UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-971
Investigation
POI: 1/1/2009 – 12/31/2009
Public Document
Office 1

DATE: October 11, 2011

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China

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Background

On April 6, 2011, the Department of Commerce ("the Department") published the *Preliminary Determination* of this investigation.[1] On July 27, 2011, the Department made available to all parties the Fine Furniture Post-Preliminary Analysis, the Layo Post-Preliminary Analysis, and the Yuhua 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 scope, 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 the CVD Law to the PRC and Double Counting
Comment 2 Whether Application of the CVD Law to NMEs Violates the APA
Comment 3 Requests for Information Regarding Other Programs
Comment 4 Provision of Electricity for Less Than Adequate Remuneration
Comment 5 Application of AFA to Non-Cooperative Respondents
Comment 6 Removal of Companies in the List of AFA Companies

[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 7 "All-Others" Rate Calculation

Scope-Related Issues
Comment 8 Exclusion Requests for Plywood Panels or Veneer
Comment 9 Strand-Woven Lignocellulosic Flooring
Comment 10 Scope Language Regarding HTSUS Subheadings
Comment 11 Continued Requests for Certain Exclusions

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

A. GOC – Electricity

Consistent with our *Preliminary Determination*, we are applying facts available for the "Electricity for LTAR" program in this final determination.

The GOC did not provide a complete response to the Department's January 3, 2011 questionnaire regarding the alleged provision of electricity for LTAR. Specifically, the Department requested that the GOC provide the original provincial price proposals for 2006 and 2008 for each province in which a mandatory respondent or any reported "cross-owned" company is located. Because the requested price proposals are part of the GOC's electricity price adjustment process,[2] the documents are necessary for the Department's analysis of the program. At page 48 of the GQR, the GOC responded that the proposals were drafted by the provincial governments and submitted to the NDRC. The GOC further stated it was unable to provide the internal working documents from the NDRC with its response. On February 18, 2011, the Department issued a supplemental questionnaire and reiterated its request for this information. In response, the GOC stated, the "GOC maintains its position that the requested original provincial proposals are internal working documents for NDRC's review and cannot be provided."[3]

Consequently, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our final

[2] *See, e.g., Magnesia Bricks from the PRC* at 45472 and accompanying IDM at Comment 8, wherein the Department quoted the GOC as reporting that these price proposals "are part of the price setting process within China for electricity." All citations to administrative cases are listed in full citation in the attached table.
[3] *See* G1SR at 4.

determination.[4] 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 as it did not respond by the deadline dates, nor did it explain to the Department's satisfaction why it was unable to provide the requested information. Consequently, an adverse inference is warranted in the application of facts available.[5] In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[6] The benchmark rates we have selected are derived from information on the record of this investigation and are the highest applicable electricity rates for the user categories reported by the mandatory respondents.[7]

For details on the calculation of the subsidy rate for the respondents, *see* below at section I.4., "Provision of Electricity for LTAR."

B. Non-Cooperative Companies

In this investigation, 124 companies[8] did not provide a response to the Department's Q&V questionnaire issued as part of the respondent selection process. We confirmed that each of these companies either received the Q&V questionnaire sent via United Parcel Service and did not respond, or refused delivery of the Q&V questionnaire.[9]

These non-cooperating companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the Q&V of their sales, the companies impeded the Department's ability to select the most appropriate respondents in this investigation. Thus, in reaching our final determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for these non-cooperating companies on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's Q&V questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that the non-cooperating companies will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) 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

[4] *See* sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(B) of the Act.
[5] *See* section 776(b) of the Act.
[6] *See* sections 776(b)(2) and 776(b)(4) of the Act.
[7] *See* GQR at Exhibit E-5 and E-6.
[8] This is a change from the *Preliminary Determination* in which we found that 127 companies did not respond to our Q&V questionnaire. S*ee* Comment 6 "Removal of Companies in the List of AFA Companies" for further discussion.
[9] *See* Respondent Selection Memo.

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."[10] 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."[11]

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment of the proceeding.[12] In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in another PRC CVD proceeding.[13] Thus, under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero.

Thus, for this final determination, consistent with the *Preliminary Determination* and the Department's recent practice, we are computing a total AFA rate for the non-cooperating companies using program-specific rates calculated for the cooperating respondents in this investigation.[14] Specifically, for programs other than those involving income tax exemptions and reductions, we are applying the highest calculated rate for the identical program in this investigation.

As explained in *Lawn Groomers Initiation*[15] and accompanying Initiation Checklist, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperating companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for the non-cooperating companies.[16] In this investigation, the GOC has not provided any information which would permit us to conclude that non-cooperating companies (including all their affiliates and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated. Therefore, we are making the adverse inference that the non-cooperating companies had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs on which the Department initiated.

Consistent with this, we have calculated the non-cooperating companies' countervailable subsidies as follows:

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[10] *See, e.g., Semiconductors From Taiwan – AD* at 8932.
[11] *See* SAA H.R. Rep. at 870.
[12] *See, e.g., LWS from the PRC* and accompanying IDM at 6-8.
[13] *Id.*; *see also Lawn Groomers from the PRC* at 4-6.
[14] *See, e.g., KASR from the PRC* and accompanying IDM at 4-5, and *Aluminum Extrusions* and accompanying IDM at 10-15.
[15] *See Lawn Groomers Initiation* at 42324.
[16] *See, e.g., KASR from the PRC* and accompanying IDM at 2.

1. *Income Tax Reduction and Exemption Programs*

For the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperating companies paid no income taxes during the POI. The three programs are: (1) Two Free, Three Half Program; (2) Local Income Tax Exemption and Reduction Program for Productive FIEs; and (3) Income Tax Subsidies for FIEs Based on Geographic Location.

The standard income tax rate for corporations in the PRC is 25 percent.[17] The highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Therefore, we are applying a CVD rate of 25 percent on an overall basis for these three income tax programs (*i.e.*, these three income tax programs combined provide a countervailable benefit of 25 percent). This approach is consistent with the Department's past practice.[18]

2. *VAT and Tariff Reduction Programs*

Among the responding companies in this investigation, Fine Furniture had the highest calculated rate for the "VAT and Tariff Exemptions on Imported Equipment" program. Therefore, we are using, as AFA, Fine Furniture's rate of 0.56 percent.

3. *Provision of Goods and Services for LTAR*

Among the responding companies in this investigation, Fine Furniture had the highest calculated rate for the Provision of Electricity for LTAR program. Therefore, we are using, as AFA, Fine Furniture's rate of 0.70 percent.

4. *Grant Programs*

As stated above, the Department applies the highest calculated rate for the identical program in the investigation if a mandatory respondent used the identical program, and the rate is not zero. Therefore, for the "Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County," we are applying the 0.16 percent rate found for Yuhua. For the "International Market Development Fund Grants for Small and Medium Enterprises," we are applying the 0.07 percent rate found for Layo. For the "GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands," we are applying the 0.24 percent rate found for Yuhua.

