C-570-959
Investigation
POI: 1/1/08 - 12/31/08
Public Document
Office 1:DEN

DATE: September 20, 2010

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

FROM: Susan 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 Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China

---

Background

On March 9, 2010, the Department of Commerce ("the Department") published the Preliminary Determination of this investigation.[1] On June 1, 2010, we published the Amended Preliminary Determination to correct significant ministerial errors. On August 27, 2010, the Department released the Gold companies' Post-Preliminary Analysis and the Sun companies' 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:

General Issues

Comment 1 Application of CVD Law to the PRC
Comment 2 Application of the CVD Law to NMEs and the Administrative Protection Act
Comment 3 Double Counting/Overlapping Remedies

[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.

Comment 31 Whether To Apply Facts Available to Sun Companies' Unreported Cross-Owned Companies

Issues Related to Gold Companies

Comment 32 Whether To Grant the Gold Companies an EV Adjustment
Comment 33 Creditworthiness
Comment 34 Whether To Adjust the Uncreditworthiness Benchmark
Comment 35 GE Sales Denominator
Comment 36 Whether To Attribute Subsidies Received By Input Suppliers Whose Inputs Are Not Used For Merchandise Exported to the United States
Comment 37 Whether the Department Should Attribute Subsidies From Pulp Producers Based on the Percentage of Total Pulp Sales to the Paper Producers Covered
Comment 38 Whether to Countervail Additional Financing Reported by the Gold Companies
Comment 39 Whether to Adjust the Gold Companies' Interest Calculation
Comment 40 Whether To Adjust JHP's Reported VAT and Duty Exemptions on Imported Equipment
Comment 41 Whether To Use an Alternative Electricity Benchmark
Comment 42 Whether To Apply AFA to JAP and JHP Caustic Soda Purchases

Use of Adverse Facts Available

Consistent with the Preliminary Determination, we have continued to rely on facts available and to draw an adverse inference, in accordance with sections 776(a) and (b) of the Act, for certain of our findings. With respect to the GOC's provision of papermaking chemicals, we determine that kaolin clay, caustic soda and titanium dioxide are being provided by governmental authorities for the reasons explained in the Preliminary Determination and we determine that the subsidy conferred through the GOC's provision of caustic soda is specific for the reasons explained in GE Post-Preliminary Analysis and Sun Post-Preliminary Analysis.[2] With respect to the GOC's provision of land use rights in the YEDZ, we determine that the subsidy is specific for the reason explained in GE Post-Preliminary Analysis.[3] Finally, with respect to the GOC's provision of electricity, we determine that the GOC has made a financial contribution that is specific, and we have applied an adverse inference is determining the benefit for the reasons explained in the Preliminary Determination.[4]

Sun companies

In a departure from the Preliminary Determination, the Department now finds that the use of "facts otherwise available" pursuant to section 776(a) of the Act is warranted with regard to the Sun companies. At verification, we learned that numerous companies that meet the Department's criteria for being "cross-owned," as that term is defined in 19 CFR 351.525(b)(6)(vi), and that produced certain coated paper or inputs for paper products were not

[2] See GE Post-Preliminary Analysis at 6; see also Sun Post-Preliminary Analysis at 6-7.
[3] See GE Post-Preliminary Analysis at 7-8.
[4] See Preliminary Determination at 10778 and 10787.

included in the Sun companies' responses.[5] Therefore, information that the Department needs to calculate the Sun companies' subsidy rate has not been provided and the Department is unable to accurately determine the appropriate level of subsidization provided to the Sun companies. By not providing this information despite being in a position to do so, the Sun companies failed to act to the best of their ability. Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act.

For the final determination and consistent with the Department's recent practice, we are computing a total AFA rate for the Sun companies, generally using program-specific rates determined for the cooperating respondent or in past cases.[6] Specifically, for programs other than those involving income tax exemptions and rate reductions, we will apply the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there is no identical program match within the investigation, we will use the highest non-de minimis rate calculated for the same or similar program in another PRC CVD investigation. Absent an above-de minimis subsidy rate calculated for the same or similar program, we will apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the Sun companies. The Department has further amended its methodology to exclude any calculated rate for a program by a voluntary respondent. See Aluminum Extrusions from the PRC at 54305.

Also, as explained in Lawn Groomers from the PRC, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not intend to include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies.

The GOC failed to provide verifiable information demonstrating that the Sun companies are located in particular provinces or that they have no facilities or cross-owned affiliates in any other province in the PRC, as requested. Therefore, the Department makes the adverse inference that the Sun companies have facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs alleged prior to the selection of mandatory respondents.
In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate 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."[7] 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."[8]

Consistent with this, we have calculated the Sun companies' countervailable subsidy rate as

[5] See Sun Verification Report at 4-8.
[6] See, e.g., KASR from the PRC IDM at 4-5.
[7] See, e.g., Semiconductors from Taiwan at 8932.
[8] See SAA at 4163.

follows:

Loans

For the "Preferential Lending to the Coated Paper Industry" and "Fast Growth High-Yield Forestry Program Loans" programs, we have applied the loan rate calculated for the Gold companies in this investigation, 8.89 percent, to each program.

Grants

The Department included in its investigation numerous grant programs: "Funds for Forestry Plantation Construction and Management," "State Key Technologies Renovation Project Fund," "Loan Interest Subsidies for Major Industrial Technology Reform Projects in Wuhan," "Funds for Water Treatment Improvement Projects in the Songhuajiang Basin," "Special Fund for Energy Saving Technology Reform in Wuhan and Shougang Municipality," "Clean Production Technology Fund," "Famous Brands Awards," "Grants to Enterprises Achieving RMB 10 Million in Sales Revenue and Implementing 'Three Significant Projects,'" "Grants to Large Enterprises in Jining City," "Funds for Water Treatment and Pollution Control Projects for Three Rivers and Three Lakes," "Grants for Programs Under the 2007 Science and Technology Development Plan in Shandong Province," "Special Funds for Economic and Trade Development," and "Interest Subsidies for Forestry Loans." The Gold companies did not use any of these programs and the Department has not calculated above de minimis rates for any of these programs in prior investigations. Moreover, all previously calculated rates for grant programs from prior PRC CVD investigations have been de minimis. Therefore, for each of these programs, we have determined to use the highest calculated subsidy rate by a non-voluntary respondent for any program otherwise listed, which could conceivably have been used by the Sun companies. This rate was 8.89 percent for the "Government Policy Lending Program" calculated for the Gold companies in this investigation.

Income Tax Rate Reduction and Exemption Programs

For "The 'Two Free, Three Half' Program," "Income Tax Subsidies for Foreign Invested Enterprises ("FIEs") Based on Geographic Location," "Income Tax Reduction for FIEs Purchasing Domestically Produced Equipment," "Local Income Tax Exemption and Reduction Program for 'Productive FIEs,'" "Preferential Tax Policies for Technology or Knowledge-Intensive FIEs," "Preferential Tax Programs for FIEs that are New or High Technology Enterprises," "Income Tax Reductions for High-Technology Industries in Guandong Province," "Income Tax Exemption Program for Export-Oriented FIEs," we have applied an adverse inference that the Sun companies paid no income tax during the POI (i.e., calendar year 2008). The standard income tax rate for corporations in the PRC was 30 percent, plus a three percent provincial income tax rate.[9] Therefore, the highest possible benefit for these income tax programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (i.e., the eight programs combined provided a 33 percent benefit). This 33 percent AFA rate does not apply to tax credit and refund programs.

[9] See GOCQR at 33 and 56.

Other Tax Benefits and VAT/Tariff Reductions and Exemptions

We are using the rates calculated for the Gold companies in this investigation for the following programs: "Preferential Tax Policies for Research and Development at FIEs" (0.01 percent); "Exemption from Maintenance and Construction Taxes and Education Surcharges for FIEs" (0.34 percent); "Value Added-Tax and Tariff Exemptions on Imported Equipment" (3.46 percent); "Domestic VAT Refunds for Companies Located in the Hainan Economic Development Zone" (0.37 percent); and "VAT Rebates on Domestically Produced Equipment" (0.2 percent). For the programs the Gold companies did not use, "Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export Orientated Enterprises," and "Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment," we have used the highest non-de minimis rate for any indirect tax program from a PRC CVD investigation. The rate we selected is 1.51 percent, which was the rate calculated for respondent Gold East Paper (Jiangsu) Co., Ltd. for the "VAT and Tariff Exemptions on Imported Equipment," program in CFS from the PRC IDM at 14.

Provision of Goods and Services for LTAR

For "Provision of Electricity for LTAR," "Provision of Papermaking Chemicals for LTAR," and "Land in the Yangpu Economic Development Zone," we have used the rates calculated for the Gold companies in this investigation, 0.08 percent, 0.80 percent and 0.85 percent, respectively.

EDZs

For the "Subsidies in the Nanchang Economic Development Zone," Petitioners alleged that land, water and electricity were provided to producers of coated paper for LTAR in the Nanchang EDZ.[10] For land, we have applied the rate calculated for the Gold companies in this investigation, 0.85 percent. For water, the Department has not calculated an above de minimis rate for this program in prior investigations. Therefore, we have applied the land for LTAR rate calculated for the Gold companies in this investigation, 0.85 percent because this program is similar to other EDZ LTAR programs in this investigation. We are not applying a sub-national rate for electricity, as we are already applying a national-level rate to the Sun companies as AFA. For "Subsidies in the Wuhan Economic Development Zone," Petitioners alleged that land was provided to producers of coated paper at LTAR in the Wuhan EDZ.[11] Therefore, we have applied the rate calculated for the Gold companies in this investigation, 0.85 percent. For "Subsidies in the Yangpu Economic Development Zone," Petitioners alleged that land and electricity were provided to producers of coated paper at LTAR in the Yangpu EDZ.[12] For land, we are applying the rate calculated for the Gold companies in this investigation, 0.85 percent. For electricity, as previously discussed we are not applying a sub-national rate. Finally, for "Subsidies in the Zhenjiang Economic Development Zone," Petitioners alleged that electricity

[10] See Initiation Checklist at 30.
[11] Id. at 31.
[12] Id.

was provided to producers of coated paper at LTAR in the Zhenjiang EDZ.[13] As discussed above, we are not applying a sub-national rate for electricity.

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."[14] The Department considers information to be corroborated if it has probative value.[15] 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.[16]

With regard to the reliability aspect of corroboration, we note that these rates were calculated in recent final CVD determinations. Further, the calculated rates were based upon verified information about the same or similar programs. Moreover, no information has been presented in this investigation that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[17]

In the absence of record evidence concerning these programs due to Sun companies' decision to impede the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy rate for any PRC program from a non-voluntary respondent from which the Sun companies could receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which the Sun companies could conceivably receive a benefit. Further, this rate was calculated for a period close to the POI in the instant case. Moreover, the Sun companies' failure to respond to requests for information has "resulted in an egregious lack of evidence on the record to suggest an alternative rate."[18] Due to the lack of participation by the Sun companies

[13] Id. at 32.
[14] See SAA at 870.
[15] Id.
[16] Id. at 869.
[17] See Fresh Cut Flowers from Mexico – Final.
[18] See Shanghai Taoen at 1348.

and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

On this basis, we determine that the AFA countervailable subsidy rate for the Sun companies is 186.07 percent ad valorem.

Subsidies Valuation Information

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 13 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[19] No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard.[20] According to the CVD Preamble, relationships captured by the cross-ownership definition include those where

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

[19] See U.S. Internal Revenue Service Publication 946 (2008), How to Depreciate Property, at Table B-2: Table of Class Lives and Recovery Periods.
[20] See CVD Preamble.

> minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[21]

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.[22]

Our attribution of the subsidies received by the Gold companies is described below.

GE and GHS, producers of the subject merchandise, reported on behalf of the following affiliates: SMPI, NBZH, NAPP, GZC, GLC, GSC, JHP, JAP, JGF, JQZ, JQY,JSG, YJGS, LZGS, GZGS, and WSGWS. We continue to find that cross-ownership existed between GE GHS, and the above companies during the POI based on 19 CFR 351.525(b)(vi).

We also continue to find that SMPI is the parent of the responding Gold companies. In accordance with 19 CFR 351.525(b)(6)(iii), we attributed the subsidies received by SMPI to the consolidated sales of SMPI and its subsidiaries.

We are also continuing to treat NBZH and NAPP, producers of multi-ply coated paper that met the scope criteria (e.g., weight, brightness, coating, etc.) as producers of subject merchandise and, pursuant to 19 CFR 351.525(b)(6)(ii), we attributed the subsidies received by NBZH and NAPP to the combined sales of GE, GHS, NAPP, and NBZH minus any intercompany sales.

With regard to the cross-owned suppliers of papermaking chemicals, GZC, GLC, and GSC, we determine that the papermaking chemicals are "primarily dedicated" to the production of the downstream product, paper. Therefore, pursuant to 19 CFR 525(b)(6)(iv), we attributed subsidies received by GSC, GZC, and GLC to the combined sales of the input and downstream products produced by each company (excluding sales between the companies).

Additionally, we determined that the subsidies received by JHP and JAP, the cross-owned suppliers of pulp, and the subsidies received by JGF, JQZ, JQY, JHF, JSG, YJGS, LZGS, GZGS, and WSGWS, the cross-owned suppliers of wood to JHP, should be attributed to the combined sales of the input and the downstream products produced from those inputs (excluding sales between the companies).

In a change from the Preliminary Determination, we are attributing subsidies received by GE to its consolidated sales, subsidies received by other coated paper producers (NBZH, NAPP, and GHS) to their combined unconsolidated sales (minus inter-company sales), subsidies received by the pulp producers (JAP and JHP) to the pulp producers' sales and the combined paper producers' unconsolidated sales (minus inter-company sales), subsidies received by the chemical

[21] Id. at 65401.
[22] See Fabrique at 600-604.

producers (GZC, GLC, and GSC) to the chemical producers' sales and the combined paper producers' unconsolidated sales (minus inter-company sales), and subsidies received by the forestry companies (JGF, JQZ, JQY, JHF, JSG, YJGS, LZGS, GZGS, and WSGWS) to JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). See Comment 35.

Entered Value ("EV") Adjustment

The Department has applied an EV adjustment to subsidies attributed to the Gold companies' paper producers. In regard to the paper producers' unconsolidated sales, we have removed their toll processing fees and added the sales of their products by GEHK and CU. For GE's consolidated sales, we have used GE's consolidated sales value excluding GEHK sales and removed the toll processing fees from the paper producers and added the sale of their products by GEHK and CU. See Comment 32. We refer to these adjustments when discussing attributed sales below in the "Programs Determined To Be Countervailable" section.

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 for benchmarking purposes.[23] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans."[24]

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 IDM at Comment 10, 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 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.[25]

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

[23] See 19 CFR 351.505(a)(3)(i).
[24] See 19 CFR 351.505(a)(3)(ii).
[25] See Softwood Lumber from Canada IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

developed in CFS from the PRC and more recently updated in LWTP from the PRC.[26] This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita GNIs similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

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 as of July 2007. As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the 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, and 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' final calculation memoranda. See e.g., Gold Companies Prelim Calc Memo at Exhibit 3. Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation figure as reported in the IFS. Id.

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.[27] In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of

[26] See CFS from the PRC IDM at Comment 10 and LWTP from the PRC IDM at 20-25.
[27] See LWRP from the PRC IDM at 8.

years of the term of the loan in question.[28] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

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.[29] 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.

Uncreditworthiness Benchmark

As discussed below, the Department is finding the Gold companies uncreditworthy in 2003 through 2008. To construct the uncreditworthy benchmark rate for those years, we used the long-term rates described above as the "long-term interest rate that would be paid by a creditworthy company" in the formula presented in 19 CFR 351.505(a)(3)(iii).

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.

The parties raised several additional issues regarding the benchmark and discount rate. These are addressed in Comments 19-23 below.

Analysis of Programs

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

I. **Programs Determined To Be Countervailable**

A. Preferential Lending to the Coated Paper Industry

1. Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks

Consistent with the Preliminary Determination, we find that the GOC has a policy in place to encourage the development of coated paper production through policy lending.[30] Specifically,

[28] See Citric Acid from the PRC IDM at Comment 14.
[29] See LWTP from the PRC IDM at 10.
[30] See Preliminary Determination at 10782-10784.

the Tenth Five-Year and 2010 Special Plan for the Construction of National Forestry and Papermaking Integration Project; the Development Policy for Papermaking Industry (2007); the Decision of the State Structure Adjustment GUOFA (2005) No. 40, the Guiding Catalogue for Industry Restructuring (2005 version), together indicate that the GOC has in place a policy to promote specifically the pulp and paper industry. Additionally, the five-year plans of provinces and municipalities where Respondents in this investigation are located provide evidence of sub-national government support for these objectives.[31] Also consistent with the Preliminary Determination, we find that the SOCBs are government controlled.

Therefore, the loans to coated paper 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)(ii) of the Act). We further find that the loans are de jure specific under section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in government plans and directives, to encourage and support the growth and development of the pulp and paper industry in the PRC.

To calculate the benefit under the Policy Lending program, we used the benchmarks described under "Benchmarks and Discount Rates" above.[32]

For GE, we divided the loan benefit by its consolidated sales. For NBZH, NAPP, and GHS, we divided the loan benefit by their combined unconsolidated sales (minus inter-company sales). For JAP and JHP , we divided the loan benefit by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GZC, GLC, and GSC, we divided the loan benefit by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For JGF, JQZ, JQY, JHF, JSG, YJGS, LZGS, GZGS, and WSGWS, we divided the loan benefit by JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we find that the Gold companies received a countervailable subsidy of 8.89 percent ad valorem under this program.

B. Income Tax Programs

1. Income Tax Exemption/Reduction under the Two Free/Three Half Program

Under Article 8 of the FIE Tax Law, an FIE that is "productive" and is scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.[33] The Department has previously found this program to be countervailable.[34]

[31] Id. at 10783.
[32] See also 19 CFR 351.505(c).
[33] See GOCQR at Exhibit GOC-FF-3.
[34] See, e.g., CFS from the PRC IDM at 11–12 and Citric Acid from the PRC IDM at 15–16.

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.[35] 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.[36] 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 GE, GHS, GZC, GLC, JHF, JAP, JQZ, and JQY 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 those companies would have paid in the absence of the program (30 percent) with the income tax rate the company actually paid (15 or 0 percent).

For GE, we divided the tax savings by its consolidated sales. For GHS, we divided the tax savings by the paper producers' combined unconsolidated sales (minus inter-company sales). For JAP, we divided the tax savings by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GZC and GLC, we divided the tax savings by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For JQZ, JQY, and JHF, we divided the tax savings by JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that Gold companies received a countervailable subsidy of 1.07 percent ad valorem under this program.

2. Local Income Tax Exemption and Reductions 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.[37] According to the *Regulations on Exemption and Reduction of Local Income Tax of FIEs in Jiangsu Province*, a "productive" FIE in Jiangsu Province may be exempted from the three percent local income tax during the "Two Free, Three Half" period. Additionally, according to Article 6, FIEs eligible for the reduced income tax rate of 15 percent can also be exempted from paying local income tax.[38] According to the *Provisional Rules on Exemption of Local Income Tax for FIEs and Foreign* Enterprises (Decree 14 of Zhejiang Government, 1991) at Article 4, productive FIES in Zhejiang Province are exempted from paying the local income tax for the first two years after their first profitable year, and pay at a reduced (half) rate for the next three consecutive years.[39] The Department has previously found this program to be countervailable.[40]

[35] See Preliminary Determination at 10784.
[36] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[37] See GOCQR at Exhibit GOC-FF-3.
[38] Id. at GOC-HH-3.
[39] See GOCQR1 at Exhibit GOC-SUPP-35.
[40] See e.g., CFS from the PRC IDM at 12-13 and Citric Acid from the PRC IDM at 21.

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.[41] The exemption or reduction is a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption or reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for GE, GHS, NBZH, GZC, GLC, GSC, JHP, JHF, JAP, JQZ, and JQY, 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.

For GE, we divided the tax savings by its consolidated sales. For NBZH and GHS, we divided the tax savings by their combined unconsolidated sales (minus inter-company sales). For JHP we divided the loan benefit by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GZC, GLC, and GSC, we divided the tax savings by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For JQZ, JQY, and JHF, we divided the tax savings by JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.25 percent ad valorem under this program.

3. Income Tax Subsidies for FIEs Based on Geographic Location

Pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in a Coastal Economic Development Zone* issued by the Ministry of Finance, a program was created on June 15, 1988, to promote economic development and attract foreign investment. The July 1, 1991, *FIE Tax* Law continued this policy. Under this program, "productive" FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC receive preferential tax rates of 15 percent or 24 percent, depending on the zone, under Article 7 of the *FIE Tax Law*.

Consistent with the Preliminary Determination, we find the reduced income tax rate paid by productive FIEs under this program confers a countervailable subsidy.[42] The reduced rate is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further 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.

[41] See Preliminary Determination at 10784.
[42] See Preliminary Determination at 10785.

To calculate the benefit, we treated the income tax savings enjoyed by GE, GHS, NBZH, GZC, GLC, GSC,JHP, JQZ, and JQY 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 (30 percent) with the income tax rate the company actually paid (24 or 15 percent).

For GE, we divided the tax savings by its consolidated sales. For NBZH and GHS, we divided the tax savings by their combined unconsolidated sales (minus inter-company sales). For JHP we divided the loan benefit by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GLC and GSC, we divided the tax savings by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For JQZ and JQY, we divided the tax savings by JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 1.32 percent ad valorem under this program.

4. Preferential Tax Policies for Research and Development ("R&D") at FIEs

According to the *Circular on Relevant Issues relating to Using R&D Expenses to Deduct Taxable Income by FIEs* (GUOSHUIFA {1999} No. 173), an FIE may deduct 150 percent of its qualifying R&D expenses from its taxable income when those expenses increase by 10 percent over R&D expenses incurred in the last tax year. The deduction is capped by taxable income and no carry-forward is allowed if the deduction is more than the taxable income of the current period. GE reported using this program during the POI.

Consistent with the Preliminary Determination, we find that the exemption from or reduction in the income tax received by FIEs under this program confers a countervailable subsidy.[43] 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 in accordance with section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption or reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by GE as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We divided GE's tax savings during the POI by its consolidated sales.

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.01 percent ad valorem under this program.

C. Indirect Tax and Import Tariff Programs

[43] Id.

1. VAT and Tariff Exemptions on Imported Equipment

According to the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (GUOFA No. 37), both FIEs and certain domestic enterprises are exempted 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. Qualified enterprises receive a certificate either from the National Development and Reform Commission or its provincial branch. Qualified enterprises must adequately document both the product eligibility and the eligibility of the imported article to the local Customs authority to receive the exemptions.[44] The Department has previously found this program to be countervailable.[45]

Consistent with the Preliminary Determination, we find that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy.[46] The exemptions are a financial contribution in the form of revenue forgone by the GOC, and they provide a benefit to the recipients 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). We further determine the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(i) because the program is limited to certain enterprises, i.e., FIEs and domestic enterprises with government-approved projects.[47]

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 expense these benefits in 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.[48]

For GE, GHS, NBZH, NAPP, GZC, GLC, GSC, JHP, and JAP, we applied the "0.5 test," pursuant to 19 CFR 351.524, for each of the years in which exemptions were reported (treating year of receipt as year of approval). For the years in which the amount was less than 0.5 percent, we have expensed the exempted amounts in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT and tariff exemptions were greater than or equal to 0.5 percent, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL. We used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for the POI.

For GE, we divided the benefits received in or allocated to the POI by its consolidated sales. For NBZH, NAPP, and GHS, we divided the benefits received in or allocated to the POI by their combined unconsolidated sales (minus inter-company sales). For JAP and JHP, we divided the benefits received in or allocated to the POI by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GZC, GLC, and GSC, we

[44] See GOCQR at 96-97.
[45] See Citric Acid from the PRC IDM at 19-20 and CFS from the PRC IDM at 14.
[46] See Preliminary Determination at 10785-10786.
[47] See CFS from the PRC IDM at Comment 16.
[48] See 19 CFR 351.524(c)(2)(iii).

divided the benefits received in or allocated to the POI by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 3.46 percent ad valorem under this program.

2. VAT Rebates on Domestically Produced Equipment

According to the *GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs,* the GOC refunds the VAT on purchases of certain domestically produced equipment to FIEs if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category.[49]

The Department has previously found this program to be countervailable.[50]

GE, GHS, NBZH, NAPP, GZC, GLC, JHP, and JAP reported using the program.

Consistent with our Preliminary Determination, we determine that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy.[51] The rebates are a financial contribution in the form of revenue forgone by the GOC, and they provide a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(A) and (C) of the Act.

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 expense these benefits in 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.[52]

For GE, GHS, NBZH, NAPP, GZC, GLC, JHP, and JAP, we applied the "0.5 test," pursuant to 19 CFR 351.524, for each of the years in which rebates were reported (treating year of receipt as year of approval). For the years in which the amount was less than 0.5 percent, we have expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we determine that the VAT and tariff exemptions were for capital equipment based on the companies' information.[53] Therefore, we are treating the rebates as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL. The Department used the discount

[49] See GOCQR at 109.
[50] See Citric Acid from the PRC IDM at 17-19 and CFS from the PRC IDM at 13-14.
[51] See Preliminary Determination at 10786.
[52] See 19 CFR 351.524(c)(2)(iii).
[53] See GQR at 69.

rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for the POI.

For GE, we divided the benefits received in or allocated to the POI by its consolidated sales. For NBZH, NAPP, and GHS, we divided the benefits received in or allocated to the POI by their combined unconsolidated sales (minus inter-company sales). For JAP and JHP, we divided the benefits received in or allocated to the POI by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GZC and GLC, we divided the benefits received in or allocated to the POI by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.20 percent ad valorem under this program.

3. Domestic VAT Refunds for Companies Located in the Hainan EDZ

According to the *Circular on Publication of the Preferential Policies for Hainan Province Yangpu Economic Development Zone (QIONGFU {1999} No. 54),* enterprises may receive VAT refunds based on level of investment.[54] The program was previously found countervailable.[55]

JHP reported using the program during the POI.[56]

Consistent with the Preliminary Determination, we determine that the domestic VAT refund confers a countervailable subsidy.[57] The refund is a financial contribution in the form of revenue forgone by the local government, and it provides a benefit to the recipient in the amount of the refunded taxes. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further determine that the program is limited to enterprises located in a designated geographical region and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the VAT refund enjoyed by JHP as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We divided the benefits received in or allocated to the POI by JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.37 percent ad valorem under this program.

4. Exemption from City Maintenance and Construction Taxes and Education Surcharges for FIEs

[54] See GOCQR at 117 and GQR at 71.
[55] See CFS from the PRC IDM at 15.
[56] See GQR at 71.
[57] See Preliminary Determination at 10786-87.

According to the GOC, FIEs are not subject to city maintenance and constructions taxes or the education surcharge.[58]

SMPI, GE, GHS, NBZH, NAPP, GZC, GLC, GSC, JHP, and JAP reported that they did not pay these taxes or the surcharge and calculated what they would have paid during the POI had they been subject to them.[59]

Consistent with the Preliminary Determination, we find that the exemptions from the city maintenance and construction taxes and education surcharge confer a countervailable subsidy.[60] The exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, FIEs, and hence, specific under section 771(5A)(D)(i) of the Act.

For SMPI, we divided the tax savings by its consolidated sales. For GE, we divided the tax savings by its consolidated sales. For NAPP, NBZH and GHS, we divided the tax savings by their combined unconsolidated sales (minus inter-company sales). For JAP and JHP, we divided the loan benefit by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GZC, GLC, and GSC, we divided the tax savings by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.34 percent ad valorem under this program.

D. Government Provision of Goods and Services for LTAR

1. Provision of Electricity

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning the alleged subsidy program, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.[61]

However, where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable.

Consistent with the Preliminary Determination, the Department finds that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act and is

[58] See GOCQR1 at 4.
[59] See GQR at 94.
[60] See Preliminary Determination at 10787.
[61] See, e.g., KASR from the PRC IDM at 17 and 22.

specific, under section 771(5A) of the Act.[62] To determine the existence and the 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 the companies who sourced electricity from the state grid, SMPI, NBZH, NAPP, JHP, JAP, JGF, JQZ, JQY, JHF, JSG, YJGS, LZGS, GZGS, and WSGWS, to the highest rates that they would have paid in the PRC during the POI. Specifically, we used the highest peak, valley and normal rates for the Gold companies based upon their user category. 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 in this investigation. See Comment 41.

For SMPI, we divided the benfit by its consolidated sales. For NBZH, NAPP, and GHS, we divided the benefit by their combined unconsolidated sales (minus inter-company sales). For JAP and JHP, we divided the benefit by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For GZC, GLC, and GSC, we divided the benefit by the chemical producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales). For JGF, JQZ, JQY, JHF, JSG, YJGS, LZGS, GZGS, and WSGWS, we divided the benefit by JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.08 percent ad valorem under this program.

2. Provision of Papermaking Chemicals For LTAR

In the Preliminary Determination, we found that the respondents received a financial contribution from the GOC through its provision of certain papermaking chemicals (caustic soda, kaolin clay, and titanium dioxide) for LTAR.[63] Based on the record at that time, we were not able to determine whether a benefit was conferred under the program.

To determine whether this financial contribution results in a subsidy to the coated paper 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 papermaking chemicals. 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. See Softwood Lumber from Canada IDM at "Analysis of

[62] See Preliminary Determination at 10787.
[63] See Preliminary Determination at 10778.

Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

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

Based on the GOC's responses, SOEs and collectives account for 36.68 percent and 33.1 percent of domestic production of caustic soda and kaolin clay, respectively. We determine that these levels of SOE and collective ownership are substantial. We also note that the reported ownership percentages may understate the presence of SOEs and collectives in the caustic soda and kaolin clay industries because of the GOC's method of classifying possible SOEs as FIEs; the presence of producers with "unknown" ownership and, for kaolin clay, the GOC's failure to include production by enterprises with sales income of less than RMB 5M. Thus, the reported amounts of 33.1 to 36.68 percent should be viewed as the minimum amounts of SOE and collective ownership in these industries. Combining this with the fact that imports as a share of domestic consumption are insignificant, we may reasonably conclude that domestic prices in the PRC for caustic soda and kaolin clay are distorted such that they cannot be used as a tier one benchmark.[64] For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark. See Comment 14.

Turning to tier two benchmarks, i.e., world market prices available to purchasers in the PRC, Petitioners have put on the record price reports from ICIS, a firm providing market intelligence for the chemical industry, for caustic soda and titanium dioxide.[65] These price reports contain monthly prices from numerous markets around the world, which we have averaged to compute average, monthly world market prices. Regarding kaolin clay, we have placed on the record U.S. dollar-denominated prices from the Global Trade Atlas.[66] Using this information, we have calculated weight-average, monthly world market prices (excluding Chinese data).

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 these papermaking chemicals to the respondents' plants.[67] We have also added import duties, as reported by the GOC, and the VAT applicable to imports of caustic soda, kaolin clay and titanium dioxide into the PRC. We have compared these prices to the weighted-average

[64] The Department has previously determined that high levels of import penetration may indicate that domestic prices are not distorted, even where government ownership of domestic production is significant. See OTR Tires from the PRC IDM at 11.
[65] See Petitioners' Factual Submission at Exhibits 27 and 28.
[66] See APP CS at Attachment 3.
[67] See APP CS at Attachment 4.

prices paid by the respondents for domestically sourced papermaking chemicals,[68] including any taxes and delivery charges incurred to deliver the product to the respondents' plants.

Based on this comparison,[69] we determine that the GOC provided caustic soda 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). Regarding titanim dioxide and kaolin clay, any potential benefit to the Gold companies under this program was less than .005 percent in the POI. Thus, without prejudice to the question of whether the GOC's provision of titanium dioxide and kaolin clay confers a countervailable subsidy, and consistent with our practice,[70] we determine that any potential subsidy is not measurable.

During the course of this investigation the Department requested certain information in order to determine whether the provision of caustic soda was specific to the papermaking chemical industry. Specifically, the Department twice requested that the GOC identify the "unlimited number" of industries that use papermaking chemicals and the share of each papermaking chemical used by that industry.[71] In response, while the GOC claimed that caustic soda, kaolin clay and titanium dioxide are used by numerous industries in response to our questions, it has not provided support for this claim. Nor has the GOC provided information about the extent to which these chemicals are used by different industries. Instead, the GOC has responded that it is mathematically impossible to calculate the shares used by different industries "because the number of downstream industries is indefinite."[72] Rather than make any attempt to identify the users of these chemicals or support its claims that they are numerous or "indefinite," the GOC put the blame on Petitioners, stating that Petitioners did not claim that these chemicals cannot be used in any other industry. Had Petitioners done so, the GOC asserts that it would have provided evidence of use in those industries.[73] Finally, although offering some analysis based on the Gold companies' usage, that analysis focuses narrowly on coated paper and not the papermaking industry as a whole.

Based on the above, we determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available."[74] 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. Consequently, an adverse inference is warranted in the application of facts available.[75] Therefore, we are assuming adversely that the subsidies bestowed by the GOC through the provision of caustic soda are specific. See Comment 15.

To compute the subsidy: (1) we converted the per unit prices paid by the Gold companies for their caustic soda purchases from RMB to USD, then compared that to the per unit USD monthly benchmark prices to arrive at the per MT benefit in dollars; (2) we converted this per MT benefit

---

[68] Because the benchmark prices are expressed in dollars, we converted the prices for domestic purchases from RMB to dollars using monthly exchange rates from the Federal Reserve. Id.
[69] Id.
[70] See CFS from the PRC IDM at 15.
[71] See GSQR3 at 1.
[72] See GOCSQR4 at 1. See also the InitQ.
[73] Id.
[74] See sections 776(a)(1) and (a)(2)(A) of the Act.
[75] See section 776(b) of the Act.

to RMB; (3) we multiplied the per MT benefit (RMB) by the amounts purchased in each month to arrive at the total monthly benefit in RMB; and (4) we summed the monthly benefits to arrive at the annual, POI benefit.

