A. **Whether Regression is Statistically Valid**

The GOC argues the methodology used in the Preliminary Determination to compute the short-term benchmark is flawed. First, the GOC argues that the benchmark rate does not reflect economic or monetary conditions in the PRC, but economic and monetary policies in other countries. Thus, the GOC contends that the Department has only shown that interest rates in the PRC are slightly lower than a simple average of rates in other countries that are dissimilar to the PRC.

Second, citing to the Drazen Report, the GOC contends the Department's claim that there is a broad inverse relationship between income and interest rates is unsubstantiated and, therefore, that there is no strong theoretical justification for using only GNI as an indicator of the level of interest rates.[296] The Drazen Report, as the GOC notes, recommends that if macroeconomic indicators are to be correlated with interest rates, economic theory and empirical analysis dictate those indicators should be national savings and inflation rates, information which the GOC has placed on the record.[297]

Third, the GOC contends the Department has not provided a sufficient factual basis to show the quality of a country's institutions is a key factor in interest rate formation and, thus, is should not include this in its benchmark calculation. Furthermore, the GOC argues the Department has placed no evidence on the record to show a correlation between the interest rates and governance indicators for the countries listed in its benchmark calculations.

TPCO concurs with the GOC.[298]

U.S. Steel cites prior determinations in which the Department's has rejected the Drazen Report's

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[295] See CWLP from the PRC IDM at Comment 15, CFS from the PRC IDM at Comment 7, LWTP from the PRC IDM at Comment 8, CWLP from the PRC IDM at 15, Citric Acid from the PRC IDM at 7, Citric Acid Prelim at 54373, and Preliminary Determination at 9171-9173.
[296] See GFIS, Exhibit GOC-Fact-45 at 18 & 21 and GOC Case Brief at 63-65.
[297] Id.
[298] See TPCO Case Brief at 12.

conclusions.[299]

Department's Position

We have addressed the issues raised by the GOC and TPCO in a prior proceeding.[300] No new arguments have been made in this investigation. We continue to disagree with the GOC's argument that the assumptions underlying the benchmark calculation are flawed and that there is no relationship between GNI and interest rates. Thus, we have continued to rely on the calculated regression-based benchmark first developed in CFS from the PRC.

B. **Terms of Loan Rates in the IMF Data**

The GOC asserts that the Department's short-term benchmark calculation includes errors in the Department's use of the IMF IFS data. In particular, the GOC complains that the Department did not explain how it determined that the IMF loan data correspond to short-term loans. The GOC states that, in prior litigation, the Department itself has characterized the IMF lending rates as either long-term or a mix of long-term and short-term rates. The GOC argues that that, if the Department continues to treat this mix of loan rates as a rate that must be adjusted upward to determine a long-term rate benchmark, the Department also must adjust the rate downward to obtain a true short-term benchmark rate.

TPCO concurs with the GOC.[301]

U.S. Steel argues the Department has found that IMF loan data is appropriate because it corresponds to loans with maturities of two years or less.[302]

Department's Position

We have addressed the issues raised by the GOC and TPCO in prior proceedings.[303] No new arguments have been made in this investigation. We acknowledge that the Department characterized the IFS data as reflecting medium- and/or long-term financing in the cases cited by the GOC. However, the GOC's argument appears to have been referring to the Department's regulations of defining a long-term loan as being one year or more.[304] Notwithstanding this claim, as explained in Citric Acid from the PRC, we have reviewed the information about the interest rates used in our regression analysis very carefully and we are confident that the majority of these rates reflect loan terms of one year or less. Nonetheless, as a measure of caution we have applied these rates to loans with one to two year maturities. The GOC and TPCO have not pointed to any evidence about the interest rates we are using. Instead they point to years' old

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[299] See Citric Acid from the PRC IDM at Comment 12, LWRP from the PRC IDM at Comment 12, and LWTP from the PRC IDM at 53.
[300] See Citric Acid from the PRC at IDM at Comment 12, CFS from the PRC IDM at Comment 10, OTR Tires from the PRC IDM at Comment E.4., LWRP from the PRC IDM at Comment 12, LWTP from the PRC IDM at Comment 9, CWLP from the PRC IDM at 13, and CWASSP from the PRC IDM at Comment 10.
[301] See TPCO Case Brief at 12.
[302] See CWASPP from the PRC IDM at Comment 10.
[303] See e.g., OCTG from the PRC IDM at Comment 24.
[304] See Usinor 1995 and Inland Steel 1997.

characterizations of the data (which may have changed since the 1990's).

With regard to the GOC's request for a downward rate adjustment, we continue to find that the majority of countries whose interest rates are included in the basket reported loans with terms of one year or less, as explained above.[305] Therefore, a downward adjustment would likely overcompensate for any difference between one- and two-year term loans.

C. **Whether Negative Real Interest Rates Should be Excluded from the Regression**

The GOC contends negative real interest rates are market-based and not statistical anomalies. Therefore, the GOC contends that they should be included in the calculation. As support, the GOC cites the United States treasury bills paying negative real returns.

TPCO concurs with the GOC.[306]

U.S. Steel cites prior determinations in which the Department's has rejected the Drazen Report's conclusions.[307]

Department's Position

The Department has addressed the argument presented by the GOC and TPCO in prior investigations, stating that we understood negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially.[308] Therefore, we have continued to exclude negative real interest rates in calculating our regression-based benchmark rate.

D. **Whether the Long-Term and Discount Rate are Flawed**

The GOC argues the Department's use of U.S. dollar bond rates is arbitrary. Specifically, the U.S. yield curves are inapplicable to the term structure of RMB rates because of different monetary policies, rates of inflation, and varying expectations of both currencies and interest rates. As such, the GOC argues the BB bond rate used by the Department is inappropriate for creditworthy companies and the mark-up should instead be based on the yield curve for quality loans.

TPCO concurs with the GOC.[309]

Citing LWTP from the PRC, U.S. Steel states the Department has consistently used BB bond rates as they are near the middle of the overall range for bonds.[310]

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[305] See Citric Acid Prelim at 54373, Citric Acid from the PRC IDM at Comment 9.
[306] See TPCO Case Brief at 12.
[307] See Citric Acid from the PRC IDM at Comment 12, LWRP from the PRC IDM at Comment 12, and LWTP from the PRC IDM at 53.
[308] See OCTG from the PRC IDM at Comment 25 and Citric Acid from the PRC IDM at Comment 11.
[309] See TPCO Case Brief at 12.
[310] See OCTG from the PRC IDM at Comment 27 and LWTP from the PRC IDM at 53.

Department's Position

The Department has fully addressed the arguments raised by the GOC and TPCO regarding the use of the U.S. corporate BB bond rate to derive a long-term external benchmark in prior cases.[311] 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, 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, as the Department has explained elsewhere in this final determination, we are rejecting Chinese interest rates. The transitional nature of PRC financial accounting and 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 had no objective basis to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we chose the highest non-investment rate.

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed.[312] In this instant case, we have also not received any 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.

Whether There is a Provision of Land for LTAR

Comment 14 Financial Contribution

Citing section 771(5)(D)(i)-(iv) of the Act, the GOC contends a transfer or lease of land-use rights is not countervailable as it does not meet the definitions of "financial contribution" as laid out in the statute. The GOC contends that section 771(5)(D)(i)-(iv) provides an exclusive list of the categories that define "financial contribution," and any government action not listed is not a subsidy in terms of CVD law.

The GOC notes the Department found the transfer of land-use rights in this proceeding to be the provision of a good or service. The GOC submits land is neither a good nor a service, citing the definition of "good" in Black's Law Dictionary to demonstrate land does not fall within this category. The GOC also cites the Black's Law Dictionary definition of "services" and contends land would not fit under this definition either. Accordingly, as land does not meet the definition of good or service, it is not a financial contribution under CVD law.

TPCO concurs with the GOC.[313]

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[311] See LWTP from the PRC IDM at Comment 9, Citric Acid from the PRC IDM at Comment 13, and Citric Acid Prelim at 54374.
[312] See Citric Acid from the PRC IDM at Comment 13 and Citric Acid Prelim at 54374.
[313] See TPCO Case Brief at 19-21.

Citing section 771(5)(D)(iii) of the Act, U.S. Steel argues that the statute reflects a broad definition and its only limitation is for general infrastructure, which does not include land. U.S. Steel states the Department has rejected the respondents' argument repeatedly in the past.[314] Citing CWLP from the PRC, U.S. Steel contends that the statutory definition of financial contribution is written broadly to encompass the variety of mechanisms that governments use to confer financial advantage.[315] U.S. Steel asserts that in CWLP from the PRC, the Department concluded the legislative history underlying the statute, including the SAA, confirms this broad definition includes land, and the Department has a well-established practice of treating land as a good or service.[316]

Department's Position

The Department has found in several cases that a government's provision of land-use rights confers a financial contribution pursuant to section 771(5)(D)(iii) of the Act.[317] In those cases, citing to the SAA as well as administrative and court precedents, the Department fully addressed the arguments raised by the GOC with regard to whether land-use rights should be considered a "good" or a "service" within the meaning of section 771(5)(D) of the Act.[318] The Department's analysis from those cases applies in this case. The GOC and TPCO have provided no new arguments nor have they cited to any additional statutory authority that would lead us to conclude that the GOC's provision of land-use rights for LTAR in the instant case does not confer a financial contribution. Consequently, the Department continues to take the position that the provision of land-use rights constitutes the provision of a financial contribution under section 771(5)(D)(iii) of the Act.

Comment 15 Whether to Use an In-country Benchmark

Citing section 771(5)(E) of the Act, the GOC notes the Department must consider prevailing market conditions when determining whether a good or service has been provided without adequate remuneration. Prevailing market conditions include, according to the Act, price, quality, availability, marketability, transportation, and other conditions of purchase or sale. Furthermore, citing 19 CFR 351.511(a)(2), the GOC contends that the Department must follow a hierarchy when determining the adequacy of remuneration, which also considers product similarity, quantities sold, imported or auctioned, and other factors.

The GOC notes land presents a unique issue because it has its own characteristics in terms of value based on location and other factors. Given this, the GOC argues only two options are possible: 1) use an internal benchmark, or 2) determine whether the government price is

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[314] See OCTG from the PRC IDM at Comment 15, Citric Acid from the PRC IDM at Comment 22, CWLP from the PRC IDM at Comment 22, LWTP from the PRC IDM at Comment 12, OTR Tires from the PRC IDM at Comment H.1, and LWS from the PRC IDM at Comment 8.
[315] See CWLP from the PRC IDM at Comment 22.
[316] Id.
[317] See Citric Acid from the PRC IDM at Comment 22, CWLP from the PRC IDM at Comment 22, LWTP from the PRC IDM at Comment 12, OTR Tires from the PRC IDM at Comment H.1, and LWS from the PRC IDM Comment 8.
[318] See LWS from the PRC IDM at 52, OTR Tires from the PRC IDM at 171-173, LWS from the PRC IDM at 51-52, and CWLP from the PRC IDM at Comment 22.

consistent with market principles in the country under investigation. The GOC asserts a land benchmark from another country is not permissible under the statute as the value of land in another country is derived from demand for land in that particular country. Thus, the GOC argues that the Department should reexamine using market-based prices within the PRC as a benchmark.

In support of using an internal benchmark, the GOC argues land sales in the PRC occur in a robust market-based system. First, the GOC contends the fact that land is state- or collectively-owned is immaterial and argues that several countries have government-owned land to varying degrees and that this land is nevertheless valued by a functioning market.[319] Moreover, the GOC cites Tianjin laws and recent studies on the PRC's land market to assert that land sales in the PRC are market-based.[320] The GOC also argues that Chinese law and practices regarding property rights have improved and that the country's real estate market has become increasingly competitive.[321] Thus, the PRC yields valid land prices which the Department must consider for the final determination.

The GOC further argues that ignoring credible benchmarks in the PRC based on administrative convenience is contrary to the statute, the SCM Agreement and precedent established under NAFTA panels and at the WTO. The GOC notes that the PRC's WTO accession agreement stated a preference for domestic benchmarks and restricts any deviation from the SCM Agreement to only "special difficulties" in the application of that methodology.[322] The GOC asserts that those circumstances do not exist here because benchmark market prices in the PRC are available. The GOC maintains that using a world market would be particularly inapplicable given the "local nature of land" and based on its position that none of the market conditions for the price of land outside of the PRC reflect the prevailing market conditions in the PRC. TPCO concurs with the GOC.[323] Moreover, TPCO cites to a list of key factors such as proximity of inputs and transportation costs that it argues make the price of land particular to its location and thus make cross-border comparisons untenable.[324] TPCO also cites to the precedents of Softwood Lumber from Canada (1983) and Softwood Lumber from Canada (1992) in which the Department rejected cross-border comparisons in favor of domestic benchmarks based on comparability.[325] Finally, TPCO points to a NAFTA Panel decision and a Department remand. TPCO notes that a binational NAFTA panel convened under NAFTA Article 1904 unanimously rejected the Department's use of cross-border benchmarks[326] and TPCO states that the Department complied with the panel and determined that "the methodology should rely on prices and costs in Canada."[327]

Citing CWLP from the PRC and OCTG from the PRC, U.S. Steel contends the Department has considered the respondents' arguments regarding the NAFTA Panel and Article 14 of the SCM

319 See GFIS at GOC_FACT-28 at 2-3.
320 See GQR at Exhibits 73, 74 and 7, GFIS at GOC-FACT-31 and GOC-FACT-30.
321 See GFIS at GOC-FACT-32 and GOC-FACT-33.
322 See Accession Protocol at Article 15(b).
323 See TPCO Case Brief at 21-25.
324 Id. at 22-23.
325 See Softwood Lumber from Canada (1983) at 24168 and Softwood Lumber from Canada (1992) at 22570.
326 See August 2003 NAFTA Lumber Panel Decision at 27-35.
327 See January 2004 NAFTA First Remand Determination at 5.

and determined that neither the Lumber from Canada NAFTA Panel, nor the SCM Agreement requires the use of Chinese land prices in lieu of external benchmarks. [328] Furthermore, U.S. Steel contends that the Department correctly found that Thai land prices constitute a valid benchmark.[329] Citing CWLP from the PRC and OCTG from the PRC, U.S. Steel maintains that the Department views the NAFTA panel decisions as having no precedential value. [330] Moreover, the Department emphasized it is bound by U.S. law and precedent, and there is no evidence that use of an external benchmark conflicts with the SCM Agreement.[331]

Citing LWTP from the PRC and OCTG from the PRC, U.S. Steel also notes that the Department rejected the use of a Chinese land benchmark because prices in the PRC were not market determined.[332] In this instant investigation, the GOC has not provided new information that would cause the Department to deviate from this determination. Thus, U.S. Steel argues the Department should continue to use an external benchmark (land values from Thailand) for the final determination.

Department's Position

In prior cases, we have determined that Chinese land prices are distorted by the government's significant role in the market and, hence, cannot be used as a benchmark.[333] For the reasons discussed in those cases, we continue to find that Chinese land prices are distorted and cannot serve as a benchmark. Moreover, because of this significant government involvement and because property rights remain poorly defined and weakly enforced, we continue to determine that land prices in the PRC do not provide an appropriate benchmark because they are not in accordance with market principles. See 19 CFR 351.511(a)(2)(iii). The GOC's arguments and information submitted in this investigation have been addressed in prior cases.[334] However, for the sake of clarity, we restate below the Department's positions regarding arguments and information submitted by the GOC in the instant review which were previously addressed in OCTG from the PRC. [335] No new information has been introduced in this investigation that would cause the Department to alter its positions on the arguments and information discussed below.

First, we note that the GOC's statements regarding the varying levels of government ownership of land in other countries and functioning markets do not address the Department's reasoning for finding Chinese land prices distorted by the significant government role in the market, but rather only discuss the historical and current issue of land ownership in Britain.[336] Furthermore, while the report in GOC-FACT-31 does state the PRC has an "effective land market in force," it also

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[328] See OCTG from the PRC IDM at Comments 16 and 17, and CWLP from the PRC IDM at Comment 22.
[329] See OCTG from the PRC IDM at Comments 16 and CWLP from the PRC IDM at Comment 22.
[330] Id.
[331] See CWLP from the PRC IDM at Comment 22.
[332] See LWTP from the PRC IDM at Comment 12 and OCTG from the PRC IDM at Comment 16.
[333] See LWS from the PRC IDM at Comment 10, CWLP from the PRC IDM at Comment 22, LWTP from the PRC IDM at Comment 12, Citric Acid from the PRC IDM at Comment 23, and OCTG from the PRC IDM at Comment 16.
[334] Id.
[335] See OCTG from the PRC IDM at Comment 16.
[336] See GFIS at GOC_FACT-28.

highlights several problematic issues concerning in the PRC land market and notes that "land value{s} in the PRC are determined by both market and non-market elements."[337] Thus, the exhibit is not dispositive evidence of major reform which would result in the Department changing its finding. As for GOC-FACT-30, the GOC states the document concludes Chinese property values – particularly for industrial land – are largely market determined. However, the GOC does not cite where this conclusion is made and it is not entirely clear how a World Bank paper discussing the implementation of the PRC's Rural Land Contract Law bolsters its claim.

In regard to international surveys, we note that the physical property rights column is based on the following factors: protection of physical property rights, registering property, and access to loans.[338] Thus, this physical property rights statistic the GOC cites contains additional factors not related to physical property rights as considered by the Department in our land analysis. The other international survey, which the GOC cites as ranking the PRC in terms of competiveness of property rights, only includes the table of contents preface and tables for the PRC and Thailand.[339] Thus, there is no context to understand what the source defines as property rights and to how the data may relate to the Department's land analysis. Finally, with regard to the Tianjin land laws, the GOC again does not explain how this data counters the Department's finding in prior cases and the Preliminary Determination. We note that the Department has previously explained that "we find that there is a wide divergence between the de jure implementation of such reforms of the market for land-use rights and the de facto implementation of such reforms."[340]

With respect to the NAFTA Panel decision cited by TPCO, it is important to note that in the remand, the Department continued to find that the out-of-country benchmark was the proper choice. Specifically, the Department explained that:

> We disagree with the Panel's conclusion that there was not substantial evidence to support the Department's determination that market conditions in Canada and the United States are comparable, and that the adjustments the Department made adequately account for differences. We continue to believe that the resulting benchmarks constitute world market prices for timber that are commercially available to purchasers in Canada, within the meaning of 19 CFR 351.511(a)(2)(ii).[341]

The Department specifically indicated that it was not altering its practice in this respect. Moreover, NAFTA panel decisions are not precedential.[342]

Finally, with respect to the SCM Agreement and the WTO Appellate Body's decision in AB Report on Softwood Lumber, the GOC has argued that Article 14 requires us to first seek to adjust prices in the PRC before adopting an out-of-country benchmark. We disagree that our

337 See GFIS at GOC-FACT-31 at 13.
338 See GFIS at GOC-FACT-32 at 15-16.
339 See GFIS at GOC-FACT-33.
340 See LWS from the PRC IDM at Comment 10.
341 See January 2004 NAFTA First Remand Determination.
342 See NAFTA Article 1904.9.

decision is inconsistent with Article 14 as interpreted by the Appellate Body. We further note that the Appellate Body ruled that there are situations when government distortion of the market can justify use of an external benchmark.[343] Accordingly, we continue to find that the use of an external land benchmark to value the adequacy of remuneration is warranted in this investigation.

Comment 16 Whether There Are Flaws in the Thai Benchmark

The GOC argues the Department's selection of Thailand for the land benchmark is entirely arbitrary. The GOC states the Department's rationale is 1) that the PRC and Thailand have comparable economic development and 2) Thailand is geographically close to the PRC. In the first instance, the GOC argues the PRC and Thailand represent different models of development. In terms of proximity, the sheer difference in size alone and the PRC's role as one the world's largest economies makes comparability enormously difficult. Thus, to the GOC, the factors provided by the Department do not demonstrate comparability of land prices.

The GOC also argues that the Thai benchmarks are derived from unique factors specific to Thailand such as proximity of supplies and inputs, transportation costs of inputs and products, transportation of workers and customers, utility costs and availability, and taxes and regulations. Thus, the GOC reiterates that Thai prices cannot serve as a benchmark.

If the Department does countervail the provision of land in the final determination, the GOC offers two benchmarks: 1) for granted land-use rights, the average price paid for industrial property in Tianjin, the PRC, compiled by CB Richard Ellis in Market View[344] for each quarter of 2008 and 2) for leased land, the average rental rates for industrial property in Tianjin, the PRC, listed in the same publication for each quarter of 2008. The GOC notes that CB Richard Ellis authored the report relied upon by the Department for the Thai land price, that these prices are from the same geographic location as TPCO, and the publication contains a detailed description of the real estate market that existed in Tianjin, the PRC, during the POI.[345]

TPCO concurs with the GOC.[346] TPCO also stresses the differences between land in Thailand and the PRC as they relate to consideration of "prevailing market conditions" under the Act.