On this basis, we determine that the AFA countervailable subsidy rate for the non-cooperating companies to be 26.73 percent *ad valorem*.[19] Because we are relying upon information gathered in this proceeding, we do not need to corroborate the AFA countervailable subsidy rate in accordance with section 776(c) of the Act.

[17] *See* GQR at 12.
[18] *See, e.g.*, *Aluminum Extrusions* and accompanying IDM at 12, *LWTP from the PRC* and accompanying IDM at 3, and *CWP from the PRC* and accompanying IDM at 2.
[19] *See* AFA Calc Memo.

Changes since the Preliminary Determination

Since the *Preliminary Determination*, the Department received comments from multiple parties alleging five companies that were preliminarily deemed non-cooperating actually responded to the Q&V questionnaire. Subsequently, the Department issued questionnaires to these five companies to address their status. As a result of this analysis, we have determined to remove three of these companies from the list of non-cooperating companies. Thus, for this final determination, we are applying AFA to 124 companies. *See* "Comment 6: Removal of Companies in the List of AFA Companies."

Application of All-Others Rate to Companies Not Selected as Mandatory Respondents

In addition to Fine Furniture, Layo, and Yuhua, we received responses to the Q&V questionnaire from 67 other companies.[20] Though these 67 companies were not chosen as mandatory respondents, they did cooperate fully with the Department's request for Q&V information. Therefore, we are applying the all-others rate to them.

Subsidies Valuation Information

A. Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[21] No party in this proceeding has disputed this allocation period.

B. 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 the recipient and other companies if: (1) cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

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

[20] *See* Respondent Selection Memo at 4.

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

the cross-ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . .Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[22]

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.[23]

a. Fine Furniture

Fine Furniture responded to the Department's original and supplemental questionnaires on behalf of itself and its affiliated parties Great Wood and FF Plantation. These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.[24] Consistent with the *Preliminary Determination*, we are continuing to attribute subsidies received by Fine Furniture to its sales, in accordance with 19 CFR 351.525(b)(6).
Fine Furniture identified Great Wood as a supplier of kiln dried lumber, cut-to-size lumber, and face veneer for furniture and flooring.[25] Because these products are primarily dedicated to the production of the downstream product, and consistent with the *Preliminary Determination*, we are attributing subsidies received by Great Wood to the combined sales of Great Wood and Fine Furniture (excluding intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iv).

Fine Furniture identified FF Plantation as a supplier of plywood cores to Fine Furniture for the production of wood flooring.[26] Because these products are primarily dedicated to the production of the downstream product, and consistent with the *Preliminary Determination*, we are attributing subsidies received by FF Plantation to the combined sales of FF Plantation and Fine Furniture (excluding intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iv).

i. EV Adjustment

Fine Furniture has reported that its affiliate, Double F, issued invoices for Fine Furniture's sales of subject merchandise to the United States. Thus, Fine Furniture has requested the Department

[22] *See CVD Preamble* at 65401.
[23] *See Fabrique* at 600-604.
[24] *See* FFQR at 4 and 6.
[25] *See* FFQR at 4.
[26] *Id.* at 6.

make an adjustment to the calculated subsidy rate to account for the mark-up between the export value from the PRC and the entered value of subject merchandise into the United States.

Citing the Coated Paper Decision Memorandum, Fine Furniture stated that the adjustment is appropriate for the following reasons:[27] 1) the U.S. invoice is issued through Fine Furniture's affiliate, Double F, and includes a mark-up from the invoice issued from Fine Furniture to Double F; 2) the exporter, Fine Furniture, and the party that invoices the customer, Double F, are affiliated; 3) the U.S. invoice establishes the customs value to which CVDs are applied; 4) there is a one-to-one correlation between the Double F invoice and the Fine Furniture invoice; 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.[28]

As indicated by the determination cited by Fine Furniture, the Department has a practice of making an adjustment to the calculated subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can provide data to demonstrate that the six criteria above are met. In the instant case, the information submitted by Fine Furniture supports its claim and the information also permits an accurate calculation of the adjustment. Therefore, as in the *Preliminary Determination*, we have made the adjustment for this final determination.

The information submitted by Fine Furniture in support of its claim and the amounts used to calculate the adjustment are business proprietary.[29]

b. Layo

Layo responded on behalf of itself, a producer of subject merchandise, as well as on behalf of Brilliant, an affiliated trading company.[30]

Consistent with the *Preliminary Determination*, we are continuing to attribute subsidies received by Layo to its sales, in accordance with 19 CFR 351.525(b)(6).

Layo reported that it made export sales of subject merchandise to the United States during the POI through Brilliant.[31] Thus, in accordance with 19 CFR 351.525(c), and consistent with the *Preliminary Determination*, we are cumulating the benefit from subsidies provided to Brilliant with the benefit from subsidies provided to Layo for this final determination.

c. Yuhua

Yuhua responded on behalf of itself, a producer of subject merchandise. Yuhua identified affiliated companies but reported that these affiliates do not produce subject merchandise or

[27] *See Coated Paper from the PRC* and accompanying IDM at Comment 32.
[28] *See* FFQR at 26.
[29] *See* Fine Furniture Final Calc Memo.
[30] *See* LQR at 3.
[31] *See* LQR (Brilliant) at 2.

provide inputs primarily dedicated to the production of the downstream products.[32] Because these companies do not fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v), we do not reach the issue of whether these companies and Yuhua are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) and, consistent with the *Preliminary Determination*, we are not including these companies in our subsidy calculations.

C. Benchmarks and Discount Rates

a. Discount Rates for Allocating Non-recurring Subsidies

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

b. Short-Term RMB Interest Rate Benchmark

The Department's regulations at 19 CFR 351.524(d)(3) state that Department will use as a discount rate the following, in order of preference: (A) the cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Department has determined to be countervailable subsidies; (B) the average cost of long-term, fixed-rate loans in the country in question; or (C) a rate that the Department considers to be most appropriate. For the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[33] Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as a discount rate under 19 CFR 351.524(d)(3)(i)(A). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.524(d)(3)(i)(A).

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.[34]

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and updated in *LWTP from the PRC*.[35] 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.

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[32] *See* YQR at Exhibit 1.
[33] *See CFS from the PRC* and accompanying IDM at Comment 10.
[34] *See Softwood Lumber from Canada* at 15545 and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[35] *See CFS from the PRC* and accompanying IDM at Comment 10, and *LWTP from the PRC* and accompanying IDM at 8-10.