For GE, we divided the benefits received in or allocated to the POI by its consolidated sales. For NBZH, NAPP, and GHS, we divided the benefit by their combined unconsolidated sales (minus inter-company sales). For JAP and JHP, we divided the benefit by the pulp producer's sales and the combined paper producers' unconsolidated sales (minus inter-company sales).

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.80 percent ad valorem under this program.

3. Provision of Land for LTAR in the YEDZ

Information from the questionnaire responses and verification shows that the Gold companies purchased land-use rights for two parcels of land in the YEDZ.[76] One purchase occurred prior to the cut-off date[77] and is not addressed further here. At the time of the Gold companies' second purchase of land-use rights in the YEDZ, the authority to make the sale rested with HYDC, a company we determine to be a public authority.[78]

The Department sought information from the GOC about the pricing of land-use rights in the YEDZ. The GOC responded that it played no role in setting those prices.[79] Despite our request, officials from HYDC did not meet with the Department officials at verification.

The provision of land-use rights is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, which gives rise to a benefit when the price paid by the purchaser of the land-use rights is LTAR.[80] The Department's benchmark hierarchy is described above in connection with the GOC's provision of papermaking chemicals. See "Provision of Papermaking Chemicals for LTAR," above. Consistent with the GE Post-Preliminary Analysis, we are using the benchmark developed in LWS from the PRC and Citric Acid from the PRC.[81] This benchmark is an average of the prices of industrial estates, parks, and zones in Thailand, as reported in CB Richard Ellis's "Asian Industrial Property Market Flash" and "Asia Marketview" for quarters 1- 4 of 2007.[82] Comparing this benchmark to the price that JHP paid in 2007 for their land-use rights in YEDZ shows that the JHP received a benefit.[83]

Finally, regarding specificity, the GOC failed to provide the requested information regarding land prices in the YEDZ and officials from HYDC refused to participate in verification. Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department must rely on "facts

[76] See GOC Verification Report at 4.
[77] See GQR at 88.
[78] See GOCSQR2 at 7-8 and GOC Verification Report at 3-4.
[79] See GOC Verification Report at 4.
[80] See 19 CFR 351.511(a).
[81] See Citric Acid from the PRC IDM at Comment 23 and LWS from the PRC at 35642.
[82] See APP CS at Attachment 5.
[83] Id.

available." Moreover, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, pursuant to section 776(b) of the Act, an adverse inference is warranted in the application of facts available. As adverse facts available, we determine that the subsidy conferred through the GOC's provision of land-use rights in the YEDZ is specific.

To calculate this subsidy rate: (1) we converted the "per square foot" price from the CB Richard Ellis reports to a "per square meter" ("PSM") benchmark price; and (2) we took the difference of the benchmark price and the PSM price paid by the Gold companies and multiplied it by the number of square meters purchased. This amount exceeded 0.5 percent of the relevant Gold companies' sales in 2007 (see the "Attribution" section of the Preliminary Determination). Consequently, in accordance with 19 CFR 351.524(b)(2), we allocated the subsidy benefit over time. Specifically, we allocated the benefit over the BPI allocated term of the land-use rights contract, using a 30-year interest rate as best available information. (For an explanation of this discount rate, see the "Benchmark and Discount Rates" section of the Preliminary Determination.) Finally, we divided the POI benefit by JHP's sales and the combined paper producers' unconsolidated sales (minus inter-company sales)

On this basis, we determine that the Gold companies received a countervailable subsidy of 0.85 percent ad valorem under this program.

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

A. Famous Brands Awards

GHS reported receiving a famous brand award from the local government in 2006.[84]

We determine that the total amount of the grant was less than 0.5 percent of the paper-producing Gold companies' sales in 2006. Therefore, we have expensed the benefit in 2006 pursuant to 19 CFR 351.524(b)(2), and we determine that the Gold companies received no benefit from this program during the POI. As a result, we have not made a determination with respect to whether this program provided a countervailable subsidy.

B. Sichuan Technology Renovation Program

The Gold companies reported that one of their responding affiliates, JAP, received assistance during the POI under the Sichuan Technology Renovation Program.[85] In response to our questions, the GOC reported that this assistance was provided pursuant to the *Circular on Printing and Distributing the Measures on Administration of Enterprise Technology Renovation Fund in Sichuan Province* (CHUANCAIJIAN {2005} No. 156). Under this circular, funds are given to accelerate industrialization, industry restructuring and upgrade, and the technological transformation of enterprises.[86]

[84] See GQR at 79.
[85] See GSQR1 at 6-7.
[86] See GOCSQR2 at 21-28 and Exhibit 2.

Given that we did not seek or receive information about these grants until late in this investigation, we do not have sufficient evidence to make a finding regarding the specificity of this program. Under 19 CFR 351.311(c)(2), if we do not have adequate time to investigate a subsidy discovered during the course of an investigation, we may defer the investigation until a future administrative review. Therefore, because of the limited available information on the record, we are deferring our examination of this program until a future administrative review should this investigation result in a countervailing duty order.

C. Ya'an Technology Innovation Program

The Gold companies reported that Sichuan Jinan Pulp & Paper Co., Ltd. received assistance during the POI under the Ya'an Technology Renovation Program. In response to our questions, the GOC reported that this assistance was provided pursuant to the *Circular on Printing and Distributing the Provisional Measures on Administration of Use of Industrial Development Fund in Ya'an and the Provisional Measures on Administration of Use of Industrial Enterprise Technological Renovation and Innovation Fund* (YAFUFA {2007} No. 23). Under this circular, funds are given to promote the technological transformation and innovation of industrial enterprises.

Any potential benefit to the Gold companies under this program was less than .005 percent in the POI. Thus, without determining whether this program confers countervailable subsidies and consistent with our practice, we are not including the assistance received by the Gold companies under this program in the countervailing duty rate because there is no measurable benefit.

D. Lending Programs

1. Fast-Growth High-Yield Forestry Program Loans

E. Income Tax Programs

1. Preferential Tax Policies for Technology or Knowledge-Intensive FIEs
2. Preferential Tax Programs for FIEs that are High or New Technology Enterprises
3. Income Tax Reductions for High-Technology Industries in Guangdong Province
4. Income Tax Credits for Domestically Owned Companies Purchasing Domestically
5. Produced Equipment
6. Income Tax Exemption Program for Export-Oriented FIEs
7. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
8. Income Tax Reduction for FIEs Purchasing Domestically Produced Equipment

F. Grant Programs

1. Funds for Forestry Plantation Construction and Management
2. The State Key Technologies Renovation Project Fund
3. Loan Interest Subsidies for Major Industrial Technology Reform Projects in Wuhan
4. Funds for Water Treatment Improvement Projects in the Songhuajiang Basin

5. Special Fund for Energy Saving Technology Reform in Wuhan and Shouguang Municipality
6. Clean Production Technology Fund
7. Grants to Enterprises Achieving RMB 10 Billion in Sales (Yanzhou City and Xinyan Town) (previously "Grants to Enterprises Achieving RMB 10 Billion in Sales Revenue and Implementing "Three Significant Projects")
8. Grants to Large Enterprises in Jining City
9. Funds for Water Treatment and Pollution Control Projects for the Theree Rivers and Three Lakes in Shandong Province
10. Grants for Programs Under the 2007 Science and Technology Development Plan in Shandong Province
11. Special Funds for Encouraging Foreign Economic and Trade Development and for Drawing Significant Foreign Investment Projects in Shandong Province
12. Interest Subsidies for Forestry Loans

G. EDZ Programs

1. Subsidies in the Nanchang EDZ
2. Subsidies in the Wuhan EDZ
3. Subsidies in the Zhenjiang EDZ

Analysis of Comments

General Issues

Comment 1 Application of CVD Law to the PRC

The GOC, the Gold companies, and the Sun companies 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.[87]

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

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 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."[88] This structure, according to the GOC, reflects the fact that Congress has always considered the AD and CVD laws to operate in tandem.[89] Additionally, the GOC points to the TAA of 1979,[90] 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.[91] 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.[92]

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.[93] 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.[94]

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,[95] 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."[96] The GOC further contends that the Committee clearly understood the CAFC's unambiguous holding in Georgetown Steel.[97]

---

[88] See section 701 of the Act.

[89] 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").

[90] See TAA of 1979 at 144.

[91] See section 771 of the Act.

[92] 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).

[93] See OCTA of 1988 at 1184.

[94] See section 701 and 771(5) of the Act.

[95] 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."

[96] See OTCA – House Report at 138 (emphasis added).

[97] 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

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,[98] 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."[99]

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.[100] According to the GOC, the definition that was adopted flowed directly from the Department's historical definition of an NME in the CVD context.[101]

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,"[102] 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.[103]

The GOC acknowledges that courts are sometimes hesitant to look to Congressional acquiescence as Congress speaking directly on an issue,[104] but argues that the Department has wrongly treated this as an outright prohibition. Citing Rapanos, the GOC notes that this does not

---

Poland and Czechoslovakia, by holding that the countervailing duty law does not apply to nonmarket economy countries." (citing Georgetown Steel) (emphasis added)).

[98] See OTCA – House and Senate Conference Report at 628.

[99] See SAA at 926 (emphasis added).

[100] See section 771(18) of the Act, which was added as part of the OTCA of 1988, at § 1316(b).

[101] See Wire Rod from Czechoslovakia at 19374.

[102] See OTCA – House and Senate Conference Report at 590.

[103] 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.).

[104] 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").

mean courts will never find such acquiescence to be significant and binding upon agencies.[105] To the contrary, according to the GOC, Congressional acquiescence is binding when: (i) Congress considered and rejected the "precise issue" presented before the Court;[106] (ii) Congress was aware of "what was going on," i.e., must have understood the current interpretation at issue;[107] and (iii) Congress "affirmatively manifests its acquiescence" through subsequent legislative action confirming the meaning of the acquiescence.[108] 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;[109] (ii) Congress was aware of the Department's interpretation, upheld in Georgetown Steel, that the CVD law did not apply to NMEs,[110] 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.[111] The GOC distinguishes this situation from others in which Congressional acquiescence was claimed but not actually present.[112] 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.[113] 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…"[114] 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.[115] 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."[116] 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

---

[105] 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 original) (citing Bob Jones at 600).
[106] See Bob Jones at 600 and Rapanos at 750.
[107] See Bob Jones at 600-601.
[108] Id. at 601.
[109] See OTCA – House Report at 138.
[110] Id.
[111] See SAA at 926; section 771(18) of the Act; and OTCA – House and Senate Conference Report at 590.
[112] See GOC Case Brief at 20.
[113] See Solid Waste at 159, 169-170.
[114] See KASR from the PRC IDM at 27.
[115] See Permanent Normal Trade Relations with the People's Republic of China, H.R. Rep. 106-632 (May 22, 2000).
[116] See Pub. L. No. 106-286 (October 10, 2000) at § 413(a)(1), codified at 22 U.S.C. § 6943(a)(1).

investigation has been found to be operating as a MOI.[117] 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 the PNTR legislation was passed;[118] and (ii) the Department continued to rule that the CVD law should not be applied to NME countries even after the PNTR legislation.[119] 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.

Petitioners contend that the statute unambiguously requires the application of the CVD law to the PRC because the language of section 701(a)(1) of the Act states that countervailing duties may be imposed on products from all countries. Petitioners also point to the subsidy definition added to the statute by the URAA (section 771(5)(A) and (B)) which, they claim, is not confined to activities that can only be engaged in by market economy governments. Petitioners claim that the unambiguous nature of the statute renders the GOC's arguments about a "statutory scheme confirmed by Congressional acquiescence" prohibiting application of the CVD law moot because the Department does not need to look beyond the law. Petitioners argue that in Ad Hoc Committee, the CAFC confronted similar issues to those raised by the respondents in this case and the court found that because there was no ambiguity in the statutory provisions at issue, only Congress could fix the perceived problem.

Petitioners further contend that even if the CVD statute were ambiguous, Georgetown Steel does not prohibit the application of the CVD law to the PRC. First, Petitioners argue that Georgetown Steel affirmed the Department's decision not to apply the CVD law to certain Soviet-era economies but did not prohibit the Department from applying the CVD law to all NMEs. Instead, the CAFC held that the "the agency administering the countervailing duty law has broad discretion in determining the existence of a 'bounty' or 'grant' under that law"[120] and, according to Petitioners, the CAFC made clear that it was deferring to the Department's discretion. Next, Petitioners argue that Georgetown Steel involved the now-repealed section 303 of the Act, which used the imprecise terminology, "bounty or grant." Petitioners argue that use of the term "bounty or grant" made it impossible for the Department to measure subsidies in NMEs at the time of Georgetown Steel. However, under the new, replacement statute, Petitioners state that the Department can use the new subsidy definition to find subsidies, providing a clear indication that Georgetown Steel does not exempt the PRC from the current version of the CVD law. Third, citing the Department's reasoning in Magnesia Bricks from the PRC, Petitioners argue that the changes in the PRC in the last 20 years distinguish it from the Soviet-era economies at issue in Georgetown Steel.[121]

---

[117] 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").

[118] 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").

[119] See Sulfanilic Acid from Hungary at 60223.

[120] Id.

[121] See Magnesia Bricks from the PRC IDM at Comment 1, and Georgetown Steel Memorandum.

Finally, Petitioners argue that Congressional action since Georgetown Steel evidences Congressional intent to apply the CVD law to the PRC. First, Petitioners assert that the 1994 URAA made clear that the CVD law should apply to the PRC, noting that (i) the SCM Agreement as implemented in the URAA does not contain the limitations of the 1979 Tokyo Round Subsidies Code; (ii) the URAA replaced the term "bounty or grant" in section 303 of the Act with the current definition of subsidy and countervailable subsidy, and (iii) the GOC's description of the URAA's legislative history is incomplete and misleading because in addressing Georgetown Steel, the Congress was making clear that Commerce did not need to look at the effects of subsidies which had no bearing on whether the statute limits application of the CVD law to NMEs. Second, Petitioners assert that the 2000 PNTR legislation demonstrates Congressional intent to apply the CVD law to China because that legislation contained Congress' assent to the terms of the PRC's WTO Accession Protocol,[122] which in turn reflected the PRC's agreement to be subject to both antidumping and countervailing duties, and appropriated money from the federal budget to defend U.S. CVD measures with respect to products for the PRC.[123] Petitioners dispute the GOC's claim that Article 15 limits the PRC's agreement simultaneous application of antidumping and countervailing duties to MOIs on the grounds that the evidence relied upon by the GOC is irrelevant. Third, Petitioners dispute the relevance the GOC attaches to the OTCA of 1988. Specifically, Petitioners claim, if Congress had intended the definition of NME it was adopting to have any relevance in CVD law, it would have said so. Petitioners continue that legislative history cannot impose requirements not present in a statute or create ambiguity in what is otherwise an unambiguous statute.[124]

Department's Position

We disagree with the GOC, the Gold companies, and the Sun companies 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.[125]

Congress granted the Department the general authority to conduct CVD investigations.[126] 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 . . . ."[127] 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.[128]

---

[122] See 106 Pub. 1. 286, 101 (Oct. 10, 2000); H.R. Rep. No.1 06-632 at 2, 11-12 (May 22, 2000).
[123] See 22 U.S.C. § 6943(a)(1).
[124] See International Brotherhood at 699-700.
[125] 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.
[126] See, e.g., sections 701, 771(5), and 771(5A) of the Act.
[127] See section 701(a) of the Act.
[128] See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME."[129] 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."[130] Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government have eliminated price controls on most products . . . ."[131] 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.[132]

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.[133] 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.[134] 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.[135]

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.[136] 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.

---

[129] See Wire Rod from Poland and Wire Rod from Czechoslovakia.
[130] See, e.g., Wire Rod from Czechoslovakia at 19373.
[131] See Georgetown Steel, discussed in CFS from the PRC.
[132] See, e.g. Wire Decking from the PRC.
[133] See Georgetown Steel Memorandum at 4-5.
[134] Id. at 5.
[135] Id.
[136] Id.; see also Lined Paper Memorandum at 22.

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.[137] 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. 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.[138] 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."[139] 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.[140] 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

[137] See Georgetown Steel at 1318.
[138] See, e.g., Wire Rod from Czechoslovakia at 19373.
[139] See Georgetown Steel at 1316.
[140] Id. at 1318.

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."[141] The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general and the PRC in particular. In that same trade law, Congress explained that "{o}n November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning the terms of the People's Republic of China's eventual accession to the World Trade Organization."[142] 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."[143] 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.[144] 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.[145] Similar exceptional circumstances are not present in this case.

---

[141] See 22 U.S.C. § 6943(a)(1) (emphasis added).
[142] See 22 U.S.C. § 6901(8).
[143] See 22 U.S.C. § 6841(5).
[144] 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)).
[145] 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)).

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.[146] In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO," contemplates the application of the CVD law to the PRC.[147] 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 Procedures 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.[148] 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;[149] (ii) in 1993, when the Department issued the "General Issues Appendix," which was a written

---

[146] See CFS from the PRC at Comment 1.

[147] See 22 U.S.C. § 6941(5).

[148] 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.

[149] 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.

statement that resolved various issues related to the CVD law;[150] 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.[151]

Petitioners contend that the GOC's arguments should be rejected. First, according to Petitioners, the GOC has failed to establish that the APA applies to CVD proceedings. Petitioners state that the Department has already dismissed this argument in CWP from the PRC and Magnesia Bricks from the PRC[152], and that the GOC's argument is premised on the erroneous conclusion that the Department's prior position regarding the applicability of the CVD law to the PRC constituted a rule that required use of the APA's notice-and-comment procedures. Petitioners state that the Department is entitled to change its practice provided that it explains the basis for its change, and notes that a change in factual circumstances is a valid reason for an agency to revisit a practice based on a previous interpretation.[153] Petitioners conclude with noting the Georgetown Steel Memorandum, where the Department distinguished the PRC's current economy from the Soviet-era economies at issue in Georgetown Steel, as an example of such a change in practice – that being the dramatic difference between the 1984 command economies of certain Eastern Europe countries and the PRC's current economy.[154]

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."[155] The GOC's arguments on this issue are similar to those it made in CFS from the PRC, and the Department's position on this issue was fully explained in its response to those arguments in that case. Consequently, we are adopting our analysis in CFS from the PRC,[156] for this proceeding, incorporated herein by reference.

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.[157] 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

[150] See Certain Steel Products from Austria at 37217.
[151] See OTR Tires from the PRC IDM at 45.
[152] See CWP from the PRC IDM at Comment 1 and Magnesia Bricks from the PRC IDM at Comment 3.
[153] See Chevron at 863-864.
[154] See Petitioners' Rebuttal Brief at 33.
[155] Id. (citing 5 U.S.C. § 553(b)(3)(A)).
[156] See CFS from the PRC IDM at Comment 2.
[157] See GPX II at 1243.

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.[158]

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[159] 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[160] and the statutory definition of "nonmarket economy."[161] 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.[162] 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.

The Gold companies argue that the antidumping law is intended to offset unfairly low prices in the U.S. market,[163] 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.[164] The Gold companies further argue 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.[165] The Gold companies assert that this is necessary because both remedies have the same purpose of protecting U.S producers from low-priced imports.

The Gold companies next point 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 the Gold companies, this broad distortion would necessarily include any countervailable subsidies. And, the Gold companies argue, 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.[166] Thus, the Gold companies believe it fair to characterize the NME AD methodology as a hybrid remedy addressing both dumping and subsidies.

---

[158] Id.
[159] Id.
[160] See Wire Rod from Czechoslovakia at 19371.
[161] See section 771(18) of the Act.
[162] See Georgetown Steel Memorandum at 10.
[163] See Badger-Powhatan at 656.
[164] See Zenith at 455-456.
[165] See section 772(c)(1)(C) of the Act.
[166] See section 773(c) of the Act. The Gold companies 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 Gold companies continue by stating 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, the Gold companies claim that the two duties are being applied to remedy substantially overlapping injuries. 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. The Gold companies point 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.

The Gold companies next argue 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, the Gold companies state 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 the Gold companies.

Finally, the Gold companies argue 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 the NME AD methodology and the CVD law.[167] Because the Department has not done so, the Gold companies urge the Department to follow the alternative provided by the court, i.e., of not imposing CVDs on NME goods.[168]

The Sun companies also contend that double remedies result from imposing both countervailing duties and antidumping duties calculated using the NME methodology. This occurs, they claim, because both methods attempt to offset or eliminate the competitive advantage which an NME government gives its producers so they can sell in the United States at unfairly low prices. Specifically, to calculate the level of the countervailing duty, the Department uses a non-distorted market-determined price as a benchmark and to calculate the amount of dumping the Department uses subsidy-free prices and financial data from a third country. The Sun companies contend that because the normal value calculated in this manner is subsidy-free, it is presumably higher than any subsidized price and, therefore, captures any subsidy. The result, according to the Sun companies, is that the Department will always assess a duty on the same subsidies twice when the Department applies the countervailing duty law and the NME methodology under the antidumping law.

[167] See GPX II at 1243.
[168] Id.

The Sun companies argue further that the Department's reasons for continuing to treat China as an NME and its decision to impose countervailing duties are completely at odds. Citing HSLW from the PRC, the Sun companies argue that the NME AD methodology seeks to determine what the NME producer's costs would be if they were determined by market forces and, thus, remove any government distortions.[169] In applying the CVD law to China, however, the Department decided that market forces were sufficiently developed that the agency could determine that a particular subsidy distorted prices. The Sun companies contend that when considered side-by-side these reasons do not make sense because any distortion being addressed under the CVD law has already been addressed by the NME AD methodology.

The Sun companies conclude that consistent with GPX III, the Department cannot apply the countervailing duty law to China when it is concurrently applying the NME AD methodology.

Petitioners argue that the Department's application of CVD and the NME AD methodology is not unreasonable and does not necessarily result in double remedies. Petitioners assert that the AD and CVD laws address different unfair trade practices committed by different parties, arguing that the AD law is intended to protect U.S. industries from international price discrimination, while the purpose of CVD law is to offset any unfair advantage foreign governments confer on their producers or exporters. Petitioners state that Congress did not intend countervailing duties to reflect, or even approximate, the price effects of subsidies on subject merchandise, as evidenced by the fact that countervailing duties are calculated in terms of benefit to the recipient, and the statute's instruction that the effects of subsidies are irrelevant to the Department's analysis.[170] Petitioners further state that export subsidies constitute the only recognized instance in which one unfair trade practice can lead to the imposition of both AD and CVD, noting that section 772(c)(1)(C) of the Act addresses this situation. Petitioners argue that in all other instances, the company or government practices underlying AD and CVD are distinct, as are the remedies, and they conclude that the Respondents' attempts to conflate the AD and CVD laws necessarily fail.

Petitioners next assert that China agreed to be subject to both antidumping and countervailing duties as a precondition to joining the WTO[171] and that, based on these and other concessions, the United States granted China PNTR. According to Petitioners, the Accession Protocol, like U.S. law, does not limit the simultaneous application of antidumping and countervailing duties.

Petitioners assert that the alleged double remedy arises from flawed logic and unsupportable economic assumptions, i.e., Chinese domestic subsidies always lower export prices and never lower normal value. In particular, Petitioners contend that domestic subsidies can be used for any number of purposes and do not necessarily have any impact on pricing; that certain types of subsidies, e.g., a subsidy used to improve the Chinese producer's production process, would lower dumping margins, and; that to the extent domestic subsidies do lower prices they do so for all markets, not just the United States.

---

[169] See HSLW from the PRC at 71796.
[170] See section 771(5)(C) and (E) of the Act.
[171] See Accession Protocol at Art. 15.

Petitioners further contend that the Department's use of out-of-country benchmarks is not evidence of an unreasonable application of the CVD law. Petitioners cite Eurodif to argue that in the absence of unambiguous statutory language, the Department's interpretation governs unless it is unreasonable, and contend that the Department's actions were reasonable.[172] Petitioners further note that this argument ignores cases where the Department has used out-of-country benchmarks from market economies,[173] and that use of such benchmarks is authorized by the Accession Protocol.[174]

Finally, Petitioners argue that the GPX decisions do not prohibit the simultaneous application of the CVD law and NME portions of the AD law to the PRC. Petitioners argue that the decisions were wrongly decided and that all appellate rights have not been exhausted.

Department's Position

We disagree with the GOC, the Gold companies, and the Sun companies. First, their reliance on GPX II is misplaced because this decision is not final because a final order has not been issued and all appellate rights have not been exhausted. 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.[175] The summary of those comments and the Department's position are detailed in the final determination of the concurrent antidumping investigation.[176]

Comment 4 Cutoff Date for Identifying Subsidies

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."[177] 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 Determination 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

[172] See Eurodif at 878, 886.
[173] See, e.g., CFS from Indonesia.
[174] See Accession Protocol at Art. 15(b).
[175] 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.
[176] See CFS from the PRC AD IDM at Comment 2.
[177] See GPX II at 1246.

not apply to a country while it is still considered an NME.[178] 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, at a minimum, the GOC argues that the analysis contained in the Lined Paper Memorandum requires a cut-off date no earlier than January 1, 2005.

Petitioners argue that the Department should continue to include at least those subsidies granted after December 11, 2001, in this investigation. They claim that the GOC has presented no arguments that the Department has not already addressed on this issue.[179] Petitioners further argue that the Department should apply its normal methodology as explained in 19 CFR 351.524(b) and countervail all subsidies received during the AUL period.

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 further do not find the GOC's reliance on GPX II to be persuasive because, as further explained below, we do not agree with the decision, and because the decision is not final.

We have selected December 11, 2001 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.[180] 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.

---

[178] See Sulfanilic Acid from Hungary IDM at 8, 14.
[179] Petitioners cite, e.g., to Wire Decking from the PRC IDM at Comment 15.
[180] See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (Oct. 1, 2001).

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 either January 1, 2005, (the start of the POI in the investigation of CFS from the PRC), or April 9, 2007 (the date of the Department's preliminary results in CFS from the PRC-Preliminary Determination). Initiation of CVD 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 Initiation. 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."[181] 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. The GOC's reliance on the Lined Paper Memorandum is misplaced, as that document speaks to the NME status of China in the context of an antidumping investigation, not in relation to the cut-off date utilized by the Department in measuring subsidies.

Regarding Petitioners' argument that subsidies granted prior to the cut-off date should be included in this investigation, we reiterate that economic changes that occurred leading up to and at the time of WTO accession allow us to identify or measure countervailable subsidies bestowed upon Chinese producers after December 11, 2001. Because subsidies cannot be meaningfully identified and measured prior to that date, we have determined that 19 CFR 351.524(b) is not applicable.[182]

Currency

Comment 5 Opportunity to Comment and the Initiation Standard

Petitioners argue that section 702(b)(1) of the Act requires the Department to initiate an

[181] See 22 U.S.C. § 6943(a)(1) (emphasis added).
[182] See CWP from the PRC IDM at Comment 2.

investigation of the GOC's provision of a countervailable subsidy through currency undervaluation. Petitioners contend that, by affording less than one week to respond to the decision not to initiate an investigation, the Department deprived interested parties of a meaningful opportunity to comment. In particular, Petitioners argue that the Department is required to identify deficiencies in record information and to provide interested parties the opportunity to cure such deficiencies by submitting additional information.[183] Noting that the Department usually makes such requests when it deems them necessary in a record proceeding, Petitioners assert that this was not done with respect to currency. Furthermore, Petitioners argue that the Currency Memo relied on new factual information that the interested parties could not clarify or rebut pursuant to 19 CFR 351.301(c)(1) because it was too late in the administrative process. Petitioners further maintain that the eight months the Department took to consider this subsidy allegation is inconsistent with its usual practice.

Petitioners argue next that, although their Revised Subsidy Allegation provided substantial information on the threshold requirements for initiating an investigation of a countervailable subsidy and support for each subsidy element, the Department intentionally neglected to address the legal standard for initiation. Noting that section 702(b)(1) of the Act requires initiation of a CVD proceeding when an interested party files a petition alleging the necessary elements for the imposition of a duty which is supported by information reasonably available to the party making the allegation, Petitioners argue that Congress intended that most allegations be investigated unless they are frivolous, not reasonably supported by facts or lacking important facts reasonably available to the petitioner.[184] Furthermore, Petitioners assert that the Federal Circuit has recognized that Congress intended the Department's threshold for initiation to be roughly analogous to the rigor of the requirements for establishing a cause of action in civil litigation, and that the Supreme Court has determined that in civil litigation, a well-pleaded complaint may proceed even if actual proof of the facts alleged is improbable and recovery is unlikely.[185] Petitioners conclude that under the correct standard, the Department must initiate an investigation of China's currency undervaluation.

The GOC argues in rebuttal that the Department appropriately declined to investigate the currency allegation. The GOC contends that currency manipulation allegations are not within the jurisdiction of the Department or the disciplines of the SCM Agreement. The GOC also disagrees that Petitioners have not had adequate process noting that they have had multiple opportunities in this investigation to file currency allegations.

More generally, the GOC concludes that the Department's analysis was sound and set forth in great detail. The Gold Companies incorporate by reference the GOC's arguments on the currency allegation.

Department's Position

We disagree with Petitioners' claims regarding our decision not to investigate their currency subsidy allegations. Petitioners' initial allegation, filed in its petition, was that the GOC

[183] See Roses, Inc. at 1572-75 (dissenting opinion).
[184] Id. (citing H.R. Rep. No. 317, 96th Cong., 1st Sess. 51 (1979)).
[185] See Bell Atl. Corp. at 556; see also Iqbal, at 1953.

maintains an exchange rate that effectively prevents the appreciation of the Chinese currency (RMB) against the U.S. dollar in a manner that constitutes an export subsidy or price support. This claim was rejected as insufficient, for the reasons the Department explained in the Initiation Notice:

> Petitioners have failed to sufficiently allege that the receipt of the excess RMB is contingent on export or export performance because receipt of the excess RMB is independent of the type of transaction or commercial activity for which the dollars are converted or of the particular company or individuals converting the dollars. Consequently, we do not plan on investigating this program because Petitioners have failed to properly allege the specificity element.[186]

Petitioners responded on January 13, 2010, by filing a revised currency allegation that significantly expanded the proposed bases for finding that the alleged subsidy meets the specificity element. Specifically, Petitioners' expanded theories included claims that the GOC's currency practices amounted to: 1) a de jure export subsidy; 2) a de facto export subsidy; 3) a de facto domestic subsidy where FIEs are predominant users; 4) a de facto domestic subsidy where exporters are predominant users; 5) a de facto domestic subsidy where FIEs receive a disproportionately large amount of the alleged subsidy; and 6) a de facto domestic subsidy where exporters receive a disproportionately large amount of the alleged subsidy. An essentially identical currency allegation was subsequently filed in the March 31, 2010, petition on aluminum extrusions from the PRC, with the result that the Department conducted an analysis of these claims involving both investigations. The currency subsidy allegations raised novel and complex issues under the CVD law.

We disagree with Petitioners that they were deprived of a meaningful opportunity to comment on the Department's decision. As an initial matter, the Department notes that Petitioners have received significant process throughout this investigation including multiple opportunities to comment with respect to their currency allegations including, inter alia, submission of their original currency subsidy allegation in the Petition, the Department's October 13, 2009 written response in the Initiation Notice, the Petitioners' revised subsidy allegation,[187] the Department's August 30, 2010 Currency Memo, and the Petitioners' most recent submission, in their case brief, on September 7, 2010. In this regard, Petitioners have raised several bases in challenging the Department's decision not to investigate the currency allegation demonstrating that they were provided a meaningful opportunity to comment. Further, the Department's six-page Currency Memo addressed each claim made by the Petitioners, but was not so lengthy that one week was insufficient time for Petitioners to effectively comment on the analysis. Moreover, the factual information which the Department placed on the record (as compared to information submitted by an interested party)[188] amounted to five pages of information from widely-available public sources which confirmed that China no longer maintained a currency surrender requirement. Petitioners' own information also demonstrated this fact.[189]

---

[186] See Initiation Notice at 53706.

[187] Petitioners submitted their revised allegation on January 13, 2010, the last date under 19 CFR 351.301(d)(4)(i) on which they could file a new subsidy allegation.

[188] See 19 CFR 351.301(c)(1) applies to "information submitted by any other interested party . . ."

[189] See Currency Memo at 4.

Petitioners are also incorrect that the Department failed to apply the correct initiation standard. In addressing both the initial currency allegation filed with the Petition and the revised currency allegation, the Department identified the correct statutory standard cited by the Petitioners.[190] Consistent with that standard, the Department determined that Petitioners' allegation failed to provide the elements necessary for the imposition of CVD duties and was not supported by information reasonably available to Petitioners.[191] For example, Petitioners allegation relied on their claim that FIEs are required to surrender the foreign exchange they earn and accept RMB in return, but the Department pointed out that "Petitioners own information indicates that the surrender requirement was terminated in 2007."[192] Notwithstanding Petitioners' claims to the contrary, the Department was not required to initiate an investigation of a currency allegation that was not reasonably supported by the facts alleged by the Petitioners. The Petitioners' allegation was not only unsupported but directly contradicted by the facts on the record.

Comment 6 The Determination Not to Investigate the Alleged Currency Subsidy

Petitioners allege that the Department failed to respond to evidence provided in the Analysis of Evidence of the Undervaluation of the Chinese Currency and the Evidence for Specificity of the Subsidy Benefit Derived from Currency Undervaluation ("Undervaluation Analysis Report") submitted as support for their revised subsidy allegation.[193] According to Petitioners, the Department has recognized that detailed information regarding usage of alleged subsidy programs may not be reasonably available to Petitioners[194] and they claim that they provided the Department with all the specificity data reasonably available to them at the time their revised allegation was filed, including the data in the Undervaluation Analysis Report. Petitioners contend that the Department's Currency Memo ignores that data.

First, Petitioners claim that the Department did not address the critical point in Petitioners' allegation that the currency subsidy is a de facto export subsidy. In particular, Petitioners point to the fact that 70 percent of China's foreign currency earnings are earned by exporters which, in their view, means that this is an export subsidy under 19 CFR 351.514, which states, inter alia, that: "{t}he Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance." Emphasis added. Again citing to 19 CFR 351.514,[195] Petitioners further claim that this high percentage provides evidence that the GOC anticipates that undervaluation of its currency will lead to exportation. Finally, citing Can-Am,[196] Petitioners claim that China's undervaluation of its currency is an export subsidy because it stimulates export sales over domestic sales.