Citing CWLP from the PRC, U.S. Steel contends the Department has previously considered the respondents' arguments and rejected them.[347]

Department's Position

The GOC's and TPCO's arguments have been addressed in prior cases where the Department analyzed a number of variables in finding that Thailand is comparable to the PRC in terms of its

[343] See AB Report on Softwood Lumber at paragraph 101
[344] See GFIS at Exhibit GOC-Fact-34.
[345] See GFIS at GOC-FACT-34.
[346] See TPCO Case Brief at 25-28.
[347] See Citric Acid from the PRC IDM at Comment 23, CWLP from the PRC IDM at Comment 22, LWS from the PRC IDM at Comment 11, and OCTG from the PRC Preliminary Determination at 47222.

prevailing market conditions: the economic similarity of Thailand and the PRC in terms of GNI per capita; the comparable population density; the perception that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond the PRC; and certain other economic and demographic factors.[348] The fact that the PRC and Thailand may have different development models does not negate the other comparable characteristics noted above for both countries at this time. Furthermore, the GOC's argument concerning the sheer size of both countries is misplaced. As noted, the Department has used population density as a factor, which provides for a more localized comparison as opposed to country size in our data, which the GOC and TPCO argue in their briefs is paramount in selecting a land benchmark. Finally, while some factors may be specific to Thailand and not to the PRC, given the distortions in the PRC surrounding the land market and its prices, it would be speculative to make any adjustments to account for any differences in these factors. However, we believe that these differences are addressed in finding an external benchmark which takes several of the factors named by the GOC into account in terms of comparability, such as GNI, population density and other economic factors and demographic factors.

As we have continued to find that Chinese land prices are distorted by the significant government role in the market and, hence, cannot be used as a benchmark (see Comment 15 above), it would not be appropriate to use internal land prices from Tianjin.

Comment 17 Whether Land is Specific

Citing section 771(5A)(D)(iv) of the Act, the GOC argues that Department may only find specificity based on geographic designation when the alleged subsidy is limited to an enterprise or industry within the jurisdiction of the authority providing the subsidy. The GOC contends that the record evidence does not support the conclusion that the TBNA limits the provision of land within its boundaries to the seamless pipe industry or enterprises such as TPCO. The GOC notes that all land-use rights arise from the state and all enterprises and industries necessarily acquire their land-use rights from the state. The provision of land-use rights is administered by the national and local governments in accordance with generally applicable laws and regulations. Thus, the GOC argues, neither the GOC, the Tianjin Municipal government, nor the TBNA provides land to specific industries or enterprises on a preferential basis. The GOC cites Tianjin Measures as support for its assertion and it notes that these measures provide for "a regulated and uniform land market" and require land transactions comply with "the principles of fairness, impartiality and publicity."[349] Finally, the GOC notes the Department may also not find de facto specificity in regards to TPCO's land as there is no evidence on the record that government discretion was exercised in favor of TPCO in the provision of this land within the meaning of section 771(5A)(D)(iii)(IV) of the Act.

With respect to the provision of land rights to TPCO in the TBNA, U.S. Steel argues the Department should reject as absurd the GOC's argument that specificity regarding regionally-specific subsidies be found on some other grounds. U.S. Steel contends the GOC previously

[348] See Citric Acid from the PRC IDM at Comment 23, CWLP from the PRC IDM at Comment 22, LWS from the PRC IDM at Comment 11, and OCTG from the PRC at Comment 17.
[349] See GOC Case Brief at 71 (citing GQR at Exhibit 77).

made the same argument in LWTP from the PRC.[350] The Department rejected the argument and found land was regionally-specific regardless of whether the government authority afforded a preference within the region. Thus, the Department should continue to find that the provision of land in the TBNA to be specific.

Department's Position

In LWS from the PRC, the Department found "the provision of land-use rights to be specific because the provision of land-use rights in an industrial park within the county's jurisdiction is limited to an enterprise or industry or group thereof located within a designated geographical region pursuant to section 771(5A)(D)(iv) of the Act."[351] The facts in this investigation are analogous: the TBNA is a designated area within the jurisdictions that provided land-use rights to TPCO and its cross-owned affiliates.[352] Therefore, we continue to find specificity within the meaning of section 771(5A)(D)(iv) of the Act.

We find the GOC's argument regarding the Tianjin Measures applicable to land-use rights in Tianjin municipality to be misplaced. The GOC argues that because the Tianjin Measures provided for "a regulated and uniform land market" and require land transactions to comply with "the principles of fairness, impartiality and publicity," no government authority at any level can provide land on preferential terms to specific industries or enterprises. [353] However, the Department determined that the provision of land-use rights in Tianjin is specific because the provision of the land use rights was limited to industries or enterprises within a designated geographic region, whether or not the various authorities in the Tianjin municipality adhere to the principles of fairness and impartiality articulated in the Tianjin Measures. How the local governments are required to administer the provision of land use rights within their jurisdictions does not alter the specificity of the geographic limitation. As noted above in the "Analysis of Programs" section for "Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area," TPCO and TPCO Iron purchased their land-use rights in the TBNA from the Dongli District Land and Resource Administration Bureau, and Yuantong purchased its land-use rights in the TNBA from the Tianjin Port Bonded Zone Land and Resource Administration Bureau. If anything, the Tianjin Measures reinforce the Department's position as they clearly describe the authority of the municipal government over the administration of land-use rights within its jurisdiction. The measures specify that the Tianjin People's Municipal Government retains the authority to administer state-owned land rights and may delegate that authority to subsidiary authorities as was the case with land-use rights provided to TPCO and its cross-owned affiliates.[354]

As the Department has found land-use rights to TPCO to be de jure specific, we need not address the GOC's claims regarding de facto specificity.

Comment 18 Provision of Land-use Rights to Hengyang

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[350] See LWTP from the PRC IDM at Comment 12.
[351] See LWS from the PRC IDM at Comment 9.
[352] See Preliminary Determination at 9176.
[353] See GOC Case Brief at 71 (citing GQR at Exhibit 77).
[354] See GQR at Exhibit 77 (Tianjin Measures, Chapter 1, Article 3

U.S. Steel states that the Department should countervail land benefits provided to Hengyang that were reported after the Preliminary Determination. U.S. Steel cites H4QR to affirm that Valin Xiangtan held land-use rights granted to it by the government after December 11, 2001.[355] U.S. Steel states that the Department has repeatedly found the provision of land-use rights to be a countervailable subsidy, citing to multiple issues and decision memorandums from previous cases involving the PRC.[356]

According to U.S. Steel, after Hengyang disclosed that Valin Xiangtan was a cross-owned affiliate, the Department asked the GOC to update its response to cover all subsidies since December 11, 2001, with respect to Hengyang. U.S. Steel states that the GOC refused to provide information on the provision of land-use rights on the claim that Valin Xiangtan is not a SOE.

U.S. Steel asserts that the Department should apply AFA with respect to the provision of land-use rights to Valin Xiangtan. According to U.S. Steel, the Department is given the ability to apply facts available according to Section 776(a)(2) of the Act. U.S. Steel argues that the GOC did not provide information related to the granting of land-use rights and has impeded the investigation. Therefore, U.S. Steel argues, application of facts available is warranted. U.S. Steel cites Section 776(b) of the Act in calling for the Department to apply an adverse inference if a party fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information. U.S. Steel cites Nippon Steel as support to demonstrate that it has acted to the best of its ability, a respondent must do that maximum it is able to do.[357] U.S. Steel argues that the GOC has not met that standard. Accordingly, U.S. Steel states the Department should apply AFA with respect to the land-use rights subsidy to Valin Xiangtan.

U.S. Steel cites to H2QR, which identifies Hengyang MPM as holding land-use rights granted by the GOC after December 11, 2001.[358] U.S. Steel reiterates its argument that the Department has found that this provision of land-use rights is a countervailable subsidy. U.S. Steel states that the GOC has not provided information requested by the department and that the GOC claims Hengyang MPM "is not a SOE and shall not be considered a recipient under this program even if the Department finds that there is a program."[359] U.S. Steel argues as it did regarding Valin Xiangtan, that the GOC has not provided requested information, has impeded the Department's investigation, and has not acted to the best of its ability in supplying the information. As such, the Department should apply AFA with respect to the land-use rights granted to Hengyang MPM, according to U.S. Steel. In selecting the AFA rate, U.S. Steel states that the Department should follow its practice of selecting the highest calculated rate for the same program in this investigation.

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355 See U.S. Steel Case Brief at 42.
356 U.S. Steel cites, e.g., OCTG from the PRC IDM at Comment 15, OTR Tires from the PRC IDM at Comment H.1, and LWS from the PRC IDM at Comment 8. See U.S. Steel Case Brief at 42.
357 See U.S. Steel Case Brief at 43.
358 Id. at 44.
359 Id.

In Hengyang's rebuttal brief, it cites the GOC's analysis of land-use rights in the PRC and incorporates that by reference.[360] Citing H4QR and H1QR, Hengyang states that for both Valin Xiangtan and Hengyang {MPM} the first parcel of land (i.e., that which came to Valin Xiangtan by way of its merger with Xigantan Steel) is an equity investment. Citing H4QR and H1QR, Hengyang states that the second parcel of land (i.e., that which Valin Xiangtan purchased from Xigangtan Steel) was purchased at arm's length. Hengyang states that there is no evidence on the record that there was any de jure or de facto government involvement in either transaction.[361] Hengyang also states that none of the statutory requirements for a finding of de facto specificity apply to Valin Xiangtan or Hengyang {MPM}. Hengyang also states that neither Valin Xiangtan nor Hengyang {MPM} operates in any kind of economic, industrial, or special zone or park.

Hengyang states that U.S. Steel's argument regarding the GOC declining to provide additional information on land-use rights is unsupported by record evidence. According to Hengyang, the questions from the Department to the GOC were within the context of land-use rights provided to SOEs. Hengyang says the GOC correctly stated that neither Valin Xiangtan nor Hengyang {MPM} is a SOE.[362] Hengyang states that all the information necessary for the Department to evaluate the land-use transactions has been put on the record. Hengyang says that there is no substantial record evidence that would justify an application of AFA to land-use rights for either company.

Department's Position

As U.S. Steel notes, the Department has found in multiple cases that the government's provision of land-use rights has conferred a countervailable benefit pursuant to section 771(5)(D)(iii) of the Act.[363] In previous cases, e.g., OCTG from the PRC, the Department countervailed land-use rights granted directly from a government agency.[364] However, in the instant investigation, the transactions related to land received by Valin Xiangtan are identified as part of an equity infusion from an individual business.[365] There is no evidence on the record that the business from which Valin Xiangtan received the land is a government authority. Additionally, under section 771(5)(E)(i) of the Act, even if the business were a government authority, equity infusions constitute a benefit when the investing decision is inconsistent with usual investment practices in the country in which the infusion is made, which no one has alleged or demonstrated in this case. With respect to the land-use rights agreements with Hengyang MPM, the transactions do not appear to fall within the scope of the allegation on which we initiated. Hengyang MPM stated that it owns four parcels of land.[366] The first parcel was obtained as part of a capital infusion by a former shareholder.[367] The second parcel was the result of a transaction with an unaffiliated company.[368] There is no evidence on the record that the business from

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[360] See Hengyang Rebuttal Brief at 3 and GOC Case Brief at 66-79.
[361] See Hengyang Rebuttal Brief at 4.
[362] See G1SR at 7, see H1QR at 5, and see also H4QR at 2.
[363] See, e.g., OCTG from the PRC IDM at Comment 15, OTR Tires from the PRC IDM at Comment H.1, and LWS from the PRC IDM at Comment 8.
[364] See OCTG from the PRC IDM at 20.
[365] See H4QR at Exhibit S4-06.
[366] See H3QR at 15.
[367] Id.
[368] Id.

which Hengyang MPM received the land is a government authority. Even if the business were a government authority, record information indicates that Hengyang MPM was not a SOE when it purchased these land-use rights.[369] Therefore, this purchase does not fall within the scope of the allegation. The third and fourth transactions are after the POI.[370] Therefore, information on the record does not indicate that Hengyang MPM received free allocated land-use rights from a government agency because of its status as an SOE.

U.S. Steel's central argument is that the GOC did not participate fully with the Department's investigation. As U.S. Steel notes, sections 776(a)(2) and 776(b) of the Act give the Department the ability to apply facts available and use an adverse inference, respectively. In the instant investigation, the Department has determined that the transactions at issue do not fit within the scope of the allegation which the Department investigated concerning land to SOEs and therefore are not countervailable under that program. Therefore, the GOC's participation did not have the effect of impeding the investigation or otherwise hampering the Department's ability to adequately examine this specific issue. Additionally, necessary information concerning this allegation was not absent from the record. Consequently, the Department is not altering the position it took in the Preliminary Determination.

Provision of Coking Coal for LTAR

Comment 19 Countervailability of Program

After the Preliminary Determination was issued in the instant investigation, the Department sought additional information regarding the purchase of coking coal by Hengyang. The GOC states that it provided a full response to the Department's questions in the G1CCR. The GOC states that in Hengyang's Post-Preliminary Analysis, the Department concluded that purchases of coking coal by the Hengyang companies conferred a countervailable subsidy. The GOC cites to its reasons specified with regard to steel rounds[371] as arguments that the Department should not consider coking coal suppliers, regardless of the level of government ownership, to be government authorities capable of conferring a financial contribution.[372] The GOC states that the Department should not countervail purchases from private suppliers or those with less than majority ownership.[373]

The GOC argues that if the Department determines that a LTAR program exists with respect to coking coal, it must ensure that no purchases from certain suppliers are countervailed, as none of those suppliers may be considered government authorities under the statute, nor is there evidence to indicate the certain suppliers were entrusted or directed by the government to provide a financial contribution.

In its rebuttal brief, U.S. Steel supports the Department's finding of AFA with regard to the provision of coking coal for LTAR because the GOC has not answered questions or provided

369 See January 13 Response at Exhibit 1; see also H2QR at Exhibit 29.7.
370 See H3QR at 15.
371 See Comment 7.
372 See GOC Case Brief at 45.
373 See GOC Case Brief at 45-46.

information that was relevant to the Department's analysis of the issue.[374] U.S. Steel states that the Department appropriately found it was forced to rely on facts available according to section 776(a)(2) of the Act because the GOC withheld information requested by the Department. U.S. Steel also agrees with a finding of adverse facts available per section 776(b) because the GOC did not act to the best of its ability in responding to the Department's requests for information.[375]

U.S. Steel makes note in its rebuttal that Hengyang did not challenge the finding of the Department on this issue. U.S. Steel states that the GOC has not taken issue with the Department's application of AFA, but only to the extent that it argues that the Department's inquiries into the role played by CCP members were inappropriate.[376] U.S. Steel has addressed this argument in its discussion of steel rounds for LTAR.[377] U.S. Steel cites OCTG from the PRC in stating that the Department "has established a rebuttable presumption that majority-government-owned enterprises are authorities based on the reasonable proposition that where a government is the majority owner of an enterprise, it controls the enterprise."[378] U.S. Steel argues that neither the GOC nor any of the company respondents have done so in this instance.

As for the GOC's statement that the Department should not countervail purchases from certain private suppliers, U.S. Steel states that the GOC has not established that the companies are private.[379] U.S. Steel states that the GOC had an opportunity to provide information to resolve that issue to the Department, but did not do so.[380]

Department's Position

The GOC argues that the Department should not countervail Hengyang's purchases of coking coal because government-ownership of a producer does not mean that the producer is an authority. Furthermore, the GOC argues that private producers of coking coal do not constitute authorities.

However, as discussed above in Comment 7 and in KSAR from the PRC,[381] normally the Department considers entities that are majority-owned by the government to constitute authorities within the meaning of section 771(5)(B) of the Act. Because record evidence demonstrates that certain of the coking coal producers are majority government-owned, the Department continues to find that these producers constitute authorities.[382]

With respect to coking coal producers that are less-than majority government-owned or private, in the Hengyang Post-Preliminary Analysis, the Department found that the GOC did not provide the information requested by the Department concerning, e.g., ownership and direction of and

374 See U.S. Steel Rebuttal Brief at 51.
375 Id. at 51-52.
376 Id. at 52.
377 See Comment 7.
378 See OCTG from the PRC IDM at Comment 9.
379 See U.S. Steel Rebuttal Brief at 53.
380 Id.
381 See KSAR from the PRC IDM at Comment 4.
382 See G4SR at 7.

decision-making within these companies.[383] Moreover, we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information because the GOC did not make an effort to obtain the information we requested. For the reasons explained under "Use of Facts Otherwise Available and Adverse Facts Available," and the Hengyang Post-Preliminary Analysis, we determined that the GOC has not provided the information relevant to determine whether the government may be exercising control of these companies and, therefore, as AFA have determined that these companies, with the exception of Hengyang's cross-owned coking coal suppliers, constitute authorities.

The GOC incorporated its comments concerning steel rounds providers into its comments concerning coking coal suppliers. The Department responds to the arguments regarding steel rounds providers in Comment 7. The Department incorporates such responses into this comment.

For the reasons discussed above in Comment 7, we also determine that cross-owned seamless pipe producers have received a financial contribution from the government in the form of the provision of a good (i.e., coking coal),[384] that the contribution is specific, and that it confers a benefit. Consistent with its position in the Hengyang Post-Preliminary Analysis, the Department finds that the provision of coking coal for LTAR provides a countervailable benefit to the seamless pipe industry.[385]

Comment 20 Freight Benchmark for Coking Coal Purchases

U.S. Steel argues that the freight rate added to the benchmark for calculating the benefit for coking coal in the Hengyang Post-Preliminary Analysis is not a true North American freight rate, nor does it even include a North American freight rate.[386] Because the benchmark price for coking coal is derived from North America, U.S. Steel argues that for the final determination, the Department should use the freight rate from North America to Japan, consistent with 19 CFR 351.511(a)(2)(iv) and past practice in Drill Pipe from the PRC.[387] U.S. Steel contends that if the Department decides not to use the North America to Japan rate alone, alternatively, it should recalculate the freight rate to include the North American freight rate in its calculation.

Hengyang argues that the Department should not include a North American freight rate in its coking coal benchmark. First, it argues that the Department's decision upon which U.S. Steel's argument relies is a preliminary determination. According to Hengyang, no precedential value should be placed on a decision the Department has yet to finalize. Second, Hengyang asserts that even if the preliminary determination in Drill Pipe from the PRC was given consideration, it would not support the Department including freight rates to Japan in its freight adjustment calculation. According to Hengyang, doing so would directly violate the Department's

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[383] See Hengyang Post-Preliminary Analysis at 19.
[384] See section 771(5)(D)(iii) of the Act and 19 CFR 351.525(b)(6)(ii).
[385] See Hengyang Post-Preliminary Analysis at 19.
[386] U.S. Steel states that in the Hengyang Post-Preliminary Analysis, the Department used the freight rate that Petitioners placed on the record for coke, which is the average of $/MT rates to ship dry bulk cargoes to China from Tubarao, Brazil and Western Australia. See Petitioners' Pre-Preliminary Comments at 38-39.
[387] See Drill Pipe from the PRC at 33257.

regulations which require the adjustment to reflect what "a firm actually paid or would pay if it imported the products."[388] Hengyang claims that it is not possible for freight rates to Japan to inform freight rates to the PRC. Lastly, Hengyang argues that U.S. Steel offers no rationale that would suggest that the freight rates used in the Hengyang Post-Preliminary Analysis would be improved or yield a more accurate benchmark by including freight rates from North American to Japan, a country not covered by this investigation. It concludes that no substantial record evidence exists to support the action urged by U.S. Steel, and doing so would not be otherwise in accordance with law.

Department's Position

As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier one or tier two benchmark pursuant to 19 CFR 351.511(a)(2)(i) or (ii), respectively, the Department will adjust the benchmark price to reflect that a price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. As discussed at Comment 7, to determine whether coking coal is being provided to Hengyang for LTAR, the Department is using a benchmark price derived from North American prices pursuant to 19 CFR 351.511(a)(2)(ii). However, we have no record information on a North America – China freight rate, which would be the most accurate rate. Because necessary freight rate information for coking coal is not available on the record, pursuant to section 776(a)(1) of the Act, the Department is using facts otherwise available. As facts available, we are using the freight rate from North America to Japan because it is the closest approximation we have on the record to a North America – China rate. Moreover, we find that freight rates beginning in Brazil and Australia are less probative than freight rates beginning in the United States. Therefore, for the final determination we are adding the North America to Japan freight rate to the benchmark for coking coal purchases.