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.[36] As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's 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 NMEs 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.[37]

c. 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.[38] In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.[39]

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**

[36] *See* The World Bank Country Classification, http://econ.worldbank.org/.
[37] The resulting inflation-adjusted benchmark lending rates are provided in the Memorandum from Shane Subler to the File, "Discount Rates for Allocating Non-recurring Subsidies" (March 10, 2011).
[38] *See, e.g.*, *LWRP from the PRC* at 35642, and accompanying IDM at 8.
[39] *See Citric Acid from the PRC* and accompanying IDM at Comment 14.

1. Income Tax Subsidies for FIEs Based on Geographic Location

To promote economic development and attract foreign investment, "productive" FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC were subject to preferential tax rates of 15 percent or 24 percent, depending on the zone.[40] These preferential rates were established on June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance, and continued under Article 7 of the *FIE Tax Law* on July 1, 1991. The Department has previously found this program countervailable.[41]

As a result of the transition provisions of the new Enterprise Income Tax Law, which came into force on January 1, 2008, enterprises that were eligible for the reduced rates of 15 percent or 24 percent are to be gradually transitioned to the uniform rate of 25 percent over a five-year period.[42]

Fine Furniture reported using this program during the POI.[43] In particular, because of its location, Fine Furniture was entitled to a 15 percent rate until December 31, 2007.[44] Under the transition rules, the *State Council Notice on Implementation of Transnational Preferential Policies*, Fine Furniture's maximum tax rate increased to 18 percent in 2008.[45]

We determine that the reduced income tax rate paid by productive FIEs under this program confers a countervailable subsidy. The reduced rate 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.[46] 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.

To calculate the benefit, we treated the income tax savings enjoyed by Fine Furniture 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 Fine Furniture would have paid in the absence of the program (*i.e.*, at the 25 percent rate) with the tax rate applicable to the company for the tax return filed during the POI (*i.e.*, 18 percent). We divided the benefits received by Fine Furniture in the POI by its sales during the POI, in accordance with 19 CFR 351.525(b)(6)(i).

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

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[40] *See* GQR at Exhibit A-1
[41] *See Citric Acid from the PRC* and accompanying IDM at 14 - 15 and *CFS from the PRC* and accompanying IDM at 12.
[42] *See* G1SR at SGQ1-2.
[43] *See* FFQR at 18.
[44] *Id.*
[45] *See* G1SR at SGQ1-2.
[46] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

2. 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 subsequent three years.[47] The Department has previously found this program countervailable.[48]

Fine Furniture reported that it and Great Wood used this program during the POI.[49] Specifically, in 2008, Fine Furniture was in the second year of paying taxes at half its normal tax rate.[50] Great Wood was in its first of two tax-free years.[51]

We determine that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings.[52] 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.[53]

To calculate the benefit, we treated the income tax savings enjoyed by Fine Furniture and Great Wood 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 the above companies would have paid in the absence of the program (*i.e.*, at the rates of 18 percent for Fine Furniture and 25 percent for Great Wood) with the income tax the companies actually paid during the POI (*i.e.*, at the rates of nine percent for Fine Furniture and zero percent for Great Wood). For Fine Furniture, we divided the benefits received in the POI by its sales during the POI, in accordance with 19 CFR 351.525(b)(6)(i). For Great Wood, we divided the benefits received in the POI by the combined sales of Fine Furniture and Great Wood, less intercompany sales, in accordance with 19 CFR 351.525(b)(6)(iv).

On this basis, we determine that Fine Furniture received a countervailable subsidy of 0.15 percent *ad valorem* under this program.

3. VAT and Tariff Exemptions on Imported Equipment

Enacted in 1997, the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (GUOFA No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. Qualified enterprises receive a certificate of entitlement either from the NDRC or its provincial branch. The Department has previously

[47] *See* GQR at Exhibit A-1.
[48] *See, e.g., CFS from the PRC* and accompanying IDM at 10-11.
[49] *See* FFQR at 14.
[50] *Id*. at 16.
[51] *Id*.
[52] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[53] *See CFS from the PRC* and accompanying IDM at Comment 14.

found this program countervailable.[54]

Fine Furniture and Great Wood reported using this program and provided a list of the VAT and tariff exemptions that they received for imported capital equipment since December 11, 2001.[55]

We determine that VAT and tariff exemptions on imported equipment under this program confer a countervailable subsidy. 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.[56] 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.[57]

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.[58] Because these VAT and tariff exemptions were received for capital equipment, we are applying the allocation rules described in 19 CFR 351.524(b), as explained below.

For Fine Furniture and Great Wood, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2), for each of the years in which exemptions were reported (treating the year of receipt as the year of approval). For the years in which the amount was less than 0.5 percent, we expensed the exempted amounts in the year of receipt, consistent with 19 CFR 351.524(b)(2). For those years in which the VAT and tariff exemptions were greater than or equal to 0.5 percent, we have allocated the benefit over the AUL, consistent with 19 CFR 351.524(b)(1). 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 Fine Furniture, we divided the benefits received in or allocated to the POI by its sales during the POI, in accordance with 19 CFR 351.525(b)(6)(i). For Great Wood, we divided the benefits received in or allocated to the POI by the combined POI sales of Fine Furniture and Great Wood, less intercompany sales, in accordance with 19 CFR 351.525(b)(6)(iv).

On this basis, we determine that Fine Furniture received a countervailable subsidy of 0.56 percent *ad valorem*.

4. Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences"

[54] *See Citric Acid from the PRC* and accompanying IDM at 19 – 20, *CFS from the PRC* and accompanying IDM at 14, and *Seamless Pipe from the PRC* and accompanying IDM at 23-25.
[55] *See* FFQR at 21 and Exhibit 14.
[56] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[57] *See CFS from the PRC* and accompanying IDM at Comment 16.
[58] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

section above, we are basing our determination regarding the government's provision of electricity in part on AFA.

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 alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. 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 this practice, 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 specific, under section 771(5A) of the Act. To determine the existence and amount of any benefit from this program, we relied on the companies' reported information regarding the amounts of electricity they purchased and the amounts they paid for electricity during the POI. We compared the rates paid by Fine Furniture, Layo, and Yuhua for their electricity to the highest rates that they would have paid in the PRC during the POI. Specifically, we compared the respondents' electricity payments to what the respondents would have paid under the highest rates on the record for the same user category (*e.g.*, "large industrial users"). 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.

We have made two changes to the electricity benchmarks used in the *Preliminary Determination*. First, in the *Preliminary Determination*, we did not calculate a benefit for the "Basic Electricity Tariffs" paid by the respondents. Consistent with recent cases, we have compared the "Basic Electricity Tariffs" paid by the respondents to the highest basic tariff on the record for the same user category.[59] *See* the calculation memoranda for the respondents for details on this calculation.[60] Second, as explained below in Comment 4, we have changed the benchmark comparison category for Fine Furniture's electricity purchases from the "Industrial and Commercial and Other" category to the "Large Industrial User" category.