---

[190] See Section 702(b)(1) of the Act.
[191] See Currency Memo at 4.
[192] Id.
[193] See NSA at Exhibit 2.
[194] Citing CVD Preamble at 65358.
[195] According to 19 CFR 351.514, de facto export subsidies can be "tied to actual or anticipated exportation or export earnings …" (emphasis added).
[196] See Can-Am at 430.

Turning to the Department's analysis of FIEs, Petitioners note that a specificity finding is case-specific and normally involves the gathering of detailed data that can only be collected in an ongoing investigation. Thus, Petitioners claim, in rejecting their allegation, the Department engaged in analysis that should have been conducted in an investigation. Nonetheless, and assuming arguendo that the Department's analysis (relying on non-POI data) was appropriate, that analysis shows that FIEs converted 20 percent of their foreign exchange earnings into RMB, thus receiving a substantial amount of excess RMB as a result of the GOC undervaluation policies. Accordingly, Petitioners argue, the Department's analysis indicates that FIEs are the predominant recipient of the subsidy (see section 771(5A)(D)(iii)(II) of the Act).

Continuing with their arguments, Petitioners contend that the Department failed to address their allegation that FIEs receive a disproportionately large amount of excess RMB (see section 771(5A)(D)(iii)(III) of the Act). In particular, Petitioners point to evidence they submitted showing that FIEs account for no more than 20 percent of China's GDP while they generate 55 percent of total Chinese exports. Citing CFS from Korea CVD, Petitioners claim that this shows FIEs received a disproportionately large amount of the subsidy and that the Department has relied on this approach where distribution data were not available.[197]

Department's Position

We disagree that Petitioners' allegation was supported by information reasonably available to them at the time their revised allegation was filed. As explained in the Currency Memo, Petitioners' allegations relied on factual assertions about China's currency regime that were contradicted by Petitioners' own information. Specifically, Petitioners overlooked information in the documentation they provided showing that the surrender requirement was eliminated prior to the POI and that FIEs use the vast majority of their foreign exchange earnings to purchase imported inputs and, thus, do not convert those foreign currency earnings at the allegedly undervalued exchange rate.[198]

While we did not specifically address Petitioners' information that exporters account for 70 percent of foreign exchange earned in the Currency Memo, Petitioners' allegation in this regard does not differ in substance from their original currency allegation, which the Department determined was inadequate. In particular, Petitioners alleged that there is "a direct and positive correlation between the export activity/export earnings and the amount of the subsidy received,"[199] while the Department found no export contingency because "receipt of the excess RMB is independent of the type of transaction or commercial activity for which the dollars are converted or of the particular company or individuals converting the dollars."[200] As noted above, Petitioners' own information regarding termination of the surrender requirement brings into question whether exporters even receive 70 percent of the alleged subsidy. At the same time, however, the 70 percent figure shows that there is a sizeable portion of foreign exchange receipts that is not earned by exporters, supporting the Department's determination that the Petitioners did not sufficiently allege that the subsidy was tied to actual or anticipated

[197] See CFS from Korea CVD at 60642.
[198] See Currency Memo at 4-5.
[199] See Petition at 135.
[200] See Initiation Notice at 53706.

exportation. We also disagree with Petitioners' reading of the Can-Am decision. In our view, that case, which pre-dates the current statutory provisions defining subsidies, merely reinforces that the alleged subsidy must be tied to the exportation of goods.

Regarding Petitioners' objections to the Department's analysis of their FIE allegations, we reiterate that the Department concluded that Petitioners overlooked certain information in formulating their allegations, including the fact that FIEs do not convert the vast majority of their foreign exchange earnings into RMB. Petitioners now contend that the portion FIEs might convert, 20 percent, makes them the predominant user of the alleged subsidy. This claim is totally unsupported as the 20 percent refers to the share of FIEs' earnings and not to the share of any potential subsidy. Moreover, as the Department noted in its Currency Memo, the 20 percent figure does not take into account profit repatriation by FIEs.[201] Petitioners' objections regarding FIEs' alleged disproportionate use of the subsidy similarly fail because again, Petitioners do not take consideration of the fact that FIEs do not convert the vast majority of their foreign exchange earnings into RMB.

Comment 7 The Department's Analysis of a Unified Rate of Exchange

Petitioners allege that the Department's assessment that currency subsidies only exist in multiple exchange rate regimes is overly simplistic and ignores the requirements of countervailing duty law and its history, which does not require a multiple exchange rate system as the prerequisite. Petitioners contend that there is no legal basis to limit the countervailing duty law to a multiple exchange rate currency practice.

Petitioners further argue that while the Department's reliance on Wire Rod from Poland Prelim appears well-reasoned, the Department in that case was at least investigating the allegation without prejudging the outcome. Furthermore, Petitioners argue that in the final determination, the Department decided that countervailing duties did not apply to nonmarket economy countries, but the Department has subsequently determined that the PRC is different from those Soviet-style economies at issue in Wire Rod from Poland.

Finally, Petitioners argue that reasonably available evidence indicates that the exchange rate has the effect of stimulating exports over domestic sales in China, which meets the requirements to initiate an investigation as a de facto export subsidy.

The GOC supports the Department's decision arguing that it would be inconsistent with the Department's past practice to find that a currency allegation based on a unified exchange rate is specific.

Department's Position

We disagree with Petitioners' characterization of the Department's statements regarding unified and multiple exchange rate regimes. In the Currency Memo, the Department did not state that the countervailing duty law only applied to countries with multiple exchange rate regimes. The

[201] See Currency Memo at 5.

Department merely noted that the select set of cases cited by Petitioners in support of their allegation addressed only multiple exchange rate regimes. Any views or findings the Department may have articulated in these decisions – some of which are several decades old – is informative on the exchange-rate-as-a-subsidy issue, but is no longer necessarily dispositive.

However, the Department did point out distinguishing factors between the Petitioners' allegation regarding the currency practices of China and previous case determinations. First, in previous countervailing duty cases, a government selected certain industries and enterprises, or groups thereof, as the subject of preferential currency exchange rates. This preferential rate was separate and distinct from the exchange rate used by the broader economy. Second, the Department observed that, unlike previous cases, the available evidence indicates that the unified exchange rate of China applies to all enterprises and individuals in the economy. Therefore, the Department concluded that the case precedent cited by Petitioners, as well as all previous determinations regarding exchange rate programs, did not support Petitioners' allegation that China's unified exchange rate regime provides a countervailable subsidy.

The Department does not agree with Petitioners' dismissal of Wire Rod from Poland Prelim. It is true that the Department considered Petitioner's exchange rate claim at the same time it also considered whether to apply the CVD law to Poland. But the application question was separate and distinct from the Department's finding on the exchange rate. Moreover, as explained above, the Department's assessment that no subsidy existed in the context of a unified rate is only informative, not dispositive, in the present case.

Finally, the Department disagrees with Petitioners' suggestion that "the effect of stimulating exports over domestic sales in China" meets the legal standard for a de facto export subsidy. As explained above, although a particular government action may stimulate exports that would not be a sufficient basis for finding that action to be a subsidy contingent upon export performance. In other words, if one, among a number of effects, from a broad government program may be the stimulation of exports, this does not necessarily mean the program is contingent upon exportation.

Scope Comments

Comment 8 Burden Imposed on Respondents

APP China and APP Indonesia ("the APP companies") contend that the Department's Scope Memo makes no sense. The APP companies argue that despite the importance of having a clear, well-defined scope for conducting its investigations properly, the Department essentially admits in its Scope Memo that it has no idea what the phrase "suitable for high-quality print graphics" means.

The APP companies further contend that the Department's conclusion in the Scope Memo is unfair. According to the APP companies, the Department has made both subject and non-subject merchandise subject to the AD and CVD investigations, and put the burden on respondents to pursue scope rulings that would exclude non-subject merchandise on a case-by-case basis. This unfair situation has resulted because of the Department's inability to define the scope and the

Petitioners' gamesmanship. The fair outcome, in the APP companies' view, would be for the Department to exclude multi-ply paperboard and instruct Petitioners to seek scope rulings if they believe that certain multi-ply paperboard products truly meet the scope definition. Alternatively, the APP companies suggest that the Department adopt an end-use certification process that would ensure that imported multi-ply paperboard is not being used in the markets served by Petitioners.

Petitioners disagree, claiming that the Scope Memo is reasonable and fully supported by the record. Petitioners acknowledge the Department's concern that there may be some coated multi-ply paperboard that meets the physical characteristics describing the covered merchandise but is not suitable for high-quality print graphics. While Petitioners believe this unlikely, they agree with the Department that the best way to handle this is through a scope inquiry.

Petitioners also dispute the need for an end-use certification process. In their view, the physical characteristics describing the covered merchandise (e.g., GE brightness levels and basis weight) render end-use certification unnecessary as CBP officials will have no difficulty in identifying in- and out-of-scope merchandise.

Department's Position

The APP companies contend that the Department should exclude multi-ply paper from the scope of these proceedings, but as we have previously explained the information and argument presented by the APP companies do not support their claim that multi-ply paper falls outside the scope. In the Preliminary Determinations,[202] we explained that the number of plies is not among the relevant physical characteristics describing the scope of the investigations. Thus, the fact that this paper has multiple plies does not, in and of itself, remove this paper from the scope. Additionally, in our Scope Memo, we pointed to record evidence showing that certain multi-ply products manufactured by the APP companies clearly meet the physical characteristics set out in the scope description (i.e., in sheet form, having a GE brightness level of 80 or more, and weighing not more than 340 grams per square meter) and have the same uses as the "typical uses" described in the scope ("printing multi-colored graphics for catalogues, books, magazines, envelopes, labels and wraps, greeting cards, and other commercial printing applications requiring high quality print graphics"). The APP companies have not addressed this evidence and there is no additional information on this point. Therefore, for these final determinations, we continue to find that multi-ply paper is not excluded from the scope of these investigations.

With respect to the APP companies' claim that the Department essentially admitted in its Scope Memo that it had no idea what the phrase "suitable for high-quality print graphics" means, we disagree. Instead, in determining whether or not we should delete the phrase altogether, we observed that the parties had not provided an objective definition of the phrase. The APP companies misconstrue the Department's statement. On its face, the phrase has definition and meaning, and we have determined that the phrase limits the scope of the investigations beyond the physical characteristics listed in the scope. That the Department may examine other factors when and if presented in any future scope inquiries, is an anticipated, common process,

[202] See, e.g., Preliminary Determination at 10776.

specifically provided for under the Department's regulations, in administering any antidumping and countervailing duty order.

While we are not excluding multi-ply, we do not rule out the possibility that certain merchandise (and, in particular, certain paper for packaging applications) that meets the physical characteristics described in the scope, may nonetheless be non-subject merchandise because it is not suitable for high-quality print graphics. In this regard, we have considered the APP companies' request that we implement an end-use certification process that would allow products that do not compete in the markets served by Petitioners to enter free of antidumping or countervailing duties. We are not adopting such a process. As a general matter, the Department prefers not to rely on end-use certification regimes because of the difficulty of administering them. Instead, we intend to rely on the scope procedures described in 19 CFR 351.225 to evaluate claims on a product-by-product basis if antidumping and countervailing duty orders are issued in these proceedings. (We explain below certain types of information that might be relevant to such scope inquiries.)

Finally, with respect to the APP companies' suggestion that we exclude multi-ply from the scope of these investigations and then bring certain multi-ply products back under the order through subsequent scope rulings, we disagree that this would be appropriate. First, for the reasons explained above, we do not agree that multi-ply should be excluded. Second, although the Department has substantial discretion to clarify and interpret the scope of antidumping and countervailing duty orders, the Department is precluded from expanding the scope of an order through scope determinations.[203]

Comment 9 Whether Multi-ply Paperboard Was Intended to Be in the Scope

The APP companies contend the Department ignored in its Scope Memo much of the evidence that multi-ply paperboard was not intended to be included in these proceedings. Petitioners dispute this. The APP companies' claims and Petitioners' counterclaims are presented below seriatim.

First, the APP companies point to the fact that the title of the petitions is explicitly limited to "*certain* coated paper for high-quality print graphics using sheet-fed presses" (emphasis added). Thus, the APP companies claim, Petitioners did not intend to cover all coated paper and paperboard. Moreover, because there is vast production of coated paperboard for packaging applications and such paperboard is not suitable for high-quality print graphics, the APP companies claim that the term "certain" places an essential limit of the scope of the petitions. Petitioners respond that the word "certain" was used because the investigations are limited to coated paper in *sheets* and not in rolls.

Second, the APP companies point to Petitioners' statements that they believed that virtually all the covered product ("certain coated paper" or "CCP") was coated free sheet paper and that they were the only significant producers of CCP. Again, given the amount of coated mechanical

[203] See Ericsson GE Mobile at 782 (determining that the Department improperly expanded the scope of the antidumping duty order during a scope determination).

paper produced in the United States by other producers, the APP companies contend that Petitioners could only make these claims if the term "certain" had a limiting impact on the scope. Petitioners restate their belief that all or almost all domestically produced coated paper that meets the scope description is coated free sheet paper, and contend that the APP companies conflate this with what is and is not covered by the scope. Petitioners point out that the scope expressly includes coated mechanical paper and paperboard.

Third, the APP companies claim that in identifying known foreign producers of the subject merchandise in the petition, Petitioners did not include any significant foreign producers of multi-ply coated paperboard for packaging applications. According to the APP companies, NBZH shipped a volume of multi-ply paperboard to the United States that nearly equaled the volume of subject merchandise shipped by Gold East and Gold Huasheng, yet NBZH was not listed among the foreign producers named in the petition.

Petitioners state that they identified those foreign producers they believed to be competing with domestically produced CCP. Petitioners claim that it is not unusual for there to be other foreign companies that also produce merchandise that meets the scope description. Petitioners find it absurd, however, to argue that failure to list these firms is somehow evidence of Petitioners' intent to exclude multi-ply from the scope.

Fourth, according to the APP companies, Petitioners based their industry support justification on industry data that included only CFS paper, while specifically excluding coated mechanical paper. Citing to their request to exclude multi-ply paper, the APP companies emphasize that all multi-ply coated paper is coated mechanical paper.[204] Thus, the APP companies conclude, it is difficult to accept Petitioners' claim that they always intended to include multi-ply coated paper within the scope of these proceedings.

Citing evidence submitted in the petition, Petitioners restate their claim that virtually all coated mechanical paper produced in the United States is produced in web rolls (merchandise not included in these investigations).

Fifth, in the APP companies' view, Petitioners have essentially admitted that coated mechanical paper is not "suitable for high-quality print graphics" because in one of the petition support documents it states that the amount of mechanical wood pulp in coated mechanical paper affects the appearance of the paper.

Petitioners respond that this statement referred to coated mechanical paper produced in the United States. However, they claim, it does not apply to coated mechanical paper from China and Indonesia that meets the physical characteristics described in the scope, as evidenced by the specification sheets for those products which identify their typical end uses as high quality cover applications, annual reports, etc. Petitioners also point to print tests they placed on the record which demonstrate that APP's coated multi-ply is virtually indistinguishable from the comparable single-ply product manufactured by one of the Petitioners.

[204] See Respondents' Scope Comments at 3.

Finally, the APP companies claim that the Department erred in its conclusion regarding Petitioners' omission of HTS number 4810.92 from the tariff numbers targeted by the petition. In particular, the APP companies contend that the Department misunderstood how customs classification works for multi-ply paper. According to the APP companies, HTS number 4810.92 is unquestionably the correct HTS number for multi-ply coated paper. In support, they point to a customs ruling on this point.[205] Given that multi-ply coated paper is properly classified under HTS 4810.92 and that imports under this tariff heading from China and Indonesia have not been trivial, the APP companies contend that it is significant Petitioners omitted this HTS number in their description of the subject merchandise.

Petitioners dismiss this line of argument as irrelevant because, they claim, HTS numbers are not controlling with respect to what merchandise is covered by an investigation. Petitioners also point to a different customs ruling[206] which, they claim, shows that the APP companies' misunderstand the customs classification rules.

The APP companies conclude that, taken together, these facts show that Petitioners did not intend to include multi-ply paperboard for packaging applications in these proceedings. Moreover, according to the APP companies, Petitioners cannot be permitted to reverse their earlier positions and construct a new, expanded scope.

Petitioners respond by pointing to statements they made in the petition regarding the changes in scope between the earlier investigations of coated freesheet and the instant investigations as evidence of their intent to include any coated paper and paperboard meeting the physical characteristics described in the scope, regardless of the number of plies or the amount of coated groundwood content.

Department's Position

We do not agree with the APP companies that the cited evidence supports the conclusion that Petitioners intended to exclude multi-ply paper from the scope. As explained above, the physical characteristics of the subject merchandise do not include the number of plies and certain multi-ply papers produced by the APP companies clearly meet the physical characteristics described in the scope and have the same uses as in-scope merchandise. Moreover, with the exception of the HTS numbers not originally included in scope, none of the evidence identified above by the APP companies even mentions the word "multi-ply." Instead, the APP companies have strung together disparate "facts" in an attempt to weave a story that supports their exclusion request. Taken individually or together the "facts" do not indicate that Petitioners intended to exclude multi-ply from these proceedings.

The APP companies first point to the use of the word "certain" in the title of the case as having a limiting effect. We acknowledge that the use of "certain" in this manner would normally indicate that the scope covered less than all "coated paper suitable for high-quality print graphics using sheet-fed presses." However, the use of "certain" does not mean that Petitioners intended

[205] See Respondents' Rebuttal Factual Information at Attachment 1.
[206] See Petitioners' Rebuttal Comments on Scope at Exhibit 8.

to exclude mechanical paper, particularly in light of the fact that from the earliest stages of this proceeding Petitioners maintained that they intended to include mechanical paper and provided their reasons for including such a paper.[207] We consider the use of the term "certain" to be attributed to the requirement that the coated paper must meet certain physical characteristics to be included in the scope. If the coated paper does not meet the certain physical characteristics described in the scope, it would not be covered by the scope regardless of whether it is suitable for use in high quality print graphics using sheet-feed presses. The word "certain" is frequently used by the Department in defining scopes. In this case, the term "certain" means that not all coated paper is covered by the scope; rather, only coated paper that both meets the physical characteristics in the scope and is suitable for use in high-quality print graphics is within the scope.

Next, the APP companies point to the fact that Petitioners did not include any significant foreign producers of multi-ply for packaging applications when they identified known foreign producers of the subject merchandise in the petition. We note that Petitioners have acknowledged that they are not involved in the packaging market and that their knowledge of that market may be incomplete.[208] Instead, as Petitioners argue above, they identified the foreign producers they believed to be competing with domestically produced CCP.

The APP companies' next argument relates to Petitioners' claim that the petition was filed on behalf of the industry. The specific information relied upon by Petitioners is a study prepared by the American Forest and Paper Association which shows that U.S. production of coated mechanical paper consists entirely of rolls (non-subject merchandise) and not sheets (subject merchandise).[209] Thus, Petitioners did not specifically exclude coated mechanical paper in sheets as the APP companies claim. Instead, they excluded production of coated mechanical paper in rolls because the scope of the petition did not include CCP in rolls and they provided independently developed information showing that there was no production of coated mechanical paper in sheets. Moreover, courts have explained that "findings with respect to domestic like product may, but need not, match the scope of investigation."[210]

The APP companies next argue that Petitioners essentially concede that coated mechanical paper was not intended to be covered by these investigations because the high mechanical pulp content renders it unsuitable for high-quality print graphics. To the contrary, far from making this concession, Petitioners quote from the APP companies' own product specification sheets for their coated multi-ply paper that expressly identify "typical end uses" including "High quality cover applications, annual reports, catalog covers, trading cards, advertizing brochures, and folders." [211] Moreover, the scope expressly references mechanical paper, which is also known as coated groundwood paper, by including "coated groundwood paper and paperboard produced from bleached chemi-thermomechancial pulp ("BCTMP") that meets this scope definition." Thus, mechanical pulp content in and of itself does not provide a basis for excluding multi-ply.

---

[207] See Petition, Volume I at 6, n. 5.
[208] See Petitioners' Scope Response at 5.
[209] See Petition, Volume I at Exhibit I-3-A.
[210] See International Imaging Materials at 1183 (citing Hosiden Corp. v. Advanced Display Mfgrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996).
[211] See Petitioners' Rebuttal Comments on Scope at 4-5 and Exhibit 3-4.

Moreover, as Petitioners note, they placed evidence on the record showing that APP's coated multi-ply, which is coated mechanical paper, is virtually indistinguishable from the comparable single-ply product manufactured by one of the Petitioners.[212]

Finally, the APP companies raise Petitioners' failure to include in their petition the HTS number covering multi-ply coated paper. As the different customs rulings demonstrate,[213] application of the customs rules in this area is complicated and it is not obvious how multi-ply paper that can be printed should be classified. Therefore, we cannot conclude that Petitioners' exclusion of the HTS number from the petition provides evidence that Petitioners intended to exclude multi-ply coated paper from the scope of these proceedings. Moreover, as the Department's notices routinely state: "While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive."

Comment 10 Physical Characteristics and End-use Applications Distinguish Multi-ply Paper from the Covered Merchandise

The APP companies contend that multi-ply paperboard serves a very different product market from single-ply coated paper. The former is used to make boxes and the printing thereon is simply for recognition, i.e., being able at a glance to know what the package contains, while the latter is used for high-quality catalogs and brochures that are to be read.

According to the APP companies, these different purposes for multi- and single-ply paper require different physical characteristics. In particular, the APP companies claim that the key characteristics of art paper are the degree of its whiteness and its smoothness. In contrast, the key attribute of industrial packaging paperboard is its folding strength. According to the APP companies, folding strength requires stiffness, which comes from bulk. Bulk, in turn, comes from mechanical pulp and having multiple layers.

The APP companies note that in its Scope Memo the Department dismissed the differences in the manufacturing processes for single- and multi-ply paper as irrelevant to the scope issue. However, according to the APP companies, the physical differences in these products result from different production processes utilizing different manufacturing equipment. Specifically, single- and multi-ply paper are produced and finished (calendared) using different production equipment; they use different inputs (APP producers of art paper use principally virgin pulp with very little recycled waste paper and mechanical pulp in order to increase the whiteness of their product, whereas NBZH (multi-ply producer) uses high quantities of recycled water paper and mechanical pulp); and, the stiffness of multi-ply paper is measured and included on the specification sheets for that product but not for art paper.

Petitioners dispute these claims stating that many of the physical characteristics that APP relies upon to distinguish single- and multi-ply paper are not among the physical characteristics listed in the scope description. For example, the scope makes clear that the amount of BCTMP is not a delimiting characteristic, i.e., that coated paper meeting the physical characteristics described in

[212] See Petitioners' Additional Rebuttal Comments on Scope at Attachments 1 and 2.
[213] See Petitioners' Rebuttal Comments on Scope at Exhibit 8, and Respondents' Rebuttal Factual Information at Attachment 1.

the scope is covered, regardless of the amount of BCTMP it contains.

Moreover, according to Petitioners, certain of the APP companies' claims are wrong. In particular, as Petitioners have demonstrated, both single- and multi-ply CCP may be made from pulp mixes that contain recycled pulp.[214] Also, both single- and multi-ply CCP come in a range of shades.[215]

Finally, Petitioners disagree that manufacturing process is relevant to a determination of whether particular merchandise falls within the scope of an order. In support, Petitioners cite to the criteria the Department relies upon for making scope rulings (see 19 CFR 351.225(k)(2)), which do not include manufacturing process.

Department's Position

We continue to find that the manufacturing process is not relevant, per se, to a determination of whether particular merchandise is covered by the scope of a proceeding. To the extent that different manufacturing processes result in different physical characteristics in the merchandise, those physical characteristics could be important, but not the manufacturing processes.

As explained above in response to Comment 8, the Department intends to use our scope procedures (19 CFR 351.225) to determine in response to any specific requests whether merchandise that meets the physical characteristics described in the scope is "suitable for high-quality print graphics" and, hence, is subject merchandise. In this regard, we note that the Department normally relies upon physical characteristics to delimit the scope. During the course of these investigations, and in particular through verification, we learned of certain physical characteristics that could potentially serve this purpose in any such future scope proceedings: stiffness and thickness.[216] While record evidence indicates that stiffness is determined by basis weight (a physical characteristic listed in the scope description),[217] that evidence also indicates that stiffness is affected by pulp composition and coating formulations.[218] Thickness of the paper may also be important for determining whether the coated paper should be covered. Measures of stiffness and thickness are prominent in the specification sheets for the APP companies' multi-ply products.[219] In addition to stiffness and thickness, we acknowledge the concept put forward by the APP companies that high-quality print graphics are meant to be read whereas graphics that are simply for product recognition may not be high-quality print graphics.

However, until and unless such physical characteristics can be developed with regard to identifying paper that is suitable for high-quality print graphics, we do not intend to use thickness, stiffness or reading/recognition in our scope description. Ultimately, the parties did not provide us with sufficient information during the investigations to determine whether or at

---

[214] See Petitioners' Rebuttal Comments on Scope at Exhibit 6.
[215] Id.
[216] See excerpts of the verification reports from the antidumping investigations of CCP submitted as attachments 1 and 2 to Respondents' Additional Factual Information.
[217] See Petitioners' Rebuttal Comments on Scope at Exhibit 6, paragraph 8.
[218] Id.
[219] Id. at Exhibit 1.

what levels stiffness, thickness or reading/recognition would be useful in further delimiting the scope, or what other physical characteristics are important in making the paper at issue suitable for high-quality print graphics. We further note that no party argued or provided evidence in the investigations to indicate that the coated paper they reported as matching the scope product characteristics in our requests for information was not suitable for high-quality print graphics. We nonetheless urge the parties to explore these and other measures for possible use in any future scope inquiries, should these investigations result in orders.

Comment 11 Whether The Department Should Retain the "Suitability" Language in the Scope Description

The APP companies support the Department's post-preliminary decision to retain the phrase "suitable for high-quality print graphics" as part of the scope description. According to the APP companies, deleting this language would result in an unlawful expansion of the scope given the late stage of these proceedings. The APP companies cite several precedents in support of their position.

While Petitioners are indifferent to the retention or deletion of the suitability language, they disagree with the APP companies' claim that deleting the language would expand the scope of the investigations. Petitioners maintain that coated multi-ply paper meeting the physical characteristics in the scope description is clearly covered, regardless of whether the suitability phrase is included or not.

Department's Position

For the reasons explained in the Scope Memo, the Department has not removed the suitability phrase from the description of the subject merchandise. Because the APP companies argued in favor of retaining this phrase in the scope and no party argued that the Department should remove this phrase, there is no need to further address the parties' arguments concerning this issue.

Comment 12 Whether Inclusion of Multi-ply Paper in the Scope Affects on the Department's Respondent Selection

The APP companies assert that if the Department expands the scope of these proceedings to include multi-ply paper, certain HTS numbers would have to be added to the scope description which would call into question the representativeness of the mandatory respondents selected by the Department at the outset of these investigations. Using the addition of HTS 4810.92.12 and 4810.92.14 as examples, the APP companies identify several Chinese companies that would potentially become respondents. The APP companies also point out that the volume of imports under these subheadings is enormous in the context of the volume considered by the Department in selecting the mandatory respondents for the Chinese CVD investigation.

The APP companies also point to the effect of including multi-ply paper for the Chinese AD investigation. In particular, under the Department's separate rate process, Chinese companies that export products falling under these added tariff numbers will presumably be subject to an

adverse rate despite the fact that they had no knowledge until five months into the investigation that their products would be covered.

According to the APP companies, the possibility of having selected the wrong mandatory respondents and the unfairness of assigning adverse dumping rates to foreign producers that had no knowledge of their supposed involvement in these proceeding argue against Petitioners' revised scope.

Petitioners disagree, claiming that since there is no expansion of the scope, the validity of the Department's respondent selection is not affected. They further point out that many of the HTS numbers already listed in the scope description include coated paper and paperboard.

Department's Position

We acknowledge that we relied upon import data for respondent selection in the Chinese CVD investigation that did not include imports under these HTS numbers and that we might have selected other companies as mandatory respondents had imports under these HTS numbers been included. However, respondents have to be selected early in the investigative process, whereas issues such as scope and the appropriate HTS numbers to be included in the scope description can be debated until the final determination (as indicated by these investigations). Short of deciding the scope issues immediately after the petitions were filed, the Department could not have made its respondent selection in the Chinese CVD investigation based on all the relevant HTS numbers.

Regarding the APP companies' claims that Chinese companies will unfairly be subject to the China-wide rate because Petitioners did not include these HTS numbers in the scope description, our notices are clear that the HTS numbers listed in the scope are not dispositive of the merchandise that is included. Thus, companies were on notice that their exports were potentially covered by these proceedings if they met the description of the scope in the Initiation Notice.

Comment 13 Scope Expansion Violates Standing and Injury Requirements

The APP companies contend that the Petitioners obscured the multi-ply issue until after initiation of these investigations and, consequently, the standing requirement under U.S. law was eviscerated and the ITC's preliminary injury finding was invalid. Regarding standing, the APP companies argue that by expanding the scope to include multi-ply paper, Petitioners necessarily bring into the domestic industry U.S. production that was not considered in the Department's standing analysis according to the APP companies. According to the APP companies, although Petitioners have attempted to convey that there is no significant U.S. production of coated paperboard in sheets, the record demonstrates that there are numerous U.S. producers that manufacture and sell coated paperboard in sheet form that meets scope parameters with respect to weight and brightness.

In light of the evidence regarding these additional U.S. producers of now-subject merchandise, the APP companies argue that the Department must reexamine standing. Although the production volume for these additional companies is not publicly available, the APP companies

claim that they are among the largest in the U.S. forest and paper industry, and that they have been completely ignored because of Petitioners' sleight of hand.

The APP companies conclude by noting the Department's statement in the Scope Memo that it has no authority to revisit standing after initiation. The APP companies argue that this is precisely why the Department must limit the scope only to those products that were known and considered fully as part of the standing determination.

Department's Position

For the reasons explained above, and in the Scope Memo, we do not agree with the APP companies that inclusion of multi-ply paper in these investigations is an expansion of the scope. Petitioners acknowledged that there appear to be U.S. producers of merchandise that meets the description in the scope that were not identified in the petition as producers of the domestic like product.[220] When asked why this production was not included in the petition, the Petitioners responded that "they identified to the best of {their} ability all of the domestic producers of competing products in the Petition."[221] The data provided in support of the petition indicates that all mechanical paper production in the United States was in rolls, and had been for many years.[222] Citing back to this same data, Petitioners argue that "virtually all coated mechanical paper produced in the United States is produced in web rolls, not sheets."[223] Petitioners intentionally did not include this product in the scope. Because we understand that multi-ply paper is also identified in the industry as mechanical paper,[224] the data provided in support of the petition suggests that based on the data reasonably available to Petitioners at the time, there was no, or no significant or measurable, domestic production of multi-ply (mechanical) coated paper in sheets suitable for high-quality print graphics. While the statements from Petitioners and the APP companies now suggest that there might be some such production, we do not believe that the record as a whole indicates that Petitioners intended to exclude multi-ply paper, in sheets, that meets the physical description of the merchandise and is suitable for high-quality print graphics. Although the APP companies speculate that Petitioners obscured (and omitted) domestic multi-ply paper in sheets in their petition industry support calculations, we disagree that the record supports this allegation. Although Petitioners acknowledge not having had perfect knowledge of some portion of the packaging industry's production, this is an insufficient basis to conclude that Petitioners made an intentional or material omission of domestic multi-ply production in sheets at the time of filing of the petition, so as to render their intended scope coverage suspect. Accordingly, we conclude that inclusion of multi-ply paper that meets the physical description of the merchandise and is suitable for high-quality print graphics, does not expand the intended scope of these investigations.

Chemicals for LTAR

Comment 14 Benchmarks – Papermaking Chemicals

[220] See Petitioners' Scope Response at 7.
[221] Id.
[222] See Petition, Volume I at Exhibit I-3-A.
[223] See Petitioners' Rebuttal Brief Regarding Scope at 7.
[224] See Respondent's Scope Comments at 3.

The GOC asserts that the Department's rejection of a tier one benchmark for valuing the adequacy of remuneration is contrary to law, as the Department's own regulations state a preference for comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. See section 771(5)(E)(iv) of the Act; see also 19 CFR 351.511(a)(2)(i) and (ii). According to the GOC, the statute relating to provision of goods for LTAR places a premium on prevailing market conditions, including "price, quality, availability, marketability, transportation, and other conditions of purchase or sale."[225] To support its contention, the GOC claims that the Department itself has recognized the practical impossibility of using benchmarks outside the jurisdiction under investigation,[226] citing a NAFTA panel that supported a preference for using a tier one price.[227] Furthermore, it claims that the WTO Appellate Body instructs the Department to adhere to these factors in finding a rational surrogate benchmark.[228]

The GOC contends that before it rejects in-country benchmark prices, the Department must determine that these non-affiliated firms' prices are distorted by alleged GOC control of the SOE firms. Moreover, the GOC claims that the Department must also conclude that the impact results in a downward distortion of private firm prices. The GOC asserts that the GOC's presence in the investigated markets is well below the 50 percent threshold the Department normally finds is indicative of sufficiently distortive government presence.[229] The GOC argues that, in the instant investigation, the majority of the kaolin clay and caustic soda suppliers are private entities, and therefore, the record evidence does not support the Department's rejection of tier one prices. The GOC notes that the Department verified that SOEs account for 36.68[230] percent of caustic soda production and 33.1 percent of "above scale" kaolin clay production, but presented no evidence that percentages influenced domestic market prices. According to the GOC, the record reflects that domestic private entities controlled more than 52 percent of the "above scale" kaolin clay market alone.[231]

Citing the CVD Preamble, the GOC maintains the Department's regulations specify that in situations where government presence does not constitute a majority, but only a "substantial presence," the circumstances under which the Department will find sufficient distortion to discard in-country benchmarks will be limited in scope.[232] The GOC argues that the Department never adequately addressed what the circumstances were that would allow it to conclude that the market for kaolin clay is sufficiently distorted, only that it lacked data for "under scale production." However, the GOC asserts that the only reasonable conclusion for the lack of this data in official statistics maintained and published by the SSB is that such data is statistically insignificant.