<u>Hengyang-specific Issues</u>

Comment 21 Cross-ownership Between Hengyang Companies

Contesting the Hengyang Post-Preliminary Analysis, Hengyang argues that the Department has not found cross-ownership between the Hengyang Companies and the Xigang Companies, between the Hengyang Companies and Valin Xiangtan, or between the Xigang Companies and CRC China. Hengyang claims that it disclosed affiliations between these companies, but did not acknowledge that the companies were cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Hengyang states that it conceded cross-ownership between Hengyang Valin, Hengyang MPM, and Hengyang Trading, but did not acknowledge cross-ownership between these companies and any other companies. Further, Hengyang notes that the Department did not collapse the Hengyang Companies and Xigang Companies in the AD investigation "because the companies were only commonly owned in part by the Valin group."[389]

Regarding the Hengyang Companies and the Xigang Companies, Hengyang claims that record

[388] <u>See</u> 19 CFR 351.511(a)(2)(iv).
[389] <u>See</u> Hengyang Case Brief at 7.

evidence not support the Department's finding in the Preliminary Determination that cross-ownership exists between the Hengyang Companies and Xigang Companies through common ownership.[390] Hengyang contends that the level of ownership between Valin Group and Hengyang Valin is not such that these two entities can be collapsed, which would preclude a finding cross ownership between Hengyang Valin and the Xigang Companies.

Regarding the Hengyang Companies and Valin Xiangtan, Hengyang argues that the level of equity ownership between Hengyang Valin and Valin Xiangtan does not reach the level necessary to find cross-ownership. Hengyang claims that Valin Xiangtan had almost nothing to do with the subject merchandise. Hengyang also asserts that Hengyang Valin and Valin Xiangtan have no common parent company; that the coke and coking coal purchased by Valin Xiangtan are used in numerous products and, therefore, not primarily used in the production of subject merchandise; and that the steel rounds produced by Valin Xiangtan are used in a range of pipe products and not dedicated to the production of subject merchandise. Hengyang argues that the Department had to prove that any subsidies provided to Valin Xiangtan were passed through to Hengyang, but did not initiate an upstream subsidy investigation as required under 19 CFR 351.523.

In response, U.S. Steel contends that Hengyang Valin and Xigang Group are cross-owned through common ownership by Valin Group, which holds a majority voting interest in Xigang Group and a large voting interest in Hengyang Valin. Further, U.S. Steel cites proprietary information that certain Hengyang companies share corporate officials.

Responding to Hengyang's argument that the Department did not collapse the Hengyang Companies and Xigang Companies in the AD investigation, U.S. Steel argues that the Department's collapsing decision in the AD context is not relevant to the Department's cross-ownership determination in the CVD context. Citing LWTP from the PRC AD, U.S. Steel argues that the Department has established the distinction between an AD collapsing analysis and CVD cross-ownership analysis.[391] Also, U.S. Steel contests the relevance of Hengyang's claim that there is no majority voting interest between the Hengyang Companies and Xigang Companies. U.S. Steel argues that cross-ownership may exist in a CVD context not only through a majority ownership interest, but also through common ownership of two (or more) corporations.

Regarding cross-ownership between the Hengyang Companies and Valin Xiangtan, U.S. Steel argues that proprietary information on the ownership of the Hengyang Companies and Valin Xiangtan demonstrates that the two are cross-owned under 19 CFR 351.525(b)(6)(vi).

Finally, responding to Hengyang's claim that Valin Xiangtan had virtually nothing to do with the subject merchandise, U.S. Steel responds that the claim is irrelevant to the Department's cross-ownership analysis and in contradiction to Henygang's other statements on the record. Rejecting Hengyang's claim that the Department must initiate an upstream subsidy allegation, U.S. Steel argues that 19 CFR 351.525(b)(6)(iv) gives the Department the authority to investigate subsidies

[390] See Preliminary Determination at 9169.
[391] See LWTP from the PRC AD IDM at Comment 8.

to Valin Xiangtan.

Department's Position

We agree with U.S. Steel. The Preliminary Determination and Hengyang Post-Preliminary Analysis show how the Hengyang Companies, Xigang Companies, and CRC China are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).[392]

We note, as an initial point, that Hengyang claims we did not find cross-ownership between "Hengyang Valin" and the Xigang Companies in several parts of its case brief, but refers to "Hengyang" in other parts of the brief.[393] The Department treats responding cross-owned companies as a single entity.[394] Because we treat the responding cross-owned companies as a single entity, we are not determining whether cross-ownership exists between only one part of the cross-owned entity and another company. Rather, we are determining whether cross-ownership exists between the responding cross-owned entity as a whole and another company.

The following sections summarize our cross-ownership findings from the Preliminary Determination and Hengyang Post-Preliminary Analysis.

a. Hengyang Companies and Xigang Companies

First, as Hengyang acknowledged on page 6 of its case brief, Hengyang Valin, Hengyang MPM, and Hengyang Trading are cross-owned. The Preliminary Determination and Hengyang Post-Preliminary Analysis show how these companies (i.e., the "Hengyang Companies") are cross-owned with the Xigang Companies (i.e., Xigang Group, Xigang Seamless, Special Pipe, and Resources Steel).[395]

At page 10 of the Hengyang Post-Preliminary Analysis, we explained that Hunan Valin owned 43.68 percent of Hengyang Valin and 68.52 percent of Hengyang MPM during the POI. Further, we cited proprietary information in Hengyang Valin's 2007 and 2008 audit reports that detailed the relationship between Hunan Valin and Hengyang Valin. Hunan Valin's public 2007 and 2008 audit reports describe the relationship as follows: "As other equity holders have granted (Hunan Valin) with the full entrustment to operate (Hengyang Valin), the company is entitled to exercise control over (Hengyang Valin) and thus consolidates it in the consolidated financial statements."[396] Thus, we found Hunan Valin to be cross-owned with the Hengyang Companies within the meaning of 19 CFR 351.525(b)(6)(vi) through Hunan Valin's controlling ownership interest in Hengyang Valin and majority ownership interest in Hengyang MPM.

Further, as we explained on page 10 of the Hengyang Post-Preliminary Analysis, Valin Group owned 33.92 percent of Hunan Valin during the POI, and Hunan Valin's 2007 and 2008 audit reports identify Valin Group as the "controlling shareholder" in Hunan Valin. Thus, the

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[392] See Preliminary Determination at 9169-9170; see also Hengyang Post-Preliminary Analysis at 5-8.
[393] See, e.g., Hengyang Case Brief at 7.
[394] See, e.g., Lined Paper from Indonesia IDM at 26.
[395] See Preliminary Determination at 9169-9170; see also Hengyang Post-Preliminary Analysis at 5-8.
[396] See HVQR at HVCVD-3 (page 88 of 2008 audit report; "Note 1" of 2007 audit report).

Hengyang Companies are cross-owned with Valin Group within the meaning of 19 CFR 351.525(b)(6)(vi) through Valin Group's indirect controlling ownership interest in the Hengyang Companies. This indirect controlling ownership interest occurs through Valin Group's direct controlling ownership interest in Hunan Valin.[397]

In the Preliminary Determination, we stated that the Hengyang Companies are cross-owned with the Xigang Companies through common ownership.[398] Valin Group owns a majority of Xigang Group.[399] As we explain above, Valin Group is cross-owned with the Hengyang Companies. Thus, the Xigang Companies and Hengyang Companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through Valin Group's ultimate common ownership.

b. Valin Xiangtan and Hengyang Companies

As we explain above, Hunan Valin is cross-owned with the Hengyang Companies. At page 10 of the Hengyang Post-Preliminary Analysis, we explained that Hunan Valin was the majority shareholder in Valin Xiangtan during the POI. Thus, Valin Xiangtan is cross-owned with the Hengyang Companies within the meaning of 19 CFR 351.525(b)(6)(vi) through common ownership by Hunan Valin.

c. CRC China and Hengyang Companies

On page 5 of the Hengyang Case Brief, Hengyang argues that cross-ownership does not exist "between the CRC companies and Xigang." Hengyang did not provide additional explanation. The Hengyang Post-Preliminary Analysis at 6-9, however, provides charts to show how we found cross-ownership between CRC China and the Xigang Companies during and prior to the POI, based on information on the record. As we explain above in part (a), the Xigang Companies are cross-owned with the Hengyang Companies. Further, consistent with the Hengyang Post-Preliminary Analysis, we continue to find that CRC China is cross-owned with the Xigang Companies because of CRC China's majority ownership interests in the Xigang Companies (i.e., Xigang Group, Xigang Seamless, Special Pipe, and Resources Steel) during and prior to the POI. Because the Hengyang Companies and Xigang Companies are cross-owned, subsidies to CRC China and its subsidiaries are attributable to the responding cross-owned Hengyang entity as a whole.

Hengyang also states the following:

> Moreover, Valin Xiangtan had virtually nothing to do with the subject merchandise. Valin Xiangtan was an affiliated company that supplied steel rounds to Hengyang Valin for production of the subject merchandise. The company does not produce the subject merchandise.[400]

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[397] We note, in addition, that Valin Group not only holds a controlling interest in Hunan Valin, but also holds a direct ownership stake in Hengyang Valin. See Hengyang Case Brief at 7.

[398] See Preliminary Determination at 9169.

[399] See Hengyang Case Brief at 7. The exact percentage is at Exhibit 2 of the Hengyang Case Brief.

[400] See Hengyang Case Brief at 8.

The Department's regulations at 19 CFR 351.525(b)(6)(iv) state the following:

> If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

In the Preliminary Determination, we found that steel rounds are primarily dedicated to production of the downstream product (i.e., seamless pipe).[401] Hengyang acknowledges that Valin Xiangtan supplied steel rounds to Hengyang Valin for production of subject merchandise, but contends that steel rounds are "not dedicated to the production of subject merchandise" because the rounds are used in a range of pipe products.[402] In determining whether an input product is "primarily dedicated to the production of the downstream product," the Department has not limited the "downstream product" to subject merchandise. In Lined Paper from Indonesia, the Department addressed the question of whether "downstream product(s)" under 19 CFR 351.525(b)(6)(iv) can encompass more than subject merchandise. The Department stated,

> By avoiding the use of the term "subject merchandise," the regulation leaves open the possibility that the "products" benefitting from the subsidy may include subject and non-subject merchandise.[403]

Therefore, we disagree with Hengyang's contention that steel rounds are not "primarily dedicated to production of the downstream product" simply because they are used in pipe products other than subject merchandise. We find no other information on the record to change our finding in the Preliminary Determination that steel rounds are primarily dedicated to production of the downstream product (i.e., seamless pipe).

As we explain above under subsection (b), we are finding cross-ownership between Valin Xiangtan and the Hengyang Companies. Valin Xiangtan provided the Hengyang Companies with an input (i.e., steel rounds) that is primarily dedicated to the downstream product. Therefore, under 19 CFR 351.525(b)(6)(iv), subsidies to Valin Xiangtan are attributable to Hengyang.

Hengyang also contends that the Department should not attribute subsidies on coke and coking coal to Hengyang because these inputs are "used in numerous products" and "not primarily used in the production of subject merchandise."[404] Hengyang's assertion, however, conflicts with the language of 19 CFR 351.525(b)(6)(iv). The regulation states that the Department will "attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations." Absent a finding that a specific subsidy is "tied" to specific merchandise or markets under 19 CFR 351.525(b)(4) or (b)(5)(i), subsidies to a cross-owned supplier of an input that is primarily dedicated to production of the downstream product

[401] See Preliminary Determination at 9168, 9170.
[402] See Hengyang Case Brief at 9.
[403] See Lined Paper from Indonesia IDM at 30.
[404] See Hengyang Case Brief at 9.

are attributable to the combined sales of the input supplier and the producer of the downstream product. Coke and coking coal are inputs to the production of steel rounds, which is primarily dedicated to the production of seamless pipe. Export restraints on coke and the provision of coking coal for LTAR are subsidy programs on which we have initiated an investigation.[405] Therefore, we disagree with Hengyang's argument that these subsidies are not attributable to Hengyang.

Hengyang also argues that the Department's legal authority to review subsidies to Valin Xiangtan is unclear because the Department did not initiate an upstream subsidy investigation under 19 CFR 351.523. In both Lined Paper from Indonesia and CFS from Indonesia, the Department addressed subsidies to cross-owned input suppliers and upstream subsidies. In Lined Paper from Indonesia, the Department stated,

> There is no indication that the statutory provision for upstream subsidies was intended to be the only provision that addresses input subsidies. The Department's regulations at 351.525 provide that, if there is *cross ownership* between an input supplier and the producer of a *downstream product* and the input product is primarily dedicated to production of downstream product, the subsidy to the input supplier is attributed to sales of both the input and the downstream product.[406]

Thus, contrary to Hengyang's argument, 19 CFR 351.525(b)(6)(iv) grants the Department the authority to countervail subsidies to Valin Xiangtan and attribute these subsidies to the responding cross-owned Hengyang entity.

Finally, regarding the AD investigation, Hengyang notes that the Department did not collapse the Hengyang Companies and Xigang Companies because the companies "were only commonly owned in part by the Valin group."[407] However, the purpose of a cross-ownership analysis in a CVD case is different from the purpose of a collapsing analysis in an AD case. Moreover, the standards for the two analyses are different. Thus, the Department's determination in the AD case does not preclude a finding of cross-ownership between the Hengyang Companies and Xigang Companies in the CVD investigation.

In LWTP from the PRC AD, the Department explained the differences between the purpose and standards for the collapsing and cross-ownership analyses:

> {t}he Department applies two different standards when considering cross-ownership in CVD cases and whether to treat affiliated parties as a single entity in AD cases, for two distinct purposes....The purpose of the cross-ownership analysis is to determine whether a subsidy received by a company can be attributed to the product produced by the other company. For a collapsing analysis, however, the question is whether the two companies have facilities for identical or similar products such that manufacturing priorities could be shifted, or whether two companies both involved in the sale and export of subject merchandise could shift sales activity resulting in a significant manipulation of U.S. price

[405] See Initiation Checklist at 27-29.
[406] See Lined Paper from Indonesia IDM at 24; see also CFS from Indonesia IDM at 52-53 (emphasis added).
[407] See Hengyang Case Brief at 7.

> and/or (normal value). Thus, whether a subsidy is attributed to the various products produced by both companies based upon cross-ownership is not determinative of whether price and/or production are subject to manipulation as a result of affiliation.[408]

As we explain above, we find cross-ownership between the Hengyang Companies and Xigang Companies within the meaning of 19 CFR 351.525(b)(6)(vi). Therefore, subsidies to the Xigang Companies are attributable to the Hengyang Companies. This is separate from the issue of whether the Hengyang Companies or Xigang Companies could shift manufacturing or sales activity to manipulate U.S. price or normal value in the AD context.

Comment 22 Application of AFA to CRC China and Subsidiaries

Hengyang argues that the Department's calculation of a subsidy rate of 32.92 percent for CRC China was inconsistent with the Act, the Preliminary Determination, and the case record. Hengyang claims that its February 23 Response showed that any connection between the Xigang Companies and CRC China was largely prior to the POI.

Citing SKF, Hengyang contends that the Department must consider sections 776(a) and 782(e) of the Act when applying facts available.[409] Hengyang argues that the conditions of section 776(a) do not apply in this case. Hengyang contends that it responded to the best of its ability and supplied the information available to it concerning CRC China. Moreover, Hengyang argues that the Department unlawfully rejected additional information Hengyang attempted to provide. Therefore, Hengyang argues that necessary information was available on the record, and the Department should not have applied facts available in the first place.

Further, citing Ta Chen I,[410] Hengyang contests the Department's statement on page 8 of the Hengyang Post-Preliminary Analysis that Hengyang failed to provide requested information. Hengyang argues that it provided information to it regarding CRC China in the February 23 Response and in a June 2, 2010, submission that the Department rejected. Citing Acciai, Usinor, and Hebei Minerals, Hengyang argues that the Department must provide a respondent with the opportunity to correct any discrepancies before applying AFA.[411] Hengyang contends that the Department not only failed to do so in this case, but rejected information when Hengyang offered it. Citing China Steel, Hengyang argues that the Department did not provide a meaningful opportunity for Hengyang to remedy flaws in the data.

Regarding the Department's decision at page 9 of the Hengyang Post-Preliminary Analysis to use the highest rate for every program in this investigation as the AFA rate, Hengyang argues that the Department failed to corroborate the rate as required by section 776(c) of the Act. Hengyang argues that because the rates used by the Department in this case were derived from previous administrative reviews, by definition they represent secondary information that the Department must corroborate. Moreover, citing Gallant, Hengyang argues that the Department

[408] See LWTP from the PRC AD IDM at Comment 8.
[409] See SKF at 1334.
[410] See Ta Chen I at 13 (citing Bowe-Passat at 343).
[411] See Accai at 169; see also Usinor 1995 at 1142; see also Hebei Minerals at 1271.

did nothing to ensure that the AFA rate reflects economic reality.[412] Hengyang also argues that the Department made no attempt to show that the AFA rate for Hengyang had probative value, as defined by the SAA.[413] Hengyang argues that the CAFC, in Ta Chen II, stated that a rational relationship must exist between the margin chosen by the Department and the party to whom it is applied.[414] Hengyang argues that the Department's selected AFA rate has no rational relationship to Hengyang.

Hengyang argues that the Department assumed the highest previous margin in this case simply because it was most prejudicial. Hengyang cites China Steel[415] and Ferro Union[416] as cases in which the courts have criticized this practice. Finally, Hengyang claims that the rate that the Department selected is punitive. Hengyang cites American Silicon as a case, among others, where the courts have affirmed that the Department must not apply a punitive rate in an AFA situation.[417]

U.S. Steel responds that the statutory requirements for AFA are met in this case. U.S. Steel claims that Hengyang provided no response on behalf of CRC China despite instructions in the original questionnaire for Hengyang to respond on behalf of its parent companies. U.S. Steel also notes that in response to the Department's instructions in a supplemental questionnaire to respond on behalf of CRC China, Hengyang simply stated that it could not do so.[418] U.S. Steel argues that this meets the statutory requirements for the application of AFA because Hengyang repeatedly failed to provide the requested information and did not act to the best of its ability.

Regarding Hengyang's claim that the Department unlawfully rejected information on CRC China that Hengyang tried to provide, U.S. Steel claims that the Department specifically requested this information earlier in the investigation and, thus, that this information was subject to the deadline for that request for information (i.e., February 23, 2010). U.S. Steel argues that this information was not subject to the general time limit for submitting new factual information and was, therefore, untimely. Citing HRS from Japan, U.S. Steel argues that this rejection was consistent with the Department's practice and regulations.[419]

In response to Hengyang's argument that the Department must corroborate the AFA rate, U.S. Steel argues that the rates are reliable and relevant to Hengyang because the Department based the calculation on information that Hengyang and TPCO reported on this record for different subsidy programs. U.S. Steel contends that the Department lacked any other information that could be used to corroborate the rates applied to CRC China because of the failure of Hengyang and the GOC to respond to the Department's requests for information concerning CRC China. Citing HRS from India, U.S. Steel argues that a lack of company-specific information when a respondent fails to cooperate severely limits the Department's ability to further corroborate AFA

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412 See Gallant at1319.
413 See SAA at 870.
414 See Ta Chen II at 1340.
415 See China Steel at 1311.
416 See Ferro Union at 1334.
417 See American Silicon at 1306, 1308, 1312-13.
418 See February 23 Response at 3.
419 See HRS from Japan at 24357-61.

rates in CVD proceedings because no independent sources for data on company-specific benefits typically exist.[420]

Further, U.S. Steel rejects Hengyang's allegation that the Department did not tie the AFA rate to Hengyang or show how Hengyang would have received a subsidy through CRC China. U.S. Steel notes that the Department, in the Hengyang Post-Preliminary Analysis, set forth at length an analysis of the relationship between CRC China and the responding Hengyang companies based on the information available. U.S. Steel contends that the Department properly assumed adversely that CRC China and its subsidiaries identified by Hengyang are cross-owned with Hengyang because of the failure of the GOC and Hengyang to provide responses on CRC China's ownership structure.

Finally, U.S. Steel rejects Hengyang's argument that the AFA rates applied to CRC China are punitive and have no relationship to Hengyang. U.S. Steel argues that the AFA rates clearly meet the requirements for being non-punitive because they are a reasonably accurate estimate of Hengyang's actual rates, along with a built-in increase as a deterrent to future non-compliance. Citing KYD and De Cecco, U.S. Steel argues that the highest verified rate applicable to cooperative respondents, which is what the Department applied in this case, is one source of AFA rates that the CIT and the CIT have determined to be corroborated and non-punitive.[421]

Department's Position

We note initially that both Hengyang and U.S. Steel have characterized the decision from the Hengyang Post-Preliminary Analysis as the application of AFA to Hengyang.[422] In the Hengyang Post-Preliminary Analysis, however, we found that an adverse inference was warranted in the application of facts available because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.[423]

We continue to find that that we must rely on "facts available" within the meaning of sections 776(a)(1) and (a)(2)(A) of the Act because Hengyang and the GOC have not provided necessary information on CRC China. Furthermore, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information because the GOC withheld requested information about CRC China, its subsidiaries, and their participation in subsidy programs. Consequently, we find that an adverse inference is warranted in the application of facts available within the meaning of 776(b) of the Act.