On this basis, we determine the countervailable subsidy rate to be 0.70 percent *ad valorem* for Fine Furniture, 0.04 percent for Layo, and 0.03 percent for Yuhua.

5. Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County

The GOC stated that this program was established in 2007 for the purpose of rewarding enterprises in Jiashan County whose brands were recognized as "well-known trademarks."[61] Specifically, enterprises first apply for "well-known trademark" status and then apply for grants under this program.[62] The GOC indicated that the program was administered by the

[59] *See, e.g., PC Strand from the PRC* and accompanying IDM at 33-34.
[60] *See* Fine Furniture Final Calc Memo at 3, Layo Final Calc Memo at 2, and Yuhua Final Calc Memo at 2.
[61] *See* G2SR at 3.
[62] *Id.* at 6.

Administration for Industry and Commerce of Jiaxing City, which is responsible for evaluating and identifying "well-known trademarks." Further, the GOC stated that the Economy and Trade Bureau of Jiashan County and Financial Bureau of Jiashan County are responsible for approving and distributing the assistance under the program.[63] Yuhua reported that it received a grant under this program in 2008.[64]

We determine that the grant under this program conferred a countervailable subsidy. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[65] Further, we find the grant to be specific in law under section 771(5A)(D)(i) of the Act, because the subsidy is limited to companies designated as having "well-known trademarks."[66]

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[67] Treating the year of receipt as the year of approval, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The 2008 grant amount was greater than 0.5 percent of Yuhua's 2008 sales. Therefore, we allocated the benefit over the average useful life of 10 years, consistent with 19 CFR 351.524(b)(1), using the discount rate described in the "Benchmarks and Discount Rates" section above.[68] Finally, in accordance with 19 CFR 351.525(b)(3), we attributed the benefit calculated for the POI to Yuhua's 2009 total sales.

On this basis, we determine that Yuhua received a countervailable subsidy of 0.16 percent *ad valorem*.

6. International Market Development Fund Grants for Small and Medium Enterprises

The GOC stated that the International Market Development Fund Grants for Small and Medium Enterprises (also known as "Medium & Small Size Enterprise International Market Expansion Assistance" or "International Exhibition Show Assistance") program was established in 2000 to support the development of small- and medium-sized enterprises, to encourage small- and medium-sized enterprises to compete in international markets, to reduce the business risks faced by these enterprises, and to promote the development of the national economy.[69] The GOC stated that the program is administered by the Ministry of Finance and Ministry of Commerce of the PRC with the assistance of other authorities, and is implemented by the local finance and foreign trade authorities within their respective jurisdictions.[70] According to the GOC, export performance and export marketing activities of an applicant are criteria in determining eligibility for assistance under this program.[71] We have previously found this program countervailable.[72]

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[63] *Id.* at 3-4.
[64] *See* Y1SR at 4 (Public Version); *see also* Removal of BPI Memo.
[65] *See* 19 CFR 351.504(a).
[66] *Id*.
[67] *See* 19 CFR 351.524(b).
[68] *Id.* and *Preliminary Determination* at 19039-19040.
[69] *See* G2SR at 11.
[70] *Id*.
[71] *Id.* at 16.
[72] *See Aluminum Extrusions* and accompanying IDM at 21; *see also Ribbons* and accompanying IDM at 9-10.

Layo and Yuhua reported that they each received a benefit under this program during the POI,[73] and Fine Furniture reported receiving two payments from the Shanghai Treasury Department's "Small and Medium Enterprise Market Development Fund" in 2003 and 2004.[74]

We determine that the grants under this program conferred a countervailable subsidy. We find the grants to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grants.[75] Further, we find the grants to be specific under section 771(5A)(B) of the Act because receipt of the grants is contingent upon export performance.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[76] Treating the year of receipt as the year of approval, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). For Fine Furniture, the grants were less than 0.5 percent and, therefore, expensed prior to the POI. The 2009 grants to Layo and Yuhua were less than 0.5 percent of their respective export sales in 2009. Therefore, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of each grant to the POI. In accordance with 19 CFR 351.525(b)(2), we attributed the benefits to Layo's and Yuhua's respective 2009 export sales.

On this basis, we determine that Layo received a countervailable subsidy of 0.07 percent *ad valorem*, and Yuhua received a countervailable subsidy of 0.04 percent *ad valorem*.

7. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands ("Famous Brands")

According to the GOC, the Famous Brands program was established in 2003 for the purpose of upgrading the quality and competitiveness of products made in Zhejiang Province.[77] The GOC stated that grants are awarded by the Brand Product Identification Committee of Zhejiang Province which is under the auspices of the ZBQTS. The ZBQTS is spread throughout various cities in Zhejiang Province and is responsible for managing the application and recommendation process and administering the program.[78] Though operated at the local level, the GOC issued "Identification and Administration Measures on Brand Product of Zhejiang Province on Interim Implementation," which requires applicants to provide information concerning their export ratio as well as the extent to which their product quality meets international standards.[79] We have previously found similar programs to be countervailable.[80]

Layo and Yuhua reported receiving grants under the Famous Brands program during the POI.[81]

[73] *See* L1SR at 6 (Public Version), Y1SR at 4 (Public Version), and Removal of BPI Memo.
[74] *See* FF3SR at 2 (Public Version).
[75] *See* 19 CFR 351.504(a).
[76] *See* 19 CFR 351.524(b).
[77] *See* G2SR at 21.
[78] *Id.* at 21-22.
[79] *Id.* at Exhibit SQII-5.
[80] *See PC Strand from the PRC* and accompanying IDM at 28-29.
[81] *See* L1SR at 6 (Public Version), Y1SR at 3-4 (Public Version), and Removal of BPI Memo.

We determine that grants under this program confer a countervailable subsidy. We find the grants to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grants.[82] Further, we find the grants to be specific under section 771(5A)(B) of the Act because receipt of the grants is contingent upon export performance.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[83] Treating the year of receipt as the year of approval, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The 2009 grant amounts were less than 0.5 percent of Layo's and Yuhua's 2009 export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grants to the POI. We attributed the benefits to Layo's and Yuhua's respective export sales in 2009.

On this basis, we determine that Layo received a countervailable subsidy of 0.22 percent *ad valorem* and that Yuhua received a countervailable subsidy of 0.24 percent *ad valorem*.

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

Based upon responses from the GOC, Fine Furniture, Layo, and Yuhua, we determine that the respondent companies did not apply for or receive benefits during the POI under the programs listed below.

1. Local Income Tax Exemption and Reductions for "Productive" FIEs

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

Analysis of Comments

General Issues

Comment 1 Application of CVD Law to the PRC and Double Counting

The GOC argues 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 CVD law, the nature of NMEs, and the actions Congress has taken in other statutes that specifically address the question of exports from those economies. The GOC points to the beginning statement in *Georgetown Steel* regarding the substantive issue before the court, "whether the CVD provisions…apply to alleged subsidies granted by countries with so-called NMEs for goods exported to the United States."[84]

[82] *See* 19 CFR 351.504(a).
[83] *See* 19 CFR 351.524(b).
[84] *See Georgetown Steel* at 1309.