---

[225] See section 771(5)(E)(iv) of the Act.
[226] See Softwood Lumber from Canada (1983) and Softwood Lumber from Canada (1992).
[227] See Certain Softwood Lumber Products from Canada, NAFTA USA-CDA-2003-1904-03 at 34.
[228] See AB Report on Softwood Lumber, at para. 103.
[229] See CVD Preamble at 65377.
[230] See Sun Post-Preliminary Analysis at 3.
[231] Id.
[232] See CVD Preamble at 65377.

For caustic soda, the GOC asserts that it was demonstrated at verification that all production was reported and thus there can be no concern regarding under scale production.[233] Moreover, the GOC points out that combined production of domestic private and FIE producers amounted to more than 57 percent of total production.[234] According to the GOC, the Department faults this data because the FIE category may include FIEs with majority government ownership. The GOC asserts that this logic implies foreign investors would allow their investment to be held hostage to industrial policy, which is not supported by the facts. On the contrary, the GOC argues that foreign investors would only commit to an investment if they were assured that the target of their investment would operate on a commercial basis, unhindered by any alleged industrial policy mandate to assist other industries in China through price preferences.

Petitioners support the Department's rejection of the purported tier one benchmarks in the Preliminary Determination. They argue that the level of government ownership and control of the chemical sector in China is very high. Moreover, citing the GOC's own case brief, Petitioners note that the Department found that at least one-third of the caustic soda and kaolin clay markets were accounted for by SOEs.[235] Petitioners argue that this is a substantial portion of the market, particularly given the fact that imports play essentially no role in the markets for kaolin clay and caustic soda in China.[236]

Petitioners contend that the information regarding the levels of ownership in these two chemical industries is incomplete and may be distorted.[237] Specifically, with respect to FIE ownership, Petitioners assert that the GOC classified any company with 25 percent foreign ownership as an FIE. However, Petitioners claim that FIEs can have both foreign and government ownership, and a company that was majority government-owned would still have to be classified as an FIE by the GOC.[238] Furthermore, the GOC did not provide complete ownership information for either kaolin clay or caustic soda, designating a significant proportion of total output as "unknown."[239] Lastly, Petitioners contend that the amount of kaolin clay output from government-owned entities is understated because the GOC did not include production by enterprises with sales income of less than RMB 5 million.[240] Based on this information, the Petitioners argue that the Department should continue to find that domestic Chinese prices for kaolin clay and caustic soda would be sufficiently distorted that they could not be used as tier one benchmarks.

Department's Position

As discussed, supra, at "Programs Determined To Be Countervailable - Provision of Papermaking Chemicals for Less Than Adequate Remuneration," for papermaking chemicals titanium dioxide and kaolin clay, we continue to find that any potential benefit to the Gold

[233] See GOC Verification Report at 11.
[234] See GOCSQR4 at 3.
[235] See GOC Case Brief at 40-43.
[236] See Sun Post-Preliminary Analysis at 3 and GE Post-Preliminary Analysis at 4.
[237] Id.
[238] Id.
[239] Id.
[240] Id.

companies under this program was less than .005 percent in the POI.[241] Thus, without determining whether the GOC's provision of titanium dioxide and kaolin clay confers a countervailable subsidy, and consistent with our practice,[242] we determine that any potential subsidy is not measurable. Therefore, our discussion here only pertains to caustic soda.

For caustic soda, the GOC reported the extent of SOE and collective participation in the Chinese market by relying on information collected by the SSB regarding production and by its local State Administration of Industry. Under the GOC's definitions of different ownership forms, SOEs and collectives account for 36.68 percent of caustic soda production in the PRC.[243] Consistent with the Post-Preliminary Analyses, we continue to find that this level of SOE and collective ownership is substantial.[244] Combining this with the fact that imports as a share of domestic consumption are insignificant, we may reasonably conclude that domestic prices in the PRC for caustic soda are distorted such that it cannot be used as a tier one benchmark.[245] For the same reasons, we continue to find that import prices into the PRC cannot serve as a benchmark.

In the Post-Preliminary Analyses, we stated that the 36.68 percent figure may understate actual SOE production because: (1) the GOC classifies any company with greater than 25 percent foreign ownership as an FIE, even if that FIE is an SOE; and (2) some production was assigned to "unknown" ownership types. [246] On page 41 of the GOC Case Brief, the GOC stated, "Because of these issues, the Department preliminarily determined the level of SOE and collective ownership was substantial…" As we explain in the previous paragraph, however, we find the production share reported by the GOC (i.e., 36.68 percent) to be substantial. We noted that this figure should be viewed as the minimum level of SOE and collective ownership because of the two issues above.[247] Contrary to the GOC's claim, however, we did not base our finding that the level of SOE and collective ownership is substantial solely because of potential issues in the GOC's data.

Further, we disagree with the GOC's argument that the government's presence in the market was not substantial because it is below 50 percent. In KASR from the PRC, the Department found the GOC controlled less than the majority of production for wire rod (47.97 percent).[248] In that case, the Department found that, while this is not a majority of the production, the substantial market share held by the SOEs is evidence of the predominant role that the government plays in this market.[249]

Therefore, consistent with the Post-Preliminary Analyses,[250] we are following our established

---

[241] See Sun Post-Preliminary Analysis at 6 and GE Post-Preliminary Analysis at 6.
[242] See CFS from the PRC.
[243] See GE Post-Preliminary Analysis at 2.
[244] See GE Post-Preliminary Analysis at 5 and Sun Post-Preliminary Analysis at 5.
[245] The Department has previously determined that high levels of import penetration may indicate that domestic prices are not distorted, even where government ownership of domestic production is significant. See OTR Tires from the PRC IDM at 11.
[246] See Sun Post-Preliminary Analysis at 3 and GE Post-Preliminary Analysis at 3.
[247] See GE Post-Preliminary Analysis at page 5, footnote 26.
[248] See KASR from the PRC IDM at Comment 8.
[249] Id.
[250] See Sun Post-Preliminary Analysis at 6 and GE Post-Preliminary Analysis at 5.

practice of using an out-of-country benchmark where actual transaction prices are significantly distorted because of the role of the government in the market for caustic soda. 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 these papermaking chemicals to the respondents' plants. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of caustic soda, kaolin clay and titanium dioxide into the PRC. We have compared these prices to the weighted-average prices paid by the respondents for domestically sourced papermaking chemicals,[251] including any taxes and delivery charges incurred to deliver the product to the respondents' plants.

Comment 15 Provision of Papermaking Chemicals for LTAR – Specificity

The GOC contests the Department's preliminary determination that the provision of papermaking chemicals is specific to the papermaking industry. The GOC argues that the consumption of caustic soda ranges across a wide variety of industries including papermaking chemicals.[252] Therefore, the GOC asserts that this information substantiates its claims that caustic soda could be used in an unlimited number of industries.[253] Moreover, the GOC argues that it is virtually impossible to track and quantify all consumption of caustic soda for the purposes of a specificity analysis. According to the GOC, the SAA guides the Department to use the specificity test as a means to identify and rule out only those subsidies which are broadly available and widely used throughout an economy.[254]

Citing its own evidence on the record regarding the Gold companies' consumption of three papermaking chemicals, the GOC argues that the Gold companies' purchases are insignificant relative to overall production of the three chemicals.[255] The GOC asserts that this information is further evidence that the GOC fully cooperated and provided information that sufficiently showed that the provision of the three papermaking chemicals cannot be deemed specific to the paper industry. Therefore, according to the GOC, the Department must reverse its preliminary finding for the final determination.

Contrary to the GOC's assertions, Petitioners argue that the Department should continue to find the provision of papermaking chemicals for LTAR specific. Petitioners argue that the Department has consistently applied adverse inferences to "financial contribution" and "specificity" in situations such as these where a government fails to cooperate to the best of its ability to comply with the Department's request for subsidies information.[256] Citing to U.S. Steel v. U.S. and Essar v. U.S., Petitioners contend that, in this case, the GOC simply stated that

[251] Because the benchmark prices are expressed in USD, we converted the prices for domestic purchases from RMB to dollars using monthly exchange rates from the Federal Reserve. Id.
[252] See Petition at IV-114. The GOC lists alumina, soap and detergents, petroleum products, chemical production, water treatment, food, textiles, metal processing, mining, glass making and others.
[253] See GOCSQR4 at 2.
[254] See SAA at 929.
[255] See GOCSQR4 at 3.
[256] See, e.g., Hot Rolled from India IDM at Comment 1, CTL Plate from Korea at 11399 and Hot Rolled from India 2010.

the provision of papermaking chemicals for LTAR is not specific rather than provide requested information that the GOC is in the best position to provide to the Department. Petitioners reiterate that, because the GOC withheld information requested by the Department, it has not cooperated to the best of its ability within the meaning of section 776(b) of the Act. Therefore, Petitioners argue that the Department should continue to apply adverse inferences and find the provision of papermaking chemicals specific for the final determination.

Department's Position

We continue to find 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. Consequently, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act. Therefore, we assume adversely that the subsidies bestowed by the GOC through the provision of caustic soda are specific. See the "Use of Facts Otherwise Available and Adverse Facts Available" and "Analysis of Programs" sections above.

As noted in Comment 14 above, as discussed, supra, at "Programs Determined To Be Countervailable - Provision of Papermaking Chemicals for Less Than Adequate Remuneration," for papermaking chemicals titanium dioxide and kaolin clay, we continue to find that any potential benefit to the Gold companies under this program was less than .005 percent in the POI. Thus, without determining whether the GOC's provision of titanium dioxide and kaolin clay confers a countervailable subsidy, and consistent with our practice,[257] we determine that any potential subsidy is not measurable. Therefore our discussion here only pertains to caustic soda.

During the course of this investigation the Department requested certain information in order to determine whether the provision of caustic soda was specific to the papermaking chemical industry. Specifically, the Department twice requested that the GOC identify the "unlimited number" of industries that use papermaking chemicals and the share of each papermaking chemical used by that industry.[258] In response, while the GOC claimed that caustic soda, kaolin clay and titanium dioxide are used by numerous industries in response to our questions, it has not provided support for this claim. Nor has the GOC provided information about the extent to which these chemicals are used by different industries. Instead, the GOC has responded that it is mathematically impossible to calculate the shares used by different industries "because the number of downstream industries is indefinite."[259] Rather than make any attempt to identify the users of these chemicals or support its claims that they are numerous or "indefinite," the GOC put the blame on Petitioners, stating that Petitioners did not claim that these chemicals cannot be used in any other industry. Had Petitioners done so, the GOC asserts that it would have provided evidence of use in those industries.[260] Finally, although offering some analysis based on the Gold companies' usage, that analysis focuses narrowly on coated paper and not the papermaking industry as a whole.

[257] See CFS from the PRC IDM at 15.
[258] See GSQR at 1.
[259] See GOCSQR4 at 1. See also the InitQ.
[260] Id.

We find that the GOC's refusal to provide the requested industry information demonstrates a failure to cooperate in this investigation. While the GOC makes the case that collecting data for all industries in the GOC that use papermaking chemicals was overly burdensome, we note that after several requests, the GOC failed to provide adequate usage data to refute Petitioners' arguments that chemicals are specific to the papermaking industry in general.

Finally, in response to the GOC's argument that record information supplied by the Petitioners about the varied industries that use caustic soda, we find that record information supplied by Petitioners, supported their allegations with respect to the specificity of papermaking chemicals by citing various webpages. Regarding caustic soda, Petitioners' information shows that its main uses are for pulp and paper, alumina, soap and detergents, petroleum products and chemical production.[261] The information goes on to say that one of the largest consumers of caustic soda is the pulp and paper industry where it is used in pulping and bleaching processes.[262]

Comment 16 Government Ownership and 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 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.[263] 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[264] (in which the Department found that majority government-owned firms were not authorities) and to the AB Report on DRAMS from Korea.[265]

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 have severed any public function from the commercial operations of SOEs.[266] 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

[261] See Petition at Exhibit 114.
[262] Id.
[263] See GOCSQR1, and February 26, 2010, Supplemental Clay submission.
[264] See DRAMS from Korea IDM at 17.
[265] See AB Report on DRAMS from Korea at paragraph 112, note 179.
[266] The GOC bases this claim on the various laws and measures described below, which were submitted in GFIS at GOC-Fact-52.

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 State-owned Assets Supervision and Administration Commission (SASAC) assumed the role of investor in SOEs on behalf of the government. According to the GOC, 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. According to the GOC, this law limited government-set and government-guided prices to a narrow band of commodities which does not include papermaking chemicals and established the enterprise operators' autonomy in setting prices.

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,[267] 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 papermaking chemicals suppliers as it did in the Preliminary Determination.

The Gold companies join the GOC in arguing that the Department should not countervail purchases from private suppliers.

Petitioners contend 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.[268] Petitioners further object to the GOC's claim that the Department should not countervail papermaking chemicals provided by "private" suppliers. Petitioners rebut the GOC's claims that it was not given enough time to gather information the Department requested. Petitioners cite to the fact that 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 Petitioners' view. Moreover, Petitioners claim that counter to the GOC's claims, the identity of the Gold companies' cross-owned affiliates was known at the outset of the case because the Gold companies had been a respondent in CFS from the PRC.[269] Thus, Petitioners argue that the Department should find that all papermaking chemicals suppliers to the Gold companies are government authorities.

Petitioners continue that the record of the instant investigation demonstrates that the GOC failed to act to the best of its ability. Citing the Preliminary Determination,[270] Petitioners maintain that

[267] See Mannesmannrohren-Werke at 1313.
[268] See, e.g., OCTG from the PRC IDM at 3 and 4.
[269] See CFS from the PRC IDM at 5.
[270] See Preliminary Determination at 10778.

for the suppliers owned by a combination of other companies, government entities and/or individuals, the GOC responses lack requested ownership documentation, including levels of state-ownership of input suppliers.[271] Petitioners contend that the GOC has, however, provided only broad assertions about the Department's standards for determining whether an entity is a government authority and citations to reforms in the role of government in SOEs. Citing the Petition, Petitioners rebut the GOC's claims that the chemical sector has been reformed with respect to the independence of government-owned companies.[272] Given the GOC's failure, Petitioners contend that the Department correctly applied AFA with respect to the ownership and control of the papermaking chemicals suppliers in the Preliminary Determination and should continue to do so for the final determination.

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.[273] That presumption can be rebutted where a party demonstrates that majority ownership does not result in control of the enterprise.

Rather than seeking to rebut the presumption for the majority-government-owned paper-making chemical suppliers with specific evidence about these suppliers, the GOC argues against the presumption stating that the enterprises operate without government interference, inter alia, in setting their prices. The GOC also submitted evidence to support its claim that the papermaking chemicals suppliers are not exercising elements of government authority and attempts to show that these suppliers operate as commercial entities.[274] This is similar to the argument discussed in KASR from the PRC that majority-government-owned enterprises may act in a commercial manner. As we stated in KASR from the PRC [275] and OCTG from the PRC:[276]

> 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.

[271] See, e.g., GQR at Exhibits Z-1 to Z-4. See also GSQR1 at Exhibit S-1-54.
[272] See Petition at 16 and 81-93, and Exhibits 115, 118 and 121.
[273] See KASR from the PRC IDM at Comment 4.
[274] The GOC submitted several laws on the record to support its contention that ownership is separate and distinct from government functions including the 1986 State-Owned Enterprise Bankruptcy Law, the 1988 State-Owned Enterprises Law, the 1993 Company Law, Interim Measures for the Supervision and Administration of State-Owned Assets of Enterprises (No. 378). See GFIS at Exhibit GOC-Fact-52 (Factual Submission on State-Owned Enterprises).
[275] See KASR from the PRC IDM at Comment 4.
[276] See OCTG from the PRC IDM at Comment 9.

> Nonetheless, the loans or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.[277]

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. We note, however, that WTO reports are without effect under U.S. law unless and until they are implemented pursuant to the statutory scheme provided in the URAA.[278] 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 DRAMS from Korea, 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 respondents have 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.[279]) Moreover, none of the respondent parties, including the GOC, have provided any additional information pertaining to the ownership of papermaking chemical producers since the Preliminary Determination.

We require such ownership information to perform our analysis and render an accurate decision. In this case, the GOC provided certain information on ownership, but this information did not address the issue of ownership for all papermaking chemical producers. Moreover, we find that the GOC did not provide a full and complete response. Accordingly, the Department was unable to determine whether or not the government controlled these companies. As explained above under "Use of Adverse Facts Available," the Department has continued to apply AFA, with the result that all the papermaking chemicals suppliers are being treated as authorities.

With respect to the GOC's claims that government ownership is separate and independent of traditional government functions, we disagree. We note that no pricing information or ownership information was submitted on the record by the GOC that would support these claims. The GOC points to various laws to argue that SOEs are not under government control (e.g., the 1998 SOE Law and the SASAC Interim Measure). These laws suggest that SOEs should be provided some level of autonomy. However, the Department does not find this evidence sufficient to demonstrate that the GOC does not control majority owned companies. For example, with majority ownership, the government would control the majority of board seats[280]

---

[277] Id.
[278] See Corus Staal at 1348-49.
[279] See Preliminary Determination at 10777-10778.
[280] See GFIS at Exhibit 2, GOC-Fact 52 (Corporate governance in China: Then and Now at 22-23 ("Pursuant to the Corporate Law of 1993, shareholders of modern SOEs are entitled to enjoy their shareholders' rights in proportion to their shares …")).

and, thus have the power to appoint senior managers.

Finally, regarding the GOC's claims that pricing generally and chemical pricing is not regulated, we have addressed this argument in the GE Post-Preliminary Analysis and also in Comment 14 – "Benchmarks – Papermaking Chemicals," SOEs and collectives account for 36.68 percent and 33.1 percent of domestic production of caustic soda and kaolin clay, respectively. We have determined that these levels of SOE and collective ownership are substantial. Hence domestic prices in the PRC for papermaking chemicals are distorted. Moreover, with respect to the producers that are government-owned the entities that are setting prices are controlled by the government. Accordingly, even if the government is not expressly legally required to set prices, it is, in fact, setting prices as the owner of papermaking chemical producers.

Preferential Lending to the Coated Paper Industry

Comment 17 Whether Chinese 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 claims that the Department previously has found entities with majority government ownership not to be government authorities for purposes of CVD law.[281] The GOC contends that the issue is whether the GOC and/or local governments exercise control or influence the practices of Chinese banks such that they do not act on a commercial basis. The GOC argues that the record evidence in this proceeding demonstrates that Chinese banks, including those in which the state has an interest, make their individual lending decisions on a commercial basis. The GOC asserts that the Chinese banking system has undergone significant restructuring and reform over the past five years, and that both Chinese and Western experts have detailed the significant advances made in the Chinese banking system that post-date many of the conclusions drawn by the Department. The GOC references three sources to support its claims that individual lending decisions are made on a commercial basis.

The first article is authored by the Vice Chairman of the CBRC, China's independent banking regulator/supervisor.[282] Important developments emphasized in the report were that four of the five large state-owned banks have undergone financial restructuring; the Chinese banking system has become increasing open to foreign investment; profitability of the Chinese banking sector has increased significantly; and non-performing loans on the balance sheets of major commercial banks declined substantially.

Secondly, the GOC references the China Monetary Policy Report for the fourth quarter of 2008, which notes the shareholding reforms undertaken by large state-owned commercial banks.[283] Lastly, the GOC refers to statements made by Dr. Pieter Bottelier, the former Chief of the World Bank Mission in China and a Senior Adjunct Professor at the Johns Hopkins University. Dr. Bottelier identified several significant recent enhancements to the Chinese banking system, including: internal restructuring of almost all major state banks; foreign banks participation in

[281] See DRAMS From Korea IDM at 61.
[282] See GOC Case Brief at 47.
[283] Id. at 48.

almost all major Chinese banks as minority investors and board members; and the adoption of market-based solutions for making non-tradable public shares in listed Chinese companies gradually tradable.[284]

The Gold companies concur with the GOC.[285]

Petitioners assert that the GOC exercises more control over its domestic financial sector than any other government in the world.[286] Furthermore, Petitioners claim that the Chinese government owns almost every financial institution in the country and strictly limits foreign participation in the sector.[287] Petitioners allege that the GOC controls access to capital through extensive bank ownership and other means, such as control over personnel appointments. Petitioners note that the GOC requires, by law, that Chinese banks support and follow the country's industrial policies.[288] According to Petitioners, the GOC continued to control the deposit and lending rates in China in 2008.[289] Petitioners state that the Department has repeatedly found that loans from state-owned banks qualify as a direct transfer of funds within the meaning of Section 771(5)(D)(i) of the Act.

In the instant case, Petitioners contend that the GOC offers no compelling reason why the Department should revisit its prior determinations and determine that banks owned and controlled by the GOC are not instruments of the GOC. Petitioners point to the CFS Paper investigation in which the Department rejected the very same arguments that the GOC is presently raising. [290]

Petitioners assert that the Chinese respondents have provided no evidence that the GOC has repealed the Commercial Banking Law, which requires banks to lend pursuant to China's industrial polices.[291] Petitioners maintain that, even though progress has been made with respect to corporate governance and the credit culture in China,[292] it does not change the fact that government-ownership and control over the SOCBs gives the GOC enormous power to guide lending to favored industries, such as paper.

Likewise, Petitioners point to the OCTG from China investigation as evidence that Chinese banks were still under the control of the GOC in 2008.[293] Petitioners state that the Department has already considered and rejected the possibility that in 2008 the GOC took significant and fundamental steps to reform its financial sectors such that state-owned banks should not be considered authorities within the meaning of the Act.

---

[284] Id. at 48.
[285] See Gold Companies Case Brief at 34.
[286] See Lined Paper Memorandum at 55.
[287] See Petitioners' Initial Comments On the Upcoming Preliminary Determination Regarding the APP Group, February 18, 2010 at 17-19.
[288] See Banking Law at Article 34 (Petition Exhibit IV-46).
[289] See China Monetary Policy Report (2008 Quarter 4) at 12, Petition Exhibit 55.
[290] See CFS From the PRC IDM at 42 and 55.
[291] See Banking Law at article 34, (Petition Exhibit 46); OTR Tires from the PRC and OTR Tires from the PRC IDM at Comment E.2.
[292] See GOC Brief at 49.
[293] See OCTG from the PRC IDM at Comment 20 and Comments 22-27.

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 from the PRC Investigation, we accorded different treatment under this section of the Act to government-owned banks that were commercial banks and those government-owned banks that acted as policy or specialized banks. Upon further review, we have determined that, with respect to determining whether a government-owned bank is a public entity or authority under the CVD law, it is more appropriate to focus solely on the issue of government ownership and control. This treatment of government-owned commercial banks is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. Furthermore, this treatment of government-owned commercial banks is also more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government-owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.[294]

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 and we adopt the reasoning in OCTG from the PRC in this investigation as well.[295] Thus, we do not find basis for reconsideration of our findings and we continue to find that state-owned Chinese banks are authorities for purposes of the CVD law.

With respect to the GOC-submitted information about advances in the banking sector that allegedly post-date the Department's earlier analyses of the Chinese banking system, the vast majority of the cited information relates to bank performance such as total assets, profitability, and the banks' recapitalization, i.e., information that does not relate the extent of government influence in bank lending decisions.[296] The information that could potentially be relevant to government influence relates to the restructuring of certain of the major banks, their incorporation under China's Company Law and subsequent sale of their shares, as well as the increase in strategic foreign investment in the banks. However, the GOC has not provided evidence that these reforms have resulted in change. To the contrary, in LWTP from the PRC, the Department pointed to continued government influence at one of the restructured banks, the Industrial and Commercial Bank of China, as reflected in the 2006 prospectus for the bank's global offering.[297] Further, while foreign ownership in Chinese banks may have increased, the

[294] See CORE from Korea IDM at 12 (emphasis added).
[295] See OCTG from the PRC IDM at Comment 20.
[296] See GOC Case Brief at 47-49.
[297] See LWTP from the PRC at Comment 6.

GOC's information confirms that they only participate as minority investors.[298] Finally, there is no evidence that the GOC has eliminated the floor on lending rates and the ceiling on deposit rates for Chinese banks, a key factor in the Department's earlier consideration of this issue.[299]

Comment 18 Whether the Policy Loan Program is Specific

The GOC claims that the Department's preliminary finding of a policy lending program in this case is not supported by substantial evidence. According to the GOC, the Department has misconstrued documents to find the existence of a de jure specific policy lending program for the coated paper industry.

The GOC maintains that the Department did not explain the foundations of its preliminary finding for policy lending in this case but presumes that the rationale is derived from the recent findings in the CFS from the PRC and LTWP from the PRC investigations. The GOC continues to disagree with the analyses in those cases. The GOC has never disputed that commercial banks in China may take industrial policy into account when making loans. But as indicated in the GOC's responses, such consideration is but one component of risk analysis.[300] The GOC asserts that just as Chinese banks may take into account industrial policy is no different than banks in the United States taking into account environmental regulations when lending to a high-polluting industry or other government program.

The GOC maintains 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. Likewise, the GOC points to Article 7 which states that commercial banks shall extend loans strictly based on the credibility of the borrower.[301] The GOC claims that banks providing financing to the respondent companies operated in accordance with detailed written policies and procedures that govern risk analysis and management. The GOC states 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 operate on a commercial basis without the level of government involvement that directs "policy lending." For these reasons, the GOC asserts that the Department must find that there is no "policy lending" program and that the evidence demonstrates that Chinese banks make lending decisions according to commercial considerations.

The Gold companies concur with the GOC.[302]

Petitioners assert that in both the CFS Paper from the PRC and LWTP from the PRC investigations , the Department concluded that: (1) the GOC had a policy to promote the paper industry through initiatives that involved preferential financing and, hence, loans provided by both Policy Banks and SOCBs in the PRC constituted a direct financial contribution (see section

[298] See GOC Case Brief at 49.
[299] See CFS from the PRC IDM at Comment 68 and LWTP from the PRC at 12.
[300] See GOCQR at 29.
[301] Id. at Exhibit A-12.
[302] See Gold Companies Case Brief at 34.

751(5)(D)(i)of the Act); (2) the loans were de jure specific because the GOC had a policy "to encourage and support the growth and development of the forestry and paper industry" (see section 751(5A)(D)(i) of the Act); and (3) the loans conferred a benefit equal to the difference between what the recipient paid on the loans and what the recipient would have paid for a comparable commercial loan (see section 771(5)(E)(ii) of the Act.).[303]

In the Preliminary Determination, Petitioners contend that the Department determined that the five-year plans and industrial policies cited in the CFS Paper from the PRC and LWTP from the PRC continue to be in effect.[304] Specifically, these plans are: 1) the Tenth Five-Year and 2010 Special Plan for the Construction of National Forestry and Papermaking Integration Project; 2) the Development Policy for Papermaking Industry (2007); the Decision of the State Council on Promulgating and Implementing the Provisional Regulation on Promoting Industrial Structure Adjustment (2005), and the Guiding Catalogue for Industry Restructuring (2005 version). Additionally, Petitioners note that the Department supported its Preliminary Determination with reference to various five-year plans of provinces and municipalities where respondents in this investigation are located.

Petitioners state that, in the InitQ, the Department asked the GOC to provide translated copies of the paper industry plans of the provinces and municipalities in which the respondent producers are located. They contend that the GOC did not fully answer the question and provide relevant documents, but instead referred the Department to the same single sub-national policy for the paper industry.

Petitioners note that in the factual information submission filed on June 1, 2010, Petitioners provided the Department at least 16 unreported economic and social development plans, light industry plans, and papermaking plans for the various provinces and municipalities. They note that even the more general plans make specific mention of the pulp and paper sector. Petitioners contend that it is inconceivable that the GOC did not know of the existence of the plans and guidelines relating to the paper industry.

Furthermore, Petitioners contend that record evidence indicates that not only the GOC, but also China's paper companies follow the nation's industrial plans. They claim that the Gold companies and other companies have embarked on extensive integration efforts encompassing forestry, pulp production, and papermaking in line with the GOC's policy pronouncements.[305] In closing, Petitioners contend that the Department should continue its preliminarily finding that the GOC has in place a policy to promote specifically the pulp and paper industry in the final determination.

Department's Position

We continue to find that loans received by the coated paper industry from SOCBs were made pursuant to government directives. In the Preliminary Determination, the Department found these loans to be de jure specific within the meaning of section 771(5A) of the Act because of the

[303] See CFS from the PRC IDM at 9-10 and LWTP from the PRC IDM at 11.
[304] See Preliminary Determination at 10782.
[305] See APP in China, Petition Exhibit 11.

GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the coated paper industry.[306] 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."[307] Thus, we disagree with the GOC and the Gold companies that this program is not de jure specific.

We also disagree with the GOC's and the Gold companies' position that evidence on the record supports finding that SOCBs acted in accordance with market principles in providing the loans to the respondents. As noted in Comment 17, 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.[308] Thus for the reasons outline above and in these prior determinations we continue to find the policy loan program to be de jure specific.

Lending Benchmarks

Comment 19 Whether Negative Real Interest Rates Should be Excluded from the Regression

The GOC claims that the Department improperly excluded negative inflation-adjusted interest rates from its computation. The GOC asserts that negative real interest rates are market-based and are not statistical anomalies.

The Gold companies concur with the GOC.[309]

Petitioners contend that the GOC has provided no new information on this issue. Therefore, the Petitioners assert that the Department should continue to reject the GOC's arguments in the instant case.

Department's Position

The Department disagrees with the GOC and the Gold companies. We have found that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially.[310] Therefore, we have continued to exclude negative real interest rates in calculating our regression-based benchmark rate.

Comment 20 Whether the Regression is Statistically Valid

The GOC contends that, in its Preliminary Determination, the Department calculated the external benchmark for the respondents' short-term RMB denominated loans using a regression-based

[306] See Preliminary Determination at 10782-83.
[307] See GQR at Exhibit 18; see also OCTG from the PRC Preliminary Determination at 47218.
[308] See OCTG from the PRC IDM at Comment 21.
[309] See Gold Companies' Case Brief at 34.
[310] See OCTG from the PRC IDM at Comment 25 and Citric Acid from the PRC IDM at Comment 11.

methodology that is flawed. The GOC notes that the Department used the lending and inflation rates from the IFS reported by the IMF.[311] The GOC maintains that this methodology was erroneous and unlawful for three principal reasons.

First, the GOC claims that the Department's benchmark rate does not relate to the economic or monetary conditions in China and is not a market-determined rate free of government distortion. The GOC claims that the benchmark is simply a rate that reflects the economic conditions and monetary policies of approximately 30 other countries, incorporating the government influence of each country.

Secondly, the GOC asserts that the Department's claim that there is a "broad inverse relationship between income and interest rates" is unsubstantiated.[312] Citing the Drazen Report, the GOC concludes that there is no strong theoretical justification for the simple use of GNI as an indicator of the level of interest rates. The GOC argues that according to the Drazen Report, if macroeconomic indicators are to be correlated with interest rates, economic theory and empirical analysis dictate the use of national savings rates and inflation rates.

Third, the GOC asserts that the Department's use of a regression analysis to determine a short-term interest rate for China based on a composite governance indicator ("GI") factor is invalid. The GOC submits that there is no evidence on the record that shows a correlation between interest rates and governance indicators for the group of countries that the Department is examining.

The Gold companies concur with the GOC.[313]

Petitioners contend that the Department should continue to use its regression-based external short-term lending benchmark. Petitioners claim that the Department has evaluated and rejected each of the GOC's arguments in a number of China CVD cases.[314]

Department's Position

We have addressed the issues raised by the GOC and the Gold companies in prior proceedings.[315] The Department has found that the GOC's predominant role in the banking sector results in significant distortions, making PRC interest rates unsuitable for a benchmark and use of an external benchmark appropriate.[316] Further, the benchmark interest rate used in the Department's calculations is based on inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC and takes into account other key factors, thus

[311] See Preliminary Determination at 10781.
[312] Id.
[313] See Gold Companies Case Brief at 34.
[314] See CWASPP from the PRC IDM at "Benchmark Interest Rates" and Comment 10; OCTG from the PRC IDM at Comments 24, 25, and 27; Citric Acid from the PRC IDM at Comment 11; and CFS from the PRC IDM at Comment 10.
[315] See Citric Acid from the PRC 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 CWASPP from the PRC IDM at Comment 10.
[316] See 19 CFR 351.505(a)(3).

making these rates a suitable external benchmark. We continue to find that use of national savings rates in calculating an external benchmark would be inappropriate, because use of such rates would insert distortions present within the PRC market into our external benchmark.[317] Further, the Department's use of governance indicators in its external benchmark facilitates cross-country comparisons with data not directly impacted by the GOC's dominance of the banking sector.[318] Finally, the Department continues to find that negative inflation-adjusted rates are anomalous and commercially unsustainable, and we have thus excluded these rates from our benchmark rate.

The parties have raised no new arguments in this investigation. For the reasons outlined above and in prior proceedings, 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.

Comment 21 Should the Department Use an In-Country Benchmark

The GOC contends that, in its Preliminary Determination, the Department unlawfully applied an external benchmark and did not follow its regulations by first looking for a comparable commercial loan[319] and, then, if the firm had no comparable commercial loans, using a national average interest rate for comparable commercial loans.[320]

The GOC maintains that the Department did not lawfully apply this standard in the preliminary determination. First, the GOC claims that the Department wrongly associated government intervention in the Chinese market with distorted lending rates. The GOC asserts interest rates in every country are a function of government intervention through banking regulation, monetary policy, and government macroeconomic policy. The GOC notes that in the United States, the Federal Reserve, is heavily involved in the U.S. financial markets. According to the GOC, the Department has failed to explain why certain government actions, such as those undertaken by the Federal Reserve in influencing interest rates, are non-distorting, but finds the Chinese financial system as distortive based on the purported actions by the GOC.[321] The GOC alleges that if the Department were to apply this unlawful presumption, it would never be able to use domestic benchmarks in any country to calculate CVD margins.