In the sections below, we address Hengyang's arguments.

a. An AFA Determination Was Not Appropriate

Hengyang claims that the conditions for applying facts available under section 776(a) of the Act are not met in this case. Hengyang also contends that it responded to the best of its ability and

420 See HRS from India IDM at 8.
421 See KYD at 756; see also De Cecco at 1032.
422 See, e.g., Hengyang Case Brief at 14; see also Petitioner Rebuttal Brief at 5.
423 See Hengyang Post-Preliminary Analysis at 8.

supplied the information available to it concerning CRC China. Further, Hengyang claims that the Department unlawfully rejected information Hengyang attempted to provide.

At Section III, page 2 of the InitQ to Hengyang, we instructed Hengyang to provide a complete questionnaire response for any cross-owned affiliate that was a "holding company or parent company (with its own operations) of your company." Hengyang did not provide a questionnaire response on behalf of CRC China or its subsidiaries in the HQR.

In the Hengyang First Supplemental Questionnaire, we requested a response from Hengyang for CRC China and its subsidiaries because the HQR showed that these companies were parent companies of Xigang Group and Resources Steel.[424] Xigang Group and Resources Steel, together with subject merchandise producers Xigang Seamless and Special Pipe, compose the cross-owned "Xigang Companies." As we explain above in Comment 21, cross-ownership exists between the Henygang Companies and the Xigang Companies. Thus, subsidies to a parent company of the individual Xigang Companies are part of our analysis.

In the February 23 Response, Hengyang acknowledged that certain CRC China subsidiaries were parent companies of Xigang Group and Resources Steel. Hengyang stated, however, that it could not provide a response on behalf of CRC China or its subsidiaries because these companies were no longer parent companies of Xigang Group or Resources Steel. Hengyang did not request an extension of time for submitting a questionnaire response for CRC China.[425]

Therefore, Hengyang's claim that we did not provide an opportunity for it to correct flaws in its submissions is wrong. Hengyang did not provide a response on behalf of CRC China in the HQR, in accordance with the instructions in the questionnaire. When we provided Hengyang another opportunity to provide a response on behalf of CRC China, Hengyang stated that it could not do so. Thus, these circumstances meet the requirements for the application of facts available under section 776(a)(1) of the Act because necessary information on CRC China and its subsidiaries was not on the record, and because Hengyang could not provide the information within the established deadline.

Hengyang also claims that we unlawfully rejected information that Hengyang attempted to provide on CRC China. Hengyang did not submit a response on behalf of CRC China and its subsidiaries in the HQR. In the Hengyang First Supplemental Questionnaire, we requested this response from Hengyang. The final deadline for providing this response was February 23, 2010. In the February 23 Response, Hengyang stated that it could not respond on behalf of CRC China or its subsidiaries, but did not request an extension for providing this questionnaire response. On June 2, 2010, which was more than three months after the February 23, 2010, deadline and one week before the start of verification, Hengyang attempted to submit information on CRC China directly in response to our questionnaire. In the June 3, 2010, Letter, we rejected Hengyang's submission because it was it was untimely.

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[424] See Hengyang First Supplemental Questionnaire at 4.
[425] See February 23 Response at 2-3.

Hengyang claims that its submission was within the deadline for submitting new factual information. As the Department has established, information that we specifically request in a questionnaire to a respondent is not subject to general factual information deadlines.[426] Under Hengyang's interpretation, respondents may freely disregard our deadlines by designating any information that we request as "factual information" and submitting the information well after the deadlines we establish. Such an interpretation undermines the Department's ability to conduct a proper CVD investigation.

Furthermore, Hengyang states the following:

> Hengyang has responded to the best of its ability in this case and supplied the information available to it concerning CRC Conic. Moreover, when it attempted to provide additional information, the Department unlawfully rejected that information…Therefore, because 'the necessary information' was 'available on the record,' (Section 776(1) of the Act) was not triggered and the Department should not have applied facts available in the first place.[427]

Hengyang also claims that it submitted necessary information by the applicable deadline, that the Department verified the information, and that the information indicates Hengyang did not receive subsidies via CRC China.[428]

Hengyang's claims contradict the facts on the record. First, in the Hengyang First Supplemental Questionnaire, we requested a complete questionnaire response from Hengyang on behalf of CRC China because Hengyang did not provide this response in the HQR. Hengyang answered that it could not provide this information. Although Hengyang claims that it provided necessary information on CRC China and its subsidiaries, the only information Hengyang provided on CRC China in the February 23 Response was a website printout on CRC China.[429] The printout showed a corporate structure chart of CRC China and its first tier subsidiaries, but did not identify the Xigang Companies or CRC China subsidiaries that Hengyang identified as direct owners of the Xigang Companies. This did not satisfy our request for a complete questionnaire response, which would have provided necessary information on the Xigang Companies' place in CRC China's corporate structure, subsidies to CRC China and its subsidiaries, and supporting documentation (e.g., financial statements). Therefore, contrary to Hengyang's claims, necessary information on CRC China, its subsidiaries, and subsidies any of these companies received was not on the record.

Second, Hengyang attempted to provide additional information on CRC China more than three months after the deadline for Hengyang to submit this information. Thus, Hengyang's claim that it submitted necessary information by the applicable deadline is incorrect. Accordingly,

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[426] See, e.g., HRS from Japan at 24361 ("{w}hen requesting information pursuant to a questionnaire, the Department will specify the deadlines by which the information is to be provided by the parties...Any information submitted after the deadline specified in the questionnaire is untimely, regardless of whether the general deadline in section 351.301(b)(I) has passed."). See also 19 CFR 351.301(c)(2).
[427] See Hengyang Case Brief at 12.
[428] Id.
[429] See February 23 Response at POCVD-1.

Hengyang's June 2, 2010, submission did not satisfy the requirements of section 782(e) of the Act for the Department to consider the submission. Specifically, Hengyang did not submit the information requested information by the February 23, 2010 deadline that the Department had established.[430]

Nevertheless, Hengyang is also asserting that the Department should have accepted its untimely submission because it contained all necessary information for the Department's analysis. However, the Department, not a respondent, determines whether all necessary information is on the record after reviewing the details of a questionnaire response, such as financial statements, internal records, and other supporting documentation. Because Hengyang attempted to submit its response at the factual information submission deadline instead of at the actual deadline for filing the response, the Department had no meaningful opportunity to analyze the response and determine whether it contained all necessary information. Thus, we disagree with Hengyang's assertion that all necessary information was on the record or would have been on the record if we had accepted Hengyang's untimely submission. We also disagree with Hengyang's contention that we verified all necessary information because the necessary information was not on the record prior to verification.

As we state above in the first paragraph of this section, we found in the Hengyang Post-Preliminary Analysis that an adverse inference was warranted in the application of facts available within the meaning of section 776(b) of the Act because the GOC failed to cooperate with regard to our requests for information on CRC China. In addition to our request in the InitQ[431] for the GOC to provide subsidy information for cross-owned companies, which includes CRC China, we requested a response from the GOC on behalf of CRC China two additional times – in the February 16 Letter and the April 16 Letter. As we detail in the Hengyang Post-Preliminary Analysis, the GOC did not address the request from the February 16 Letter and refused to respond to the request in the April 16 Letter.[432] Therefore, we continue to find that GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information, thereby warranting an adverse inference in the application of facts available within the meaning of 776(b) of the Act.

b. Corroboration

Hengyang claims that the Department must corroborate the AFA rate in accordance with section 776(c) of the Act. Hengyang also states, "As the rates used by the Department in this case were derived from previous administrative reviews, by definition they represent secondary information."[433]

Section 776(c) of the Act states the following:

> When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the

[430] See section 782(e)(1) of the Act.
[431] See InitQ at Section II, pages 1 and 2.
[432] See Hengyang Post-Preliminary Analysis at 4.
[433] See Hengyang Case Brief at 18.

> administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

Hengyang's claim that we used information from "previous administrative reviews" is incorrect. The Hengyang Post-Preliminary Analysis at 9 stated the following:

> we recommend preliminarily determining that CRC China together with its subsidiaries benefitted from all countervailable programs that at least one respondent in this investigation has used because we do not have information on the record concerning which programs CRC China and its subsidiaries actually used, but do have information that exporters or producers of seamless pipe and their cross-owned companies did use and benefit from these programs.

We based the AFA rate for CRC China and its subsidiaries on information obtained in the course of this investigation. Therefore, the requirement to corroborate secondary information obtained outside of the investigation does not apply.

Hengyang also states, "{t}he Department never ties the AFA rate used to Hengyang and to how Hengyang would have received a subsidy through CRC China."[434] Hengyang also states, "{t}he Department made zero effort to explain how the rate selected for CRC China could apply to Hengyang."[435] Hengyang, however, disregards the analysis at pages 5-8 of the Hengyang Post-Preliminary Analysis. This analysis explains how cross-ownership existed between the Xigang Companies and CRC China, including its subsidiaries, during and prior to the POI. As we found in the Preliminary Determination and explained above in Comment 21, the Xigang Companies are cross-owned with the Hengyang Companies. Therefore, subsidies to CRC China and its subsidiaries benefit the cross-owned Hengyang Companies and Xigang Companies. Therefore, contrary to Hengyang's assertion, the Hengyang Post-Preliminary Analysis and Preliminary Determination show the connection between CRC China and the cross-owned Hengyang Companies and Xigang Companies. The Hengyang Post-Preliminary Analysis and Preliminary Determination also show how the responding Hengyang companies would have benefited from subsidies to CRC China and its subsidiaries.

c. Selected AFA Rate – Punitive and Prejudicial

Hengyang states, "{i}n this case, the Department assumed the highest previous margin (nineteen times) simply because it was most prejudicial."[436] In support, Hengyang cites Ferro Union. Both Hengyang's argument and Ferro Union, however, deal with prior calculated margins.[437] As we explain above, we based the AFA rate on information obtained in the course of this investigation. Thus, Hengyang's allegation and reference to Ferro Union are incorrect.

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434 Id. at 19.
435 Id.
436 Id. at 20.
437 See Ferro Union at 1334 ("{u}nder the URAA Commerce cannot assume the highest previous margin applies simply because it is the one most prejudicial to the respondent.").

Finally, Hengyang argues that the AFA rate is punitive. In addition to citing American Silicon, Hengyang cites Timken. In Timken, the CIT stated that in choosing an AFA rate, the Department must "appropriately balance {the} goal of accuracy against the risk of creating a punitive margin."[438] This is the analysis we undertook in assigning an AFA rate to CRC China. At page 9 of the Hengyang Post-Preliminary Analysis, we recognized the application of a total AFA rate to Hengyang was not warranted under the unique facts and circumstances of this investigation, including Hengyang's level of participation in this investigation.

However, the SAA guides the Department to ensure "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[439] Because necessary information on CRC China and its subsidiaries is not on the record, we are missing a potentially large universe of additional cross-owned companies and countervailable subsidies from our analysis. Further, the missing universe of subsidies is not limited to CRC China and the subsidiaries that Hengyang identified. For example, CRC China could be cross-owned with additional producers of subject merchandise. This would expand the universe of cross-owned companies and subsidies that are part of our analysis. Furthermore, because the GOC provided no information at all on CRC China and its subsidiaries, we have no basis to conclude that CRC China and its subsidiaries could not have benefited from certain subsidy programs, such as programs to companies in a specific province.

Finally, Hengyang states the following: "It defies logic that a past owner of an affiliated company received a subsidy of 32.93%."[440] This statement disregards our whole analysis at pages 5-8 of the Hengyang Post-Preliminary Analysis, in which we showed how CRC China was not only affiliated, but cross-owned with the four responding cross-owned Xigang Companies both prior to and during the POI. Further, with its statement, Hengyang attempts to minimize the importance of the missing information, but offers no support for its assertion that the AFA rate "defies logic." As we state in the previous paragraph, we are missing information on subsidies for entire cross-owned companies. Because the GOC provided no information at all on CRC China and its subsidiaries, we cannot make a judgment on the number of cross-owned companies or the extent of subsidies for which we have no information. Therefore, we find that the AFA methodology we selected balances the goal of accuracy against creating a punitive margin.

Comment 23 Finding that the GOC Did Not Cooperate With Respect to CRC China

The GOC contests the Department's finding in the Hengyang Post-Preliminary Analysis that the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's request for information regarding CRC China.[441] The GOC argues that a company's decision to cooperate in an investigation is responsibility of the company, not the government, and that it, the GOC, was fully prepared to cooperate. Further, the GOC argues that the Department is assuming the GOC was in a position to respond for CRC China simply because the company is state-owned. The Department, the GOC contends, falsely assumes that all SOEs are government authorities and that the GOC is directly engaged in their operational activities.

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438 See Timken at 1234.
439 See SAA at 870.
440 See Hengyang Case Brief at 21.
441 See Hengyang Post-Preliminary Analysis at 8.

U.S. Steel did not respond to the GOC's argument.

Department's Position

We continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information because the GOC withheld requested information about CRC China, its subsidiaries, and their participation in subsidy programs. First, in the InitQ, the Department requested information from the GOC on subsidies to the respondents and their cross-owned companies.[442] The InitQ specifically identified Xigang Seamless as a producer/exporter subject to the investigation.[443] As we detailed on page 7 of the Hengyang Post-Preliminary Analysis, the HQR at pages 5-7 showed a clear parent company relationship between Xigang Seamless and CRC China. Still, the GOC did not address CRC China in the GQR. We recognize that the GOC may not have known when it filed the GQR that CRC China met the standard for cross-ownership with the Hengyang Companies and Xigang Companies. However, based on the information Hengyang provided at pages 5-7 of the HQR, the GOC was aware of the relationship between the Xigang Companies and CRC China at an early stage of this investigation. Further, there is no record evidence, such as a formal inquiry to the Department, indicating that the GOC made any effort to determine CRC China's status before filing the GQR.

Second, in the Hengyang First Supplemental Questionnaire, we requested a response from Hengyang for CRC China and its subsidiaries.[444] In the subsequent February 16 Letter to the GOC, we requested that the GOC update its original questionnaire response on behalf of companies for which we had requested a response from Hengyang in the Hengyang First Supplemental Questionnaire. Hengyang designated CRC China, its subsidiaries, and the time periods during which these companies held ownership stakes in the responding Hengyang companies as business proprietary information in the HQR. Thus, in the February 16 Letter, we instructed the GOC to coordinate with Hengyang to obtain the names of the companies and the time periods for which we requested a questionnaire response from Hengyang.[445] In the GCOR, the GOC responded on behalf of other Hengyang companies, but not CRC China.[446]

Finally, because Hengyang indicated that CRC China was an SOE, we requested that the GOC respond to both the company portion and government portion of the questionnaire on behalf of CRC China.[447] Specifically, we requested the following:

> We request that the GOC update its original questionnaire response and provide a response to the company portion of the original questionnaire (i.e., Section III) on behalf of CRC China and its subsidiaries for any time period during which CRC China and/or its

[442] The InitQ states, "Please indicate which of the companies under investigation (including all cross-owned companies and any trading companies exporting subject merchandise into the United States) applied for, accrued, or received benefits under the program during the POI." See InitQ at Section II, Appendix 1, page 4.
[443] See InitQ at Section I, page 1.
[444] See Hengyang First Supplemental Questionnaire at 4.
[445] See February 16 Letter at 1-2.
[446] See GCOR at 1.
[447] See April 16 Letter.

> subsidiaries were direct or indirect parent companies of the responding Hengyang companies from December 11, 2001, through the end of the period of investigation.

In the GOC April 30 Letter, the GOC called the request "inappropriate," argued that companies would have no need to participate in investigations if the GOC were required to produce company questionnaire responses, and did not respond to any questions from the government or company portions of the InitQ.[448]

Thus, the GOC made no effort to respond to our requests for information regarding CRC China. In the InitQ to the GOC, we noted, "If a question requires information from other authorities, e.g., local governments, please forward questions to the correct source."[449] Given that CRC China is an SOE, the GOC was in a position to, at a minimum, forward the request in the April 16 Letter to CRC China or its SOE owners. There is no record evidence indicating that the GOC made any such effort. The GOC did not provide answers to some questions from the company portion of the InitQ and explain why it could not provide answers to others. Regardless of the GOC's argument that it is not in a position to respond to the company portion of a CVD questionnaire, the GOC did not even make an effort to respond to the government portion (i.e., Section II) of the InitQ. The GOC simply disputed the appropriateness of our requests and made no effort to provide any information regarding CRC China. Therefore, we continue to find that necessary information is not on the record, that the GOC has withheld requested information, and that the application of an adverse inference is appropriate because the GOC did not act to the best of its ability to respond to our requests regarding CRC China.[450]

Comment 24 Hengyang Attribution

Hengyang argues that the Department has not demonstrated that Hengyang Valin and Xigang Group (or Hengyang Valin and Valin Xiangtan) are cross-owned. However, Hengyang contends, if the Department continues to find that Hengyang Valin and Xigang Group are cross-owned, the Department must correctly attribute alleged benefits to the appropriate sales denominators. Hengyang claims the attribution methodology adopted by the Department in the Preliminary Determination and the Hengyang Post-Preliminary Analysis is unsupported by record evidence and not in accordance with the law.[451] Hengyang states that the Department found cross-ownership of Hengyang Trading, Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, Resources Steel, and Xigang Group in its Preliminary Determination and Hengyang Post-Preliminary Analysis, which added Sifang to the cross-ownership of subject merchandise producers.[452] Hengyang references the Hengyang Preliminary Calc Memo in regard to the Department's statement that subsidies to any of the subject merchandise producers would be attributed to the sales of all the cross-owned subject merchandise producers.[453] Hengyang states that this finding comports with Department regulations, however, that the Department did not complete its attribution analysis when it found alleged subsidies could be

[448] See GOC April 30 Letter.
[449] See InitQ at Section II, page 1.
[450] See sections 776(a)(1) and (a)(2)(A), and 776(b) of the Act.
[451] See Hengyang Case Brief at 22.
[452] Id.
[453] Id.

attributed to one of the companies producing subject merchandise under 19 CFR 351.525(c), or 19 CFR 351.525(b)(6)(iii), or 19 CFR 351.525(b)(6)(iv).[454]

Hengyang states that the Department did not attribute subsidies over all cross-owned entities producing subject merchandise when the subsidy is attributed under any sub-provision of 19 CFR 351.525(b)(6) other than 19 CFR 351.525(b)(6)(ii). Hengyang says this contradicts the Department's regulations and past practices. According to Hengyang, the Department's regulations do not allow for exclusion of attribution of benefit to cross-owned companies, once those companies have been found to be cross-owned under 19 CFR 351.525(b)(6)(ii). Citing CWLP from the PRC, Hengyang states that past practice has been to include the total sales of companies found to be cross-owned producers under 19 CFR 351.525(b)(6)(ii), even if a benefit is attributed to one of the companies under a provision of 19 CFR 351.525(b)(6) other than 19 CFR 351.525(b)(6)(ii). Hengyang argues that regardless of how a subsidy is attributed to a company, once two or more companies are found to be cross-owned under 19 CFR 351.525(b)(6)(ii), any benefit attributable to one or more of these companies must be allocated to the total sales of all companies found to be cross-owned under 19 CFR 351.525(b)(6)(ii).[455]

Citing Fabrique, Hengyang states that the CIT has affirmed the rationale underlying the Department's practice of allocating benefits across the total sales of cross-owned companies. Hengyang argues that it would be unreasonable to calculate a CVD margin or a portion thereof, based only on the attribution of a benefit to the sales of one company, and then apply that margin to the sales of another company or companies that were producers who shared cross-ownership.[456] Hengyang states that the Department has done just this, and has inflated Hengyang's margin. Hengyang argues that the Department has never found that once an alleged benefit is attributable under 19 CFR 351.525(b)(6)(ii) to two or more companies, a determination that a subsidy is attributable to one of those companies under 19 CFR 351.525(b)(6)(iii-(v) or 19 CFR 351.525(c) nullifies the attribution of that benefit to the total sales of all cross-owned producers as directed by 19 CFR 351.525(b)(6)(ii).

Hengyang argues that, e.g., rather than attributing alleged subsidies received by Xigang Group to the consolidated sales of Xigang Group and its subsidiaries, the Department should have attributed the alleged subsidies received by Xigang Group to the consolidated sales of Xigang Group, its subsidiaries, and all companies found to be both producers and cross-owned with Xigang Group producers under 19 CFR 351.525(b)(6)(ii). According to Hengyang, the sales denominator should have included Xigang Group, Xigang Seamless, Special Pipe, Resources Steel, Hengyang Valin, Hengyang MPM, and Sifang.[457] Hengyang states that the Department should apply this change to its methodology regarding all alleged benefits attributed under 19 CFR 351.525(b)(6)(iii-(v) and 19 CFR 351.525(c) to any company found to be both a producer and cross-owned with other producers under 19 CFR 351.525(b)(6)(ii). According to Hengyang, the Department must ultimately attribute any benefit received by or attributed to any of the cross-owned producers (i.e., Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, or

454 Id. at 23.
455 Id. at 25.
456 Id.
457 Id. at 26.

Sifang) to the sales of all the companies, in addition to any other companies as dictated by 19 CFR 351.525(b)(6)(iii-(v) and 19 CFR 351.525(c).