The GOC argues that the CAFC discussed the proper interpretation of the statute and congressional intent, and the CAFC concluded that the statute did not apply to NMEs.[85] The GOC alleges the CAFC's ruling still correctly interprets the intent of Congress.

The GOC asserts that the language of the current statute essentially mirrors the language previously interpreted by the CAFC,[86] and that the relevant provisions governing CVD investigations have not changed materially since *Georgetown Steel*.[87] The GOC asserts that based on what the CAFC focused its attention on (*i.e.*, what it means when the agency decides that a country does not have a functioning market) and whether a "bounty or grant" within the meaning of the statute could ever arise in a country without functioning markets, the CAFC properly concluded that Congress never intended the CVD law to apply to such countries.[88]

The GOC argues that legislative history also demonstrates Congress' intention that the old language "bounty or grant" have the same meaning as "subsidy."[89] The GOC avers that the underlying statutory provision at issue in *Georgetown Steel* has not changed materially, and the rationale developed applies today, because: 1) the language of sections 303 or 701 of the Act do not specifically address the issue; 2) section 771(5)(C) of the Act was added by Congress to reverse a NAFTA panel decision regarding the effects of subsidies (and in doing so, it reaffirmed that the CVD statute does not extend to NMEs); 3) the notion of a "subsidy" does not make sense in the context of an NME, as market principles do not apply, so "the governments of those NMEs would in effect be subsidizing themselves;"[90] 4) Congress has not expanded the CVD law to apply to NMEs; 5) the *Tariff and Trade Act of 1984* stated that "the Department has determined that the CVD laws cannot be applied to NME imports (pending judicial resolution),[91] which was provided in *Georgetown Steel*; 6) Congress has continued to address NMEs through other remedies;[92] 7) the CAFC dismissed the argument that exempting NMEs from the law would excuse the "worst distorters;"[93] and 8) *Georgetown Steel* drew its analytical framework for discerning congressional intent from *Chevron*, and developments since 1986 confirm the congressional intent that the very nature of an NME prevents any such country from being able to provide a "subsidy" within the meaning of the CVD law.

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.[94] 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

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[85] *Id.* at 1314.
[86] *See* section 303(a)(1) of the Act, repealed and replaced by section 701(a)(1).
[87] *See GPX I* at 1290.
[88] *See Georgetown Steel* at 1318.
[89] *See TAA of 1979*, section 303 of the Act, *Georgetown Steel* Brief, and the *URAA's SAA* at 4238; *see also Ningbo* at 1247, 1255.
[90] *See Georgetown Steel* at 1316.
[91] *See Tariff and Trade Act of 1984* at 50.
[92] *See Georgetown Steel* Brief at 44-45.
[93] *See Georgetown Steel* at 1318.
[94] *See OCTA* at 1184.

Congress did not materially alter the specific statutory provision governing the application of CVDs, which continues to make no reference to NMEs.[95]

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."[96] This structure, according to the GOC, reflects the fact that Congress has always considered the AD and CVD laws to operate in tandem.[97] Additionally, the GOC points to the *TAA of 1979*,[98] 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.[99] Consequently, the definition of the term "non-market 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 CVD provisions comprise a single, integrated statutory scheme.

The GOC discusses the *OTCA of 1988*, which according to the GOC, Congress specifically acted on 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,[100] 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."[101] The GOC further contends that the Committee clearly understood the CAFC's unambiguous holding in *Georgetown Steel*.[102]

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,[103] 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

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[95] *See* sections 701 and 771(5) of the Act.
[96] *See* section 701 of the Act.
[97] *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").
[98] *See TAA of 1979* at 144.
[99] *See* section 771 of the Act.
[100] 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."
[101] *See OTCA – House Report* at 138 (emphasis added).
[102] *Id.* ("In a recent court case ... the U.S. Court of Appeals for the Federal Circuit upheld the Department of Commerce's refusal to apply the countervailing duty law in two investigations of carbon steel wire rod imports from Poland and Czechoslovakia, by *holding that the countervailing duty law does not apply to nonmarket economy countries.*" (citing *Georgetown Steel*) (emphasis added)).
[103] *See OTCA – House and Senate Conference Report* at 628.

economies."[104] In the GOC's view, the debate about *OTCA of 1988* 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.

The GOC additionally 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*.[105] According to the GOC, the definition that was adopted flowed directly from the Department's historical definition of an NME in the CVD context.[106]

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,"[107] makes clear Congress' intent that the NME AD provisions provide a remedy addressing both aspects of dumping and market distortions.

The GOC argues that, in 1994, Congress reaffirmed *Georgetown Steel*'s prohibition of applying CVDs to NMEs with the revisions to the CVD law reflecting the *SCM Agreement*. The GOC asserts the *SAA* has several provisions confirming the inapplicability of the CVD law to NMEs.[108]

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 authority to apply the AD and CVD laws to the PRC.[109] The GOC counters that there is nothing in the PNTR legislation or in the legislative history accompanying the PNTR legislation expressly recognizing the Department's authority to apply U.S. CVD law to NMEs. The GOC notes that subsidies were referenced only in terms of the PRC's broader WTO subsidy commitments,[110] and the *only* reference to the United States 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"[111] against the PRC. The GOC argues that this reference merely acknowledges the Department's then-existing practice of applying CVD law to the PRC and other NMEs where the industry under investigation has been found to be operating as an MOI.[112] The GOC contends the Department continued to rule that the CVD law should not be applied to NME countries even after the PNTR legislation.[113]

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[104] *See SAA* at 926 (emphasis added).
[105] *See* section 771(18) of the Act, which was added as part of the *OTCA of 1988*, at § 1316(b).
[106] *See Wire Rod from Czechoslovakia* at 19374.
[107] *See OTCA – House and Senate Conference Report* at 590.
[108] *See SAA* at 4237 and 4240.
[109] *See KASR from the PRC* and accompanying IDM at 27.
[110] *See* PNTR with the People's Republic of China, H.R. Rep. 106-632 (May 22, 2000).
[111] *See* Pub. L. No. 106-286 (October 10, 2000) at § 413(a)(1), *codified at* 22 U.S.C. § 6943(a)(1).
[112] *See, e.g., Oscillating Fans from the PRC* at 10012 ("the Department is free to apply the CVD law to an MOI located within an NME").
[113] *See Sulfanilic Acid from Hungary* at 60223.