Secondly, the GOC claims that the Department's reliance on deposit rate caps and interest rate floors as evidence of government intervention that distorts Chinese interest rates is misplaced. The GOC cites to a memorandum addressed to then Assistant Secretary Spooner from the U.S. Department of Treasury, in which the Treasury Department states that deposit rate caps do not necessarily confer on banks a benefit that is passed on to the banks' borrowers.[322] In addition, the GOC quotes the Treasury Department memorandum for its point that, in some countries, an

[317] See CFS from PRC IDM at Comment 10.
[318] Id.
[319] See GOC Case Brief at 52 (citing section 771(5)(E)(ii) of the Act).
[320] See 19 CFR 351.505(a)(3)(ii).
[321] See Preliminary Determination at 10781.
[322] See GOC Case Brief at 54.

interest rate floor on lending can keep rates that companies pay to borrow money high. The GOC contends that given the comments from the U.S. Department of Treasury and what is known about government financial market intervention throughout the world, there is no basis to find the Chinese market so distorted as to disregard Chinese interest rates.

The Gold companies concur with the GOC.[323]

Petitioners state that the Department should continue to rely on an external benchmark to determine the benefit from policy lending and calculate the benefit as it did in the Preliminary Determination, using its well-developed, regression-based methodology, given that the GOC has provided no new factual or legal arguments in this case. Petitioners maintain that the Department has rejected the same arguments from the GOC in prior cases and has consistently relied on an external benchmark to determine the benefit from this program.[324]

Petitioners claim that the Department should reject the GOC arguments regarding deposit rate caps and interest rate floors as it is unpersuasive. They claim that the Department has rejected the GOC arguments in prior investigations.[325]

Department's Position

The Department has fully addressed the arguments raised by the GOC and the Gold companies regarding the Department's rationale for relying on an external benchmark and its authority to do so in prior cases and the Preliminary Determination.[326] Those decisions apply to the GOC's arguments in this case. We do not find basis for reconsideration of our findings. Therefore, 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.[327] 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.[328] 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.[329]

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 a way to guarantee the banks a considerable profit margin on each of their loans. In previous

---

[323] See Gold Companies Case Brief at 34.
[324] See OCTG from the PRC IDM at Comment 22; see also PC Strand from the PRC IDM at Comment 20.
[325] See Citric Acid from the PRC IDM at Comment 7.
[326] 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 73 FR at 54373, and Preliminary Determination at 9171-9173.
[327] See also May 15 Memorandum and Lined Paper Memorandum.
[328] See CFS from the PRC IDM at Comment 10.
[329] Id., see also Citric Acid from the PRC IDM at Comment 7 and Citric Acid Prelim at 54373.

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.[330] 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 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.

Comment 22 Terms of Loan Rates in the IMF Data

The GOC asserts that the Department's short-term benchmark calculation includes errors stemming from the Department's use of the IMF international financial statistics data. In particular, the GOC contends that the Department provided no explanation as to how it determined that the IMF loan data corresponds to short-term loans. The GOC alleges that, in prior litigation, the Department has characterized the IMF lending rates as either "long-term" or a mix of long-term and short-term rates. The GOC notes that, if the Department continues to treat this mix of short-, medium-, and long-term loan rats as a rate that must be adjusted upward to determine a long-term rate benchmark, the Department must also adjust the rate downward to obtain a true short-term benchmark rate.

The Gold companies concur with the GOC.[331]

Petitioners contend that the GOC has provided no new information on this issue. Therefore, the Department should continue to reject the GOC's arguments in the instant case.

Department's Position

We have addressed the issues raised by the GOC and the Gold companies in prior proceedings.[332] 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.[333] Notwithstanding this claim, as explained in Citric Acid from the PRC, the information about the interest rates used in our regression analysis was reviewed and found to be rates that reflect loan

[330] See CFS from the PRC IDM at Comment 10.
[331] See Gold Companies Case Brief at 34.
[332] See OCTG from the PRC IDM at Comment 24.
[333] See Usinor 1995 and Inland Steel 1997.

terms of one year or less.[334] Nonetheless, as a measure of caution we have applied these rates to loans with one to two year maturities. The GOC and the Gold companies have not pointed to any evidence about the interest rates we are using. Instead they point to years' old 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.[335] Therefore, a downward adjustment would likely overcompensate for any difference between one- and two-year term loans.

Comment 23 Whether the Long-Term and Discount Rates are Flawed

The GOC contests that the Department's computation of an adjustment between short- and long-term rates using U.S. dollar "BB" bond rates is arbitrary and unlawful.[336] The GOC claims that U.S. dollar yield curves are inapplicable to the term structure of RMB rates because of different monetary policies in China, rates of inflation, and the varying interest rate expectations of lenders across currencies.

The GOC states that the Department's long-term benchmark was arbitrary because the use of U.S. bond rates to compute the long-term mark-up is inconsistent with the rationale underpinning the Department's use of interest rates in low-middle income countries as the starting point for its regression analysis. The GOC also notes that the Department's own regulations recognize that BB bond rate is an inappropriate benchmark for creditworthy companies.[337]

The Gold companies concur with the GOC.[338]

Petitioners contend that the GOC has provided no new factual information with regard to this issue. They claim that the Department has evaluated and rejected each of the GOC's arguments in a number of China CVD cases.[339] Therefore, petitioners maintain that the Department should continue to reject the GOC's arguments.

Department's Position

The Department has fully addressed the arguments raised by the GOC and the Gold companies regarding the use of the U.S. corporate BB bond rate to derive a long-term external benchmark in prior cases.[340] 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

[334] See Citric from the PRC IDM at Comment 9. See also Gold Companies Prelim Calc Memo at Exhibit 4.
[335] See Citric Acid Prelim at 54373, Citric Acid from the PRC IDM at Comment 9.
[336] See Preliminary Determination, 75 FR at 10781.
[337] See 19 CFR 351.505(a)(3)(iii).
[338] See Gold Companies Case Brief at 34.
[339] See CWASPP from the PRC IDM at Comment 10; OCTG from the PRC IDM at Comments 24, 25, 27; Citric Acid from the PRC IDM at Comment 11; and CFS from the PRC IDM at Comment 10.
[340] See LWTP from the PRC IDM at Comment 9; Citric Acid from the PRC IDM at Comment 13.

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.[341] 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.[342] The Department has 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 have continued to use the rates for BB-rated bonds, the highest non-investment grade, to calculate the mark-up for this final determination.

In addition, parties in this proceeding have proposed no 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.

Provision of Land for LTAR

Comment 24 Whether HYDC is an Authority

With regard to the provision of land to JHP by HYDC, the GOC argues that the Department inappropriately concluded that HYDC is an authority and thereby capable of conferring a financial contribution. The GOC contends that the Department failed to engage in a "reasonable examination" of the record to reach this conclusion, limiting its analysis to only certain facts identified in the BPI Memo.[343] The GOC argues that its account on the record of the history and role of HYDC demonstrates that HYDC should not be regarded as an authority. According to the GOC, the HYDC is an FIE with significant foreign investment that assumed a development mandate in the YEDZ previously established for a Hong Kong-based Japanese subsidiary, KGHK. Under the original 1992 development contract with the Hainan People's Government, KGHK obtained a mandate to develop the YEDZ, and as part of this mandate, it acquired the right to transfer or rent land-use rights to other enterprises who sought to establish facilities in the YEDZ. The GOC claims that HYDC assumed the development mandate in the YEDZ previously held by KGHK in 2005.[344] The GOC asserts that the transfer or rental of the land-use rights in the YEDZ under this mandate were commercial in nature. The GOC claims that it has made it clear in this investigation that the GOC plays no role in setting prices for land-use rights in the YEDZ and, therefore, HYDC's transfer or rental of land-use rights under the YEDZ mandate involves only private transactions.[345]

The GOC also argues that for the same reasons it puts forth to oppose the Department's preliminary finding that chemicals were provided at LTAR (discussed above in Comment 16), government ownership by itself cannot be considered dispositive in identifying an authority for

[341] See Comment 21.
[342] See LWTP from the PRC IDM at Comment 9.
[343] See BPI Memo at 1.
[344] See GOCSQR2 at 7-8.
[345] Id.

purposes of the statute. The GOC contends that this is particularly true with an entity such as HYDC where (1) the entity has foreign investors; (2) the entity's development rights are plainly commercial in nature; (3) the entity is separate from the government land administration agency and is responsible for land pricing as a secondary market actor; and (4) the Department has made no effort, beyond establishing ownership, to examine factors related to the entity's status.

The Gold companies incorporate by reference the arguments made by the GOC in its case brief regarding the provision of land to JHP in Yangpu. [346]

Petitioners assert that the GOC's argument that HYDC is not an authority appears to be based primarily on the GOC's belief that the Department did not engage in a "reasonable examination" of HYDC. Petitioners argue that the GOC's position ignores certain facts discussed in the BPI Memo. [347] Petitioners also argue that in HYDC, in refusing to meet with the Department, foreclosed the possibility of verifying whatever information might be relevant to the GOC's analysis of HYDC and its role in the YEDZ. Moreover, Petitioners argue that even if HYDC were not an authority, it was clearly entrusted and directed to provide the financial contribution at issue within the meaning of section 771(5)(B)(iii) of the Act. Petitioners claim that the YEDZ website placed on the record establishes that land prices in the zone were set a "preferential rates" pursuant to a decree of the GOC State Council. [348]

Department's Position

We review the Department's factual basis for finding the HYDC to be an authority in the BPI Memo.[349] We find that the particular facts cited by the Department and discussed in the BPI Memo provide a solid basis for establishing HYDC as an authority. The GOC argues that the Department supports its position with an overly limited set of facts. In the GOC's view, its narrative explanation of conditions governing land distribution in the YEDZ[350] overrides the facts on which the Department has relied to establish HYDC as an authority. [351] We disagree. The Department relies on facts that have been verified whereas the GOC's narrative explanation did not include sufficient supporting documentation and was not verified because HYDC failed to participate in verification.[352]

The Department has been diligent in trying to build a factual record on the role and status of HYDC and its provision of land-use rights in the YEDZ. The Department issued a second supplemental questionnaire to the GOC on April 14, 2010 in which we asked 10 detailed questions on the provision of land in the YEDZ. In GOCSQR2, the GOC submitted general narrative responses to all of the Department's questions, including a short corporate history of the companies in the YEDZ that managed the land-use right, including KGHK and HYDC, but

[346] See Gold Companies Case Brief at 35.
[347] See BPI Memo at 1.
[348] See Land Preferential Policy in Yangpu, Yangpu Economic Development Zone Website, Petition at Exhibit 189.
[349] See BPI Memo at 1-2.
[350] See GOCSQR2 at 6-10
[351] See GOC Case Brief at 60-61.
[352] See GOCSQR2 at 7-8 and GOC Verification Report at 3 and Exhibit 2.

did not provide adequate documentation to support the narrative.[353] The Department requested the "Contract on Granting Land-use-right in Yangpu EDZ" in its May 12, 2010 supplemental questionnaire which the GOC submitted in the GOCSQR3 on May 19, 2010. The referenced contract expressly delegates the decision-making authority for transferring or renting land-use rights in the zone to KGHK, but does include any apparent requirements that the land-rights be provided or not be provided on a commercial basis and does not inform us one way or the other of the exact relationship between the YEDZ development company (KGHK at the outset) and the government.[354] In an effort to substantiate the GOC's narrative explanation of the YEDZ land-rights regime during verification, the Department requested the following in the GOC Verification Outline issued on May 28, 2010:

- Meetings with officials from the Yangpu EDZ City Layout, Construction, and Land Bureau, Danzhou Bureau of Land and Resources, and any other agencies involved with the granting of land-use rights to JHP.
- Meetings with representatives from the HYDC and any government agency involved with the transfer of land-use rights in the Yangpu EDZ to HYDC.
- Discuss and provide evidentiary support to substantiate how JHP applied for and obtained land-use rights for all parcels of land cited in the GOC's February 12, 2010 response at Exhibits 10 - 21.
- Provide evidentiary support to substantiate the location of JHP's land-use rights.

As indicated in the GOC Verification Report, HYDC did not participate in the verification and, therefore, the exact nature of its role as land-rights seller in the YEDZ is unverified. The GOC made an official from the Hainan Yangpu State Administration of Industry and Commerce available at verification which enabled the Department to verify HYDC ownership. [355] Department verifiers also met with an official of the Hainan Yangpu EDZ Layout and Construction and Land Bureau ("YEDZ Land Bureau") which enabled them to verify, as requested in the outline, the role of that government agency in the administration of land in the YEDZ.[356] However, while the Land Bureau official provided a general overview of the role of the HYDC, when we asked him to explain and document specific transactions between JHP and HYDC, he could only refer us to JHP. [357] Thus, the GOC failed to satisfy the Department's requests in the verification outline to review and verify the role of HYDC in selling land use rights in the YEDZ and to explain and document how HYDC determines the value of land and the price at which it sells land-use rights. Therefore, the Department must rely on the information it has verified, as discussed in the BPI Memo and on that basis, we find that HYDC is an authority, as defined in Section 771(5)(B) of the Act.

We disagree with the GOC's position that foreign investment in HYDC precludes it from being an authority. We discuss the reason for the disagreement in the BPI Memo.

[353] Id.
[354] See GOCSQR3 at Exhibit SUPP3-08.
[355] See GOC Verification Report at 3- 4
[356] Id. at 4-6.
[357] Id. at 4-5

Also, the Department cannot subscribe to the GOC's position that HYDC's land transactions in the YEDZ were purely commercial based on the history of development mandate in the YEDZ, for which the HYDC assumed responsibility. Having been denied the opportunity to meet with HYDC during verification, the Department has no basis to support such a position, we simply do not have adequate details regarding HYDC provision of land to JHP.

Finally, while the GOC's assertion that HYDC was wholly separate from the local government land administration was reiterated by government authorities at verification, this does not in itself negate the possibility that HYDC is an authority in its own right for reasons discussed in the BPI Memo. [358] HYDC's failure to participate in verification made it impossible to confirm that HYDC's separate status in the YEDZ established that it was not an authority in its provision of land-use rights.

Comment 25 Financial Contribution

Citing section 771(5)(D) 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) 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.

The Gold companies incorporate by reference the arguments made by the GOC in its case brief regarding the provision of land to JHP in Yangpu. [359]

Petitioners maintain that the Department has considered and rejected arguments that the provision of land-use rights is not a financial contribution in other proceedings. [360] Petitioners highlight the Department determination in OTR Tires from the PRC that the provision of land-use rights provide a benefit pursuant to 19 CFR 351.511(a) and 771(5)(E)(iv) of the Act. Petitioners assert the Department's position is bolstered by Eurodif at 886 in which the Supreme Court held that the Department's interpretation of the law "governs in the absence of unambiguous statutory language

Department's Position

[358] Id.
[359] See Gold Companies Case Brief at 35.
[360] See, e.g., DRAMS from Korea at 37122, 37125; OTR Tires from the PRC at 71360, 71368; Live Cattle from Canada at 57040 (October 22, 1999); Wire Rod from Italy at 40480-40485 (July 29, 1998); Steel Wire Rod from Trinidad and Tobago (1997) at 55008.

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.[361] 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.[362] The Department's analysis from those cases, incorporated herein by reference, applies in this case. The GOC and the Gold companies 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 26 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 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 that 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.[363] Moreover, the GOC cites Article 5 of the Rules on Granting Land-Use Rights Through Private Agreement and recent market reports to assert that land sales in the PRC are market-based.[364] 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 and cites a number

[361] 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.
[362] See LWS from the PRC IDM at 51-52, OTR Tires from the PRC IDM at 171-173, and CWLP from the PRC IDM at Comment 22.
[363] See GFIS at GOC_FACT-28 at 2-3.
[364] Id. at Exhibits GOC-Fact-14, GOC-FACT-30 and GOC-FACT-31.

of legal measures taken by the GOC which the GOC claims has created a well-regulated market for land in China.[365] 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.[366] 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.

The Gold companies incorporated by reference the arguments made by the GOC in its case brief regarding the provision of land to JHP in Yangpu. [367]

Petitioners dispute the GOC's arguments that there is a functioning market for land-use rights in China and that the Department should use domestic Chinese prices for benchmarks for land. Petitioners assert that the Department has found on numerous occasions that industrial land prices in China are distorted by GOC ownership of all land and its use of industrial policies to guide distribution. [368] Petitioner cite to the Department's analysis of the Chinese land-use rights market in LWS from the PRC in which the Department identified the dominant role of the government and concluded that land in China was not priced in accordance with market principles. [369] In light of the distortions that the Department previously identified in the Chinese industrial land-use rights market, Petitioners conclude that resort to an external benchmark is necessary.

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.[370] 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). In this investigation, we were unable to verify the particulars of the arrangement under which Peoples' Government of

[365] See GOC Case Brief at 64-65. See also GFIS at GOC-FACT-32 and GOC-FACT-33.
[366] See Accession Protocol at Article 15(b).
[367] See Gold Companies Case Brief at 35.
[368] See GE Post-Preliminary Analysis at 8.
[369] See LWS from the PRC IDM at 15-17 ("Analysis of Programs" section)
[370] 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.

Hainan reportedly delegated authority to HYDC and others to administer land rights in the YEDZ. However the GOC made it very clear that the government is the ultimate authority over the distribution of land rights in the YEDZ and any administrative responsibility that HYDC and others might exercise is granted by the government as the actual owner of the land.[371] Therefore, our conclusion that land prices in the PRC do not provide an appropriate benchmark because they are not in accordance with market principles due to ultimate and pervasive government control of the land market are supported by the particular facts of this case. Moreover, the GOC's arguments and information submitted in this investigation have been addressed in prior cases.[372] 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. [373] 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.[374] Furthermore, while the report in GOC-FACT-31 does state the PRC has an "effective land market in force," it also 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."[375] 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.[376] 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.[377] Thus, in this excerpt from the 2009-2010 Global Competiveness Report, 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. Even if we knew what the metrics were behind the property right rankings in the 2009-2010 Global Competiveness Report, this would not change the fact that the GOC is the predominant player in the Chinese land market. With regard to the GOC's assertion that legal measures have created a well regulated land market which by implication

[371] See GOCSQR2 at 6-10 and GOCSQR3 at Exhibit SUPP3-08.
[372] Id.
[373] See OCTG from the PRC IDM at Comment 16.
[374] See GFIS at GOC_FACT-28.
[375] Id. at GOC-FACT-31 at 13.
[376] Id. at GOC-FACT-32 at 15-16.
[377] Id. at GOC-FACT-33.

would preclude the necessity of using external benchmarks, 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."[378]

With respect to the GOC's argument based on the SCM Agreement and WTO reports, the Department notes that unless and until WTO reports are implemented through the procedures outlined in 19 USC 3538, they do not have effect under US law. In any event, the Appellate Body has ruled that there are situations when government distortion of the market can justify use of an external benchmark.[379]

With regard to the GOC argument that the Accession Protocol reinforces the SCM Agreement's preference for domestic benchmarks and restricts any deviation from the SCM requirements to circumstances where there are "special difficulties," the Department has clearly established that special difficulties exist in the form of the Chinese government's predominant role in the Chinese land market. In this case, as in previous decisions cited above, the Department has followed its established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market. Moreover, a case-by-case approach is what China agreed to in its Accession Protocol, which explicitly provides for use of external benchmarks, where there are special difficulties in applying standard CVD methodology.[380] Thus, the use of world market prices is fully in accordance with the Department's regulations and the Department's past practice, and in no manner evidences that the CVD law should not be applied to China.

Comment 27 Whether There Are Flaws in the Thai Benchmark

The GOC argues the Department's selection of Thailand for the land benchmark is entirely arbitrary and fails any test of comparability required by the statute. 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.

The GOC states that the only land-use transactions at issue in this investigation concern JHP's purchase of land-use rights in the YEDZ. If the Department does countervail this provision of land in the final determination, the GOC asserts that the Department must calculate the benefit

[378] See LWS from the PRC IDM at Comment 10.
[379] See AB Report on Softwood Lumber at paragraph 101
[380] See Accession Protocol, WT/L/432 at paragraph 15 (November 23, 2001).

either by comparing the government price to a "market determined price resulting from actual transactions in China or, alternatively, to a price consistent with market principles. The GOC states that these benchmark prices are available on the record for each quarter of 2008 in Market View, compiled by CB Richard Ellis in Market View for each quarter of 2008. The GOC claims that these data reflect the prevailing market conditions in China during the POI across varied real estate markets, including markets more comparable to the more sparsely developed Hainan market. The GOC maintains that while Department should use the most comparable market available in Market View, it should at a minimum calculate an average of the industrial market prices in Market View.[381]

The Gold companies incorporated by reference the arguments made by the GOC in its case brief regarding the provision of land to JHP in Yangpu.[382]

Petitioners state simply that they support the Department's preliminary selection of "indicative land values" based on the facts of the case.

Department's Position

The GOC'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 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.[383] The GOC makes the point that many of the characteristics of the respective land parcels being compared in Thailand and China are unique to their locations and argues that based on this location-based uniqueness, the Department is wrong to use the Thai benchmark. We agree that land by its nature has characteristics that are defined by its location and the farther afield one must go to find a benchmark, the more difficult it is to find a match that is identical in every aspect. It is for this very reason that in the Department's CVD methodology, we only go to external benchmarks when no viable internal benchmark is available, which is the situation in this case. If we do have a benchmark with all or most of the same characteristics, we look for the most similar benchmark available. 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 argues in its brief 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

[381] See GFIS at GOC-FACT-34.
[382] See Gold Companies Case Brief at 35.
[383] 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.

density and other economic factors and demographic factors. We find that these factors by themselves firmly establish the Thai land as an applicable external benchmark for Chinese land. The record does not establish that the Thai land benchmark is so different in its proximity to supplies, transportation costs of inputs and finished products, transportation costs of workers and customers, availability and costs of utility services, and application of local regulations and taxes so as to render it inapplicable as a benchmark.

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 26 above), it would not be appropriate to use internal land prices in the PRC.

Comment 28 Specificity of Land for LTAR Based on AFA

The GOC argues that the Department's application of AFA as the basis for finding specificity with regard to the HYDC's provision of land is unreasonable and represents the continuation of the Department's results-oriented policies to generate subsidy rates. The GOC notes that in the post-preliminary results, the Department cited to HYDC's failure to meet with Department verifiers and the GOC's failure to provide land-use pricing information. The GOC contends that the premise of the Department's analysis that HYDC is a government authority has never been adequately established by the Department, but based on that assumption, the Department concluded that the GOC had the power to compel HYDC to participate in verification and disclose the terms of its land transactions. The GOC insists that it was not in a position to dictate HYDC's participation in the verification or obtain land transaction information because HYDC's land transactions are considered to be based only on private and commercial considerations outside the GOC's power to control.

The Gold companies incorporated by reference the arguments made by the GOC in its case brief regarding the provision of land to JHP in Yangpu. [384]

Department's Position

In the Department's GE Post-Preliminary Analysis, the Department found that the subsidy conferred through the provision of land in the YEDZ was specific based on adverse facts available. The GOC has not provided us with any arguments that would cause us to change our position on the application of adverse facts available as the basis for specificity in the final determination. The fact that HYDC officials refused to participate in the verification continues to be a relevant factor in this consideration. This lack of participation in the verification coupled with the GOC's failure to fully respond to the Department's questions concerning the administration of land in the YEDZ by failing to provide adequate supporting documentation for its narrative explanation, as discussed above in our position for Comment 24 are clear indications that the GOC failed to cooperate by not acting to the best of its ability.

Contrary to GOC assertions that the post preliminary finding was arbitrary and result-oriented, the Department made a distinct effort prior to its post-preliminary determination to obtain and

[384] See Gold Companies Case Brief at 35.

verify the information that might have supported the GOC's case brief arguments. In the Department's Position for Comment 24, "Whether Hainan Yangpu Development Co., Ltd. ("HYDC") Is an Authority," we review the Department's attempts to obtain and verify information relevant to the administration of land-use rights in the YEDZ, information that would have bearing on whether HYDC is an authority and whether the subsidy conferred is specific. In our second supplemental questionnaire, the Department was very specific about the information it needed to analyze this program.[385] The GOC was apparently unwilling to go beyond its general unsubstantiated statements that (1) the provision of land-use rights in the YEDZ represents a secondary market in which transactions are made on a commercial basis and (2) HYDC is an FIE and, therefore, by definition, it cannot be an authority. [386] The GOC did not provide any additional information on the record that would establish HYDC as an independent commercial actor. Moreover, by failing to ensure the participation of HYDC at verification, the GOC missed another opportunity provided by the Department to substantiate the GOC's general statements concerning the YEDZ land-use rights regime in the GOCSQR2. [387] On the other hand, the Department was able to verify other record information that indicates that the GOC was in a good position to encourage HYDC's participation in the verification.[388]

Issues Related to Sun Companies

Comment 29 Whether to Use Revised Sales Values for the Sun Companies

Petitioners state the Sun companies provided adjusted sales values at verification.[389] As such, Petitioners assert the verified adjusted sales values should be used in any subsidy calculation for the Sun companies.

The Sun companies did not provide a rebuttal on this issue.

Department's Position

As the Department has applied total AFA to the Sun companies, see Comment 31 below, we have not used the Sun companies' sales values in any calculation.

Comment 30 Whether To Apply Adverse Facts Available to Sun Companies' Unreported Loans

Petitioners note that the Sun companies did not initially provide full details on all outstanding loans during the POI.[390] They further note the Sun companies did not provide full information until its final supplemental questionnaire response and at verification.[391] Petitioners state the Department requested four times for the Sun Paper companies to provide complete information

[385] See GOC Second Supplemental Questionnaire, April 14, 2010 at 3-4.
[386] See GOCSQR2 at 7-8.
[387] Id. at 6-10
[388] See GOC Verification Report at 3-4 and Exhibit 2. See also BPI Memo at 2.
[389] See Sun Verification Report at 10-11.
[390] See Petitioners' Case Brief at 47-49.
[391] Id.

on all outstanding loans during the POI and they failed to comply with the requests. As such, Petitioners argue that total adverse facts available are warranted in regards to the Sun companies' trade and non-bank institution financing as they failed to cooperate to the best of their ability to comply with a request for information, consistent with 776(b) of the Act. Petitioners further argue that the Department cannot apply the rate as if the Sun companies had cooperated and, instead, should follow its precedent and apply an appropriate adverse rate.[392]

Petitioners further cite record evidence in support of finding all trade and non- bank institution financing linked to Chinese banks or majority government-owned institutions and recommend suggestions in calculating an AFA rate in regards to these loans.[393]

The Sun companies refute Petitioners' assertions that they did not provide complete information and were deficient in their responses. They argue that the Department asked multiple questions regarding the loans of SP and YT and each question was posed differently. Notwithstanding, each request for information or confirmation was appropriately answered to the Sun companies' best ability.

They note that the Sun companies fulfilled the Department's original request for all loans "from banks or lending institutions on which interest payments were outstanding during the POI" and confirmed this in SPQR1.[394] In SPQR3, the Sun companies responded to yet more questions regarding its loans and provided additional loans based on a review of its records as well as loans inadvertently omitted that should have been reported with the original questionnaire response. However, they note that one loan included in SPQR3 was not needed to be reported as no interest was owed during the POI. All of these loans were again reported on the presumption by the Sun companies that the Department was interested in loans from banks and lending institutions that were outstanding during the POI. In SPQR4, the Sun companies state that the Department wanted all outstanding loans during the POI from each company.[395] However, the Sun companies note the Department referenced the original request for loans, which implied the Department was still only concerned with loans from banks or lending institutions. Notwithstanding, the Sun companies provided loans inadvertently omitted that should have been reported and trading loans from YT, which the company believed were not covered under the Department's request. At verification, YT officials provided information on a non-bank financial institutional that was not previously reported. However, they argue that it was their understanding that this type of loan did not fit within the perimeters of "banks and lending institutions and, therefore, was not reported.

As summarized above, the Sun companies assert they complied with the Department's requests for loan information and any misunderstanding or issues with their submissions were resolved at verification. Moreover, the information was verified by the Department. Thus, the Sun companies argue there is no missing information on the record regarding either company's loans to warrant AFA, and, moreover, citing, Olympic Adhesives, the Department cannot apply AFA to a company that did the best to its ability to answer the Department's questions.

---

[392] See Magnesia Bricks from the PRC IDM at 4, Hot-Rolled from India 2010 IDM at Comment 5.
[393] See Petitioners' Case Brief at 50-56.
[394] See InitQ at Section III-6 and SPQR1 at 10.
[395] See SPQR4 at questions 6 and 7.

Department's Position

As noted in section "Use of Adverse Facts Available" above, we have applied total AFA to the Sun companies. For the "Preferential Lending to the Coated Paper Industry" program, we have followed our standard methodology in applying AFA and assigned the rate calculated for the Gold companies in this investigation to the Sun companies. Id. As such, arguments regarding applying AFA based on the Sun companies' failure to report loan information are moot.

Comment 31 Whether To Apply Facts Available to Sun Companies' Unreported Cross-Owned Companies

Petitioners state they have provided comments based on record evidence that the Sun companies did not report certain cross-owned affiliates.[396] Moreover, they note that Sun repeatedly claimed to have reported all cross-owned companies. However, in SPQR3, the Sun companies reported an additional eight affiliated companies, but did not address whether or not they were cross-owned. Moreover, in SPQR4, the Sun companies revealed certain affiliated companies provided inputs that are used in the production of subject merchandise, but none were identified as cross-owned companies. Petitioners further repeated its claims that the Sun companies did not report all of its cross-owned companies.[397] Finally, Petitioners note the Department found several companies at verification which would meet the Department's definition of cross-ownership.[398]

Petitioners list several companies from the verification report not reported by the Sun companies that would be considered cross-owned under one of the criteria listed in 19 CFR 525(b)(6)(ii)-(iv).[399] They further note that the Department's regulations do not limit cross-owned companies to inputs or subject merchandise for export. Thus, the Sun companies should have reported these companies as cross-owned and provided a complete response.

Citing section 776(b) of the Act, Petitioners argue that the non-reporting of several cross-owned companies warrants total AFA as the Sun companies withheld information that was requested and impeded the proceeding. As such, the Department was unable to verify all programs conferring a benefit to the Sun companies. As AFA, Petitioners recommend assigning the Gold companies calculated rate for those programs found to be countervailable. For all other programs, Petitioners recommend assigning the Gold companies highest calculated rate. This is consistent with CFS from the PRC.[400]

Citing Borden, De Cecco, and World Finer Foods, the Sun companies argue that the application of AFA by the Department must not be unrestrained, reflect a reasonably accurate estimate of the respondent's actual rate (with some built-in increase intended as a deterrent to non-compliance), and make subtle judgments supported by substantial evidence. The Sun companies further argue

[396] See Petitioners' 1/15 Sun DC at 2-19, Petitioners' Pre-Prelim Comments at 8-25, and Petitioners' Pre-Verification Comments at 22-24.
[397] See Petitioners' Pre-Verification Comments at 22-24
[398] See Sun Verification Report at 4-8.
[399] See Petitioners' Case Brief at 43-45.
[400] See CFS from the PRC IDM at 2-3.

that sections 776(a) and (b) of the Act outline the process by which the Department may determine when to apply facts available and use adverse inferences in selecting from facts otherwise available. They further note that the focus of section 776(a) of the Act is the failure of the respondent to provide information[401] and employing adverse inferences on missing information to ensure that a party does not receive a more favorable result than if it had fully cooperated.[402] Finally, citing Olympic Adhesives, the Sun companies assert that the above principal is reflected in the CAFC's decision to overturn the Department's application of the best information standard because a company did not provide information that was nonexistent.[403] In this instance, the company responded to the Department's requests for this information by stating that it did not exist. Thus, the CAFC noted that the Department could not properly conclude the best information rule was justified when a company provided a complete questionnaire response insomuch as the Department concluded the answers did not resolve the overall issue at hand and determined that "section {776(b)} requires noncompliance with an information request before resort to the best information rule is justified, whether due to refusal or mere inability."[404]

The Sun companies further refute Petitioners allegation that they have failed to report all cross-owned companies. Citing 19 CFR 351.525(b)(6)(vi), the Sun companies assert that cross-ownership is a higher standard than affiliation and involves "majority ownership" and "common ownership of two (or more) corporations." Moreover, the Sun companies note that the Department's regulations clearly state the definition of cross-ownership and the Department will not "investigate subsidies to affiliated parties unless cross-ownership exists."[405]

The Sun companies reiterate that the only company shipping coated paper subject to this investigation is YT and all subject merchandise shipped to the United States is based on a toll arrangement with Jin Rui Group Inc. Moreover, the only raw materials used in these transactions are imported, which the Department verified.[406] Thus, the Sun companies argue that as all of YT's coated paper sales to the United are based on contracts involving imported materials, any subsidies received by other companies in the Sun Paper group that produce for the Chinese market (excluding Sun Paper) cannot be incorporated into any price of the coated paper sold to the United States.

The Sun companies further argue that five out of the six companies[407] Petitioners allege are cross-owned are clearly not cross-owned because either SP or YT cannot control the companies; only SP officers or employees own portions of the companies, not SP or YT; and there is no evidence of common ownership.

The Sun companies further note that the only regulations at issue here concerning cross-ownership is whether a company is cross-owned and produces subject merchandise or provide an

---

[401] See Nippon Steel at 1381.
[402] See SAA at 870.
[403] See Olympic Adhesives at 1573.
[404] Id. at 1574.
[405] See CVD Preamble at 65401-02. The Department's interpretation was upheld in Fabrique at 601
[406] See Sun Verification Report at 2.
[407] The companies are: Yanzhou Xilai, Yanzhou Mingxu, Yanzhou Mingyang, Yangzhou Dongsheng and Yanzhou Xudong.

input that is primarily dedicated to the production of the downstream product. In regards to inputs, the Sun companies state that the regulation refers to the fact that the production of the input is primarily dedicated to the production of downstream product. In regard to Heli, a pulp provider for YT and SP, the Sun companies argue it did not need to provide a questionnaire for this company as its pulp was not used in the production of subject merchandise and reiterates that the Department verified that all coated paper shipped to the United States followed the toll arrangement outlined above.