In discussing the attribution methodology in determining sales denominators, U.S. Steel states that each sub-section of 19 CFR 351.525(b)(6) gives the Department a different method of attribution based on whether the cross owned company is a 1) producer of subject merchandise; 2) holding or parent company; 3) input supplier; 4) producer of non-subject merchandise that transferred a subsidy to a cross-owned affiliate. According to U.S. Steel, 19 CFR 351.525(b)(6)(ii), the regulation on which it says Hengyang is relying, applies only when attributing subsidies granted to cross-owned subject merchandise producers.[458] U.S. Steel states that the Department attributed Hengyang's subsidies fully in accordance with 19 CFR 351.525(b)(6).

U.S. Steel states that the Department followed its own regulations in attributing subsidies to cross-owned subject merchandise producers (i.e., Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang) under 19 CFR 351.525(b)(6)(ii). U.S. Steel said the Department followed its regulations in attributing subsidies to parent or holding companies (i.e., CRC China and Xigang Group) per 19 CFR 351.525(b)(6)(iii). U.S. Steel also states that the Department followed its own regulations in attributing subsidies to input suppliers (i.e., Resources Steel and Valin Xiangtan) per 19 CFR 351.525(b)(iv), and to trading companies (i.e., Hengyang Trading) according to 19 CFR 351.525(c). U.S. Steel calls on Magnesia Bricks from the PRC in stating that when choosing the denominator for use in calculations, it is the Department's standard practice to consider the role of the company receiving the subsidy.[459]

U.S. Steel states that Hengyang's reliance on CWLP from the PRC is irrelevant. U.S. Steel argues that CWLP from the PRC does not support Hengyang's position, but rather, shows that provisions other than 19 CFR 351.525(b)(6)(ii) of the regulations apply when attributing subsidies of cross-owned companies.[460] U.S. Steel states that in Fabrique, the court simply upheld the Department's authority to attribute subsidies based on cross-ownership.[461] According to U.S. Steel, the court did not say the Department is to use only one method of attribution at the exclusion of other methods.

U.S. Steel states that Hengyang's argument against the Department's method of attributing subsidies is refuted by the plain language of 19 CFR 351.525(b)(6) and by the Department's application of that provision.

Department's Position

For subsidies that we attribute under a provision other than 19 CFR 351.525(b)(6)(ii), we find that it is appropriate to include the sales of all five cross-owned subject merchandise producers (i.e., Hengyang Valin, Hengyang MPM, Xigang Seamless, Special Pipe, and Sifang) in the attribution.

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[458] See U.S. Steel Rebuttal Brief at 89.
[459] See Magnesia Bricks from the PRC at 45472.
[460] See U.S. Steel Rebuttal Brief at 91.
[461] Id. at 91.

We acknowledge, as U.S. Steel argued, that the Department's regulations do not state that only 19 CFR 351.525(b)(6)(ii) applies once the Department finds cross-ownership between two producers of subject merchandise. Further, we disagree with Hengyang that CWLP from the PRC is applicable to Hengyang's situation. CWLP from the PRC involved the transfer of a subsidy to a producer of subject merchandise.[462] This is different from Hengyang's situation, in which the question is whether a subsidy to a cross-owned company that does not produce subject merchandise benefits all cross-owned producers of subject merchandise.

The CVD Preamble recognizes the difficulty in reconciling different attribution rules in certain situations: "Our intent is to apply these rules as harmoniously as possible, recognizing that unique and unforeseen factual situations may make complete harmony among these rules impossible."[463] As we explain in Comment 21, the Department's practice is to treat all cross-owned responding companies as a single entity.[464] We calculate a single CVD margin that applies to all cross-owned subject merchandise producers that are part of that entity.

Because of the unique structure of the cross-owned responding Hengyang companies, however, the methodology we used in the Preliminary Determination and Hengyang Post-Preliminary Analysis did not treat the cross-owned subject merchandise producers as one entity. In the Department's position for Comment 21, we explain that cross-ownership exits between the Xigang Companies and Hengyang Companies within the meaning of 19 CFR 351.525(b)(6)(vi) through Valin Group's ultimate common ownership. The five subject merchandise producers, however, have different intermediate owners under Valin Group. Hunan Valin owned 43.68 percent of Hengyang Valin and 68.52 percent of Hengyang MPM during the POI, but does not own a stake in Xigang Seamless, Special Pipe, or Sifang.[465] Likewise, Xigang Group owns stakes in Xigang Seamless, Special Pipe, and Sifang, but does not own a stake in Hengyang Valin or Hengyang MPM.[466] To treat the subject merchandise producers as one entity, we must account for this ownership structure in the attribution of the subsidy.

For example, as Hengyang points out, we attributed the benefit from subsidies to Xigang Group to Xigang Group's consolidated sales. Xigang Group's consolidated sales include Xigang Seamless, Special Pipe, and Sifang, but do not include sales of Hengyang Valin and Hengyang MPM. Because we have found cross-ownership between the Hengyang Companies and Xigang Companies, a subsidy to Xigang Group benefits all cross-owned subject merchandise producers, including Hengyang Valin and Hengyang MPM. By excluding Hengyang Valin and Hengyang MPM from the subsidy attribution, we effectively calculated a separate subsidy rate for Xigang Seamless, Special Pipe, and Sifang. However, we assigned this rate to all five cross-owned subject merchandise producers.

Therefore, given that the responding cross-owned subject merchandise producers have different intermediate owners under Valin Group, we find it appropriate to include the sales of all five

[462] See CWLP from the PRC IDM at 12.
[463] See CVD Preamble at 65400.
[464] See, e.g., Lined Paper from Indonesia IDM at 26.
[465] See Hengyang Post-Preliminary Analysis at 10.
[466] See Preliminary Determination at 9170.

cross-owned subject merchandise producers in the attribution of subsidies under any provision other than 19 CFR 351.525(b)(6)(ii). By doing so, we treat the five cross-owned subject merchandise producers as a single entity and calculate a single CVD margin for the cross-owned companies as a whole. We note that this is consistent with the case cited by U.S. Steel, Magnesia Bricks from the PRC. In that case, for subsidies to the input supplier, RHI Jinding, the Department attributed subsidies to the combined sales of RHI Jinding and its two, cross-owned subject merchandise producers under 19 CFR 351.525(b)(6)(iv).[467]

See the "Attribution" section above for details on the revision.

Comment 25 Hengyang Electricity Purchases

Hengyang argues that the Department did not include all payments made by Hengyang companies in its benefit calculation. Hengyang asserts that the Department did not account for all electricity payments made during the POI, which it detailed in its initial questionnaire response.[468] Hengyang states that the Department verified this data and tied electricity purchases to Hengyang's accounting records.[469] According to Hengyang, the Department calculated the electricity payments based only on four of seven charges related to electricity purchases as identified in the Verification Report.[470]

Hengyang states that it made a minor correction to its electricity purchases to account for Hengyang Valin reselling a small portion of electricity to affiliated companies that were not producers of subject merchandise.[471] Hengyang states that the Department verified these quantities and values. Hengyang argues that in its final results, the Department must account for all payments made by Hengyang for electricity purchases. According to Hengyang, the Department should allocate the charges listed as "Basic Electricity Charge", "Power Rate Adjustment," and "Price Adjustment" over the Sharp, Peak, Normal, and Valley payments based on the value of each category in RMB.[472] Hengyang also states that the Department should remove the quantities and values of electricity Hengyang Valin resold to its affiliates by allocating the quantities and values resold over each line based on the quantity and value of each category and subtracting the allocated amounts from the reported amounts.[473]

According to Hengyang, the Department did not take into account all of the amounts paid by Xigang Group for its purchased electricity. Hengyang cites to its HQR to show that Xigang Group paid three separate rates for electricity (i.e., Peak, Normal, and Valley), in addition to a "Capacity Charge" and an "Efficiency Adjustment," which adjusted the total payments.[474] Hengyang says that the Department accounted for only the first three charges (i.e., Peak, Normal, and Valley) in its calculation. According to Hengyang, in its final results, the Department must

467 See Magnesia Bricks from the PRC Prelim at 68245 (unchanged in Magnesia Bricks from the PRC).
468 See HQR at Exhibit 23.
469 See Hengyang Case Brief at 27.
470 Id.
471 Id. at 28.
472 Id.
473 Id.
474 Id.

account for all payments made by Xigang Group for electricity. Hengyang calls for the Department to directly incorporate the Efficiency Adjustments into the calculation because the adjustments are reported in parallel with the Peak, Normal, and Valley payments made by Xigang Group.[475] Hengyang states that the Department should allocate the Capacity Charge for each line over each of the Peak, Normal, and Valley payments based on the value of each category in RMB.[476]

Hengyang states that the Department must take similar action with the electricity purchases of Valin Xiangtan. Hengyang states that it provided Valin Xiangtan's electricity purchases showing "Sharp," "Peak," "Valley," and "Level." In addition, Valin Xiangtan paid a "Basic Charge," a "Power Rate Adjustment," and a "Price Adjustment," according to Hengyang. According to Hengyang, the Department must account for the latter payments in its calculation of alleged subsidies. Hengyang states that the Department must directly add the payments made under Basic Charge, Power Rate Adjustment, and Price Adjustment, to the subtotal the Department calculated for the charges paid by Valin Xiangtan. According to Hengyang, this will fully account for all of the electricity payments made by Valin Xiangtan during the POI.

U.S. Steel argues in its rebuttal brief that the Department should reject Hengyang's arguments and continue to rely on its current methodology for calculating Hengyang's electricity benefit for the final determination. U.S. Steel states that in accordance with 19 CFR 351.511(a)(2), the Department compared the benchmark rates to the comparable rates paid by Hengyang (i.e., rates for peak, valley, and normal) to ensure a direct comparison. U.S. Steel states that to adjust electricity payments in the manner Hengyang proposes, without making similar adjustments to the benchmark, would distort the comparison. According to U.S. Steel, doing so would overstate the price paid by Hengyang while understating the actual price Hengyang would have paid in the absence of the subsidy, because the benchmark rates do not include the extra charges.

Department's Position

Consistent with the Preliminary Determination, to determine the existence and amount of any benefit from this program, we relied on the companies' reported information on the amounts of electricity they purchased and the amounts they paid for electricity during the POI.[477] As a result of the Department's AFA decision regarding electricity in the PRC, we compared the rates paid by Hengyang for its electricity to the highest rates that it would have paid in the PRC during the POI. Specifically, we have selected the highest rates for "large industrial users" for the peak, valley and normal ranges. The valley and normal ranges were selected from the GQR at Exhibit 85, Electricity Sale Rate Schedule of Zhejiang Grid. The peak rate is the electricity rate for Dongguan City as reported in the GOC's March 12, 2009 supplemental questionnaire response at Exhibit S2-4 in the CVD investigation of "Certain Kitchen Appliance Shelving and Racks from the People's Republic of China."[478]

As for the additional service charge and fees, the Department agrees with U.S. Steel. In its

[475] Id.
[476] Id.
[477] See Preliminary Determination at 9174.
[478] See Electricity Rate Data.

benefit calculation, the Department compares the rate paid per kilowatt hour of the company (i.e., Hengyang's submitted "Peak," "Level," "Valley," "Normal") to the rate paid for electricity in a benchmark location (i.e., Dongguan City and Zhejiang).[479] As the Dongguan City and Zhejiang electricity rate does not include service charges, or additional fees, we do not incorporate the respondent's service charges or additional fees. Consequently, the Department is not altering its position from the Preliminary Determination.

Regarding Hengyang's reselling of electricity, after examining the information and data submitted by Hengyang, we agree with Hengyang. The Department also verified this minor correction during the investigation.[480] We will incorporate Hengyang's minor correction in this final determination.

Comment 26 Currency Denomination for Hengyang Loans

Hengyang states that the Department erred in its benefit calculation of foreign currency loans of Hengyang Valin and Hengyang MPM. According to Hengyang, the Department treated initial loan amounts for Hengyang Valin and Hengyang MPM and the amounts of interest paid in RMB as amounts in USD or Euro.[481] Hengyang states that during verification, the Department confirmed that the amounts were in RMB. Hengyang asserts that the loan benefit calculation methodology of the Department calls for initial loan amounts for foreign currency loans and the amounts of interest to be converted to RMB. Hengyang argues that since the amounts are already reported in RMB, they should not be converted again. According to Hengyang, the Department must recalculate without performing the conversion.

Department's Position

We have reviewed our preliminary calculations and the data submitted by Hengyang and we agree with Hengyang regarding the calculation of loan benefits. We have corrected the calculation for this final determination.

Comment 27 Clerical Error Allegations for Debt Restructuring

U.S. Steel asserts that the Department did not correctly calculate a benefit to Xigang Group regarding debt forgiveness. U.S. Steel states that the Department used only the principal amount as the debt forgiven, instead of the amount Hengyang reported, which included the interest accrued since 2001 and the date of the debt restructuring agreement. U.S. Steel urges the Department to recalculate the debt forgiveness to Hengyang, using the interest-inclusive total debt forgiven as reported by Hengyang.

Hengyang contends that the Department used an incorrect benefit amount in its calculation of debt forgiveness regarding Resources Steel. Hengyang states that the Department misconstrued the restructuring agreement, which only provides for exemption of accrued interest.[482]

479 See Hengyang Preliminary Calc Memo at 13 and Attachments 12 and 13.
480 See Hengyang Verification Report at 22.
481 See Hengyang Case Brief at 31.
482 Id.

Hengyang states that this is supported by the minor corrections presented at verification and verified by the Department.[483] The Department must revise its benefit used in the calculation for the final determination, Hengyang states.

U.S. Steel states in its rebuttal that the restructuring agreement regarding Resources Steel does not indicate in the agreement that interest would be the only amount exempted. According to U.S. Steel, the agreement states that the repayment amount matches what the Department used to calculate the benefit in the Preliminary Determination. U.S. Steel refutes Hengyang's claim that the Department verified Hengyang's repayment obligation at verification. U.S. Steel states that the verification report does not mention the restructuring agreement. U.S. Steel argues that the Department could not verify Hengyang's information because it contradicts the repayment terms contained in the restructuring agreement.

Department's Position

With regard to Xigang Group's debt forgiveness, we have reviewed our preliminary calculations and the data submitted by Hengyang at Exhibit X-39 of the HQR and we agree with U.S. Steel regarding the benefit amount (i.e., that the Department should use an interest-inclusive total debt forgiven as reported by Hengyang). We have corrected it for this final determination.[484]

With regard the debt forgiveness cited by Hengyang, we have reviewed the data submitted by Hengyang in its HNSAQR at Exhibit NV-2 and the minor correction submitted to the Department at verification and we agree with Hengyang regarding the correct benefit amount. The Department will incorporate the minor correction in this final determination.[485]

Comment 28 Uncreditworthiness Allegation

U.S. Steel argues that the Department should find the Xigang Companies were uncreditworthy in 2008 and should revise their preferential loan subsidy rate accordingly. U.S. Steel asserts that the uncreditworthiness allegation filed on April 14, 2010 was timely filed and pursuant to the Department's regulations. U.S. Steel argues that on May 12, 2010, the Department improperly declined to investigate explaining that it considered the uncreditworthiness allegation to be untimely filed because it was not filed by the new subsidy allegation deadline and, in addition, circumstances did not allow the Department to conduct a meaningful examination of the allegation given the short time remaining to complete the investigation (with the final determination deadline in September and verification planned for June).

U.S. Steel asserts that there is no deadline in the regulations or the statute for the filing of an uncreditworthiness allegation. U.S. Steel argues that in CFS from the PRC Preliminary Determination, the Department found that uncreditworthiness is not, in and of itself, a countervailable subsidy but, rather, a valuation issue that is properly addressed in the course of an investigation.[486] U.S. Steel further asserts that in CFS from the PRC Preliminary

[483] Id.
[484] For further discussion, see the Hengyang Final Calc Memo.
[485] Id.
[486] See CFS from the PRC Preliminary Determination at 17490 (unchanged in the final determination, CFS from the

Determination, the Department found it is not mandatory for creditworthiness allegations to be filed within the deadline established for new subsidy allegations as long as parties have ample time to submit information and argument on the point.[487] U.S. Steel argues that the Department provided no explanation of why it reached the opposite conclusion in the instant case. U.S. Steel contends that in prior cases where the Department refused to consider such allegations, the allegations were filed two months or less before the final determination.[488] U.S. Steel asserts that in the instant case, it filed the allegation almost five months before the final determination, yet the Department erroneously called this a short time. Moreover, U.S. Steel emphasizes, the Department had almost 60 days between filing and the beginning of verification to request and obtain additional information,[489] and this was more than sufficient time.[490] U.S. Steel asserts that, in any case, it provided the Department with sufficient information to show Xigang Companies were uncreditworthy in 2008, so the Department does not need to seek additional information relating to the issue. U.S. Steel argues that the Xigang Companies' financial ratios U.S. Steel provided make clear those companies were poor financial health during 2008 and, therefore, were unlikely to meet their financial obligations. U.S. Steel asserts that information it provided was exactly the kind of information on which the Department bases its creditworthiness determinations.[491]

Hengyang alleges the Department correctly rejected U.S. Steel's uncreditworthiness allegation because it was filed too late in the proceeding to conduct a proper uncreditworthiness investigation. Hengyang asserts that while U.S. Steel relies on CFS from the PRC Preliminary Determination to support their contention, this case backs up the Department's rejection of the allegation as untimely. In CFS from the PRC Preliminary Determination, the Department recognized that in order to investigate an allegation of uncreditwothiness, there must exist ample time to submit information and argument on the point, and in that case, adequate time existed.[492] Hengyang argues that in instant case, adequate time does not exist. Hengyang notes that the filing was three months after questionnaire response and 44 days after the Preliminary Determination. In addition, Hengyang continues, the Department extensively described the administrative burden that would have been created by U.S. Steel due to the timing of the allegation.[493] Hengyang points out that the number of its affiliates and cross-owned companies only magnifies the burden that would have been place on the Department if it initiated on this claim.

PRC).

[487] Id.

[488] See CWLP from the PRC IDM at Comment 20 (the Department refused to consider uncreditworthiness allegation because there were only 76 days until final determination) and Granite from Italy at Comment 4 (uncreditworthiness allegation untimely filed because only two months before final determination).

[489] U.S. Steel notes that in the time period between filing of the uncreditworthiness allegation and beginning of verification, the Department issued five additional supplemental questionnaires requesting information on various other issues.

[490] See Citric Acid from the PRC at 16836 (the Department initiated creditworthiness investigation after the preliminary determination and only 30 days before verification).

[491] U.S. Steel notes the factors examined by the Department in making a creditworthiness determination are: receipt of comparable commercial long-term loans; present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts; and firm's past and present ability to meet its costs and fixed financial obligations with its cash flow (see 19 CFR 351.505(a)(4)(i)(A)-(C)).

[492] See CFS from the PRC Preliminary Determination at 17490.

[493] See Uncreditworthy Allegation Memorandum at 3.

Hengyang notes that the Department has recognized the examination of the criteria for creditworthiness is complex.[494] Hengyang asserts complex analyses require both time and resources, and in CWLP from the PRC, the Department declined to examine an uncreditworthiness allegation even though it was submitted 32 days before the preliminary determination.[495] According to Hengyang, in that case the Department also repudiated the notion that CFS from the PRC Preliminary Determination should be interpreted to mean allegations of uncreditworthiness must always be examined.

Hengyang argues that past agency practice with regard to examining uncreditworthiness allegations are clear: the Department will entertain them if there is ample time for consideration. Hengyang points out the reason that ample time does not exist in the instant case is solely due to U.S. Steel. Hengyang asserts that it is unclear why it took U.S. Steel over three months after questionnaire responses to make their allegation. Hengyang concludes the Department should continue to decline to investigate this uncreditworthiness allegation.

Department's Position

We disagree with U.S. Steel. We acknowledge in CFS from the PRC Preliminary Determination,[496] we stated:

> We disagree with Gold East that uncreditworthiness allegations must be filed within the same timeframe established for new subsidy allegations in 19 CFR 351.301(d)(4)(i)(A). Uncreditworthiness in and of itself is not a countervailable subsidy. Instead, it is a valuation issue that is properly addressed in the course of an investigation as long as parties have ample time to submit information and argument on the point. In this case, adequate time exists. Therefore, we have analyzed petitioner's allegation.