The GOC asserts that the CIT recently held that Commerce's statutory interpretation {in applying the CVD law to NMEs} and resulting methodologies are inherently unreasonable.[114] The GOC argues that the Georgetown Steel Memorandum erroneously maintains that the legal authority to apply the CVD law to the PRC depends only on whether, factually, the Soviet-style economies of the 1980s differ from the PRC's present-day NME.[115] The GOC notes that the Georgetown Steel Memorandum discusses only one standard for identifying NMEs (the standard in section 771(18) of the Act), and the Department has never provided any analysis showing that the U.S. law recognizes different types of NMEs and that different rules should apply to these different types. The GOC contends this is not surprising because the statute provides only one definition. The GOC contends that after the Department insisted that section 771(18) of the Act only applies for AD purposes, it then used factors from that section of the Act to assess within the Georgetown Steel Memorandum whether the PRC was an NME for CVD purposes. The GOC argues that the Department cannot reconcile inconsistent facts in the Georgetown Steel Memorandum, such as having definitively found in August 2006 that prices and costs do not reflect market forces and then in March 2007 asserting the existence of an economy that operates on market principles.

The GOC argues that the simultaneous application of the CVD law and the NME methodology leads to double remedies. The GOC notes that in *GPX I*, the CIT held that it was unreasonable for the Department to ignore this double remedy problem, the Department can reasonably provide relief through the NME AD statute, and the Department must apply methodologies that make such double remedies reasonable, including methodologies that will make in unlikely double counting will occur.[116] The GOC asserts that the double remedy problem arises from simultaneous application of normal CVD and special AD duties that address the same underlying problem: the distortion of market prices from government influence. The GOC contends that Department argued this very point in its 1985 brief to the CAFC.[117] The GOC notes the NME designation allows the Department to replace the producer's actual costs and prices with market-determined costs and prices, and the rationale for imposing CVDs is that a government has provided production resources to a company on non-market terms. Thus, the GOC asserts, the remedies are duplicative and have the overlapping rationale of correcting distortions that arise when costs and prices are not determined by market forces.

The GOC argues that although the statute provides for safeguards against double remedies in the ME context (*e.g.*, double remedies with regard to export subsidies), these safeguards do not work for NMEs. The GOC asserts that there is no double-remedy problem for domestic subsidies in ME cases, as the AD margin calculation uses the respondent's own prices and costs, which reflect any domestic subsidies. According to the GOC, the double remedy problem arises in the NME context because the Department does not utilize PRC sales prices or PRC costs that might have benefitted from domestic subsidies but, rather, it uses surrogate values which are subsidy free. The GOC contends that the two penalties (or remedies) are (1) the CVD to offset the alleged subsidy and (2) the comparison of an allegedly subsidized export price a non-subsidized, constructed normal value. The GOC concludes that the Department must as a matter of law

[114] *See GPX I* at 1240.
[115] *See* Georgetown Steel Memorandum at 2.
[116] *See GPX I* at 1240 and 1243.
[117] *See Georgetown Steel* Brief at 44.

terminate this investigation but, at a minimum, the Department must adhere to the instructions in *GPX I* by adopting methodologies that make a double remedy unlikely and identify the double remedies at issue and make an appropriate adjustment.[118]

The GOC asserts that the Department has an obligation, pursuant to the WTO *SCM Agreement*, to look into whether imposition of CVDs on wood flooring would result in double counting. Citing to the *WTO Appellate Body Decision* of March 25, 2011, the GOC argues that the Department must consider the final results of the concurrent AD investigation when calculating the final CVDs to avoid the imposition of two duties for the same injury. Further, the GOC asserts that even if the dumping margin does not capture the entirety of the subsidization, the Department has an obligation to investigate the extent to which the dumping margin does so.[119] The GOC concludes that the Department must determine whether and to what degree the same subsidies are being offset twice when AD and CVDs are simultaneously imposed on the same products.[120]

Fine Furniture argues that the Department cannot concurrently apply the CVD law to an NME under current U.S. trade remedy law and, therefore, must refrain from imposing CVDs in this case. Fine Furniture argues that the Department's NME AD methodology and the CVD law serve to remedy the same underlying problem and, as such, the imposition of both remedies results in double counting. Fine Furniture cites *GPX II*, stating that when the Department compares a constructed normal value with the original subsidized export price to calculate the AD margin, "any resulting…margin in theory also captures the competitive advantage that subsidies may provide" and that when the CVD and NME AD methodologies are "used concurrently, {it would} result in a high likelihood of double counting."[121]

Fine Furniture states that the WTO Appellate Body has also ruled that the Department's practice of applying both AD and CVD on the same products from the PRC violates WTO rules, and that "the offsetting of the same subsidization twice by the concurrent imposition of ADs calculated on the basis of an NME methodology and CVDs, is inconsistent with Article 19.3 of the *SCM Agreement*."[122] Fine Furniture concludes that the Department should discontinue applying CVDs for elements of cost which are being normalized within the dumping calculation, and it provides an example of how its margin is calculated in both investigations regarding the provision of electricity.

Yuhua argues that as long as it employs the NME methodology in the concurrent AD investigation, the Department should refrain from imposing CVDs on Chinese exports in order to avoid the imposition of a double remedy. Yuhua states that both the CIT and the WTO Appellate Body have concluded that imposing CVDs while employing the NME AD methodology results in a doubly remedy, is contrary to U.S. law, and goes against the *SCM Agreement*.

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[118] *See GPX I* at 1243.
[119] *See WTO Appellate Body Decision* at para. 602.
[120] *Id.*
[121] *See GPX II* at 1337, 1344.
[122] *See WTO Appellate Body Decision* at para. 611(d)(i).

Yuhua states that, in *GPX I*, the CIT explained that "the NME AD statute was designed to remedy the inability to apply the CVD law to NME countries, so that subsidization of a foreign producer or exporter in an NME country was addressed through the NME AD methodology."[123] Yuhua argues that, based on the current NME AD methodology, any subsidy received by producers or exporters in an NME country has already been accounted for and eliminated in the AD investigation, through the use of constructed normal values based on factors of production in a surrogate country.[124] Yuhua argues that, in *GPX I*, the CIT held that the concurrent imposition of CVDs and ADs using the NME methodology leads to the imposition of a double remedy, and that, in *GPX II*, the CIT found that it was unreasonable for the Department to apply the CVD law to a country while also employing the AD NME methodology.[125]

Yuhua references the *WTO Appellate Body Decision*[126] in stating that the United States is not in compliance with its obligations under the *SCM Agreement* and, as such, it argues that the continued application of the current methodology will lead to further litigation at the CIT and the WTO, which Yuhua concludes is a waste of the U.S. government's limited resources. Yuhua notes that the Department only decided to apply the CVD law to the PRC in 2007 in *CFS from the PRC*, and that until it can provide an explanation as to how it can apply a CVD remedy without double counting, it should refrain from imposing CVDs in this investigation.[127]

Samling Group and Eswell Timber argue that by initiating CVD investigations against the PRC while continuing to treat the PRC as an NME for AD purposes, the Department has violated the clear statutory intent behind the Act. Samling Group and Eswell Timber contend that the Department should, therefore, revoke all CVD cases thus far initiated against the PRC.