For Shandong Sun and Zhaoyang, the Sun companies argue that they were required to provide a questionnaire response only if the companies were cross-owned and produced subject merchandise. For Shandong Sun, they argue that the company only sold coated paper in the Chinese domestic market. They also did not provide a questionnaire response for Zhaoyang because they did not produce coated paper that was within the scope of the investigation during the POI. They note that the Department examined documentation of the weights of the company's paper and did not ask why the company was not reported as a cross-owned company; implying that the Department did not believe the coated paper to be within the scope of the investigation.

Department's Position

As stated above in the "Use of Facts Available" section, we have found that "facts otherwise available" are warranted pursuant to section 776(a) of the Act because the Sun companies did not provide a response for several affiliated companies the Department deems to be cross-owned as described in 19 CFR 351.525(b)(6)(vi) and 19 CFR 351.525(b)(6)(ii) and (iv). To the extent these companies did not provide responses, the Department is not able to fully gauge the subsidies attributed to these companies nor if there are any other affiliated companies that should have also been reported and potentially could also be considered cross-owned. Beacuse the Sun companies were in a position to provide this information, we conclude that they failed to act to the best of their ability, and thus the use of adverse facts available is warranted pursuant to 776(b) of the Act.

We note that the Department's original questionnaire stated "This questionnaire requests information about programs alleged to be provided to producers/exporters in the PRC of certain coated paper and paperboard in sheets suitable for high quality print graphics using sheet-fed presses ("coated paper" or "the subject merchandise")."[408] Thus, the term subject merchandise was defined in the questionnaire sent to the Sun companies as producers/exports in the PRC of certain coated paper and paperboard in sheets suitable for high quality print graphics using sheet-fed presses. Moreover, the Department requested in questions 2 and 3 of Section - III of the questionnaire to provide information regarding affiliated and cross-owned companies and further stated:

> You must provide a complete questionnaire response for those affiliates where "cross ownership" exists and:
>
> - the affiliate produces the subject merchandise; or

[408] See InitQ at Section III-1.

- the affiliate is a holding company or a parent company (with its own operations) of your company; or
- the affiliate supplies an input product to you that is primarily dedicated to the production of the subject merchandise, or
- the affiliate has received a subsidy and transferred it to your company.[409]

In regard to this request, the Department also stated, "If you have any questions regarding whether another company is affiliated with your company or whether cross-ownership exists, we urge you to consult with the officials in charge named on the cover page as soon as possible."[410] In response to the cross-ownership question, SP provided a chart showing YT as the only cross-owned company and YT stated that SP would provide a response. SP also stated that two other companies produce subject merchandise, but do not meet the Department's definition of cross-ownership.[411] In a supplemental questionnaire, we asked the Sun companies to confirm all affiliated and cross-owned companies were reported and a response was provided.[412] The Sun companies confirmed both. After reviewing the response, the Department sent the following question in another supplemental questionnaire:

1. On page 5 of YQR, you have stated that Yanzhou produces and exports coated paper (e.g., subject merchandise) to the United States and also produces non-subject products and sells them in the domestic and third country markets.

   a. Please confirm that your responses to I.3. of the original questionnaire and question 2 of SQR1 regarding affiliates and cross-ownership considered all products produced by Yanzhou, not only subject merchandise.

   b. If you are identifying any additional cross-owned companies based on your response to question a above, provide a complete response to the original questionnaire at this time.[413]

The Sun companies confirmed part "a" and stated part b was not applicable.[414] Following the Preliminary Determination, the Department sent another supplemental questionnaire and asked:

3. On page 1 of SPQR1, you state all affiliated companies and cross-owned companies were reported. Please explain why Dongguan Jianhui Paper Industry Co., Ltd. was not included in your response (listed on pages 51 and 83 of Sun Paper's 2008 Annual Report). Also, on page 83 of Sun Paper's 2008 Annual Report, the "note" section states several companies were changed into non-affiliates in 2008. Please confirm your responses to questions regarding affiliated

[409] Id. at Section – III, "Affiliated Companies" question 3.
[410] Id.
[411] See SPQR at 3 and Appendix 2 and YQR at 2-3.
[412] See SPQR1 at 1.
[413] See SPQR2 at question 1 (emphasis original) (we note the above quote has part c omitted).
[414] Id.

and cross-owned companies covered the entire 2008 calendar year.[415]

The Sun companies stated that they missed several affiliated companies in their initial response and were providing a revised list of affiliates, but did not answer the cross-ownership portion of the question.[416] Thus, in a subsequent supplemental questionnaire, we asked the Sun companies to provide a response regarding cross-ownership for the additional companies reported.[417] The Sun companies stated that none of the companies were cross-owned, but noted that Mingxu, Mingyang and Xilai produced inputs that are used in the manufacture of subject merchandise during the POI. As we received this information on May 28, 2010, and verification of the GOC was to begin on June 7, 2010, we did not have further time to send another supplemental questionnaire.

In preparing for verification, the Department included the following question in its outline sent to the Sun companies:

> 2. Be prepared to substantiate with affirmative evidentiary support the following affiliated companies are not cross-owned or are not involved with the production, sale, or exportation of subject merchandise during the POI:
>
> - Donguan Jianhui Paper Industry Co, Ltd.
> - Yanzhou Yongyue Paper Ltd.
> - Yanzhou Zhaoyang Paper Co., Ltd.[418]

At verification we discussed the above companies and also discussed additional companies listed as affiliates. As noted in the verification report, the Sun companies stated that Shandong Sun, Zhaoyang, and Dongguan Jianhui produced coated paper. Moreover, Heli provided pulp to YT and SP and purchased logs from Baiyang. Moreover, several other companies provided inputs to either SP or YT or both.[419] For Shandong Sun, and Zhaoyang, the officials at verification stated that as the companies only had domestic sales and the logs from Baiyang turned into pulp at Heli were sold to YT and SP for the production of uncoated double-sided paper.[420] For Dongguan Jianhui, the officials stated that SP did not control the company.

Notwithstanding the Sun companies' above argument that the Sun companies cannot control or use or direct the individual assets of certain input suppliers and Dongguan Jianhui, the Sun companies' reason for not reporting Sun Industry, Zhaoyang, Baiyang, and Heli was the presumption that the only producers being considered by the Department were producers of subject merchandise exported to the United States (e.g., YT) or inputs which are used in the production of subject merchandise being exported to the United States. As YT only uses imports in the production of its exported subject merchandise to the United States, no other companies can be considered cross-owned producers or input suppliers. However, 19 CFR 525(6)(b)(ii) –

---

[415] See SPQR3 at question 3.
[416] Id.
[417] See SPQR4 at question 1.a.
[418] See Sun Verification Outline at 5.
[419] See Sun Verification Report at 4-8.
[420] Id.

(iv) describes various rules by which the Department will attribute subsidies in regard to cross-ownership. As noted by Petitioners, these regulations are not limited to only export producers. Moreover, the Sun companies cannot make the claim that the Department only inquired about subject merchandise, per their definition, in regard to cross-ownership as the Department further clarified the question, as noted above, in a subsequent supplemental questionnaire to include "non-subject merchandise" as well. We further add, as cited above, that the questionnaire defined the term "subject merchandise" and it is not understandable why the Sun companies based their reporting on some other, self-selected definition. Finally, the Department's intentions were clear in regard to the universe we were examining. As shown in the Preliminary Determination in regard to the cross-ownership of the Gold companies, we explained that we were considering wood and pulp as upstream products to paper products as well as the fact that the Department denied the Gold companies' request to exclude the subsidies to their wood and pulp companies as the inputs did not go into subject merchandise for exportation to the United States.[421] Accordingly, the Department does not find the Sun companies' argument credible that they would consider certain companies not to be cross-owned, despite the Department's regulations and actions in this case which make this point clear.

In addition to cross-owned companies, the Department further points out that other deficiencies occurred in regard to the Sun companies' questionnaire and subsequent supplemental questionnaires. We note that the Sun companies provided f.o.b. sales values in the original questionnaire response and confirmed YT's values were based on f.o.b.[422] We stated in the verification outline that we would verify the reported sales value were on a f.o.b. basis.[423] However, at verification, the Department discovered the sales values were not based on f.o.b. and subsequently were told in the middle of verification that the values were incorrect after the Department requested officials to demonstrate no freight was included in the reported sales values.[424] Moreover, we note that in regard to the "VAT Tax and Tariff Exemptions on Imported Equipment" program the Department found several items reported in the source material that were not included in its submission and certain reported lines of data that were not included in its source material and had benefited from the program.[425] Verification of the sales value and the "VAT and Tariff Exemptions on Imported Equipment" program were included in the outline presented to the Sun companies and yet none of these errors were presented as minor corrections or explained to the Department until discovered.

In regard to Olympic Adhesives, the Sun companies' argument is misplaced. During the investigation, the Department sent supplemental questionnaires to the Sun companies that either asked the company to confirm or clarify the information provided. Although the Sun companies replied to these questions, it was not until verification that the Department learned that certain affiliated companies produced subject merchandise or were providing inputs to YT and SP. In contrast to Olympic Adhesives, the Sun companies had information available to them regarding other potential cross-owned companies and chose not to provide this information to the Department. Given the scope of unresponsive cross-owned companies that encompass two

[421] See Preliminary Determination at 10779-80.
[422] See SPQR at 6, YQR at 7, SPQR2 at 4.
[423] See Sun Verification Outline at 5.
[424] Id. at 9-11.
[425] Id. at 21.

producers and two input suppliers, the Department cannot accurately measure the potential subsidies provided to these companies. There were 31 alleged programs and six additional new subsidy allegations in this investigation that covered loans, grants, preferential tax programs, regional programs, economic development zone programs and electricity and papermaking chemicals for less than adequate remuneration. As such, it is difficult to ascertain or estimate the potential number of subsidies each unreported company may have received in the context of this investigation. We further note that certain programs being examined are non-recurring subsidies and thus, those specific subsidies would be examined over the allocation period or 13 years. Moreover, we have knowledge of four companies that should have been reported as cross-owned companies that represent paper and pulp producers as well as a forestry company. Given the diverse operations of the companies, it is also difficult to assess the extent they received any subsidies under these programs or if we would discovered additional subsidies in the course of the investigation. We further note that as diverse companies, it would also be difficult to estimate sales values of these unreported companies as well. The two reported companies, SP and YT, represent a parent and a paper producer, while two of the four unreported companies are involved in pulp or forestry operations. Finally, the four unreported companies may have affiliations or cross-ownership relationships of which we have no knowledge, and, thus makes it difficult to gauge the universe of subsidies not reported.

The result of which makes it impossible to rely on the information provided to compute an accurate subsidy rate.

The Sun companies also state Zhaoyang's coated paper is outside the scope of the investigation because the Department examined the weights of the paper and did not ask why the company was not reported as a cross-owned company. We note the company official had already stated Zhaoyang only had domestic sales in 2008 at the same time he said it produced coated paperboard.[426] Thus, the question regarding why they were not reported as a cross-owned company was not necessary. Moreover, no comment was made in the verification report as to the weight specifications provided in the invoices being outside the scope of the investigation or if the company should be considered cross-owned or not.[427]

Thus, in regards to Sun Industry, Zhaoyang, Baiyang, and Heli, based on record information, these companies meet the Department's cross-ownership definition as described in 19 CFR 351.525(b)(6)(vi) and should have also provided a response as they either produce subject merchandise or provide an input that is primarily dedicated to the downstream product. By not providing responses describing their use of any alleged subsidies in the investigation, the Sun companies failed to provide necessary information that was requested and failed to act to the best of their ability in the investigation.

Section 782(e) of the Act requires the Department to consider information on the record that was filed by the deadline, verifiable, not so incomplete as to not be reliable, the party has acted to the best of its ability, and the information can be used with undue difficulties. The Department determines that Sun's information did not verify and was sufficiently incomplete such that the

[426] See Sun Verification Report at 4.
[427] Id.

Department cannot use any of the information for purposes of this investigation. Moreover, we find that because the Sun companies could have provided this information, we find that they failed to act to the best of their ability. Thus, the conditions of section 782(e) of the Act have not been met.

While the Sun companies provided responses to the Department's questionnaires, as noted above, the Sun companies withheld information regarding four cross-owned companies. In this regard, the Department has no information pertaining to these companies' subsidization, potential affiliates or other cross-owned companies. Moreover, two of the companies are input suppliers and, as such, the Department has no information on the record from which it can derive the extent of subsidization related to their tree or pulp operations.

Furthermore, the Sun companies also did not provide any minor corrections at verification and the Department discovered obvious errors that the Sun companies had stated were accurate in supplemental questionnaires.[428] We also note that these programs were included in the verification outline, thus the Sun companies understood we would perform completeness checks on the data and had ample time prior to verification to alert the Department to any errors. Moreover, the Department needed to ask questions multiple times and in response the Sun companies kept changing its answer. For example, although the Sun companies had provided a list of affiliated companies and confirmed twice the list was complete,[429] the Department still had to request additional affiliates from the Sun companies pointing to SP's own reported Annual Report, which listed several unreported affiliates.[430]

In regard to the "VAT and Import Duty Exemption on Imported Equipment" program, the Department requested use of this program from December 2001 through 2008. YT reported using this program.[431] However, it was not until the Department received a GOC supplemental response that it learned YT had additional imported equipment that was transferred.[432] After the Department inquired, YT clairified that it had incorrectly reported equipment in use as of 2008.[433] Moreover, we note that YT claimed it did not use the "Exemption from City and Maintenance and Construction Taxes and Education Surcharges for FIEs" program. For the Preliminary Determination, we applied facts available to the Sun companies as evidence on the record suggested YT used this program.[434] YT finally clarified that it used the program in a supplemental questionnaire after the Preliminary Determination.[435]

Given the above in its totality, the Department made several attempts to clarify and receive accurate information regarding the Sun companies. In several instances, the Department did not receive complete information and found several issues with reported information at verification without being alerted by the Sun companies. Thus, the Sun companies did not act to the best of

[428] Id. at 9-10 and 21.
[429] See SPQR at Appendix 1, YQR at Appendix 1, SPQR1 at 1, and SPQR2 at 1.
[430] See SPQR3 at question 3.
[431] See YQR at 20.
[432] See GOCQR1 at 4.
[433] See SPQR4 at 5-6.
[434] See Preliminary Determination at 10779.
[435] See SPQR3 at 5.

their ability to provide the Department with information. In regard to the unreported cross-owned companies, the Department does not have sufficient information on the record to evaluate the potential subsidies by these companies as it only learned of these companies operations at verification. As noted above, the Department is examining 37 alleged subsidies that cover an allocation period of 13 years. Additionally, two of the four companies are involved in the pulp or forestry operators which is different from the parent and paper producer that were reported. As such, it is difficult to measure the potential subsidies the companies may have received and, moreover, have knowledge of any additional subsidiaries or affiliates that may also been reported. Moreover, given the numerous mistakes and clarifications on the record and the fact input suppliers were not reported, the Department would need more information than the record contains in order to calculate the Sun companies' subsidy rate. In order to have an appropriate sales value on which to attribute subsidies, we would need information regarding the input suppliers' affiliated supply relationships as well as affiliated and unaffiliated sales values. As noted above, input suppliers are diverse from the paper producers and may receive either some of the alleged subsidies as well as others that the Department may discover in the course of this investigation. As such, it is difficult to compare the subsidies received by the reported parent and paper producer that the input suppliers may receive as well as potential subsidiary or cross-ownership that may exist with other parties as the record information is not complete. Thus, the Department is unable to accurately determine the appropriate level of subsidization attributable to the Sun companies based on record information and will resort to total AFA.

Issues Related to Gold Companies

Comment 32 Whether To Grant the Gold Companies an EV Adjustment

The Gold companies note the normal methodology for the Department in calculating a subsidy rate is to divide the benefit amount by an f.o.b. value. However, the respondent's sales value in this case contains a processing fee rather than the value of the export sale. Thus, the result is an over-collection of duties. The Gold companies state the Department has addressed this problem in prior cases and developed an adjustment methodology for such instances.[436] The Gold companies state that they did not receive the adjustment because they had not met the criteria nor had they provided sufficient data to apply the adjustment to certain companies in the preliminary determination. However, the Gold companies argue that they have since provided sufficient data to demonstrate that its circumstances meet the six criteria.[437]

The Gold companies assert that they have met the following six criteria as enumerated by the Department to receive a rate adjustment: 1) the price on which the alleged subsidy is based differs from the U.S. invoiced price, 2) the exporters and the party that invoices the customer are affiliated, 3) the U.S. invoice establishes the customs value to which the CVD duties are applied, 4) there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment, 5) the merchandise is shipped directly to the united States, and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.[438] They further note the Department verified

[436] See Thai Bearings, CWASPP from the PRC, Uranium from France AD Final Results, and CFS from the PRC.
[437] See Gold Companies' Case Brief at 16–21.
[438] See CFS from the PRC IDM at Comment 21.

the supporting information.[439] If the Department does not grant the EV adjustment, the Gold companies argue that the issue of under-collection will still occur and argue that the unconsolidated sales of GE be used as an alternative. Although CU's sales are not included, the sales value captures the bulk of the sales made by the paper producers during the POI.

Petitioners assert the Gold companies have not met the criteria to be granted an EV adjustment and, as such, the Department should follow its precedent and attributed subsidies to the products produced by the corporation that received the subsidy.[440]

In qualifying for an EV adjustment, Petitioners note the Department requires the respondent to document six criteria as mentioned above. Petitioners note that in Thai Bearings the respondent's subsidies were based on exports and, thus, the subsidy was directly related to the value of its exports.[441] As such, Petitioners argue that subsidies received by the Gold companies was based on the amount of toll processing fees reported and the sales price to the U.S. customer. Thus, the situation in this instance does not have the same significance and the Gold companies fail the first and fourth criteria set by the Department.

Although sections of each of the following arguments are BPI, the Petitioners list several deficiencies that would preclude the Gold companies from receiving an EV adjustment. These deficiencies include: the Gold companies' claimed sales value is not the value of the subject merchandise but rather the value of the toll processing service, the Gold companies have still not provided data required to accurately apply an EV adjustment for each producer/trading company combination, CU records were not verified or provided in some instances, and the Gold companies failed in showing that there is a one-to-one correlation between the invoice the price on which subsidies are received and the invoice with the mark-up. Given these deficiencies, Petitioners argue the Department should follow the methodology applied in the Preliminary Determination.

Petitioners further note that if the Department adjusts the Gold companies' denominator, it should not use a complex methodology, but rather use actual sales values from the domestic and export markets. In this instance, the actual sales values are the consolidated sales of GE, which include the affiliated offshore trading companies. Moreover, Petitioners assert the correct characterization of the Gold companies' toll processing fee is an intercompany transfer as the mechanics of the tolling arrangement have no title transfer of the materials/merchandise.[442] As the toll processing fee does not reflect a sales value, it is more appropriate to use a sales value pursuant to 19 CFR 351.525(a), which in this case would be GE's consolidated sales value. They add that using GE's consolidate sales value is the best option and comports with section 701(a) of the Act as the Department must consider the merchandise produced in the country of origin rather than the seller. They recognize the Department has not yet considered sales processes that involve third countries in prior cases.[443] However, Petitioners reiterate that the

---

[439] See GE Verification Report at 6-8.
[440] See NRW from the PRC IDM at Comment 4, Lawn Groomers from the PRC Prelim (unchanged in Lawn Groomers from the PRC), Bags from Vietnam Prelim at 45811.
[441] See Thai Bearings 1989 at 19130, Thai Bearings 1992 Prelim at 9413, and Thai Bearings 1992 Final at 26646.
[442] See Bethlehem Steel at 1670.
[443] See NWR from the PRC IDM at Comment 4.

Department's focus should be on the nationality of the merchandise rather than the merchandise seller's nationality because it does not change the facts that the merchandise is inescapably Chinese, in this instance.

Citing Eurodif, Petitioners also argue the Department should consider economic reality in its decision to grant an EV adjustment. In this case, the Court recognized how easily service contracts could be restructured into sales of goods and services.[444] In the same vein, the Department should recognize the relationship between the toll processor and seller and the ability of each party to manipulate either the toll processing fee or mark-up as well as the "absurd result" of subsidies being allocated to the full value of the merchandise, but only allocated to export markets based on the toll processing fee. Thus, by extension, the ratio by which the calculated subsidy rate would be multiply could be manipulated , although the amount of the subsidy never changes. To remedy this, in regard to the application of an EV adjustment, Petitioners argue the use of GE's consolidated sales.

Finally, Petitioners note that if the Department should apply an EV adjustment in this proceeding, it should take note of the inherent flaws in its current calculation and adjust it to ensure that countervailing duties are not under-collected. To demonstrate this, Petitioners provided 5 scenarios: 1) Volume-Based Methodology, 2) Standard Value-Based Methodology, 3) Affiliated Trading Company and Toll Processing Agreement, 4) EV Adjustment as Applied to Date, and 5) Corrected EV Adjustment.[445] By use of the above scenarios, Petitioners assert that the Department's EV Adjustment as Applied to Date leads to an under-collection of duties and, thus, does not comport with section 701(a) of the Act, which requires the imposition of countervailing duties equal to the amount of the net countervailable subsidy. Petitioners further reiterate the relationship between the toll processors and sellers and notes that the subject merchandise in question in produced in the PRC and exported to the United States. Thus, the Department should focus on the merchandise and its importer value rather than the nationality of the seller. If the Department determines to grant the Gold companies an EV adjustment Petitioners argue it has demonstrated the Department's methodology is flawed and results in an under-collection and propose their Corrected EV adjustment as the preferred methodology.

In rebuttal, Petitioners contend the Gold companies reinforce their arguments by noting that the proper calculation is dividing the benefit by a "sales value," not a processing fee. However, Petitioners note the Gold companies neglected to mention that it is the sales value of the products or products. Petitioners also reiterate its arguments from its case brief that situation in this instant proceeding do not mirror Thai Bearings, the basis of the rate adjustment leads to an absurd result as identified in Eurodif, and the Gold companies did not provide documentation for CU. Petitioners reiterate that it either use GE's consolidated sales or its alternative methodology in place of its current EV adjustment methodology.

The Gold companies contend Thai Bearings is applicable in this instance as the same issue of over-collection is present. Moreover, they counter that the EV adjustment is not based on a "government–recognized" export value, but to sales.[446] In this instance, there are two f.o.b.

[444] See Eurodif at 889.
[445] See Petitioners' Case Brief at 21-26.
[446] See 19 CFR 351.525.

export prices for the same sale and, thus, the EV adjustment is relevant. Moreover, the Gold companies assert Petitioners are wrong to assert that including raw material costs on invoices reflect the actual terms of sale, but were merely for Customs purposes.[447]

The Gold companies also reiterate the Department has all the information to aply the EV adjustment and all information was verified. [448] In regard to CU, the Gold companies argue financial statements are not need to establish affiliation and other verifiable information was provided to demonstrate all facets and sales information among CU and the four paper producers. They also note that the Department verified comprehensive lists of sales through GEHK and CU from the paper producers and there is no reason to believe all export sales did not go through the trading companies.

The Gold companies also note that although they also recommended using GE's consolidated sales, it is not their preferred method because it does not contain CU sales. Moreover, using GE's consolidated sales would be inconsistent with the Department's practice and regulations as it normally attributes subsidies to products produced within the jurisdiction of the granting authority.[449] They also find Eruodif misplaced because the rationale for the adjustment is to counter an over-collection of duties. As the EV adjustment demonstrates, it is merely assessing duties at the appropriate ad valorem rate to the U.S. value of imported subject merchandise to reflect the attributed amount of subsidies as reported in the Gold companies accounting records. They further note the Department has addressed the issue of manipulation in regard to the Eve adjustment in CFS from the PRC.[450]

The Gold companies further contend that Petitioners' scenarios, as listed above, do not follow section 701(a) of the Act and involve sale values, but rather inappropriately focus on units being sold. The scenarios are unsupported presumption which presume the production and sales of two boxes in the domestic and foreign markets are the same. In regard to Petitioners' Corrected EV Adjustment, the Gold companies note its prior argument and note that the inclusion of domestic sales in the numerator of the calculation effectively double count the domestic component of sales to which subsidies have already been attributed and effectively over-attribute subsidies to relevant U.S. export sales. Therefore, the Gold companies reiterated its argument that the Department follow Thai Bearings and apply an EV adjustment.

Department's Position

In prior proceedings, the Department has used six criteria, as noted above, to determine whether a company merits an EV adjustment and has granted an adjustment if the company met these criteria.[451] The Gold companies have sufficiently demonstrated through their submissions and verification that they have met these criteria.[452] We disagree that the Gold companies did not

[447] See GSQR3 at 7 and GE Verification Report at 7.
[448] See Gold Companies' Rebuttal Brief at 7.
[449] See 19 CFR 351.525(a).
[450] See CFS from the PRC IDM at Comment 21.
[451] Id. at "Treatment of the Ad Valorem Rate Calculation and the Denominator" and Comment 21 and see, also, CWASPP from the PRC at "Adjustment to Net Subsidy Rate Calculation" and Comment 3.
[452] See GE Verification Report at 6-8.

provide sufficient information to warrant the adjustment. At verification, we examined the toll process as described by the Gold companies through documentation and found no discrepancies.[453] Thus, the Department established a linkage between the tolling fee in the Gold companies' accounting system to the sales invoice issued by GEHK or CU, confirmed that the toll processing fee is recorded in the books and records of the Gold companies in a sales account, confirmed all combinations between the paper producers and GEHK or CU, and established that sales to the United States of subject merchandise go through either GEHK or CU.[454] We further note the Gold companies stated in a supplemental response that they were unable to obtain CU's financial statements and stated that they could provide the same information based on invoices held by the paper producers. Although the Gold companies were unable to provide CU's financial statements, they were able to provide verifiable information that was directly related to its EV adjustment request.[455] Moreover, the Department was able, based on information submitted by the Gold companies and an examination of the Gold companies' accounting system at verification, to confirm CU's sales amount in regard to sales of the Gold companies' paper producers.[456] As such, we have accepted this information as a suitable alternative to our initial request. We also were able to verify that CU was affiliated with the Gold companies and disagree there would be a reason to deny the Gold companies an EV adjustment.[457]

In the Preliminary Determination, the Department stated it would further examine the EV adjustment as currently applied. The basis for our reexamination of the EV adjustment is based on its methodology and the premise that it, results in an understated ad valorem subsidy rate that would lead to under-collection. The Gold companies have described their toll processing system, in general, as follows: the Gold companies toll subject merchandise, with raw materials owned by GEHK or CU, to the United States through agreements with GEHK or CU and as such the revenue reflected in the Gold companies' paper producers sales is the toll processing fee and the actual revenue from the sale in GEHK or CU's sales records.[458] Thus, the amount captured currently in the Gold companies sales accounting records is only the toll processing fee while the difference (raw materials and mark-up) is captured in GEHK or CU's sales accounting records.

In Thai Bearings, where we first granted the EV adjustment, respondent claimed its parent adjusted the export value of the merchandise to include a mark-up.[459] Thus, when it entered the United States, the additional mark-up skewed the actual attributed subsidies to the merchandise by the percentage of the mark-up, which resulted in an over-collection of duties. The respondent provided its and the parent's f.o.b. invoices to demonstrate the additional mark-up. The Department granted the EV adjustment based on this fact and other supporting documentation.[460] In that instance, the only difference in pricing was the mark-up or profit from the parent company. However, in the current proceeding, the actual difference the Department is examining is not the difference in mark-up, rather the difference in the toll processing fee and the

[453] Id. at 7.
[454] Id. and see BPI Memo at 3 for additional discussion.
[455] See GSQR3 at 1-3 and GE Verification Report at 6-8.
[456] Id.
[457] Id. at 7.
[458] Id. at 6 and GQSR1 at Exhibit S1-23.
[459] See Thai Bearings.
[460] Id.

difference of the mark-up and the raw materials. The Gold companies and Petitioners have seized upon this point and offered differing views as to the impact of this fact on any EV adjustment applied.

As explained above, the Gold companies' sales accounting records contain only the toll processing fee. Thus, when applying any attribution to a paper producers' sales value, the Department is measuring the subsidy against only the domestic sales and the toll processing fee. As noted in prior cases, we have acknowledged this has the net effect of resulting in an over-collection of duties due to the actual value of the merchandise entering the United States.[461]

The Department's regulations at 19 CFR 351.525(a) states the Department will calculate a subsidy rate to the "product or products to which the Secretary attributes the subsidy. . . ." In this instance, however, the Department, using its EV adjustment, is not attributing the subsidy to the product rather the processing of the product (e.g., subject merchandise). Thus, as Petitioners point out, the net effect of the current EV adjustment is adjusting a subsidy rate that resulted in over-collection to one that results in under-collection because the Department has removed the mark-up and also the product cost in its adjustment. Although it has been noted we have granted the EV adjustment when the six criteria have been met, our reexamination of this issue in the context of this investigation leads us to finding an alternative adjustment that would not result in either an under- or over-collection of duties.

Although the Gold companies have argued it is appropriate to measure the subsidy by the universe of sales actually incurred by the Gold companies (which would include the sales of tolled merchandise by GEHK and CU), thus the reason for the EV adjustment, we disagree it is proper to apply the EV adjustment in this manner because it does accurately reflect the true measurement of the subsidy. The regulations at 19 CFR 351.525(a) is clear that the Department is attributing the subsidy to the product. In this instance, although the Gold companies do not have title to the raw materials, the production of the subject merchandise is occurring in the PRC using these materials. Thus, the export product leaving the PRC for which subsidies should be attributed is not just the processing fee, but also the actual product produced.

In deciding how to adjust the current EV adjustment to more accurately reflect how subsidies are attributed to the Gold companies, the Department has examined the record of this investigation. As such, the Department believes the most effective manner to attribute the subsidies is to remove toll processing fees from the Gold companies' paper producers' reported sales value and replaced it with the sales values reported by GEHK's or CU's reported sales of each of the paper producers' products. Using this methodology comes closest to ensuring that the amount of subsidies assigned to the Gold companies is reflected in the calculated CVD rate because it is the actual value by which the merchandise enters the United States. Both parties mentioned using the consolidated sales of GE. However, we do not agree that this would be more accurate as it does not contain CU's sales and could include sales by GEHK that do not involve tolled products by the paper producers. Moreover, Petitioners argue the toll processing fees cannot legally be considered a sale. As we are not using the toll processing fees for attribution, we do not need to address this issue at this time. Finally, we note that we have received several comments

[461] See CFS from the PRC IDM at Comment 21.

regarding the use of sales values outside the country for which subsidies are measured. In this instance, we note that the price of the merchandise sold to the United States is set by the Gold companies' paper producers. Thus, although the actual sales revenue may be collected outside the PRC, we are calculating a subsidy rate using the sales price set or sales value of the product from the PRC and, in this regard, are fulfilling our obligation under section 701(a) of the Act to collect the amount duties owed based on subsidization of the product.

We acknowledge petitioner's concern about the Gold companies' ability to manipulate the CVD rate in the future by adjusting its sales price to GEHK or CU. However, this is not a basis to deny the adjustment given that without an adjustment we would not collect the correct amount of duties. Instead, we agree that this may be an issue to examine in future reviews, and, if this investigation results in a CVD order, we will carefully monitor the continued basis for making this adjustment in those future proceedings in order to avoid any such manipulation.

Comment 33 Creditworthiness

Petitioners assert the Department erred in preliminarily determining that certain Gold companies were creditworthy in 2006-2008. Petitioners argue that the Department glossed over significant differences, during the period, in financial and other indicators, which showed glaring financial weakness.

Petitioners assert that the Department did not accord proper weight to certain facts which are proprietary in nature. For a full discussion, see Final Creditworthiness Memorandum. Petitioners also assert that the Department overlooked entirely the fact that the Gold companies failed to provide one of the most critical documents related to debt restructuring, and, therefore, the Gold companies' failure should result in an AFA finding that the Gold companies were uncreditworthy during 2006-2008. For further discussion, see Final Creditworthiness Memorandum.

Petitioners argue that the Override Agreement with the international creditors is also not indicative of financial health, and it was only in effect for part of the period. Petitioners contend that although the Department found this agreement to be an important contrast to 2003-2005, it was not executed until November 2007. See further discussion on the Agreement and the debt standstill in the Final Creditworthiness Memorandum. Petitioners assert that the continued financial weakness of the Gold companies is evident in the deal struck with the foreign creditors.[462]

Petitioners contend that the Department should consider each year individually as broad generalizations, such as "greatly improved," can be misleading. Petitioners assert that financial ratios "greatly improving" is not germane to the creditworthiness analysis, because the Gold companies were essentially bankrupt in 2003-2005 and their nominal financial improvement does not indicate financial health or that a market–oriented lender would lend to them. Petitioners then discuss some of the financial ratios in each year 2006 through 2008. For a complete discussion, see Final Creditworthiness Memorandum. Petitioners conclude that on

[462] See Petitioners' Case Brief at 34 and Final Creditworthiness Memorandum.

balance the Department should the Gold companies to be uncreditworthy each year 2006-2008.