While we implied in the Uncreditworthy Allegation Memorandum that we were rejecting U.S. Steel's uncreditworthiness allegation because it was filed after the deadline for new subsidy allegations,[497] this was not our only basis for declining to investigate the allegation. Our reason for not investigating the claim was that there was inadequate time remaining in the investigation to complete a meaningful investigation into an allegation of this complexity.[498]

As we stated in Hardwood Trailer Flooring from Canada,[499] creditworthiness analysis is often highly complex. Large quantities of complex information must be considered, and, as Hengyang notes, the analysis is further complicated when numerous affiliates are involved. The decision on whether to investigate a creditworthiness claim received later in the process is a case-specific

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[494] Id. at 3. See also Hardwood Trailer Flooring from Canada at 5203 (describing creditworthy inquires as difficult) and CVD Proposed Regulations at 23371 (stating that investigations of creditworthiness add substantially to the work involved in a CVD investigation).
[495] See CWLP from the PRC IDM at Comment 20.
[496] See CFS from the PRC Preliminary Determination at 17490.
[497] See Uncreditworthy Allegation Memorandum at 2. See also Bethlehem at 639.
[498] Id. at 3.
[499] See Hardwood Trailer Flooring from Canada at 5203.

decision which rests on numerous factors including the timing in relation to both verification and the final determination, and the work remaining to be done on the case.[500] Moreover, we cannot unilaterally make a decision on creditworthiness without allowing all parties ample time to submit information and argument on the point. In the instant case, we did not have the time to conduct a meaningful investigation of this complex claim. As we explained in the Uncreditworthy Allegation Memorandum, between the time of our decision not to investigate the claim and the final determination, the Department had to issue a post-preliminary determination, send out verification outlines, conduct verification, release verification reports, analyze case and rebuttal briefs, hold a hearing,[501] and release the results of the final determination. In addition, if the Department had decided to investigate the allegation, we would have had to analyze U.S. Steel's submission, decide whether or not to initiate, potentially issue a questionnaire and any necessary supplemental questionnaires, and analyze and verify the response(s). U.S. Steel asserts that in the time period between filing of the uncreditworthiness allegation and beginning of verification, the Department issued five additional supplemental questionnaires requesting information on various other issues. We note that three of these supplemental questionnaires were issued within a week of the uncreditworthiness allegation filing, during which time there is virtually no chance the allegation would have been initiated on anyway, and the final two were the fifth and sixth supplemental questionnaires to the GOC on various issues, not initial questions as a creditworthiness investigation would have called for (not to mention potential supplemental questionnaires).

Therefore, the Department determined that it did not have the time to examine U.S. Steel's uncreditworthy allegation. In addition, we cannot find the Xigang Companies uncreditworthy solely on the basis of U.S. Steel's allegation as all parties have not had the time to submit information and argument on this issue. However, if this case results in a countervailing duty order and an administrative review is requested, the Department will revisit this allegation, if requested with an adequate amount of time for investigation, and conduct a full analysis of U.S. Steel's allegation, as well as a full investigation of the Xigang Companies' creditworthiness if warranted.

TPCO-specific Issues

Comment 29 TPCO Attribution of Subsidies

a. Attribution of Steel Rounds for LTAR

U.S. Steel contends that, in the Preliminary Determination, the Department attributed the benefit from the provision of steel rounds to TPCO at LTAR to the consolidated sales of TPCO Group. U.S. Steel asserts that the Department's tying standard is met where, inter alia, the record

[500] For Citric Acid from the PRC, for example, cited by U.S. Steel, the Department determined that it had sufficient time to conduct the creditworthiness analysis. Among the facts distinguishing that case was that TTCA Co., Ltd. (which was the respondent for which a creditworthiness investigation was initiated after the preliminary determination and shortly before verification) did not have as many affiliates as in the respondent in the instant investigation (see Citric Acid from the PRC at 16836 and accompanying IDM at 9).
[501] While no hearing was eventually held in this case, that was not known at the time of the Uncreditworthy Allegation Memorandum.

evidence shows that at the time of bestowal the subsidy could only have benefited a particular product or class of products.[502] U.S. Steel asserts that, for subsidies that are tied to the production of a particular product, the Department should attribute the benefit from such subsidies to the sales value of the relevant product. Citing the following, U.S. Steel argues that the record of this proceeding demonstrates that policies and directives of the GOC and provincial and local governments in the PRC support seamless steel pipe production, and government authorities implement those plans and directives by making high-quality steel rounds available to seamless pipe producers for LTAR:

- Statements by the GOC that the steel rounds are "billets in round shape that can be used to produce seamless pipe" and that are used "by the seamless pipe industry."[503]
- Designation of steel rounds for seamless pipe production as an "encouraged project" under the GOC's 11th Five Year Plan under the GOC's stated policy of promoting development of seamless pipe.
- Statements in the 10th and 11th Five Year Plans of Tianjin that apparently encourage the development of a pipe production base by expanding production capacity.
- Development of "a new round billet caster" in Tianjin by a state-owned steel producer for the express purpose of producing steel rounds "that can be used to produce hot-rolled seamless steel pipe."[504]

U.S. Steel further cites business proprietary record documents that it claims demonstrate that government authorities that provided TPCO with steel rounds were aware at the time of bestowal that they would benefit only the company's production of steel pipe. Thus, says U.S. Steel, the Department should attribute the benefit from the provision of steel rounds only to TPCO's sales of steel pipe.

TPCO asserts that the Department should reject U.S. Steel's arguments regarding the tying of steel rounds to TPCO's production of steel pipe, as it did in the recent investigation of OCTG from the PRC. TPCO asserts that the evidence in the instant proceeding is similar to the evidence in OCTG from the PRC, and the Department should similarly find the tying regulation does not apply. TPCO contends that the evidence cited by U.S. Steel does not show that the GOC knew or intended for purchases of steel rounds to benefit solely steel pipe production. Thus, says TPCO, U.S. Steel has not met its burden to demonstrate that the steel rounds provision should be tied to TPCO's steel pipe production.

b. Attribution of Other Subsidies to Consolidated Sales of TPCO

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[502] See 19 CFR. 351.525(b)(5) and CVD Preamble, 63 Fed. Reg. at 65402-65403. See also, e.g., OTR Tires from the PRC IDM at Comment G.7; Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom IDM at Comment 14.
[503] See GOC's Jan. 6 Response at 91 (Public Version).
[504] See "Tiantie commissions new round billet caster," Steel Business Briefing (Nov. 7, 2008), attached as Exhibit III-144 of the CVD Petition.

U.S. Steel argues that TPCO reported subsidies only for for itself, TPCO Iron, Yuantong Pipe, TPCO International, and TPCO Charging. U.S. Steel contends that additional subsidiaries exist that should be considered cross-owned by TPCO because their ownership interests satisfy the standards discussed in section 351.525(6)(vi) of the Department's regulations.[505] Thus, argues U.S. Steel, TPCO should have reported all subsidies received by additional TPCO Group subsidiaries and affiliates. U.S. Steel contends that the numerator in the Department's calculation is inconsistent with the denominator, because the numerator is limited to TPCO and the four cross-owned affiliates and the denominator includes sales from additional TPCO subsidiaries. U.S. Steel requests that the Department revise the denominator to include only the sales of the unconsolidated TPCO Group entity, TPCO Iron, Yuantong Pipe, TPCO International, and TPCO Charging.

TPCO refutes U.S. Steel's argument, asserting that the Department has consistently attributed subsidies received by a holding/parent company to the consolidated sales of the holding/parent company and its controlled subsidiaries. Thus, says TPCO, U.S. Steel's argument regarding attributing subsidies to TPCO's unconsolidated sales must fail. TPCO asserts that this attribution issue relates to control and how subsidies may flow through the hierarchy of a corporate group, as opposed to whether a subsidy is tied to a particular product or market. TPCO notes that this principle is embodied in the Department's cross-ownership rules under section 351.525(b)(6) of the Department's regulations. Thus, says TPCO, while there is a default rule that subsidies provided to one particular company are normally attributed to the sales of only that company, under the Department's regulations the presence of cross-ownership means that the scope of attribution is necessarily broadened and a special rule exists for holding/parent companies under section 351.535(b)(6)(iii) of the Department's regulations.

c. TPCO Sales Denominator – Other Income

U.S. Steel argues that the Department should exclude TPCO's reported "Others" income from the sales denominator for the final determination. In the Preliminary Determination, U.S. Steel contends that the Department correctly deducted amounts reported under operating income for "income of processing service" and "income of other services" from the denominator used to calculate subsidies. At verification, U.S. Steel claims that the Department learned that TPCO's 2008 operating income also included amounts for "rental income" and "bidding services" that the company included in the category "Others" in its financial statements. U.S. Steel asserts that the Department's longstanding practice is to deduct the value of a respondent's sales of services and other non-production related income from the denominator used to calculate its ad valorem subsidy rates. Accordingly, U.S. Steel argues that because TPCO had not deducted the amount from its total reported income, the Department should make the adjustment to TPCO's sales denominator for the final determination.

TPCO did not respond to U.S. Steel's argument.

Department's Position

[505] Citing TPCO's TQR at 3-5 and Exhibit 6 (TPCO's 2008 Consolidated Financial Statements) at 48-51.

We address each argument below.

a. Attribution of Steel Rounds for LTAR

We agree with TPCO. The CVD Preamble at 65402 states,

> Given the wide variety of factual scenarios that we have encountered in the past, and are likely to encounter in the future, we are not promulgating an all-encompassing definition of "tied."

In the same section, the CVD Preamble also states, "{W}e intend to apply the term 'tied' on a case-by-case basis, using the guidelines in this section {of the CVD Preamble}."

As we explain above, subsidies provided directly to TPCO fall under the attribution regulation for parent companies at 19 CFR 351.525(b)(6)(iii), whereby subsidies to a parent or holding company are normally attributable to the sales of the parent/holding company and its subsidiaries. Thus, the parent company and its subsidiaries, including subsidiaries with no involvement with subject merchandise, benefit equally from a subsidy to the parent company under 19 CFR 351.525(b)(6)(iii).

At the same time, the facts in this case indicate that the regulation governing the attribution of subsidies tied to a particular product, 19 CFR 351.525(b)(5), may also be applicable. The CVD Preamble specifically recognizes that there may be circumstances where more than one attribution rule may apply to a company's situation: "(D)epending on the facts, several of the different (attribution) rules may came into play at the same time."[506] The CVD Preamble further anticipates, however, that reconciling different rules may be difficult in certain situations: "Our intent is to apply these rules as harmoniously as possible, recognizing that unique and unforeseen factual situations may make complete harmony among these rules impossible."[507] In this case, TPCO is both a producer and a parent company with subsidiaries, some of which are engaged in production of a wide variety of steel products that may or may not benefit from the inputs provided at LTAR in this case, and some of which are not engaged in such production.

Based on the facts in this case, we determine that while the attribution rule governing subsidies to parent companies, 19 CFR 351.525(b)(6)(iii), clearly applies to TPCO, it is less clear that the product tying regulation under 19 CFR 351.525(b)(5) is also applicable. Therefore, the Department has determined that it is most appropriate to follow the Department's regulation for subsidies provided to parent companies under 19 CFR 351.525(b)(6)(iii). On this basis, we continue to attribute subsidies to TPCO to TPCO's consolidated sales.

b. Attribution of Other Subsidies to Consolidated Sales of TPCO

We agree with TPCO. We note that 19 CFR 351.525(b)(6)(iii) states,

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[506] CVD Preamble at 65399.
[507] Id. at 65400.

> If the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.

U.S. Steel argues that the subsidy numerator for TPCO is inconsistent with the denominator because the numerator only includes subsidies to TPCO and its four responding cross-owned subsidiaries, while the denominator includes the sales of TPCO and all of its subsidiaries. Under 19 CFR 351.525(6)(i), the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, the Department will follow other attribution methodologies for subsidies to cross-owned companies that fall under the conditions in 19 CFR 351.525(6)(ii)–(v) or 19 CFR 351.525(6)(c).

In TPCO's case, TPCO and four of its cross-owned subsidiaries fall under the conditions in 19 CFR 351.525(b)(6)(ii)–(v) or 19 CFR 351.525(6)(c). TPCO's remaining subsidiaries, however, do not fall under these conditions. The companies are not subject merchandise producers, do not supply inputs for the production of subject merchandise, are not parent or holding companies of any companies involved in the production or sale of subject merchandise, did not transfer a subsidy to a company involved in the production or sale of subject merchandise, and are not trading companies that export subject merchandise. Thus, any subsidies that these companies received are attributable to these companies. These companies and subsidies to them, however, are not part of our analysis because the companies do not meet the conditions of 19 CFR 351.525(6)(ii)–(v) or 19 CFR 351.525(6)(c).

Meanwhile, TPCO meets the conditions of both 19 CFR 351.525(6)(ii) and (iii) because it is a producer of subject merchandise and a parent company. As we stated above, the CVD Preamble recognizes that more than one attribution rule may apply to a company's situation. The CVD Preamble also recognizes that reconciling different rules may be difficult in certain situations.

Under 19 CFR 351.525(6)(iii), the Department will attribute subsidies to a parent or holding company to the consolidated sales of the parent / holding company and its subsidiaries. This is because subsidies to a parent or holding company benefit both the parent or holding company and its subsidiaries. In TPCO's case, subsidies to TPCO benefit TPCO and all of its subsidiaries, not just TPCO and its four responding cross-owned subsidiaries. Even though subsidies to the remaining subsidiaries are not part of our analysis, we find that it is appropriate to include the sales of these subsidiaries in the denominator (i.e., to attribute the subsidies to TPCO's consolidated sales) because subsidies to TPCO also benefit these subsidiaries.

Thus, consistent with the Preliminary Determination, we are continuing to attribute subsidies to TPCO to the company's consolidated sales.

c. TPCO Group Sales Denominator – Other Income

At verification TPCO explained that its reported consolidated sales total included amounts for rental fees, and "bidding services," fees the company collects from companies entering bids for service and supply contracts with TPCO Group.[508] 19 CFR 351.525 directs the Department to attribute subsidies to "all products sold by a firm." Accordingly, because these are amounts are not related to production, we are deducting consolidated revenue reported for rental income and bidding services from TPCO's sales denominator for the final determination.

Comment 30 TPCO Group Accelerated Depreciation

TPCO Group argues that the Department should treat the "Accelerated Depreciation Program" as a tax deferral under 19 CFR 351.509(a)(2), not as an exemption of taxes under this same regulation. TPCO Group claims that any benefit from the program comes from the timing of the depreciation of assets, not the amount of depreciation. TPCO Group acknowledges that the Department treated accelerated depreciation as creating a tax exemption in SSPC from Belgium, and in OCTG from the PRC, but requests that the Department change this practice for the final determination.

U.S. Steel cites OCTG from the PRC and SSPC from Belgium to argue that the Department's well-established practice is to treat accelerated depreciation as an exemption from direct taxes under 19 CFR 351.509(a)(1).[509] Also, citing the CVD Preamble,[510] U.S. Steel argues that the Department's reasoning for treating accelerated depreciation tax benefits as a tax exemption, rather than a tax deferral, prevents a company from receiving a credit for a potential tax liability that may not occur at some future point; additionally, it removes the administrative burden on the Department of tracking a company's future tax payments in order to confirm that higher taxes were paid in the future. U.S. Steel argues that the Department explained in the CVD Preamble that the treatment of an accelerated depreciation program as a tax deferral would be contrary to the central tenet of the CVD laws, which are to discourage the provision of subsidies.

Department's Position

In SSPC from Belgium[511] and OCTG from the PRC,[512] we stated that our practice is to treat the tax savings from accelerated depreciation as a tax exemption rather than a tax deferral because we cannot be certain that the benefits of an accelerated depreciation program will be offset by higher taxes in the future. We also stated that factors such as changes in tax provisions and government tax policies, the provision of additional future tax benefits, or the possibility that the recipient company is in a tax loss position in the future might prevent higher taxes from materializing.[513] We find that our methodology from SSPC from Belgium and OCTG from the PRC is necessary to account for these factors. Thus, we have made no changes to the

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508 See TPCO Verification Report at 5.
509 Referencing OCTG from the PRC at 19-20 and Comment 42 in which the Department rejected the "identical argument raised by TPCO in this case." U.S. Steel notes that the Department determines the amount of the subsidy (benefit) as the difference between the amount of tax that would have been paid during the POI under the normal depreciation schedule for the assets in question from the amount that the company actually paid under the accelerated depreciation program. If there is any tax savings for the company during the POI, that amount is the benefit.
510 See Countervailing Duties; Final Rule at 65375-65376.
511 See SSPC from Belgium at 15580-15581.
512 See OCTG from the PRC IDM at Comment 42.
513 See SSPC from Belgium at 15581 (citing Steel Products from Germany, 58 FR 37315, 37324-25).

Preliminary Determination with regard to our calculation methodology for this program.

Other Issues

Comment 31 Export Restraints on Steel Rounds

U.S. Steel argues that the Department should reconsider its rejection of Petitioners' New Subsidy Allegation with respect to the PRC's export restraints on steel rounds. It maintains that, in the CVD Petition, Petitioners alleged that Chinese producers of seamless pipe received a countervailable benefit from the GOC's export restraints on raw materials. It further maintains that in Petitioners' New Subsidy Allegation, they demonstrated that the export restraints imposed by the GOC on steel rounds restricted exports and lowered Chinese domestic prices of steel rounds; thereby, conferring countervailable benefits on Chinese seamless pipe producers.

U.S. Steel argues that the Department's reasons for refusing to investigate export restraints are not valid. First, the Department determined that Petitioners' information did not show a connection between the export restraints and information showing that Chinese domestic market prices are less than world market prices. It argues that not only did the Department's decision fail to address the factual information submitted by Petitioners, but that the Department also failed to specify what information might be necessary to demonstrate this connection. Second, the Department determined that Petitioners' information did not show how the GOC is "entrusting or directing private entities to provide steel rounds to respondents." U.S. Steel, citing to the Preamble, contend that the Department itself has made clear that export restraints of the type at issue in this case may lead a private party to provide the restrained good to domestic purchasers for less than adequate remuneration and that the phrase entrusts or directs could encompass government actions that provide inducements to a private party to provide benefit to another party. Furthermore, according to U.S. Steel, the Preamble indicates that the Department has, in past cases,[514] found export restraints may provide an indirect financial contribution within the meaning of 771(5)(C) and (D) of the Act.

U.S. Steel contends that its allegation not only met the "reasonably available" standard by demonstrating the effect of the PRC's export restraints on the prices of steel rounds, but that it was bolstered by the U.S. Government, through the USTR, which made clear the significant effect of the PRC's export restraints on the price of steel raw materials. In this regard, U.S. Steel notes that the United States, followed by Mexico and the European Communities, requested consultations at the WTO concerning the PRC's export restraints on a number of key inputs used by the steel industry, and have more recently requested a WTO dispute settlement panel.[515]

U.S. Steel argues that, in light of the findings by the USTR and others, as well as the evidence presented by Petitioners in their New Subsidy Allegation, the Department's rejection of such an allegation is improper. It also contends that the Department has on record all the information

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[514] See Leather from Argentina, and Softwood Lumber from Canada.

[515] See China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by the United States; Mexico; and the European Communities. See also "United States Requests WTO Panel Against China Over Export Restraints On Raw Materials, European Union and Mexico Join The United States In Request," USTR Press Release (November 4, 2009) (Public Document).

required to countervail this subsidy, and argues that the Department should countervail the export restraints on steel rounds in the final determination.

The GOC and TPCO assert that there is no basis to countervail alleged subsidies associated with export restraints on steel rounds. The GOC and TPCO assert that the Department previously reviewed Petitioners' allegations and declined to initiate an investigation. The Department's analysis and decision to decline to initiate on Petitioners' allegations were set forth in detail.[516] Accordingly, the GOC argues that the Department cannot lawfully base any aspect of its final determination on Petitioners' aforementioned allegation, which has neither been tested nor substantiated by record evidence.

Department's Position

Petitioners' allegation involving export restraints on steel rounds does not meet the threshold for the initiation of an investigation, as has been established by the Department in prior cases (e.g., OCTG from the PRC, CFS from Indonesia, and Leather from Argentina). For example, in Leather from Argentina, the Department relied on information indicating that an embargo on hide exports provided a countervailable subsidy to Argentine leather producers based on long-term historical price comparisons that demonstrated a clear link between the imposition of the embargo and the divergence of prices. Such information was not provided by Petitioners in the instant investigation. The information submitted by Petitioners did not include an historical price trend comparison that would allow a review as to whether pricing differences during the POI are due to export restraints. As such, the Department continues to find that this allegation did not meet the standard for initiation, as set out under the statute.

Comment 32 Export Restraints on Coke

TPCO and the GOC argue that the Department's finding that the GOC failed to cooperate in fully responding to the Department's questionnaires is flawed and contend that the application of adverse inferences is predicated on an invalid interpretation of financial contribution. Further, the GOC contends that the Department's line of questioning did not address whether a financial contribution took place, but, instead, focused on whether the measures at issue were the most effective to address the GOC's sustainable development objectives. Hence, the GOC and TPC argue that export restraints on coke cannot be considered to confer a financial contribution and the Department had all the facts necessary to reach this conclusion, and, thus, the Department should reverse its post-preliminary findings on this issue in the final determination.