Samling Group and Eswell Timber assert that when analyzing the structure and context of the Act, Congressional intent is clear that the CVD law does not apply to NME countries. Samling Group and Eswell Timber note that in the *Preliminary Determination*, the Department based its application of the CVD law to imports from the PRC on *CFS from the PRC* and its related Georgetown Steel Memorandum, which ultimately concluded that sections 771(5) and (5A) of the Act provided the Department with the discretion to apply CVD law to NME countries. Samling Group and Eswell Timber explain that the Department erroneously found that the Act did not prohibit it from applying CVDs to NMEs, and instead left it to the Department's discretion.

Samling Group and Eswell Timber assert that the exclusion of the term "non-market economy" from sections 701 and 771(5) and (5A) of the Act, combined with its inclusion in other sections, demonstrates the clear intent of Congress that the Department does not have the authority to apply CVD law to NMEs. Citing *Chevron* at 843 and *Bell Atlantic* at 1047, Samling Group and Eswell Timber argue that to ascertain whether Congress intended to prevent the application of CVD law to the PRC, the Department must employ the traditional tools of statutory

[123] *See GPX I* at 1231, 1241.
[124] *Id.* at 1242.
[125] *Id.* at 1242 and *GPX II* at 1237.
[126] *See WTO Appellate Body Decision* at 227.
[127] *See CFS from the PRC* at 60645, and the Georgetown Steel Memorandum.

construction,[128] including an examination of the statute's text, legislative history, and structure.[129] According to Samling Group and Eswell Timber, if, after such a statutory analysis, Congressional intent is unclear, the Department may use its discretion in determining the meaning of that intent; however if the intention is clear, then in accordance with *Chevron*, that intention is the law and must be given effect.[130]

Samling Group and Eswell Timber state that the statutory analysis begins with the plain meaning of the statute under sections 701, 731, 751, and 771 of the Act, and note that these sections include relevant provisions of the AD and CVD laws. Samling Group and Eswell Timber argue that the analysis of the plain meaning of the statute involves more than simply the meaning of the specific language or lack thereof, but also the structure of the section in which the key language is found, the design of the statute as a whole, and its object.[131]

Samling Group and Eswell Timber assert that further inquiry is not required where, on examination of the language itself, the specific context in which that language is used, and the broader context of the statute as a whole, the statutory language is plain and unambiguous. Moreover, Samling Group and Eswell Timber argue that according to a well-established canon of statutory interpretation, the use of different words or terms within a statute demonstrates that Congress intended to convey a different meaning for those words. Samling Group and Eswell Timber assert that provisions of the CVD law cannot be wholly segregated from those of the AD law (and *vice versa*), and that the two were implemented jointly in the Department's regulations. Consequently, the meaning of a particular provision cannot be viewed in the vacuum of only that discipline (AD or CVD), but must be interpreted within the larger context of both the AD and CVD laws. As such, Samling Group and Eswell Timber argue that the Department's limitation of its discussion to sections 701 and 771(5) and (5A) of the Act, is inappropriate.

Samling Group and Eswell Timber note that the Department has explained that section 701 of the Act does not contain a reference to NMEs but rather is a general grant of authority to conduct CVD investigations and, thus, it demonstrates that the Department is free to apply, or not apply, CVD law to NMEs.[132] Samling Group and Eswell Timber note, however, when compared with the very same section for AD proceedings, section 731 of the Act, there are no references to NMEs and, yet, the Department must apply the AD law to NMEs. Thus, Samling Group and Eswell Timber aver that the Department's claim for support of its discretion by citing to section 701 of the Act is inapposite.

If in fact it does exist, according to Samling Group and Eswell Timber, this mandate must stem from section 771 of the Act, which sets forth the special rules and definitions that are applicable to the conduct of both CVD and AD duty proceedings. Samling Group and Eswell Timber note that while sections 771(5) and (5A) of the Act do not contain a reference to NMEs, the term is used notably elsewhere in the section in reference to AD proceedings, and not CVD proceedings.

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[128] *See Chevron* at 843.
[129] *See Bell Atlantic* at 1047.
[130] *See Chevron* at 843, n.9.
[131] *See, e.g., Alaska* at 104.
[132] *See CFS from the PRC* IDM at Comment 1.

Samling Group and Eswell Timber note that section 771(18) of the Act defines and provides the analysis for determining whether a country is an NME. According to Samling Group and Eswell Timber, this provision clearly demonstrates the intention that only AD proceedings apply to NMEs, and in setting forth the NME analysis, this section states that any NME determination made by the administering authority shall not be subject to judicial review in any investigation conducted under subtitle B (section 731 of the Act). As such, Samling Group and Eswell Timber argue that this means Congress expressly limited any judicial review of NME status determinations to AD investigations, because CVDs do not apply to NMEs, and it is unreasonable to believe that Congress would have limited judicial review of a non-market designation in one type of investigation but not the very same designation in another.

Samling Group and Eswell Timber note that section 773 of the Act provides instructions on the calculation of normal value for AD investigations for countries designated as NME countries, but that NMEs are not referenced anywhere in the instructions on the calculation of subsidies for CVD investigations. Samling Group and Eswell Timber argue that NME countries' absence from portions dealing with the calculation of CVDs is telling,[133] and if Congress had intended to make the section applicable to CVD investigations, even at the Department's discretion, Congress would have at least included a reference to investigations involving products from NME countries in at least one of the numerous sections on CVDs. As such, Samling Group and Eswell Timber argue that absent new legislation, the Department did not have the discretion to initiate this or any other CVD investigation against the PRC.

Samling Group and Eswell Timber argue that contrary to the Department's statements in *CFS from the PRC*, the CIT in *GOC v. United States* did not affirm the Department's proposed procedure of applying CVD law to NME countries nor did it agree with the Department's reasoning in *CFS from the PRC*. In that case, according to Samling Group and Eswell Timber, the CIT simply ruled that it did not have jurisdiction to decide the merits of the case, and any statements regarding the substantive merits of the case were pure *dicta* (a court without jurisdiction cannot render precedential opinions on the merits).[134] and the CIT has repeatedly rejected attempts to support such *dicta*.[135] Therefore, Samling Group and Eswell Timber aver that the Department cannot legitimately rely on *GOC v. United States* for any purpose other than its jurisdictional finding.