The Gold companies assert that the Department correctly found the Gold companies to be creditworthy during 2006-2008. They assert that the Department's creditworthiness analysis was sound and corroborated by other evidence on the record. The Gold companies disagree with the Department's conclusions regarding various financing that are, in the Gold companies' opinion, probative of their creditworthiness, but they assert that the financial indicia relied upon by the Department are more than adequate to support the creditworthiness finding. The Gold companies assert that Petitioners' claims that movement in these indicia do not suffice are misplaced, and Petitioners' AFA arguments regarding certain debt restructuring documents should be dismissed because the Gold companies explained why these documents were unavailable.[463]

The Gold companies assert that creditworthiness is determined on a case by case basis and the Department is not limited in the factors it may consider in reaching its conclusion.[464] The Gold companies contend that the Department correctly determined SMPI's (i.e., the consolidated parent company of the Chinese Gold companies) ratios improved in 2006-2008 over 2003-2005, including profits rising substantially and sales more than doubling. The Gold companies say that these increases indicate substantial returns from the companies' fixed investment, after a period of flatter performance. According to the Gold companies, SMPI's current ratio also showed dramatic improvement, while the company's debt-to-equity ratio declined significantly and the cash flow to total liabilities ratio experienced improvement. The Gold companies contend these trends show a different financial situation than in 2003-2005, and they confirm the Gold companies' substantial investments were paying off and would provide a solid foundation for repayment of long-term debt, consistent with the expectations of a creditworthy company and with the factors the Department may give weight in its analysis.[465]

The Gold companies point out that the Department's regulations indicate that the Department may consider evidence of a firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals.[466] In this regard, the Gold companies note that they placed on the record credit rating analyses for GE. The Gold companies argue that although the Department did not consider these analyses in its Preliminary Creditworthiness Memorandum, it should do so for the final. The Gold companies note that these credit rating studies were conducted by China Cheng Xin International Credit Rating, a member of Moody's Investors Service and 49% owned by Moody's. The Gold companies assert that in one of these analyses, issued in 2008, GE was given a long-term credit rating of A+, advanced from A, issued in 2007 in conjunction with a short-term bond offering.[467] Further, the Gold companies note, the same report gave GE an A-1 rating on a short-term financing bill, and the rating goes on to report several other factors that demonstrate GE's creditworthiness, highlighting GE's low payment risk. According to the Gold companies, these factors, which are relevant to the Department's determination, are: improvement of corporate governance in 2007;

[463] See GSQR4 at 1.
[464] See 19 CFR 351.505(a)(4).
[465] See 19 CFR 351.505(a)(4)(i)(B) and (C).
[466] See 19 CFR 351.505(a)(4)(i)(D).
[467] See GSQR2 at 17-18 and Exhibit SQR 2-18.

positive outlook of the Chinese paper industry for future performance; market leadership in domestic coated paper industry; increase in sales and output from 2006 to 2007; growth in prices and profitability in 2007; rapid increase in net operating cash flow in 2007; and reduction in costs from environmental measures.[468] The Gold companies assert that this information is from an impartial source and supports a creditworthiness finding.

Finally, the Gold companies assert that the Department fully addressed the significance of certain facts, which are proprietary in nature. See full discussion in the Final Creditworthiness Memorandum.

Department's Position

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department may examine the following four types of information: (1) receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness.

In the Preliminary Determination, the Department found GE to be cross-owned with its parent and affiliated producers of subject merchandise, as well as affiliated pulp, forestry, and papermaking chemical producers.[469] All the cross-owned enterprises are part of a larger group of companies that is involved to varying degrees in the pulp and paper industry. Moreover, these enterprises operate under a holding company, SMPI, which directly owns GE and most of the reported cross-owned affiliates. As evidenced by the record, these enterprises interact, in varying degree, through inter-company financial transactions and have the ability to shift resources among themselves.[470] Consequently, we have examined the Gold companies' creditworthiness at the consolidated parent level, SMPI. This is consistent with prior cases in which the Department has evaluated companies at the consolidated level based on the facts of the case.[471]

We have fully examined all record evidence with regard to creditworthiness, including the types of information listed in the Department's regulations. Based on our evaluation of all the factors and all the information on the record, and as explained below and in the Final Creditworthiness Memorandum, we find the Gold companies to be uncreditworthy in 2006, 2007, and 2008. (In CFS from the PRC, the Department determined that the Gold companies were uncreditworthy

[468] See Gold Companies' Rebuttal Brief at 17 – 18 and GSQR2 at Exhibit SQR 2-18.
[469] See Preliminary Determination at 10779.
[470] See generally GQR at Exhibits GQ-7 – GQ-25.
[471] See, e.g., CFS from the PRC IDM at Comment 12, Wire Rod from Canada at 54987, and OCTG from Austria Prelim at 4601(unchanged in OCTG from Austria Final at 33535).

during the 2003-2005 period.)

We agree with Petitioners that we should analyze each year individually in making a creditworthiness determination. Although not clear in the Preliminary Creditworthiness Memorandum, we did evaluate each year individually in making our preliminary determination. In spite of the fact that a separate decision is made for each year, yearly financial ratios and statistics cannot be considered in isolation, as the trends in financial ratios and statistics over preceding years are important in understanding the company and its financial situation and in making a fully informed creditworthiness determination.

We will now review the evidence that is available for each type of information listed in the Department's regulations. Under 19 CFR 351.505(a)(4)(i)(A), the Department looks to whether the company has received commercial long-term loans in assessing the company's creditworthiness. The Department normally considers a company's receipt of a long-term loan from a commercial source to be dispositive of its creditworthiness.[472] As explained in our Preliminary Creditworthiness Memorandum, we found that the Gold companies did not have loans from commercial sources that were dispositive of their creditworthiness.[473]

Pursuant to 19 CFR 351.505(a)(4)(i), we next examine information pertaining to the present and past indicators of SMPI's financial health, its ability to meet its costs and fixed financial obligations with its cash flow, and evidence of the firm's future financial position. First, we will examine the ratios and other financial statistics, and then we will examine other information related to these factors. In accordance with the Department's usual practice, we conducted the examination on a yearly basis for 2006, 2007, and 2008. Because most of the financial ratios and statistics, as well as other information, considered in this analysis are proprietary, see the Final Creditworthiness Memorandum for a full discussion.

In summary, while there are some definite improvements in each year 2006, 2007, and 2008 versus prior periods, we agree with Petitioners that there are also some statistics in each year which demonstrate financial problems. Given the mixed financial ratios and results in each year, we turn to other factors on the record to help make our creditworthiness determination. Again, because many of these details are proprietary in nature, the analysis is contained in the Final Creditworthiness Memorandum. On balance, the facts on the record support a determination of uncreditworthiness for 2006, 2007, and 2008.

While Petitioners asserts the Gold companies' failure to provide a certain document should result in an AFA finding that the Gold companies were uncreditworthy during 2006-2008, we do not agree. There is no record evidence that the failure to provide this document was due to a lack of cooperation. Therefore, we are not applying AFA to the Gold companies for the failure to provide this document. See full discussion in the Final Creditworthiness Memorandum.

Finally, under 19 CFR 351.505(a)(4)(i)(D), the Department considers, in its creditworthiness analysis evidence of the firm's future financial position, such as market studies, country and

[472] See 19 CFR 351.505(a)(4)(ii).
[473] See Preliminary Creditworthiness Memorandum at 3-4

industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan. While this information may be informative, it is not dispositive of creditworthiness in and of itself and is one of several factors the Department considers under 19 CFR 351.505(a)(4)(i). While the Gold companies provided the Department with a study conducted by the China Cheng Xin International Credit Rating Co., Ltd., ("CCXICR") [474] we cannot give the study much probative weight. First, the study was conducted for GE and not the consolidated company SMPI. Second, while the study contains a long-term credit rating, it was conducted for purposes of short-term financing analysis. Finally, the Department also notes that there is little information on the record about CCXICR

Accordingly, for these reasons and the reasons discussed in the Final Creditworthiness Memorandum we have determined that the Gold Companies were uncreditworthy for the years 2006, 2007, and 2008 for purposes of the final determination.

Comment 34 Whether To Adjust the Uncreditworthiness Benchmark

Citing LWTP from the PRC,[475] Petitioners argue the Department failed to follow the correct methodology in calculating the benchmark rate and then the uncreditworthy benchmark and discount rates as described in 19 CFR 351.505(a)(3)(iii). Petitioners argue this methodology should be applied to all benchmarks and discount rates for which the Gold companies' received a benefit in 2003 – 2005. The specifics of Petitioners comments are provided in the BPI Memo.

The Gold companies did not provide a rebuttal brief on this issue.

Department's Position

We agree with Petitioners and have applied their adjustments to the Gold companies' calculations for the uncreditworthy benchmark. We note that Petitioners' methodology was already being used by the Department in terms of discount rates. A discussion of the issue is provided in the BPI memo.

Comment 35 GE Sales Denominator

For the Preliminary Determination, the Department attributed subsidies received by GE to the combined sales of GE, GHS, NBZH, and NAPP, consistent with 19 CFR 351.525(b)(6)(ii). The Gold companies argue the Department incorrectly treated GE as a paper producer rather than a parent and only used GE's consolidated sales that included the other three paper producers and excluded JHP's and inter-company sales. They note in the original questionnaire response GE also reported JHP as a cross-owned company and provided GE's consolidated sales, which included GE, GHS, NBZH, NAPP, JHP, and other companies.[476] Thus, for purposes of attribution GE should be considered a parent and any subsidy received by the company should be attributed to GE's total consolidated sales, consistent with 19 CFR 351.525(b)(6)(iii).

[474] See GSQR2 at 17-18 and Exhibit SQR 2-18.
[475] See LWTP from the PRC IDM. See full cite in BPI Memo at 3.
[476] See GQR at 16.

The Gold companies further argue that GE's status as a parent should also be considered in the context of cross-ownership. As such, any subsidy which may be received by one of its subsidiaries or input providers should also be attributable to GE's consolidated sales, consistent with 19 CFR 351.525(b)(6)(iii). Citing the CVD Preamble, the Gold companies argue that the Department expressed intent is to apply the cross-ownership attribution rules as harmoniously as possible.[477] As such, the Department should recognize GE's status as a parent company and spread any subsidy received by the company, subsidiary, or input supplier across GE's consolidated sales for the final determination.

Petitioners contend that 19 CFR 351.525(b) set out the rules by which a corporation that receives subsidies can be attributed to another company. Petitioners assert that the Gold companies are incorrect to argue that any subsidy received by one corporation should be allocated over the combined sales of all other cross-owned corporations, regardless of whether the other companies are or were involved in the production of subject merchandise or inputs for subject merchandise. Petitioners note that the unconsolidated sales of GE represent those of a corporation, while the consolidated sales of GE represent a group of companies or corporations. As such, following the Department's regulations and its use of the term "corporation," The Department should use GE's unconsolidated sales as, apart from the paper and pulp producers, no other affiliates are involved with either subject merchandise or inputs.[478]

The Petitioners further argue that in addition to not treating GE as a parent for purpose of attribution, the Department should also correct GE's sales denominator from the preliminary determination. As noted by the Gold companies, GE's reported consolidated sales included additional affiliates other than JHP. Thus, to appropriately follow the Department's preliminary determination to treat GE as a producer, the Department must use the company's unconsolidated sales and not just use GE's consolidated sales, minus JHP's and inter-company sales, as in the preliminary determination.

Petitioners reiterate its argument concerning GE regarding the Gold companies request that regarding subsidies to its cross-owned subsidiaries or input suppliers. They further assert that the Gold companies' arguments on cross-ownership are misplaced in this situation. Petitioners note that while GE is in a position to control JHP, the same is not true of GHS, NBZH, or NAPP. Thus, it is not practical to attribute subsidies from these companies to JHP or GE's other subsidiaries. Moreover, if the Department were to accept the Gold companies' logic, then the Gold companies should have reported subsidies by all subsidiaries.

Finally, in regard to input suppliers, Petitioners argue the Gold companies' inclusion of JHP's sales in the attribution of any subsidy provided to cross-owned chemical suppliers is misplaced as it has nothing to do with the purchase or manufacture of a product using paper. However, they do agree that for the log/wood suppliers the Department should include JHP's sales, but reiterate that the Department should only use GE's unconsolidated sales to ensure the additional subsidiaries sales are not included.

---

[477] See CVD Preamble at 65401.
[478] Id. at 65400 and GQR at 6-10.

Department's Position

Regarding the Gold companies first argument, the Department's regulations at 19 CFR 351.525(b)(6)(iii) state, if the firm that received the 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. Petitioners argument focuses on 19 CFR 351.525(b)(6)(ii) in describing GE (which is discussed below) and do not present arguments regarding its status as a parent under 19 CFR 351.525(b)(6)(iii). Moreover, we disagree that any attributed subsidy to GE should not go over its consolidated sales because subsidies to GE benefit GE and all of its subsidiaries, not just GE and its 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 GE's consolidated sales) because subsidies to GE also benefit these subsidiaries. However, when we are examining subsidies attributed to GE's reported cross-owned affiliates, we do agree that it involves a more thorough analysis (see below). Thus, the Department will attribute GE's subsidies to its consolidated sales because subsidies to a parent benefit the parent as well as its subsidiaries.

In regard to the subsidies attributed to GE's reported cross-owned affiliated input suppliers or subsidiaries, they all fall under conditions in 19 CFR 351.525(b)(6)(ii) – (iv) because the companies are either a producer of subject merchandise (19 CFR 351.525(b)(6)(ii)) or provide an input that is primarily dedicated to the downstream product (19 CFR 351.525(b)(6)(iv). Please see "Attribution of Subsidies" section above for a complete listing of companies and our analysis of how they were determined to be cross-owned. However, subsidies attributed to GE's remaining subsidiaries do not meet any of the conditions described in the Department's regulations and, thus, are not part of our analysis. Moreover, GE meets both conditions as described in 19 CFR 351.525(b)(6)(ii) and (iii) because it is a parent as well as a producer of subject merchandise.

As noted by the Gold companies, the CVD Preamble states that the Department's 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.[479]

In this instant case, GE has affiliated producers of subject merchandise that are also subsidiaries (GHS, NBZH, and NAPP), a pulp producer of inputs to GE (and other paper producers) that is also a subsidiary (JHP), and other pulp, wood, and chemical affiliated producers that provide inputs to the parent/producer, GE (and other paper producers).

In regard to the GHS, NBZH, and NAPP, it is appropriate to continue to attribute subsidies to all producers of subject merchandise, pursuant to 19 CFR 5351.525(b)(6)(ii). However, the purpose of this regulation is that the subsidy is attributed to the combined production of the subject merchandise producers. As such, there is no basis to include GE's consolidated sales in the attribution when the subsidy was received by its own subsidiary and our intent is measuring the received subsidy to the products produced by the producers (e.g., GE, GHS, NAPP, and NBZH).

[479] See CVD Preamble at 65400.

Thus, in these instances, we will use GE's unconsolidated sales in the attribution of subsidies to these companies.

Moreover, we find that we will also use GE's unconsolidated sales in regard to the input suppliers. The CVD Preamble states the purpose of a subsidy provided to the input producer is to benefit the production of both the input and downstream products.[480] As such, we again find no basis to include GE's consolidated sales in subsidies attributed to its subsidiary, and instead seek to follow the intent of 19 CFR 351.525(b)(6)(iv). However, in a change from the preliminary determination, we find that it is more appropriate to consider subsidies attributed to the cross-owned input suppliers in the context of all paper producers. This is due to the fact that by only considering the paper producers that received inputs from a particular input supplier in regard to attribution, we would over-estimate the ad valorem subsidy rate that would actually apply to all four paper producers because the subsidy rate would be based on only one producer rather than all four. Thus, to accurately reflect the subsidy rate that would be assessed to all producers, we will include the GE's, GHS', NAPP's, and NBZH's unconsolidated sales in the calculation of any subsidies attributed to input suppliers.

Comment 36 Whether To Attribute Subsidies Received By Input Suppliers Whose Inputs Are Not Used For Merchandise Exported to the United States

As reported and verified by the Department, the Gold companies state that export production by its paper producers takes place under toll processing arrangements.[481] As such, neither domestic wood nor pulp received by paper producers is associated with toll processing production as utilized by the producers. Citing section 701(a)(1) of the Act and 19 CFR 351.525(b)(4) and (5), the Gold companies argue that the Department has no authority to countervail subsidy benefits that do not enter the United States.[482]

The Gold companies further note that the analysis should not be whether a specific input could be used in the production, but whether the input was in fact used in the production of subject merchandise. Citing Cold Rolled-Steel Flat Products from Korea, the Gold companies state that the Department had previously found that purchases of subsidized hot-rolled steel was not used as an input in the production of the exporter's U.S. sales of subject cold-rolled steel, even though it was the main input into the subject merchandise.[483] Further, in Wheat from Canada, a NAFTA Binational Panel ruled that where a program provides benefits to subject merchandise that was not imported into the United States, the Department may not countervail those benefits.[484] They add that in the remand determination the Department's analysis examined whether the program had been used to support sales to the United States.[485]

---

[480] Id. at 65401.
[481] See GQR at 9-10, 18 and GE Verification Report at 7.
[482] See Delverde (citing 701(a)(1)).
[483] See CR Steel from Korea Prelim at 9693 (affirmed in CR Steel from Korea IDM at 19).
[484] See Wheat from Canada.
[485] See Redetermination on Remand in the Matter of Certain Durum Wheat and Hard Spring Wheat From Canada: Final Affirmative Countervailing Duty Determination, Secretariat File No., USA-CDA-2003-1904-05 NAFTA Binational Panel Review (August 8, 2005) at 9.

Thus, the Department cannot countervail any subsidized input received from the pulp and forestry companies to the four paper producers as none of those inputs are exported as subject merchandise to the United States.

Citing CFS from the PRC and IPA from Israel, Petitioners argue the Department should continue to include all subsidies received by the Gold companies' cross-owned wood and pulp producers.[486] They further note that the Gold companies have not presented any new arguments that were not considered in CFS from the PRC and moreover, the Department also addressed the same case precedents cited by the Gold companies and its contention that the Department should consider the use of the input product rather if the input product could be used in its case brief.[487] They also note that the Department has already acknowledged in another proceeding that JHP's pulp was not used in coated paper that GE exported to the United States and still included subsidies received by cross-owned pulp and forestry companies.[488] Petitioners also cite other Department proceedings and court determinations in support of its contention that the Department is not required to only countervail subsidies to inputs that are actually used in the production of subject merchandise that is sold in the United States during the POI.[489] They further note that the Department has explained its rationale not to trace inputs in several proceedings.[490]

Finally, Petitioners assert that the Gold companies' cite to Delverde is misplaced as the case surrounded the Department's pass-through methodology in the context of a change-in-ownership. Thus, as the CVD Preamble states that it is the government bestowal of a subsidy is relevant under the countervailing duty law rather than how the company chooses to use the subsidy, the Department must continue to include subsidies received by pulp and log/wood cross-owned companies for the final determination.[491]

Department's Position

Our decision to include subsidies provided on inputs that could be used in the production of subject merchandise is consistent with prior practice.[492] We note that the Gold companies have not put forth any new argument or information in this investigation that either JHP's or JAP's pulp could not be used in the production of subject merchandise, but only contend that the pulp was not used in subject merchandise that was exported to the United States. This issue was addressed in the preliminary determination and the Gold companies have not put forth any new arguments or information that would lead us to reconsider our position.[493] We note that similar arguments were put forth by the Gold companies in CFS from the PRC and were also rejected.[494]

---

[486] See CFS from the PRC IDM at Comment 18; see also IPA from Israel IDM at Comment 3.
[487] See CFS from the PRC IDM at Comments 18 and 20.
[488] Id. at Comment 18.
[489] See Softwood Lumber from Canada (2002) IDM at Comment 8, PET Film from India IDM at Comment 8, Fabrique at 576, MTZ at 1315, and Essar at 27-28.
[490] See LWRP from the PRC IDM at Comment 8 and IPA from Israel IDM at Comment 3.
[491] See CVD Preamble at 65361.
[492] See LWRP from the PRC IDM at Comment 8, IPA from Israel IDM at Comment 3, and CFS from the PRC IDM at Comments 18 and 20.
[493] See Preliminary Determination at 10780.
[494] See CFS from the PRC IDM at Comment 18.

In that case the Department reasoned that:

> We acknowledge that HJP pulp was not used to produce the CFS that GE exported to the United States during the POI. Nonetheless, we continue to attribute subsidies bestowed on HJP to CFS produced by GE, including CFS exported to the United States, based on the standard articulated in our Preliminary Determination, i.e., "absent a showing that the domestic pulp cannot be used to produce CFS sold to the United States, there is no basis to tie subsidies bestowed on these input products exclusively to sales in the domestic Chinese market.
>
> However, we are able to address in this memorandum why we include subsidies bestowed on inputs that could be used to produce subject merchandise exported to the United States, even if the inputs are not actually used for that purpose during a given period of investigation or review.
> Whether a producer uses a particular input is usually driven by business considerations. For example, a producer may choose different inputs based on the demands of different customers. Also, government regulations may make it more or less costly to use certain inputs depending on where the product is to be sold. In such situations, it is perfectly rational for the producer to create a business model that takes these factors into account. However, these business choices should not dictate how the Department attributes subsidies bestowed on the inputs. As explained above, the Department has implemented tying regulations to attribute subsidies rather than tracing subsidies through the company. By analogy, we will not trace subsidized inputs through a company's production process.[495]

Therefore, for the reasons articulated in the aforementioned decisions, the Department will continue to attribute subsidies received by the reported input producers to the downstream paper producers.

Comment 37 Whether the Department Should Attribute Subsidies From Pulp Producers Based on the Percentage of Total Pulp Sales to the Paper Producers Covered

The Gold companies argue the Department did not follow its past practice and properly allocate subsidies received by their pulp-producers based on the percentage of total pulp sales to the appropriate paper producers. Citing to the CVD Preamble, the Gold companies state the attribution rules are intended to attribute subsidies "to the extent possible, to the sales for which costs are reduced (or revenues increased)."[496] As such, the Gold companies disagree that merely attributing subsidies across the sales of the input and downstream product reflect the intent of the Department's regulations, as was done in the Preliminary Determination.

They note that when subsidies are received by an input supplier, costs are first reduced at the input supplier and are then shared with the consumers of the input. By attributing the pulp

[495] Id.
[496] See CVD Preamble at 65400.

producers' subsidies to the sales of pulp and paper producers (net of inter-company sales), the Department is implicitly assuming that the Gold companies' paper producers are sharing in the cost reduction afforded to unaffiliated parties. Alternatively, it may also be assumed that the pulp producers merely serve as a conduit to pass on a disproportionate amount of the subsidy to the paper producers, which cannot be substantiated, consistent with 19 CFR 351.525(b)(6)(v). Thus, the Gold companies captured subsidies that cannot be attributed to a class or kind of merchandise as envisioned under section 701(a)(1) of the Act.

To resolve this issue, the Gold companies argue the Department should follow the methodology it followed in CFS from the PRC.[497] In that investigation, the Department allocated subsidies attributed to the pulp producer based on the percentage of total sales by the pulp producer to the paper producer. As such, the Department should follow its past practice in this instance.

Petitioners assert that the ratios provided by the Gold companies are misleading based on proprietary record information the companies' submitted information.[498] As such, the Department, even if it wanted to apply this methodology, could not use the ratios as reported.

Petitioners further argue this methodology is not envisioned in 19 CFR 351.525(b)(6)(iv) because the regulation specifically states that the entire subsidy should be distributed over the combined sale of the input supplier and subject merchandise producer less intercompany sales. Thus, the Department should continue to follow its regulations and methodology from the Preliminary Determination.

Department's Position

The Department will continue to attribute subsidies from the pulp producers by the combined sales minus any inter-company sales. The Gold companies' cite to the CVD Preamble references the intent of the Department to attribute subsidies to the sales for which costs are reduced (or revenues increased).[499] Based on this statement, the Department provides examples of how this would apply to different types of subsidies (e.g., export, etc.) and also describes the rationale behind its attribution under 351.525(b)(6)(iv).[500] This rationale states for situations where there is an input producer whose production is dedicated almost exclusively to the production of a higher value added product, the Department's believes "the purpose of a subsidy provided to the input producer is to benefit the production of both input and downstream products…" and "(b)(6)(iv) requires the Department to attribute the subsidies received by the input producer to the combined sales of the input and downstream products (excluding the sales between the two corporations)."[501] Thus, the Department's intent in attributing subsidies to the input producer of a product that is primarily dedicated to downstream products is clear and the Department complied with its regulations in attributing JHP's and JAP's subsidies in the preliminary determination. Although the Department used a different methodology in CFS from the PRC, we have not found another instance in which we used that methodology. Instead, we note certain

[497] See CFS from the PRC IDM at 3.
[498] See Petitioners' Case Brief at 44-45.
[499] See CVD Preamble at 65400.
[500] Id. at 65401.
[501] Id.

recent cases involving input producers of primarily dedicated products in which we have applied the attribution principle as outlined above, and believe this to be the appropriate practice.[502]

Comment 38 Whether to Countervail Additional Financing Reported by the Gold Companies

Petitioners argue the Gold companies reported loans, classified as "financial instruments," in GSQR3b should be included in the Department's lending calculation.[503] Petitioners note the Department has previously found that certain forms of lending are equivalent to short-term commercial loans as well as treated various trade financing instruments as part of government directed programs.[504] As such, the Department should follow its prior practice and include the Gold companies' reported trade financing in its lending calculation.

Citing CFS from the PRC Prelim, the Gold companies contend that the origins of "policy lending" were based on plans and papers that emphasized accelerated renovation, construction, capacity development, technological restructuring, environmental conservation, and elimination of inefficient capacity.[505] These same findings are the basis of the program in the current investigation. The Gold companies further note that none of the documentation mentions the type of short-term trade financing mentioned by Petitioners and have nothing to do with the underpinnings of the Department's preliminary determination concerning lending to the coated paper industry.

In regard to the Petitioners' support, the Gold companies claim that both cited precedents involved proceedings where this type of financing was alleged and under investigation by the Department.[506] As Petitioners' cited cases are misplaced and there is no explicit allegation concerning such financing, the Gold companies assert the arguments should be rejected.

Department's Position

In the Preliminary Determination, the Department preliminarily found that the "Preferential Lending To The Coated Paper Industry" program was specific as the GOC's policy demonstrated through plans and directives to encourage and support the growth and development of the PRC pulp and paper industry.[507] As further noted in the Preliminary Determination, the plans and directives cited by the Department discuss not only the items as explained by the Gold companies, but also the growth and expansion of the industry.[508] In that regard the Department notes one of the underpinning documents of its findings was the "Decision of the State Council on Promulgating and Implementing the Provisional Regulation on Promoting Industrial Structure Adjustment GUOFA (2005) No. 40" and its statements on providing "credit supports" to

[502] See LWTP from the PRC IDM at "Attribution of Subsidies" and CWASPP from the PRC IDM at "Cross-Ownership and Subsidy Attribution".
[503] See Petitioners' Case Brief at 57.
[504] See CORE from Korea Prelim at 46104, DRAMS from Korea Prelim Determination at 16766, 16777, DRAMS from Korea IDM at 21.
[505] See CFS from the PRC Preliminary Determination at 17491-2.
[506] See CORE from Korea Prelim at 46104 and DRAMS from Korea IDM at 19-21, 39 and Comment 1.
[507] See Preliminary Determination at 10783-84.
[508] Id.

encouraged industries, which includes the pulp and paper industry. Moreover, the Department has also found that policy banks and SOCBs are authorities and provide a financial contribution in the form of loans. Thus, the Department's examination of the preferential lending program is not limited to so-called traditional loans extended by policy banks and SOCBs, but rather "credit supports" provided by these institutions that by extension promote the growth and expansion of the pulp and paper industry. In this regard, we find that, to the extent these additional loans or "financial instruments" are provided by SOCBs and policy banks to respondents, they should be included in the "Preferential Lending To The Coated Paper Industry" program. Finally, the Gold companies also reported shareholder and entrusted loans. As the funds provided in these loans are not from SOCBs or policy banks, we have excluded them from our analysis of this program.[509]

Comment 39 Whether to Adjust the Gold Companies Interest Calculation

Petitioners argue the Department should correct its interest rate benchmark and inflation calculations to account for the fact that the Gold companies paid its loan interest based on a 360-day convention. They note the benchmark amounts should be calculated on the same basis as the company reported its interest payments, pursuant to 351.505(a)(1).

The Gold companies did not provide rebuttal argument on this issue.

Department's Position

On page 9 of GSQR3, the Gold companies stated that their reported loans at Exhibits A-1 through A-13 were based on a 360-day convention. There is no contrary information on the record. As such, we have adjusted our interest rate benchmark and inflation calculations to reflect a 360-day convention for these loans.

Comment 40 Whether To Adjust JHP's Reported VAT and Duty Exemptions on Imported Equipment

At verification, the Department discovered JHP had misplaced a decimal point in the tariff variable rate used to calculate the tariff rate under the "VAT and Tariff Exemptions on Import Equipment" program.[510] Petitioners argue the values should be corrected for 2005 and any other year for which the error is discovered.

The Gold companies did not provide a rebuttal on this issue.

Department's Position

At verification, JHP provided corrections and the Department found other errors in regard to its reported information for the "VAT and Tariff Exemptions on Imported Equipment" program.[511] For the final determination, the Department has applied all corrected information from the

[509] See GQSR3b at 2-3 and GE Verification Report at 10-11 and 14.
[510] See GE Verification Report at 17.
[511] Id. at 16-17 and VE-1 (c6), VE-9, and VE-26.

verification report to JHP's benefit calculation under this program.

Comment 41 Whether To Use an Alternative Electricity Benchmark

Petitioners argue that the Department should calculate the benefit received from the GOC's provision of electricity by assessing whether the Government price is consistent with market principles.[512] In the Preliminary Determination,[513] following its recent practice, the Department compared the rates paid by respondent companies to the highest rates they would have paid in the PRC during the POI. However, Petitioners assert the Department's true practice is to not use inappropriate information as facts available.[514]

Electricity prices in the PRC during the POI are not appropriate to use as a facts available benchmark because the GOC suppressed electricity tariffs, and forbade electricity suppliers from raising prices with increases in the price of coal. Consequently, Petitioners suggest that the Department should use either electricity tariffs for large industrial users from Hong Kong, or rates from Dongguan City and Zhongshang City, adjusted upward by at least 105 percent to account for increased coal prices during the POI.[515]

Pursuant to 19 CFR 351.511(a)(2), Petitioners assert that the Department should examine the electricity benchmark in terms of the three tiers. They contend the Department should reject the first-tier and second-tier benchmark as done in prior cases investigating electricity subsidies in China[516] [517] and then do an evaluation consistent with market principles as required with a third-tier benchmark, which will demonstrate PRC prices should also not be used. Petitioners note that the Department has followed these regulations in prior cases that involve electricity and the practice has been upheld in the CIT.[518]

Petitioners point to evidence on the record to support its assertion that Chinese electricity prices were strictly regulated and producers could not raise rates commensurate with costs.[519] Petitioners also point out to the fact that a Russian electricity producer, INTER RAO UES, ceased electricity transmission to the PRC during the POI because the GOC refused to import the electricity as the price was twice as high as the PRC's prices. They further note that the possibility that an electricity producer could raise electricity prices with costs (consistent with market principles) is foreclosed by law due the NDRC's control of electricity tariffs.[520] Petitioners also refer to a recent report by the U.S. Department of Energy as evidence that the GOC did not allow electricity producers to set prices consistent with market principles.[521] The

---

[512] See 19 CFR 351.511(a)(2)(iii).
[513] See Preliminary Determination at 10787
[514] See Magnesia Bricks from the PRC (citing Fresh Cut Flowers from Mexico Final).
[515] See Petitioners' Pre-Prelim Comments at Exhibit 9.
[516] See LWTP from the PRC IDM at Comment 11, p. 61 ("rejecting a first tier benchmark because the two Chinese grid companies are state-owned and because end-user prices are regulated by the GOC).
[517] See LWTP from the PRC IDM at 23.
[518] See Wire Rod from Trinidad and Tobago (2002), Steel Flat Products from Thailand, and Royal Thai Gov't at 1359.
[519] See Petitioners' Pre-Prelim Comments at 40-52.
[520] Id. at Exhibit 5.
[521] Id. at Exhibit 5.

report says that the NDRC controls both wholesale and retail electricity prices and electricity tariffs. The NDRC has a policy of keeping coal prices used to produce electricity low, while allowing some competitive pricing of coal not used for electricity production, thus creating a "double track pricing scheme." [522] The double tracking scheme was abolished prior to the POI and resulted in higher coal prices.[523]

Petitioners note that approximately 70% of China's electricity is produced with coal and also represent 50 to 70 percent of the cost of electricity.[524] In this regard, the Petitioners state the GOC implemented a CE Price Mechanism in 2004 to ease the conflict between the coal and electricity industries and allow increases in electricity prices as coal prices rise.[525] During the POI, however, Petitioners state this did not occur in 2008 as electricity prices were not allowed to rise.[526]

Petitioners further point to news reports and analysis to support their assertion that electricity and power companies rationing electricity and a decreased in profit margins.[527]

Petitioners suggest the Department should consider the extent to which the GOC tariff policies mandated that Chinese electricity prices could not rise commensurate with coal prices, and in fact lowered certain electricity tariffs even though coal prices rose.[528] Studies cited by Petitioners show coal prices rose 80 percent since 2004 and electricity prices rose only 20 percent during the same time.[529] Additionally, they provide statistics showing Australia's average coal price rose 140 percent from 2004 through 2008 and 159% from 2006 through 2008%.[530] Therefore, based on these numbers and other information, Petitioners assert that even the highest rate in China during the POI is 105 percent to 120 percent lower than necessary for electricity producers to cover their costs for coal, and is thus inappropriate to use as a facts available benchmark.[531] Thus, the Department should use either electricity tariffs for large industrial users from Hong Kong or the appropriate highest rate in China during the POI, adjusted upward by at least 105 percent.

The GOC contests that Petitioners' arguments regarding the Department's benefit analysis with respect to electricity should be rejected. The GOC also argues that the provision of electricity to coated paper producers in China does not confer a countervailable subsidy.

The GOC argues that should the Department countervail electricity purchases, it should not use Petitioners' benefit methodology and should use in-country benchmarks for valuing electricity purchases. They state that the Department's first preference is actual transactions within the country of question, second is a world market price, and finally the Department will determine

[522] Id. at Exhibits 6 and 7.
[523] Id. at Exhibit 7.
[524] Id. at Exhibits 7 and 8.
[525] Id.
[526] Id. at Exhibit 5.
[527] Id. at 5,7, and 8.
[528] Id. at 8.
[529] Id. at 7.
[530] Id. at Exhibit 9.
[531] Id. at Exhibit 9.

whether the government price is consistent with market principles.[532] The GOC states that there is no world market price for retail electricity prices. The GOC disagrees with Petitioners' proposal to apply a Hong Kong benchmark adjusted by external factors unrelated to the market in China.