TPCO and the GOC argue that the Department's practice of finding that export restraints confer a financial contribution does not adhere to WTO principles and should be corrected. The GOC argues that export restraints do not provide a financial contribution to the industry producing the subject merchandise within the meaning of section 771(5) of the Act and Article 1.1 of the WTO SCM Agreement. TPCO and the GOC contend that it is well-established at the WTO that not all government action constitutes a financial contribution. TPCO and the GOC argue in the context of entrustment or direction, that form of indirect financial contribution does not cover the

516 See NSA Memo.

circumstance in which the government intervenes in the market in some way "'which may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market'."[517] In other words, TPCO and the GOC explain, entrustment or direction cannot be the mere by-product of governmental action.[518] TPCO and the GOC further state that if this interpretation were allowed, "the legal element of financial contribution would be swallowed whole."[519] TPCO and the GOC argue that the WTO Appellate Body recognized "not all government measures capable of conferring benefits would necessarily fall within Article 1.1(a)…, because all government measures conferring benefits, per se, would be subsidies."[520] TPCO and the GOC argue that the mere fact that some party may benefit from export restraint imposition, whether through lower prices or greater supply of the restricted product, is not dispositive of the existence of a countervailable subsidy. Moreover, TPCO and the GOC assert, that would imply such a broad interpretation of Article 1.1(a)(iv) of the SCM Agreement as to permit WTO members to apply countervailing measures to products whenever a government is merely exercising its general regulatory powers, contrary to WTO disciplines. TPCO and the GOC stress that a finding of entrustment or direction requires the government give responsibility to a private body or exercise its authority over a private body in order to effect a financial contribution.[521] The GOC argues that exports restraints do not meet the standard when they are framed within a border measure in the form of a "government law or regulation that expressly limits the quantity of exports or places explicit conditions on the circumstances under which exports are permitted, or that takes the form of a government-imposed fee or tax on exports of the product calculated to limit the quantity of exports."[522]

TPCO and the GOC reiterate that the record reflects that the GOC does not regulate the price of coke, coke prices are entirely market-determined, and the GOC does not instruct any coke producer to sell or not sell coke to any downstream user.[523] TPCO and the GOC contend that these statements are specifically supported by the laws and regulations that the GOC placed on the record of this investigation in regard to the export quota and export tariff. Hence, according to TPCO and the GOC, there is no basis to conclude that any perceived benefit of the export quota and tariff on coke to downstream users is anything more than a mere by-product of the government action intended to promote sustainable development principles that include the following: controlling the aggregate supply; adjustment of structure; preservation of natural and energy resources; and the protection of the environment.[524] TPCO and the GOC urge the Department to conclude that export restraints at issue with respect to coke do not confer a financial contribution, in line with WTO disciplines.

TPCO and the GOC contend that just because the Department did not receive full responses to every question it posed in regard to export restraints, there is no basis for applying adverse

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517 See GOC Case Brief at 47-48, see also TPCO Case Brief at 30-31.
518 Referencing United States—Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea, WT/DS296/AB/R, June 27, 2005, para. 114, quoting United States—Measures Treating Exports Restraints as Subsidies, WT/DS194/R, 29 June 2001, para. 8.31.
519 See GOC Case Brief at 48, see also TPCO Case Brief at 30.
520 See AB Report on Softwood Lumber at para. 52, n.35.
521 Id. at para. 115.
522 See GOC Case Brief at 48-49.
523 See G5SR at 2.
524 See G3SR at 2 and Exhibit SUPP3-01, see also TPCO Case Brief at 32.

inferences. TPCO and the GOC argue that the Department was provided adequate evidence that demonstrates that the export restraints at issue do not effect a financial contribution. Further, TPCO and the GOC argue that the Department pursued more than a simple examination of the export restraints and requested an explanation of why these measures were selected in place of others to achieve the government's objectives.[525] TPCO and the GOC argue that the Department's questions are not germane to identifying the existence of a financial contribution within the meaning of Article 1 of the SCM Agreement. Although the Department may be convinced that there is a less trade distortive manner in which to achieve the objectives established by the GOC, TPCO and the GOC assert that this inquiry is not within the domain of the SCM Agreement and the failure to respond to such an inquiry is not a legitimate basis to find a countervailable subsidy.

U.S. Steel supports the Department's application of AFA under export restraints because the GOC refused to respond to certain questions related to the analysis of export restraints. U.S. Steel notes that the GOC did not: 1) explain, as requested by the Department, why it imposed these export restraints, rather than alternatives, to reach its environmental objectives; 2) supply the Department with requested coke production, import, and export data; and 3) respond to the Department's questions about the factors the GOC considers when determining the export tax.[526] U.S. Steel argues that the GOC regarded certain questions as irrelevant to the analysis of export restraints but did not specify why it was "premature" to respond to these questions.[527]

U.S. Steel asserts that the Department properly applied FA, and specifically AFA, because the GOC withheld information and failed to act to the best of its ability in responding to the Department's questionnaires.[528] U.S. Steel states that the GOC and TPCO do not deny that the GOC withheld information requested by the Department and they do not dispute that the GOC did not act to the best of its ability to respond to the Department's questions. According to U.S. Steel, these are the basis to apply FA and AFA, respectively. Instead, U.S. Steel argues, both parties admit that the GOC did not respond to questions it viewed as irrelevant to the Department's analysis of export restraints.[529]

U.S. Steel argues that the GOC and TPCO stated that the Department's questions regarding export restraints were not relevant based on findings of the Appellate Body of the WTO concerning the definition of a "financial contribution."[530] U.S. Steel argues, however, that the SAA clarifies that WTO decisions are not binding on the United States and have no ability to change U.S. law.[531] U.S. Steel concludes that the WTO decisions cited by the GOC and TPCO are completely irrelevant, and that neither respondent provided the Department with any reason to reconsider its findings in the Post-Preliminary Analysis.

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[525] Referencing Third Supplemental Questionnaire for Export Restrictions on Coke Response (April 13, 2010) at Question 2; see also TPCO Case Brief at 32-33.
[526] Referencing the Hengyang Post-Preliminary Analysis at 26-30; for TPCO Post-Preliminary Analysis at 9-10.
[527] See Hengyang Post-Preliminary Analysis at 26, 27, 29.
[528] Referring to section 776(b) of the Act; see Hengyang Post-Preliminary Analysis at 31.
[529] See GOC's Case Brief at 50; TPCO's Case Brief at 32.
[530] See GOC's Case Brief at 47-49; TPCO's Case Brief at 30-31.
[531] See SAA at 659. See also Timken II at 1334.

Department's Position

We agree with U.S. Steel. Notwithstanding the GOC's and TPCO's arguments regarding the non-countervailability of the export restraints at issue, we continue to find, as an adverse inference, that the GOC's export restraints on coke constitute a financial contribution (i.e., provision of goods) to PRC producers of downstream goods which incorporate coke within the meaning of sections 771(5)(B) and (D) of the Act. Moreover, as an adverse inference, we continue to find that the GOC's export restraints on coke are specific to producers of seamless pipe in the PRC within the meaning of section 771(5A) of the Act. See the "Use of Facts Otherwise Available and Adverse Facts Available" and "Analysis of Programs" sections above.

As we discussed in the Hengyang and TPCO Post-Preliminary Analyses, the GOC refused to respond to questions that were necessary to our investigation of the countervailability of this program.[532] TPCO and the GOC contend that the Department's questions were not relevant to this issue based on findings of the Appellate Body of the WTO concerning the definition of a "financial contribution," but the primary issue is the failure of the GOC to respond to the Department's questionnaire. Further, the SAA states that WTO decisions are not binding on the United States and do not have any "power to change U.S. law or to order such a change."[533]

The Department disagrees with the GOC's and TPCO's apparent position that the GOC was not required to respond to the Department's requests for information given the GOC's position that export restraints, both in general and those at issue, cannot constitute a financial contribution pursuant to section 771(5)(D)(iii) of the Act. As an initial matter, the Department has found export restraints to confer a financial contribution in past cases.[534] Moreover, similar to its examination of other potential subsidies, the Department based its analysis of export restraints in these past cases on information submitted on the record of those proceedings by the relevant governments and respondent companies. Further, the Department found in its initiation analysis that Petitioners had properly alleged the elements necessary for the imposition of countervailing duties under section 701(a) of the Act and that these elements were supported by information reasonably available to Petitioners.[535] Thus, regardless of its opinion regarding the potential countervailability of the export restraints at issue, the GOC is responsible for responding to the Department's requests for information.

532 See TPCO Post-Preliminary Analysis at 9; see also Hengyang Post-Preliminary Analysis at 31.
533 See SAA at 659.
534 See Leather from Argentina, CFS from Indonesia, and Magnesia Bricks from the PRC Prelim.
535 See Initiation Notice at 52947.

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 ____

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Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

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(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
APA	Administrative Procedures Act
AUL	Average useful life
BPI	Business proprietary information
CAFC	U.S. Court of Appeals for the Federal Circuit
CBRC	China Banking Regulatory Commission
CCP	Chinese Communist Party
CFR	Code of Federal Regulations
Charging	TPCO Charging Development Co., Ltd.
Cinda	China Cinda Asset Management Corporation
CIT	U.S. Court of International Trade
CRC China	China Resources (National) Corporation
CRU	The Department's Central Records Unit (Room 1117 in the HCHB Building)
CVD	Countervailing Duty
Department	Department of Commerce
EIBC	Export-Import Bank of China
FIE	Foreign-Invested Enterprise
GNIs	Gross National Incomes
GOC	Government of the People's Republic of China
Hengyang	Hengyang Steel Tube Group International Trading, Inc. ("Hengyang Trading"), Hengyang Valin Steel Tube Co., Ltd. ("Hengyang Valin"), Hengyang Valin MPM Tube Co., Ltd. ("Hengyang MPM"), Xigang Seamless Steel Tube Co., Ltd. ("Xigang Seamless"), Wuxi Seamless Special Pipe Co., Ltd. ("Special Pipe"), Jiangsu Xigang Group Co., Ltd. ("Xigang Group"), Wuxi Resources Steel Making Co., Ltd. ("Resources Steel"), Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Valin Xiangtan") , Wuxi Sifang Steel Tube Co., Ltd. ("Sifang"), Hunan Valin Steel Co., Ltd. ("Hunan Valin"), and Hunan Valin Iron & Steel Group Co., Ltd. ("Valin Group")
Hengyang Companies	Hengyang Valin, Hengyang MPM, and Hengyang Trading (collectively)

Hengyang MPM	Hengyang Valin MPM Tube Co., Ltd.
Hengyang Trading	Hengyang Steel Tube Group International Trading, Inc.
Hengyang Valin	Hengyang Valin Steel Tube Co., Ltd.
Hunan Valin	Hunan Valin Steel Co., Ltd.
IDM	Issues and Decision Memorandum
IFS	International Financial Statistics
IMF	International Monetary Fund
IRS	Internal Revenue Service
Jianli	Zhejiang Jianli Enterprise Co., Ltd.
LIBOR	London Interbank Offering Rate
LME	London Metal Exchange
LTAR	Less than adequate remuneration
MOFCOM	PRC Ministry of Commerce
MOI	Market-Oriented Industry
NDRC	National Development and Reform Commission
NME	Non-market economy
PBOC	People's Bank of China
Petitioners	United States Steel Corporation; TMK IPSCO; V&M Star L.P.; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
Resources Steel	Wuxi Resources Steel Making Co., Ltd.
RMB	Renminbi
SAA	Statement of Administrative Action
SAIC	State Administration of Industry and Commerce
Salem	Salem Steel North America LLC
SASAC	State-owned Assets Supervision and Administration Commission
SBB	Steel Business Briefing
Seamless Pipe	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe
SHIBOR	Shanghai Interbank Offered Rate
Sifang	Wuxi Sifang Steel Tube Co., Ltd.
Special Pipe	Wuxi Seamless Special Pipe Co., Ltd.
SOE	State-Owned Enterprise
SOCB	State-Owned Commercial Bank
TAI	Toyota Tsusho America, Inc.

TBNA	Tianjin Binhai New Area
TEDA Holding	TEDA Investment Holding Co., Ltd.
TMK IPSCO, et al.	TMK IPSCO, V&M Star L.P., and The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
TPCO	Tianjin Pipe (Group) Co. ("TPCO Group"), Tianjin Pipe Iron Manufacturing Co., Ltd. ("TPCO Iron"), Tianguan Yuantong Pipe Product Co., Ltd. ("Yuantong"), Tianjin Pipe International Economic and Trading Co., Ltd. ("TPCO International"), and TPCO Charging Development Co., Ltd. ("Charging")
TPCO Group	Tianjin Pipe (Group) Corporation
TPCO Holding	Tianjin Pipe Investment Holding Co., Ltd.
TPCO International	Tianjin Pipe International Economic and Trading Co., Ltd.
TPCO Iron	Tianjin Pipe Iron Manufacturing Co., Ltd.
U.S.C.	United States Code
U.S. Steel	United States Steel Corporation (one of Petitioners)
USTR	United States Trade Representative
WTO	World Trade Organization
VAT	Value Added Tax
Valin Group	Hunan Valin Iron & Steel Group Co., Ltd.
Valin Xiangtan	Hunan Valin Xiangtan Iron & Steel Co., Ltd.
WTO	World Trade Organization
Xigang Companies	Xigang Group, Xigang Seamless, Special Pipe, and Resources Steel (collectively)
Xigang Group	Jiangsu Xigang Group Co., Ltd.
Xigang Seamless	Xigang Seamless Steel Tube Co., Ltd.
Yuantong	Tianguan Yuantong Pipe Product Co., Ltd.

II. ***RESPONSES AND DEPARTMENT MEMORANDA***

Short Cite	Full Name
	GOC
GQR	Response of the Government of China to the Department's Initial Questionnaire (January 7, 2010)
GSRR	Response of the Government of the People's Republic of China to the Department of Commerce's Steel Rounds Supplemental Questionnaire (January 26, 2010)
GCOR	Response of the Government of the People's Republic of China to the Department of Commerce's Cross-Owned Affiliates Questionnaire (January 26, 2010)
G1SR	Response of the Government of the People's Republic of China to the Department of Commerce's First Supplemental Questionnaire (February 4, 2010)
GFIS	Government of China's Factual Information Submission (March 3, 2010)
G2SR	Response of the Government of China to the Department's Second Supplemental Questionnaire (March 30, 2010)
G3SR	Response of the Government of China to the Department's Third Supplemental Questionnaire for Export Restraints on Coke (April 20, 2010)
GCCR	Response of the Government of China to the Department's April 5, 2010 Request Regarding Coking Coal (April 26, 2010)
GOC April 30 Letter	Response of the Government of China to the Department's April 16, 2010, Letter (April 30, 2010)
G1CCR	Complete Response of the Government of China to the Department's April 5, 2010 Request Regarding Coking Coal (May 4, 2010)
G4SR	Response of the Government of China to the Department's Fourth Supplemental Questionnaire (May 5, 2010)
G5SR	Response of the Government of China to the Department's Export Restraint Letter (May 12, 2010)
G6SR	Response of the Government of China to the Department's Sixth Supplemental Questionnaire (May 25, 2010)
GOC Case Brief	Case Brief of the Government of the People's Republic of China (August 25, 2010)
	Petitioners

Factual Information Submission	U.S. Steel's (Petitioner's) April 14, 2010, submission, "Countervailing Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China"
New Subsidy Allegation	Letter from Petitioners to the Department, "Certain Carbon and Alloy Seamless Steel Standard, Line, and Pressure Pipe from the People's Republic of China" (January 7, 2010)
Petition	Original Petition (September 16, 2009)
Petitioner's FIS	Petitioners' Submission of New Factual Information (October 5, 2009)
Pre-Prelim Comments	Letter from U.S. Steel (Petitioner) to the Department dated February 12, 2010, "Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China"
U.S. Steel's Case Brief	Letter from U.S. Steel to the Department, "Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," (August 25, 2010)
U.S. Steel Rebuttal Brief	Letter from U.S. Steel to the Department, "Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," (September 1, 2010)
	Hengyang
February 23 Response	Letter from Hengyang to the Department dated February 23, 2010, "Response to Questions 1-3 of the Department's January 27, 2010, Supplemental CVD Questionnaire – Previous Owners"
H1QR	Letter from Hengyang to the Department, "Response to Questions 13-16, 20-22, 28, 32-37a and 39 of the Department of Commerce's January 27, 2010 Supplemental CVD Questionnaire" (February 4, 2010)
H2QR	Letter from Hengyang to the Department, "Response to Second Supplemental Questionnaire dated February 4, 2010 (February 12, 2010)
H3QR	Letter from Hengyang to the Department, "Response to Questions 4-12, 17-19, 23-27, 29-31, 38 and 40 of the Department's January 27, 2010 Supplemental CVD Questionnaire (February 16, 2010)
H4QR	Letter from Hengyang to the Department, "Response to 4th Supplemental Questionnaire" (April 13, 2010)
HNSAQR	Letter from Hengyang to the Department dated March 23, 2010, "Re: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China; Response to Response to New

	Subsidy Allegation Dated March 8, 2010"
Hengyang Case Brief	Letter from Hengyang to the Department, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China; Case Brief" (August 30, 2010)
Hengyang Rebuttal Brief	Letter from Hengyang to the Department, "Re: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China; Case Brief" (September 1, 2010)
HQR	Hengyang's January 5, 2010, questionnaire response.
HVQR	Letter from Hengyang to the Department dated February 23, 2010, "Response to Questions 1-3 of the Department's January 27, 2010, Supplemental CVD Questionnaire – Hunan Valin Steel Co., Ltd."
January 13 Response	Letter from Hengyang to the Department dated January 13, 2010, "Electronic Files Submission and Errata"
POQR	Letter from Hengyang to the Department dated February 23, 2010, "Response to Questions 1-3 of the Department's January 27, 2010, Supplemental CVD Questionnaire – Previous Owners"
SQR	Letter from Hengyang to the Department dated February 23, 2010, "Response to Questions 1-3 of the Department's January 27, 2010, Supplemental CVD Questionnaire – Wuxi Sifang Steel Tube Co., Ltd."
VGQR	Letter from Hengyang to the Department dated February 23, 2010, "Response to Questions 1-3 of the Department's January 27, 2010, Supplemental CVD Questionnaire – Hunan Valin Iron and Steel Group Co., Ltd."
VXQR	Letter from Hengyang to the Department dated February 23, 2010, "Response to Questions 1-3 of the Department's January 27, 2010, Supplemental CVD Questionnaire – Hunan Valin Xiangtan Iron & Steel Co., Ltd."
	TPCO
CCR	"TPCO's Critical Circumstances Data Submission: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China" (February 2, 2010)
SQR1	"Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Response of Tianjin Pipe (Group) Corporation and Reporting Cross-Owned Affiliates to the Department of Commerce's Supplemental Questionnaire" (February 3, 2010)

SQR2	"Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Response of Tianjin Pipe (Group) Corporation and Reporting Cross-Owned Affiliates to the Department's First Supplemental Questionnaire (Part I & II) and the Department's Second Supplemental Questionnaire" (February 16, 2010)
TNSAQR	"Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Response of TPCO (Group) and Reporting Cross-Owned Affiliates to the Department's NSA Questionnaire" (March 10, 2010)
TPCO Case Brief	"Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: TPCO's Case Brief" (August 25, 2010)
TPCO Rebuttal Brief	"Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Rebuttal Brief of Tianjin Pipe (Group) Corporation" (September 1, 2010)
TQR	"Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Response of Tianjin Pipe (Group) Corporation and Reporting Cross-Owned Affiliates to the Department of Commerce's Questionnaire" (December 30, 2009)
UCCR	"TPCO's Updated Critical Circumstances Data Submission: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China" (June 4, 2010)
	Department
Additional Documents Memo	Memorandum to File from Yasmin Nair, Analyst regarding "Additional Documents Placed on the Record" (February 22, 2010)
April 16 Letter	Letter to the GOC dated April 16, 2010, "Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China"
Electricity Rate Data	Memorandum to File from Yasmin Nair, International Trade Compliance Analyst, Office 1 (February 22, 2010)
February 16 Letter	Letter to the GOC dated February 16, 2010, "Certain Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China"
Electricity Rate Data	See Memorandum to File from Yasmin Nair, International Trade Compliance Analyst, Office 1,

	"Electricity Rate Data" (February 22, 2010).
Georgetown Steel Memorandum	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)*
Hengyang Final Calc Memo	Memorandum to the File from Shane Subler and Matthew Jordan, International Trade Compliance Analysts, Office 1, "Final Determination Calculation Memorandum for (Hengyang)" (September 10, 2010)
Hengyang First Supplemental Questionnaire	Letter from the Department to Hengyang, "Countervailing Duty Investigation: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China" (January 27, 2010)
Hengyang Post-Preliminary Analysis	Memorandum from Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated August 13, 2010, "Countervailing Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for: Hengyang Steel Tube Group International Trading, Inc. ("Hengyang Trading"), Hengyang Valin Steel Tube Co., Ltd. ("Hengyang Valin"), Hengyang Valin MPM Tube Co., Ltd. ("Hengyang MPM"), Xigang Seamless Steel Tube Co., Ltd. ("Xigang Seamless"), Wuxi Seamless Special Pipe Co., Ltd. ("Special Pipe"), Jiangsu Xigang Group Co., Ltd. ("Xigang Group"), Wuxi Resources Steel Making Co., Ltd. ("Resources Steel"), Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Valin Xiangtan"), Wuxi Sifang Steel Tube Co., Ltd. ("Sifang"), Hunan Valin Steel Co., Ltd. ("Hunan Valin"), Hunan Valin Iron & Steel Group Co., Ltd. ("Valin Group") (collectively "Hengyang") (August 13, 2010)
Hengyang Preliminary Calc Memo	Memorandum to the File from Shane Subler and Matthew Jordan, International Trade Compliance Analysts, Office 1, "Preliminary Determination Calculation Memorandum for (Hengyang)" (February 22, 2010)
Hengyang Questionnaire	Letter from the Department to Hengyang, "Countervailing Duty Investigation: Certain Seamless

	Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," (December 1, 2009)
Hengyang Verification Report	Memorandum from Shane Subler and Matthew Jordan, International Trade Compliance Analysts, Office 1, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, dated July 16, 2010, "Verification Report: Hengyang"
Initiation Checklist	Countervailing Duty Investigation Initiation Checklist: Certain Seamless Pipe from the PRC (October 15, 2009)
Initiation Notice	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Initiation of Countervailing Duty Investigation, 74 FR 52945 (October 15, 2009)
InitQ	Department's Initial Questionnaire, (November 9, 2009)
June 3 Letter	Letter from the Department to Hengyang, "Countervailing Duty Investigation: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," (June 3, 2010)
Lined Paper Memorandum	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's Status as a Non-Market Economy (August 30, 2006)*
March 29 Letter	Letter from the Department to Hengyang dated March 29, 2010, "Countervailing Duty Investigation: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China"
NSA Memo	Countervailing Duty Investigation: Certain Seamless Carbon and Alloy Standard, Line and pressure Pipe from the people's Republic of China – New Subsidy Allegations Memorandum (February 17, 2010)
New Subsidy Questionnaire	Letter from the Department to Hengyang dated March 8, 2010, "New Subsidy Allegations Questionnaire"
Steel Rounds Memo	Memorandum to the File, "Additional Information on Steel Rounds," dated February 22, 2010
Third Supplemental Questionnaire	Letter from the Department to Hengyang dated February 16, 2010, "Third Supplemental Questionnaire"
TPCO Final Calc Memo	Memorandum to the File from Joseph Shuler and Shane Subler, "Final Determination Calculation Memorandum for (TPCO)" (September 10, 2010)

TPCO Preliminary Calc Memo	Memorandum to the File from Joseph Shuler and Shane Subler, "Preliminary Determination Calculation Memorandum for (TPCO)" (February 22, 2010)
TPCO Post-Preliminary Analysis	Memorandum from Edward Yang to Ronald Lorentzen, "Countervailing Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for (TPCO)" (August 13, 2010)
TPCO Verification Report	Memorandum from Scott Holland and Joseph Shuler to Susan Kuhbach, "Verification Report: Tianjin Pipe (Group) Corporation ('TPCO Group'), Tianjin Pipe Iron Manufacturing Co., Ltd. ('TPCO Iron'), Tianguan Yuantong Pipe Product Co., Ltd. ('Yuantong'), Tianjin Pipe International Economic and Trading Co., Ltd. ('TPCO International'), and TPCO Charging Development Co., Ltd. ('Charging') (collectively, 'TPCO')," (August 9, 2010)
Uncreditworthy Allegation Memorandum	Memorandum from Joseph Shuler and Shane Subler, International Trade Compliance Analysts, to Susan Kuhbach, Director, Office 1, Import Administration, dated May 12, 2010, "Countervailing Duty Investigation: *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China*: Uncreditworthy Allegation"

* on file in the Department's Central Records Unit (Room 1117 in the HCHB Building)

III. LITIGATION TABLE

Short Cite	**Cases**
Acciai	Acciai Speciali Terni Sp.A. v.United States, 26 CIT 148 (CIT 2002)
Ad Hoc Committee v. U.S.	Ad Hoc Committee v. United States, 13 F.3d 398 (Fed. Cir. 1993)
Ad Hoc Shrimp	Ad Hoc Shrimp Trade Action Committee v. United States, 675 F. Supp. 2d 1287 (CIT 2009)
Alaka	Alaka v. Attorney General, 456 F.3d 88 (3d Cir. 2006)
Alaska Hunters	Alaska Professional Hunters Assn. v. FAA, 177 F.3d 1030 (D.C. Cir. 1999)
Allegheny Ludlum	Allegheny Ludlum Corp. v. United States, 112 F. Supp.2d 1141 (CIT 2000)
Allied Signal	Allied Signal Aerospace Co. v. United States, 996 F.2d 1185 (Fed. Cir. 1993)
American Silicon	American Silicon Technologies v. United States, F. Supp. 2d 1306 (CIT 2002)
American Spring	American Spring Wire Corp. v. U.S., 569 F. Supp 73 (CIT 1983)
Asociacion Colombiana	Asociacion Colombiana de Exportadores de Flores v. United States, 40 F.Supp. 2d 466 (CIT 1999)
August 2003 NAFTA Panel Decision	In the Matter of Softwood Lumber Products From Canada (NAFTA Panel), USA-CDA-2002-1904-03, Panel Decision (August 13, 2003)
Badger-Powhatan	Badger-Powhatan, Div. of Figgie Int'l, Inc. v. United States, 608 F. Supp. 653 (CIT 1985)
Bell Atlantic	Bell Atlantic Telephone v. FCC, 131 F.3d 1044 (D.C. Cir. 1997)
Bethlehem	Bethlehem Steel Corp. v. United States, 140 F. Supp. 2d 1354 (CIT 2001)
Bob Jones	Bob Jones Univ. v. United States, 461 U.S. 574 (1983)
Bowe-Passat	Bowe-Passat v. United States, 17 CIT 335 (CIT 1993)
Butterbaugh v. DOJ	Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed. Cir. 2003)
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Chenery Corp.	SEC v. Chenery Corp., 332 U.S. 194 (1947)
Chevron	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
China - Measures Related to	China - Measures Related to the Exportation of Various Raw

the Exportation of Various Raw Materials, WTO Requests for Consultation by the European Communities	Materials, Requests for Consultation by the European Communities, WT/DS395/1 (June 25, 2009). See Exhibit 5 to U.S. Steel's October 5, 2009, Submission of New Factual Information
China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by Mexico	China - Measures Related to the Exportation of Various Raw Materials, Requests for Consultation by Mexico, WT/DS398/1 (August 26, 2009). See Exhibit 6 to U.S. Steel's October 5, 2009, Submission of New Factual Information.
China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by the United States	China - Measures Related to the Exportation of Various Raw Materials, Requests for Consultation by the United States, WT/DS394/1 (June 25, 2009). See Exhibit 4 to U.S. Steel's October 5, 2009, Submission of New Factual Information
China Steel	China Steel Corp. v. United States, 264 F. Supp. 2d 1339 (CIT 2003)
Corus Staal	Corus Staal BV v. United States, 387 F. Supp. 2d 1291 (CIT 2005)
De Cecco	F. Lii De Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027 (CAFC 2000)
Fabrique	Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d. 593 (CIT 2001)
Ferro Union	Ferro Union, Inc. v. United States, 23 CIT 178, 205, 44 F. Supp. 2d 1310 (1999)
Gallant	Gallant Ocean Thailand Co. v. United States, 602 F.3d 1319 (Fed. Cir. 2010)
Georgetown Steel	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)
Gerald Metals	Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997)
GOC v. United States	Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d 1274 (CIT 2007)
GPX I	GPX International Tire Corp. v. United States, 587 F. Supp. 2d 1278 (CIT 2008)
GPX II	GPX International Tire Corp. v. United States, 645 F. Supp. 2d at 1231 (CIT 2009)
GPX III	GPX International Tire Corp. v. United States, No. 10-84, slip op. (CIT Aug 4, 2010)
Groff	Groff v. United States, 493 F.3d 1343 (Fed.Cir. 2007)
January 2004 NAFTA First Remand Determination	In the Matter of Softwood Lumber Products From Canada (NAFTA Panel), USA-CDA-2002-1904-03, First Remand Determination (January 12, 2004)
Hebei Minerals	Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 29 CIT 288, 296, 366 F. Supp. 2d 1264 (2005)

Hebei New Donghua	Hebei New Donghua Acid Co. v. United States, 374 F.Supp.2d 1333 (CIT 2005)
Hynix	Hynix Semiconductor Inc. v. United States, 391 F. Supp. 2d 1337 (CIT 2005)
Inland Steel 1997	Inland Steel Indus., Inc. v. United States, 967 F. Supp. 1338 (CIT 1997)
KYD	KYD Inc. v. United States, 607 F.3d 760 (Fed. Cir. 2010)
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Mannesmannrohren-Werke	Mannesmannrohren-Werke AG v. United States, 77 F. Supp 2d 1302 (CIT 1999)
McCarthy	SEC v. McCarthy, 322 F.3d 650 (9th Cir. 2003)
Merrill Lynch v. Curran	Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353 (1982)
Mittal Steel	Mittal Steel Galati v. United States, 502 F.Supp.2d 1295 (CIT 2007)
Motor Vehicle Mfr. Ass'n	Motor Vehicle Mfr. Ass'n of United States v. State Farm Auto Ins. Co., 463 U.S. 29 (1983)
Nippon Steel	Nippon Steel v. United States, 337 F. 3d 1373, (Fed. Cir. 2003)
Rapanos	Rapanos v. United States, 547 U.S. 715 (2006)
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Rust v. Sullivan	Rust v. Sullivan, 500 U.S. 173 (1991)
Saarstahl	Saarstahl A.G. v. United States, 78 F.3d 1539 (Fed. Cir. 1996)
Shinyei	Shinyei Corp. of Am. v. United States, 355 F.3d 1297 (Fed. Cir. 2004)
SKF	SKF USA Inc. v. United States, 391 F. Supp. 2d 1327 (CIT 2005)
Steel Co.	Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998)
Solid Waste	Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001)
Ta Chen I	Ta Chen Stainless Steel Pipe, Ltd. v. United States, No. 99-117, slip. op., 1999 WL 1001194 (CIT 1999)
Ta Chen II	Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F. 3d 1330 (Fed. Cir. 2002)
Timken	The Timken Co. v. United States, 26 CIT 1072, 1076, 240 F. Supp. 2d 1228 (2002)
Timken II	Timken Co. v United States, 354 F.3d 1334 (2004).
Torrington	Torrington Co. v. United States, 772 F. Supp. 1284 (CIT 1991)

Usinor 1995	Usinor Sacilor v. United States, 893 F. Supp. 1112 (CIT 1995)
Wheatland Tube	Wheatland Tube Co. v. United States, 495 F.3d 1355 (Fed. Cir. 2007)
Zenith	Zenith Radio Corp. v. United States, 437 U.S. 443 (1978).

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**
	Ammonium Nitrate - Ukraine
Ammonium Nitrate from Ukraine	Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate From Ukraine, 66 FR 13286 (March 5, 2001) ("Ammonium Nitrate from Ukraine").
	Application of CVD Law
Application of CVD Law	Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comment, 71 FR 75507 (Dec. 15, 2006).
	Bedroom Furniture - PRC
Wooden Bedroom Furniture from the PRC	Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004).
	Castings from India
Castings from India	Certain Iron-Metal Castings from India, 62 FR 32297 (June 13, 1997).
	CVD Preamble
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998).
	CVD Proposed Regulations
CVD Proposed Regulations	Notice of Proposed Rulemaking and Request for Public Comments (Countervailing Duties), 54 FR 23366 (May 31, 1989).
	CVD Regulations
CVD Regulations	Countervailing Duty Regulations, 63 FR 65377 (Nov. 25, 1998).
	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).
	Carbon Steel Wire Rod - Germany
Wire Rod from Germany	Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (August 30, 2002) ("Steel Wire Rod from Germany").
	Carbon Steel Wire Rod – Poland

Wire Rod from Poland Prelim	Carbon Steel Wire Rod from Poland: Preliminary Negative Countervailing Duty Determination, 49 FR 6768 (February 23, 1984).
Wire Rod from Poland	Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984).
	Chrome Plated Lug Nuts - PRC
Lug Nuts from China	Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 10459 (March 26, 1992).
Lug Nuts from China Initiation	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).
	Circular Welded Carbon Quality Steel Pipe – PRC
CWP from the PRC	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).
	Circular Welded Carbon Quality Steel Line Pipe – PRC
CWLP from the PRC – Preliminary	Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China; Preliminary Affirmative Countervailing Duty Determination, 73 FR 52297 (September 9, 2008).
CWLP from the PRC	Circular Welded Carbon Quality Steel Line Pipe: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008).
	Circular Welded Austenitic Stainless Steel Pipe – PRC
CWASPP from the PRC	Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 74 FR 4936 (January 28, 2009).
	Citric Acid and Certain Citrate Salts - PRC
Citric Acid Prelim	Citric Acid and Certain Citrate Salts 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 54373 (September 19, 2008).
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 - Indonesia

CFS from Indonesia	Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007).
	Coated Free Sheet Paper – PRC
CFS from the PRC-Preliminary Determination	Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484 (April 9, 2007).
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).
	Coated Free Sheet Paper – Korea
CFS from Korea	Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (Oct. 25, 2007).
	Cold-Rolled Carbon Steel Flat Products – Korea
CR Steel from Korea	Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (October 3, 2002).
	Corrosion-Resistant Carbon Steel Flat Products – Korea
CORE from Korea	Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009).
	Cut-to-Length Carbon-Quality Steel Plate – Korea
CTL Plate from Korea	Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) (Preliminary Results of CTL Plate from Korea) (unchanged in the Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (July 10, 2006).
	Drill Pipe - PRC
Drill Pipe from the PRC	Drill Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 33245 (June 11, 2010).
	Dynamic Random Access Memory Semiconductors – Korea
DRAMS from Korea	Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003).
	GPX Remand Determination
GPX Remand Determination	Final Results of Determination Pursuant to Remand , GPX International Tire Corp. v. United States, Consol. Court No.

	08-00285 (DOC April 26, 2010).
	Granite from Italy
<u>Granite from Italy</u>	<u>Final Negative Countervailing Duty Determination; Certain Granite Products From Italy</u>, 53 FR 27197 (July 19, 1988).
	Hardwood Trailer Flooring from Canada
<u>Hardwood Trailer Flooring from Canada</u>	<u>Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) From Canada</u>, 62 FR 5201 (February 4, 1997).
	Hot-Rolled Carbon Steel Flat Products – India
<u>Hot-Rolled Steel from India</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India</u>, 66 FR 49635 (September 28, 2001).
<u>Hot Rolled from India 2007</u>	<u>Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review</u>, 74 FR 20923 (May 6, 2009).
<u>HRS from India</u>	<u>Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review</u>, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum.
<u>HRS from Japan</u>	<u>Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan</u>, 64 FR 24329 (May 6, 1999).
	Hot-Rolled Carbon Steel Flat Products – Thailand
<u>Hot-Rolled Steel from Thailand</u>	<u>Certain Hot-Rolled Carbon Steel Flat Products from Thailand</u>, 66 FR 50410 (October 3, 2001).
	Kitchen Appliance Shelving & Racks – PRC
<u>KASR from the PRC</u>	<u>Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination</u>, 74 FR 37012 (July 27, 2009).
<u>KASR from the PRC AD Final</u>	<u>Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</u>, 74 FR 36656 (July 24, 2009).
	Laminated Woven Sacks – PRC
<u>LWS from the PRC</u>	<u>Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances</u>, 73 FR 35639 (June 24, 2008).
	Leather from Argentina
<u>Leather from Argentina</u>	<u>Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Leather from Argentina</u>, 55 FR 40212 (October 2, 1990).

	Light-walled Rectangular Pipe and Tube – PRC
LWRP from the PRC	Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008).
	Lightweight Thermal Paper – PRC
LWTP from the PRC	Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008).
LWTP from the PRC AD	Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008), and accompanying Issues and Decision Memorandum.
	Lined Paper – Indonesia
Lined Paper from Indonesia	Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (Aug. 16, 2006).
	Magnesia Bricks - PRC
Magnesia Bricks from the PRC Prelim	Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Negative Countervailing Duty Determination, 74 FR 68241 (December 23, 2009).
Magnesia Bricks from the PRC	Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 45472 (August 2, 2010).
	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 Preliminary Determination	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 (September 15, 2009).
OCTG AD Preliminary Determination	Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117 (November 17, 2009).
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	64045 (December 7, 2009).
	Oscillating Fans – PRC
Fans from the PRC	Preliminary Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans From the People's Republic of China, 57 FR 10011, (March 23, 1992).
	Pasta – Italy
Pasta from Italy	Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review, 74 FR 5922 (February 3, 2009).
	Pre-Stressed Concrete Steel Wire Strand - PRC
PC Strand from the PRC	Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010).
	Polyethylene Terephthalate Film, Sheet, and Strip - China
PET Film from China	Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (Sept. 24, 2008).
	Polyethylene Terephthalate Film, Sheet, and Strip -India
PET Film from India	Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002).
	Seamless Pipe - PRC
Preliminary Determination	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, 75 FR 9163 (March 1, 2010).
	Softwood Lumber Products – Canada
Softwood Lumber from Canada (1983)	Final Negative Countervailing Duty Determinations; Certain Softwood Products From Canada, 48 FR 24159 (May 31, 1983)
Softwood Lumber from Canada (1992)	Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570 (May 28, 1992)
Softwood Lumber from Canada	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).
Lumber from Canada 03-04	Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (Dec. 12, 2005).

	Static Random Access Memory 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).
	Stainless Steel Plate in Coils - Belgium
SSPC from Belgium	Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium, 54 FR 15567 (March 31, 1999).
	Steel Grating - PRC
Steel Grating from the PRC	Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32362 (June 8, 2010).
	Steel Products from Austria
Certain Steel Products from Austria	Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217 (July 9, 1993).
Certain Steel Products from Austria (General Issues Appendix)	General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria (General Issues Appendix), 58 FR 37217 (July 9, 1993).
	Steel Products from Belgium
Certain Steel Products from Belgium	Certain Steel Products from Belgium, 47 FR 39304 (September 7, 1982).
	Steel Sheet and Strip - Korea
Steel Sheet and Strip from Korea	Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636 (June 8, 1999).
	Stainless Steel Bar from India
Stainless Steel Bar from India – 2009 Administrative Review	Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review, 74 FR 47198 (September 15, 2009) and accompanying Issues and Decision Memorandum.
	Sulfanilic Acid – Hungary
Sulfanilic Acid from Hungary	Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002).
	Textiles - PRC
Textiles from the PRC	Initiation of Countervailing Duty Investigations; Textiles, Apparel, and Related Products From the People's Republic of China, 48 FR 46600 (October 13, 1983).
	Tow-Behind Lawn Groomers and Certain Parts Thereof - PRC

Lawn Groomers from the PRC	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).
	Uranium - France
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).
	Uranium – Germany, the Netherlands, and the UK
Low Enriched Uranium from Germany, the Netherlands, and the UK	Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 66 FR 65903 (December 11, 2001).
	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).

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

Short Cite	**Full Name**
10th Metallurgical Plan	10th Five-Year Plan for the Metallurgical Industry
Accession Protocol	Protocol on the Accession of the People's Republic of China to the World Trade Organization, WT/L/432, art. 15(b) (November 23, 2001) (found at www.wto.org)
APA	Administrative Procedures Act, 5 USC section 500 et seq.
AB Report on DRAMS from Korea	United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea, Report of the Appellate Body, WT/DS296/AB/R (June 27, 2005)
AB Report on Softwood Lumber	United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, Report of the Appellate body, WT/DS257/AB/R, adopted Feb. 17 2004
Banking Law	Law of the People's Republic of China on Commercial Banks
Decision 40	Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation (No. 40 (2005))
GAO Report: Challenges	United States Government Accountability Office, Challenges and Choices to Apply Countervailing Duties to China, GAO-06-608T (Apr. 2006)
GAO Report: Eliminating	United States Government Accountability Office, Eliminating Nonmarket Economy Methodology Would Lower Antidumping Duties for Some Chinese Companies, GAO-06-231(Jan. 2006)
OTCA of 1988	Omnibus Trade and Competitiveness Act of 1988, Pub.L.No. 100-418, 102 Stat. 1007
Report on the Accession of China	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
SCM Agreement	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
Softwood Lumber Products – 2003 NAFTA Panel Decision	Certain Softwood Lumber Products from Canada, USA-CDA-2002-1904-03, NAFTA Panel Decision (August 13, 2003)
Steel Plan	Development Policies for the Iron and Steel Industry (July 2005)

TAA of 1979	Trade Agreements Act of 1979
Tianjin Measures	Measures of Tianjin Municipality for Compensated Use of State Owned Land
URAA	Uruguay Round Agreements Act, Pub L. No. 103-465, 108 Stat. 4809 (1994)
WTO Working Party Report – 10/1/2001	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), available at http://www.wto.org