Notwithstanding the GOC's rejection of any provision of electricity for LTAR, the GOC claims that the record does not support a finding that government-set electricity prices in the PRC are inconsistent with market principles. Moreover, in regard to Petitioners' suggestion of using a Hong Kong electricity price as the benchmark, the GOC note that section 771(5)(E) require the adequacy of the remuneration be determined in relation to the market conditions in the country. As such, the GOC argues the Petitioners' Hong Kong rate or adjusted Chinese rates do not approximate the conditions under electricity is sold at the retail level in the PRC.

The GOC also does not contest that electricity market are regulated and that wide fluctuations in generation costs may not lead to immediate changes in prices at the wholesale or retail level, but this does not mean that government-set electricity prices in the PRC are not consistent with market principles. The GOC asserts that the fact electricity generators in the PRC during mid-2008 was unique to circumstances in the PRC is incorrect and that the negative effects of sudden and sharp fluctuations in commodity prices during 2008 was experience throughout the world.[533] The GOC points out that China has a system in place to account for swings in coal prices to help regulate the tension between an unregulated coal market and a regulated electricity market established in the 2004 CE Mechanism along with the general adjustment mechanisms found under article 27 of the Provisional Rules on Retail Electricity Price. Moreover, the GOC concedes that certain generators may have been overwhelmed by the spiking market, but that does not mean the market was unaffected and cite to less efficient generators shutting down during the height of the spike period.[534]

The GOC further notes that if the Department were to do an analysis pursuant to 19 CFR 351.525(a)(2)(iii), it must be objective and take into account for the type of market in question. In this instance, the GOC does not believe an analysis of cost recovery and profitability in such a brief period offers insight into whether the Chinese electricity prices are consistent with market principles. Instead, the GOC notes that Petitioners' submitted information shows that Chinese generators were profitable from 2001 through 2006 and, although profits plunged in the first quarter of 2008 and it appears the generators lost profits, they did not incur loses overall.[535]

The GOC also argues the fact that the Department used in-country benchmarks for the measurement of benefit does not mean the Department did not conduct a third-tier benefit analysis under 19 CFR 351.511(a)(2)(iii). They state that the Department has never concluded that electricity prices in the PRC are not set according to market principles and used the same subsidy analysis with respect to electricity as in prior decisions.[536] The GOC asserts that the Department's preliminary application of adverse facts available in finding an electricity subsidy

[532] See 19 CFR 351.511 (a)(2)(i)(ii)(iii).
[533] See Petitioners' Pre-Prelim Comments at Exhibit 5 and 9.
[534] Id. at 5.
[535] Id. at Exhibit 7 and 8.
[536] See LWTP from the PRC IDM at Comment 11 and see Wire Decking from the PRC IDM at Comment 6.

was due to the lack of information on electricity pricing proposals. However, the GOC did provide information regarding price setting on a country-wide basis. The GOC also contests that nowhere do the Department's regulations state that it may not use an in-country benchmark under its third-tier analysis, whether or not it concludes that prices are set based to market principles. The GOC cites to Hot-Rolled Steel from Thailand where the Department concluded that electricity prices charged by the government authority in one pricing jurisdiction were not set according to market principles and as a result used prices of another government authority in another pricing jurisdiction to measure the benefit[537] and did not conclude that the prices of the other pricing authority were set according to market principles. This approach is consistent with the CVD Preamble.[538]

The GOC also argues that even if the Department finds that electricity prices in the PRC are not set according to market principles then this does not require the use of external benchmark. The state the purpose of 19 CFR 351.511(a)(2)(iii) is to address unique situation where the government is clearly the only source available to consumers in the country and therefore, the Department has discretion to use in-country benchmarks as seen in Hot-Rolled Steel from Thailand.[539]

Finally, the GOC notes that the Department's use of the highest rates in the PRC is consistent with the specificity statute. They note when the only source is the government, then all transactions in the market constitute financial contributions. Moreover, there is basis to conclude de jure or de facto specificity. From that logic, the only option is to use a price that is not to be deemed preferred, which in this case is the highest rate on record form the PRC. Therefore, the GOC contests that that the Department must reject Petitioners' benchmarking arguments with respect to electricity and use an in-country benchmark for valuing electricity purchases.

The Gold companies incorporate the GOC's argument.[540]

The Sun companies note that as none of the Sun companies were found to use this program in the preliminary determination, they are not subject to any determination by the Department with regard to this issue.

Department's Position

In LWTP from the PRC, the Department found a provision of electricity for LTAR program to be regionally specific. In KASR from the PRC, the Department applied AFA and used the highest electricity rates in the PRC for large industrial users, the respondent's electricity rate category.[541] In subsequent reviews, the Department has continued to apply AFA to the GOC for not providing requested information on pricing information and used Chinese electricity rates as its benchmark.[542] Since, KASR from the PRC, the Department has measured the benefit from

[537] See Hot-Rolled Steel from Thailand IDM at Section II.B.
[538] See CVD Preamble at 65378.
[539] Id. at 65377.
[540] See Gold Companies Case Brief at 4.
[541] See KASR from the PRC IDM at 5-6 and 17.
[542] See, e.g., KASR from the PRC at 17 and OCTG from the PRC at 22-23.

electricity using the methodology set forth in this final determination. Petitioners have not provided sufficient information or argument that would cause us to change this methodology.

For example, upon examination of the record, the information provided by Petitioners does not provide sufficient evidence that PRC electricity generators costs were not covered by the effective electricity rates during 2008. We note that several of the articles provided by Petitioners have conflicting information or do not address electricity generators' costs in 2008. First, we note that although several articles discuss losses incurred by electricity generators other articles also mention that Chinese power companies have always higher operating margins than global averages based on stable coal prices.[543] Moreover, although certain articles state power companies have shut-down or refuse to operate at a loss, the same or other articles also mention other factors (e.g., the fact coal is located in areas affected by the 2008 Earthquake creating shortages, the increase of production prior to the Chinese New Year, severe snowstorms in the winter of 2007/2008, etc.) in addition to the limited electricity increases or caps instituted by the GOC.[544] Also, notwithstanding Petitioners' other information, the only article providing statistical information is the UPI news report from June 9, 2008.[545] In this news report, its states that Chinese power companies' average first-quarter profits this year have plunged by up to 21.5 percent from the same period last year.[546] However, this document also implies that the power companies are still operating at a profit.

Finally, we note that several of the articles provided by Petitioners are from January or February 2008, which does not take into account the whole period for which we are examining, calendar year 2008. As shown above, one news report from June 9, 2008 demonstrates a lower profit margin for the power companies, but no evidence of costs not being covered. The other news article outside the beginning of the year, GLG news dated June 20, 2008, states the NDRC raised prices in that month 4.7% and also instituted a thermal coal price freeze effective immediately. Petitioners have not included this fact in their argument and it would certainly alter the premise that the rising coal prices as demonstrated by the Australia coal pricing data and limited rise in electricity prices shows Chinese power companies did not cover its costs. As there is no further information beyond June 2008, we cannot accurately analyze the second half of 2008 or the above information in the context of calendar year 2008.

Further, we note that the Petitioners' reference to electricity prices in Hong Kong is unpersuasive. The information petitioners submitted was very general and failed to demonstrate how such rates would be a relevant benchmark for the Chinese electricity rates.

Therefore, Petitioners have not provided sufficient information that would cause us to revisit our established benefit methodology. We continue to use the same methodology in regard to selecting the highest electricity rates in the PRC as described above in "Provision of Electricity."

Comment 42 Whether to Apply AFA to JAP and JHP Caustic Soda Purchases

[543] See Petitioners' Pre-Prelim Comments at Exhibit 8.
[544] Id.
[545] Id.
[546] Id.

At verification, the Department discovered that JAP and JHP purchased caustic soda during the POI. Although the companies stated that it did not believe the allegation applied to pulp producers, Petitioners note the alleged program was not limited to paper producers and the Petition also mentioned caustic soda in relation to the pulping process.[547] Petitioners argue JAP and JHP should receive AFA on their caustic soda purchases as they failed to report their purchases. Petitioners recommend applying the Gold companies highest calculated rate as AFA, consistent with CFS from the PRC, as no information regarding their purchases is on the record.

Gold companies assert that GE, GHS, and all reported cross-owned companies have been fully cooperative during this investigation, submitted thousands of pages of documentation and information detailing with their utilization of alleged subsidy programs under investigation, and were verified by the Department with only a handful of minor discrepancies. As such, the Gold companies argue they have made a good faith effort to comply with the Department that would not reflect a failure to cooperate to the best of their ability or an attempt to impede the proceeding.

Although Petitioners argue nothing on the record limited the scope of the allegation into papermaking chemicals for LTAR, the Gold companies contend the Department's description of the allegation in the questionnaire stated that "the GOC provides the following chemicals through SOEs to coated paper producers ……..collectively papermaking chemicals."[548] Based on the description, the Gold companies state that officials at the company understood that the request for information was only directed at the paper producers and said as much at verification.[549] However, once the Department asked officials at verification if the pulp producers purchased the papermaking chemicals during the POI, they confirmed it and full information was provided. The Gold companies note that the purchases of caustic soda were collected at verification from both pulp producers and they argue that it should be used in any subsidy calculation for JAP's and JHP's caustic soda purchase.

Department's Position

Notwithstanding the Gold companies' assertions regarding the description of the "Papermaking Chemicals for LTAR" program, we note, as with the other alleged programs and our inclusion of reported cross-owned wood and pulp companies in this investigation, that it was clear that the Department was investigating all alleged subsidies in regard to coated paper producers and their affiliated cross-owned input suppliers.[550] Although the Department did not seek this information in subsequent supplemental questionnaires or clarify to the respondents that we were seeking such information, the Petitioners brought this issue to the Department's attention in pre-verification comments.[551] Thus, we further addressed and examined the issue of pulp producers purchasing papermaking chemicals only at verification. In response to the Department's questions at verification regarding purchases of papermaking chemicals, the Gold companies' officials responded that the two pulp producers did in fact purchase caustic soda, but not kaolin

[547] See Petition at 83.
[548] See InitQ at III-15 (Item Z).
[549] See GE Verification Report at 24.
[550] See generally InitQ at Section III and Preliminary Determination at 10779-80 ("Attribution of Subsidies").
[551] See Petitioners Pre-Verification Comments at 13.

clay or titanium dioxide. They further noted that it was their understanding, based on the questionnaire, that the Department was only interested in coated paper producers.[552] The Department also verified that the companies did not purchase titanium dioxide or kaolin clay.[553]

Section 776(a) of the Act states that the Department shall apply "facts otherwise available" if information is withheld that has been requested, information is not provided on a timely basis or in the manner requested, a company impedes a proceeding, or provides information that cannot be verified. In regard to JAP and JHP, the Department finds that the evidence does not support finding that the Gold companies impeded or withheld information specifically requested by the Department. As discussed above, the Department asked for further information about purchases of papermaking chemicals for the first time at verification and the Gold companies provided the Department with complete information at that time. Moreover, the Department examined JAP's and JHP's accounting records to confirm their statements on purchases of papermaking chemicals and this data was obtained and verified in the same manner as the data pertaining to other papermaking chemicals purchased by the paper producers.[554] Therefore, in light of the fact that complete, verifiable information was provided that the Department sought and accepted at verification, we do not believe that facts otherwise available is warranted in this instance and will use the monthly quantity and value obtained from JAP's and JHP's accounting in the calculation of the Gold companies' benefit for the "Papermaking Chemicals for LTAR" program.

[552] See GE Verification Report at 24.
[553] Id.
[554] Id. at 23-24.

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

AGREE ____ DISAGREE ____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
AD	Antidumping Duty
AFA	Adverse Facts Available
APP	The APP Companies
AUL	Average useful life
BCTMP	Bleached Chemi-thermomechancial Pulp
BPI	Business proprietary information
CAFC	U.S. Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CBRC	China Banking Regulatory Commission
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
CRU	The Department's Central Records Unit (Room 1117 in the HCHB Building)
CU	China Union (Macao Offshore) Company Limited
CVD	Countervailing Duty
Department	Department of Commerce
Dongguan Jianhui	Dongguan Jianhui Paper Industry Co., Ltd.
EDZ	Economic Development Zone
EV	Export Value
FIE	Foreign-Invested Enterprise
GE	Gold East Paper (Jiangsu) Co., Ltd.
GEHK	Gold East Trading (HK) Company Ltd.
GHS	Gold Huasheng Paper Co., Ltd
GI	Governance Indicator
GLC	Gold Lun Chemicals (Zhenjiang) Co., Ltd.
GNI	Gross National Income
GOC	Government of the People's Republic of China
Gold companies	Collectively, Gold East Paper (Jiangsu) Co., Ltd., Gold Huasheng Paper Co., Ltd., Sinar Mas Paper (China) Inv. Co., Ltd., Ningbo Zhonghua Paper Co., Ltd., Ningbo Asia Pulp & Paper Co., Ltd., Gold Zuan Chemicals (Suzhou) Co., Ltd., Gold Lun Chemicals (Zhenjiang) Co., Ltd., Gold Sheng Chemicals (Zhenjiang) Co., Ltd., Hainan Jinahi Pulp & Paper Co., Ltd., Sichuan Jinan Pulp & Paper Co., Ltd., China Union (Macao Offshore) Company

	Limited, Guangxi Jingui Forestry Co., Ltd., Guangxi Jinqinzhou H-Y Forest Co., Ltd., Jinqing Yuan Timber Land Co., Ltd., Hainan Jinhua Forestry Co., Ltd., Jinshaoguan First Quality Timberland Ltd., Yangjiang Golden Sun Forestry Co., Ltd., Leizhou Golden Sun Forestry Co., Ltd., Ganzhou Golden Sun Forestry Co., Ltd., Wenshan Jin Wenshan Forestry Co., Ltd., and Gold East Trading (HK) Company Ltd.
GSC	Gold Sheng Chemicals (Zhenjiang) Co., Ltd.
GZC	Gold Zuan Chemicals (Suzhou) Co., Ltd.
GZGS	Ganzhou Golden Sun Forestry Co., Ltd.
HTSUS	Harmonized Tariff Schedule of the United States
HYDC	Hainan Yangpu Development Co., Ltd.
IDM	Issues and Decision Memorandum
IFS	International Financial Statistics
IMF	International Monetary Fund
IRS	Internal Revenue Service
ITC	U.S. International Trade Commission
JAP	Sichuan Jinan Pulp & Paper Co., Ltd.
JGF	Guangxi Jingui Forestry Co., Ltd.
JHF	Hainan Jinhua Forestry Co., Ltd.
JHP	Hainan Jinahi Pulp & Paper Co., Ltd
JQY	Jinqing Yuan Timber Land Co., Ltd.
JQZ	Guangxi Jinqinzhou H-Y Forest Co., Ltd.
JSG	Jinshaoguan First Quality Timberland Ltd.
KGHK	Kumagai Gumi (Hong Kong) Limited
LIBOR	London Interbank Offering Rate
LTAR	Less than adequate remuneration
LZGS	Leizhou Golden Sun Forestry Co., Ltd.
MOI	Market-Oriented Industry
NAFTA	North American Free Trade Agreement
NAPP	Ningbo Asia Pulp & Paper Co., Ltd.
NBZH	Ningbo Zhonghua Paper Co., Ltd.
NDRC	National Development and Reform Commission
NME	Non-market economy
PBOC	People’s Bank of China
Petitioners	Appleton Coated LLC, NewPage Corporation, S.D. Warren Company d/b/a/ Sappi Fine Paper North America, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
RMB	Renminbi
SAIC	State Administration of Industry and Commerce
SASAC	State-owned Assets Supervision and Administration Commission
SSB	State Statistical Bureau
SHIBOR	Shanghai Interbank Offered Rate
SMPI	Sinar Mas Paper (China) Inv. Co., Ltd.
SOCB	State-Owned Commercial Bank
SOE	State-Owned Enterprise
SP	Shandong Sun Paper Industry Co., Ltd.
Sun companies	Collectively, Shandong Sun Paper Industry Co., Ltd., and Yanzhou Tianzhang Paper Industry Co., Ltd.
Sun Industry	Sun Paper Industry Co., Ltd.
The Act	Tariff Act of 1930, as amended
U.S. Steel	United States Steel Corporation (one of Petitioners)
U.S.C.	United States Code
VAT	Value-Added Tax
WSGWS	Wenshan Jin Wenshan Forestry Co., Ltd.
WTO	World Trade Organization
Yangzhou Dongsheng	Yangzhou Dongsheng Fine Chemicals Industry Co., Ltd.
Yanzhou Fengye	Yanzhou Fengye Paper Industry Co., Ltd.
Yanzhou Mingxu	Yanzhou Mingxu Paper Making Starch Co., Ltd.
Yanzhou Mingyang	Yanzhou Mingyang Chemical Co., Ltd.
Yanzhou Xilai	Yanzhou Xilai Fine Chemicals Co., Ltd.
Yanzhou Xudong	Yanzhou Xudong Pulp & Paper Sales Co.
Yanzhou Yongyue	Yanzhou Yongyue Paper Industry Co., Ltd.
YEDZ	Yangpu Economic Development Zone
YJGS	Yangjiang Golden Sun Forestry Co., Ltd.
YT	Yanzhou Tianzhang Paper Industry Co., Ltd.
Zhaoyang	Yanzhou Zhaoyang Paper Industry Co., Ltd.

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GFIS	Government of China's Factual Information Submission (March 3, 2010)
GOCQR	Response of the Government of the People's Republic of China to the Department's Supplemental Questionnaire (January 8, 2010)
GOCQR1	Response of the Government of the People's Republic of China to the Department's First Supplemental Questionnaire (February 16, 2010)
GOCSQR2	Response of the Government of the People's Republic of China to the Department's Second Supplemental Questionnaire (April 29, 2010)
GOCSQR3	Response of the Government of the People's Republic of China to the Department's Third Supplemental Questionnaire (May 20, 2010)
GOCSQR4	Response of the Government of the People's Republic of China to the Department's Fourth Supplemental Questionnaire (May 26, 2010)
	Petitioners
NSA	Petitioners' New Subsidy Allegation on Chinese Currency Undervaluation (January 13, 2010).
Petition	Petitions for the Imposition of Antidumping and Countervailing Duties in the matter of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China (September 23, 2009).
Petitoners' Case Brief	Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses From The People's Republic of China: Petitioners' Case Brief (September 7, 2010)
Petitioners' 1/15 Sun DC	Petitioners' Comments On The Initial Countervailing Duty Investigation Questionnaire Responses ofShandong sun Paper Joint Stock Co., Ltd. And Yanzhou Tianzhang Paper Industry Co., Ltd. (January 15,2010)
Petitioners' Pre-Prelim Comments	Petitioners' Initial Comments On The Upcoming Preliminary Determination Regarding The APP Group at 40 - 52 (February 18,2010)
Petitioners' Sun Pre-Prelim Comments	Petitioners' Initial Comments On The Upcoming Preliminary Determination Regarding The Sun Paper Group (February 16, 2010)
Petitioners' Pre-Verification	Petitioner's Pre-Verification Comments (June 1, 2010)

Comments	
Petitioners' Additional Pre-Verification Comments	Petitioner's Additional Pre-Verification Comments on Sun Paper (June 3, 2010)
Petitioners' Factual Submission	Petitioners' General Factual Submission, June 1, 2010
Petitioners' Additional Rebuttal Comments on Scope	Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses ("Certain Coated Paper") from Indonesia and the People's Republic of China: Petitioners' Rebuttal Comments on Scope (April 9, 2010).
Petitioners' Rebuttal Brief Regarding Scope	Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses Republic of China and Indonesia: Petitioners' Rebuttal Brief Regarding Scope (August 24, 2010).
Petitioners' Rebuttal Comments on Scope	Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses ("Certain Coated Paper") from the People's Republic of China: Petitioners' Rebuttal Comments on Scope (November 16, 2009).
Petitioners' Scope Response	Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses ("Certain Coated Paper") from Indonesia and the People's Republic of China: Petitioners' Response to the Department's Supplemental Questionnaire dated April 23, 2010 (May 10, 2010).
	Gold companies
GCR	February 22, 2010, correction and clarification response.
Gold Companies Case Brief	Case Brief of Gold East Paper (Jiangsu) Co., Ltd. and reporting of Cross-Owned Affiliates (September 7, 2010)
Gold Companies Rebuttal Brief	Rebuttal Brief of Gold East Paper (Jiangsu) Co., Ltd. and Reporting Cross-Owned Affiliates, September 14, 2010.
GQR	January 8, 2010, initial questionnaire response.
GSQR1	February 16, 2010, first supplemental questionnaire response.
GSQR2	May 14, 2010, second supplemental questionnaire response.
GSQR3	May 20, 2010, third supplemental questionnaire response.
GSQR3b	May 27, 2010, additional third supplemental questionnaire response.
GSQR4	May 24, 2010, fourth supplemental questionnaire response.

Respondents' Additional Factual Information	Submission of Additional Scope Information, Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia (July 29, 2010).
Respondents' Rebuttal Factual Information	Submission of Rebuttal Factual Information, Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China (July 20, 2010) (identical filings were made in the other investigations).
GE Prelim Calc Memo	Gold East Preliminary Determination Calculation Memorandum (March 1, 2010)
Respondents' Scope Comments	Scope Comments, Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia (November 6, 2009).
	Sun companies
SPQR	January 8, 2010, initial questionnaire response for SP.
SPQR1	February 16, 2010, first supplemental questionnaire response.
SPQR2	March 1, 2010, second supplemental questionnaire response.
SPQR3	April 27, 2010, third supplemental questionnaire response.
SPQR4	May 28, 2010, fourth supplemental questionnaire response.
YQR	January 8, 2010, initial questionnaire response for YT.
	Department
APP CS	Memorandum to the File from David Neubacher, International Trade Analyst, regarding APP companies Calculation Sheet, August 27, 2010.
Initiation Notice	Certain Coated Paper Suitable for High–Quality Print Graphics Using Sheet–Fed Presses from the People's Republic of China: Initiation of Countervailing Duty Investigation, 74 FR 53704 (October 20, 2009)
Initiation Checklist	Office of AD/CVD Operations, Countervailing Duty Investigation Initiation Checklist, Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China (October 20, 2009)
Currency Memo	Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, regarding Countervailing Duty Investigation: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet–Fed Presses from the People's Republic

	of China, New Subsidy Allegation – Currency (August 30, 2010).
Final Creditworthiness Memorandum	Memorandum to Susan Kuhbach, from The Team, regarding, "Countervailing Investigation: Certain Coated Paper Suitable for High-Quality Graphics Using Sheet-Fed Presses from the People's Republic of China; Final Creditworthiness Determination for Gold East Paper (Jiangsu) Co., Ltd. and its Cross-Owned Affiliates" (September 20, 2010).
GE Post-Preliminary Analysis	Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from The Team, AD/CVD Operations, Office, 1, re: "Countervailing Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Post-Preliminary Analysis Memorandum for Gold East Paper (Jiangsu) Co., Ltd. ("GE"), Gold Huasheng Paper Co., Ltd. ("GHS"), and their reported cross-owned affiliates (August 27, 2010).
GE Verification Report	Memorandum to Susan H. Kuhbach, Director, ADCVD Operations, Office 1, from David Neubacher, Scott Holland, David Layton, Jennifer Meek, International Trade Compliance Analysts, re: "Verification Report of Gold East Paper (Jiangsu) Co., Ltd. and its reported cross-owned affiliates" (August 24, 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).*
GOC Verification Report	Memorandum to Susan H. Kuhbach, Director, ADCVD Operations, Office 1, from David Neubacher, Jennifer Meek, International Trade Compliance Analysts, AD/CVD Operations, Office 1, re: "Verification Report of the Government of the People's Republic of China" (July 28, 2010).
InitQ	Department's Initial Questionnaire, (December 1, 2009).
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).*

May 15 Memorandum	Department's May 15, 2006 Memorandum, The People's Republic of China (PRC) Status as a Non-Market Economy in the investigation of Certain Lined Paper Products from China.
NSA Memo	Countervailing Duty Investigation: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses form the People's Republic of China (March 4, 2010).
Preliminary Creditworthiness Memorandum	Memorandum to Susan Kuhbach, from Mary Kolberg, regarding, "Countervailing Investigation: Certain Coated Paper Suitable for High-Quality Graphics Using Sheet-Fed Presses from the People's Republic of China; Preliminary Creditworthiness Determination for Gold East Paper (Jiangsu) Co., Ltd. and its Cross-Owned Affiliates" (August 26, 2010).
Preliminary Determinations	Certain Coated Paper from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 FR 10761, 10763 (March 9, 2010); Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 FR 10774, 10776 (March 9, 2010); Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24885, 24887 (May 6, 2010); and Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24892, 24894 (May 6, 2010).
Amended Preliminary Determination	Certain Coated Paper Suitable For High–Quality Print Graphics Using Sheet–Fed Presses from the People's Republic of China: Amended Affirmative Preliminary Countervailing Duty Determination, 75 FR 30370 (June 1, 2010).
Scope Memo	Memorandum to Ronald K. Lorentzen regarding Anitdumping and Countervailing Duty Investigations: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China, Scope (August 3,

	2010).
Sun Post-Preliminary Analysis	Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from The Team, AD/CVD Operations, Office, 1, re: "Countervailing Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Post-Preliminary Analysis Memorandum for Shandong Sun Paper Industry Joint Stock Co., Ltd. ("Sun Paper") and Yanzhou Tianzhang Paper Industry Co. Ltd. ("Yanzhou Tianzhang")" (August 27, 2010).
Sun Verification Outline	Countervailing Duty Investigation: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China (June 4, 2010)
Sun Verification Report	Memorandum to Susan H. Kuhbach, Director, ADCVD Operations, Office 1, from David Neubacher, David Layton, Jennifer Meek, International Trade Compliance Analysts, AD/CVD Operations, Office 1, re: "Verification Report of Shandong Sun Paper Industry Joint Stock Co., Ltd., and Yanzhou Tianzhang Paper Industry Co., Ltd." (August 4, 2010).
Department's May 21, 2010 SQ	Countervailing Duty Investigation: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Fourth Supplemental Questionnaire for the Government of the People's Republic of China ("GOC") (May 21, 2010)
BPI Memo	Business Proprietary Memorandum for the Final Determination (September 20, 2010)
* on file in the Department's Central Records Unit (Room 1117 in the HCHB Building)	

III. LITIGATION TABLE

Short Cite	**Cases**
Allegheny Ludlum	Allegheny Ludlum Corp. v. United States, 112 F. Supp.2d 1141 (CIT 2000)
Badger-Powhatan	Badger-Powhatan, Div. of Figgie Int'l, Inc. v. United States, 608 F. Supp. 653 (CIT 1985)
Bell Atl. Corp.	Bell Atl. Corp v. Twombly, 550 U.S. 544 (2007)
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)
Borden	Borden Inc. v. United States, 22 CIT 233, 262 and 4 F.Supp.2d 1221, 1245 (1998)
Can-Am	Can-Am Corp. v. United States, 11 CIT 424 (1987)
Carlisle Tire	Carlisle Tire & Rubber Co. v. United States, 634 F. Supp. 419 (CIT 1986)
Chevron	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by the European Communities	China - Measures Related to the Exportation of Various Raw 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 Nat'l Mach. vs. United States	China Nat'l Mach. vs. United States, 264 F. Supp. 2d. 1229 (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)
Delverde	Delverde, SRL v. United States, 202 F.3d 1360 (Fed. Cir. 2000)
Ericsson GE Mobile	Ericsson GE Mobile Communications, Inc. v. United States,

	60 F.3d 778 (Fed. Cir. 1995)
Essar Steel v. U.S	Essar Steel Ltd v. United States, No. 09-00197, (CIT 2010)
Eurodif	Eurodif S.A. v. United States, 129 S. Ct. 878 (2009)
Fabrique	Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d. 593 (CIT 2001)
Georgetown Steel	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)
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)
Hosiden	Hosiden Corp. v. Advanced Display Mfgrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996)
Inland Steel 1997	Inland Steel Indus., Inc. v. United States, 967 F. Supp. 1338 (CIT 1997)
International Brotherhood	International Brotherhood of Electrical Workers v. NLRB, 814 F.2d 697, 699-700 (D.C. Cir.1987)
International Imaging Materials	International Imaging Materials v. ITC, 30 C.I.T. 1181 (CIT 2006)
Iqbal	Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)
Mannesmannrohren-Werke	Mannesmannrohren-Werke AG v. United States, 77 F. Supp 2d 1302 (CIT 1999)
MTZ	MTZ Polyfilms, Ltd v. United States, 659 F. Supp. 2d 1303 (CIT 2009)
Nippon Steel	Nippon Steel v. United States, 337 F. 3d 1373, (Fed. Cir. 2003)
Olympic Adhesives	Olympic Adhesives, Inc. v. United States, 899 F.2d 1565 (Fed. Cir 1990)
Rapanos	Rapanos v. United States, 547 U.S. 715 (2006)
Roses Inc.	United States v. Roses, Inc., 706 F.2d 1563 (Fed. Cir. 1983)
Royal Thai Gov't	Royal Thai Gov't v. United States, 441 F.Supp.2d 1350 (CIT 2006)
Shanghai Taoen	Shanghai Taoen Int'l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005)
Solid Waste	Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001)
U.S. Steel v. U.S.	United States Steel Corp. v. United States, No. 08-00239, (CIT 2009)
Usinor 1995	Usinor Sacilor v. United States, 893 F. Supp. 1112 (CIT 1995)
World Finer Foods	World Finer Foods, Inc. v. United States, 24 CIT 541,545 at

	footnote 3 (2002)
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
	Aluminum Extrusions from the PRC
Aluminum Extrusions from the PRC	Aluminum Extrusions from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 54302 (September 7, 2010)
	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).
	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).
	Bags from Vietnam
Bags from Vietnam Prelim	Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 45811 (September 4, 2009)
	Bearings from Thailand
Thai Bearings 1989	Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof From Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof From Thailand, 54 FR. 19130 (May 3, 1989).
Thai Bearings 1992 Prelim	Ball Bearings and Parts Thereof From Thailand; Preliminary Results of Countervailing Duty Administrative Review, 57 FR. 9413 (March 18, 1992);
Thai Bearings 1992 Final	Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review, 57 FR 26646
	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 – Canada
Wire Rod from Canada	Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada, 62 FR 54972 (October 22, 1997).
	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).
	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).
	Certain Coated Paper – PRC
Preliminary Determination	Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 FR 10774 (March 9, 2010).
	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 AD	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).
CFS from Korea CVD	Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (Oct. 25, 2007)
	Cold-Rolled Carbon Steel Flat Products – Korea
CR Steel from Korea Prelim	Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 9685 (March 4, 2002).
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 (March 7, 2006) (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 Prelim Determination	DRAMS from Korea Prelim Determination, 68 FR 16766, 16777 (April 7, 2003).
DRAMS from Korea	Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003).
	Fresh Cut Flowers from Mexico

Fresh Cut Flowers from Mexico Final	Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).
	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
Granite from Italy	Final Negative Countervailing Duty Determination; Certain Granite Products From Italy, 53 FR 27197 (July 19, 1988).
	Hardwood Trailer Flooring from Canada
Hardwood Trailer Flooring from Canada	Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) From Canada, 62 FR 5201 (February 4, 1997).
	Hot-Rolled Carbon Steel Flat Products
Hot-Rolled Steel from India	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001).
Hot Rolled from India 2007	Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009).
Hot Rolled from India 2010	Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review, 75 FR 43488 (July 26, 2010).
HRS from India	Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum.
HRS from Japan	Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999).
	Hot-Rolled Carbon Steel Flat Products – Thailand
Hot-Rolled Steel from Thailand	Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001).
	Industrial Acid from Israel
IPA from Israel	Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review, 66 FR 15839, (March 21, 2001)
	Kitchen Appliance Shelving & Racks – PRC
KASR from the PRC	Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009).

KASR from the PRC AD Final	Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009).
	Laminated Woven Sacks – PRC
LWS from the PRC	Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008).
	Leather from Argentina
Leather from Argentina	Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Leather from Argentina, 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).
	Lock Spring Washers - PRC
HSLW from the PRC	Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 61794 (Nov. 19, 1997).
	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).
	Narrow Woven Ribbons from the PRC

NWR from the PRC	Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 41801 (July 19, 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 – Austria
OCTG from Austria Prelim	Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Oil Country Tubular Goods From Austria, 60 FR 4600 (January 24, 1995).
OCTG from Austria Final	Final Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Oil Country Tubular Goods From Austria, 60 FR 33534 (June 28, 1995).
	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).
OCTG from the PRC	Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009).
	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).
	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 Lumber from Canada 03-04	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). 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 Flat Products from Thailand
Steel Flat Products from Thailand	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001)
	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 Prelim	Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971 (November 24, 2008)
Lawn Groomers from the PRC	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	Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the

Netherlands, and the UK	Netherlands, and the United Kingdom, 66 FR 65903 (December 11, 2001).
	Wheat from Canada
Wheat from Canada	Certain Durum Wheat and Hard Red Spring Wheat from Canada, Final Affirmative Countervailing Duty Determinations, USA-CDA-2003-1904-05 (March 10, 2005) at 61-62.
	Wire Rod from Poland
Wire Rod from Poland Prelim	Preliminary Negative Countervailing Duty Determination on Carbon Steel Wire Rod from Poland, 49 FR 6768 (February 23, 1984).
Wire Rod from Poland Final	Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 FR 19375 (May 7, 1984).
	Wire Rod from Trinidad and Tobago
Wire Rod from Trinidad and Tobago (2002)	Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 55810 (August 30, 2002)
Wire Rod from Trinidad and Tobago (1997)	Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 55003, 55008, (October 22, 1997).
	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 U.S.C. 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
CE Price Mechanism	Coal and Electricity Prices Co-Move Mechanism
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