Samling Group and Eswell Timber argue that the CAFC's statutory interpretation in *Georgetown Steel* and subsequent Congressional legislative history confirm that CVD law does not apply to NMEs and preclude the Department from applying CVD measures to NMEs.[136] Samling Group and Eswell Timber note that, in *Georgetown Steel*, the CAFC addressed the very issue presented here – whether section 303 of the Act allowed the application of CVDs to NME countries. Samling Group and Eswell Timber argue that while the Department views this decision narrowly as only going to its discretion, a plain reading of the court's findings demonstrates the contrary, namely, that Congress unambiguously did not intend CVD laws to apply to NMEs.[137] Samling

[133] *See McCarthy* at 656.
[134] *See Steel Co.* at 94-95.
[135] *See American Spring* at 75.
[136] *See NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274-275 (1974); *see also San Huan New Materials*at 1355.
[137] *Id.* at 1314 and 1318.

Group and Eswell Timber note that for two decades following *Georgetown Steel*, the Department dismissed CVD petitions involving NME countries based on the CAFC's statutory interpretation,[138] reasoning that Congress could not have intended to apply the CVD law to NMEs. Samling Group and Eswell Timber contend that the Department cannot completely reverse that conclusion without any explanation of how the Department's new practice of recognizing differences between different NMEs[139] satisfies the mandate that the CVD law does not apply to any NMEs.

Samling Group and Eswell Timber argue that in adopting the *URAA*, Congress expressly accepted this long-standing interpretation of Congressional intent, and the Supreme Court has held that Congress is presumed to be aware of an administrative interpretation of a statute and is deemed to have adopted that interpretation when it reenacts a statute without modification.[140] Samling Group and Eswell Timber claim there can be no dispute that Congress was well aware of the finding in *Georgetown Steel*, because prior to the enactment of the *URAA*, Congress enacted the *OTCA of 1988.* Samling Group and Eswell Timber claim that this law was the first opportunity for Congress to alter the finding in *Georgetown Steel*, and it refused to do so. Samling Group and Eswell Timber claim the refusal to amend the CVD law is evident in a rejected section of that law.[141] According to Samling Group and Eswell Timber, this rejected section shows the House Ways and Means Committee recognized that the Department did not have discretion in deciding whether to apply the CVD law to NMEs. Samling Group and Eswell Timber also note Congress directly referenced the holding in *Georgetown Steel* that the CVD law does not apply to NME countries, and it definitively did not characterize the holding in that case as providing the Department with discretion as to its application. Therefore, Samling Group and Eswell Timber conclude that this does not merely represent Congressional inaction as the Department stated in *CFS from the PRC* and accompanying IDM at Comment 1 but, rather, constitutes legislative history of the *OCTA of 1988* and the Congressional reaction to *Georgetown Steel.* Further, Samling Group and Eswell Timber state that Congress also failed to amend the CVD laws in 1994, in enacting the *URAA* and in repealing section 303 of the Act.

Samling Group and Eswell Timber assert that the Department's previous interpretation of the CVD law in *Sulfanilic Acid from Hungary* affirms Samling Group's and Eswell Timber's view, as this case occurred after the enactment of the new iterations of the CVD law. Samling Group and Eswell Timber note than in *Sulfanilic Acid from Hungary*, the Department determined that it could not apply CVD law to Hungary when it was designated as an NME, and the Department made this decision categorically as applicable to all NMEs without analyzing any of the inherent differences between NMEs. Samling Group and Eswell Timber assert that in the year prior to graduating to ME status, Hungary was at the same economic level as the PRC is currently, and they argue that now the Department has impermissibly interpreted the very same statute to conclude that CVD law can apply to some NMEs. Additionally, Samling Group and Eswell Timber assert the application of the CVD law to the PRC is contradicted by the Department's

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[138] *See Lug Nuts from China*; *Oscillating Fans from China*; *Certain Steel Products from Austria (General Issues Appendix)*; *SAA*, pt. 1 (1994); *CVD Regulations*; *Sulfanilic Acid from Hungary*.

[139] *See CFS from the PRC* IDM at Comment 3.

[140] *See Merrill Lynch v. Curran* at 383, n. 66.

[141] Samling Group and Eswell Timber specifically cite to section 157 of H.R. 3. *See* H.R. Rep. No. 100-40, pt. 1, at 138 (1987).

failure to accord even one PRC industry involved in an AD investigation MOI status or to accord any individual PRC respondent ME status.

Samling Group and Eswell Timber contend that the Department's continued use of a country-wide rate in AD investigations involving the PRC for companies not accorded separate rate status, instead of using the all-others rate methodology for non-selected respondents, is proof that the Department continues to believe that the PRC is an NME country in all respects that are relevant to calculation of subsidization in CVD investigations. Samling Group and Eswell Timber argue that unless and until the Department recognizes that the PRC should not be treated as an NME for AD purposes, the application of CVD measures to the PRC will constitute double counting. Samling Group and Eswell Timber argue, therefore, that the Department improperly initiated this CVD investigation and should revoke that initiation in this final determination.

Samling Group and Eswell Timber claim that if the Department concludes this investigation without terminating it due to the aforementioned illegality, then the Department should terminate it due to the double counting issues encountered when applying CVDs to an NME. Samling Group and Eswell Timber allege that this issue has been premised upon a variety of "economic theories" and "hypothetical circumstances" over the last several years. Samling Group and Eswell Timber assert that given the holdings in *GPX I* and the Department's comments on double counting in the *KASR AD Final* and accompanying IDM, the Department should put aside the untested theories and focus on facts. They allege that when looked at in this manner, it cannot be denied that a double remedy is imposed in these circumstances.

As evidence that Congress and the Department are aware that there is a potential for a double remedy, Samling Group and Eswell Timber reference section 772(c)(1)(C) of the Act, which provides an offset to the AD margin for export subsidies. Samling Group and Eswell Timber then state that in *CFS from the PRC*, the Department began its "dual remedy practice" without any explicit statutory or regulatory direction.[142] As a result, Samling Group and Eswell Timber argue that the Department has encountered a variety of scenarios not present in ME CVD cases and for which no specific statutory or regulatory direction exists. In response, Samling Group and Eswell Timber state, the Department has established PRC-CVD-specific methodologies including the definition of "authority," the valuation of loans, and the treatment of privatizations.[143]

Samling Group and Eswell Timber argue that in virtually every aspect of its application of the CVD law to the PRC, the Department has had to create new standards and practices not expressly dictated or even suggested in the regulations or the statute, while refusing to develop statutory and/or regulatory gap-filling measures to adjust for the double remedies it continues to impose on the PRC. As such, Samling Group and Eswell Timber state that this "disparate" approach does not reflect the kind of equilibrium essential to demonstrate good faith between the United States and the PRC, and indicates that the Department believes that it has the authority to make novel adjustments to account for gaps in the law.

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[142] *See KASR AD Final* and accompanying IDM at Comment 1.

[143] *See, e.g., OCTG from the PRC* and accompanying IDM at Comments 10, 13, 15-17, 20, 22, and 23; *see also Off-The-Road Tires from the PRC* and accompanying IDM at Comments A.4, C.1-C.2, and F.3-F.10.

Samling Group and Eswell Timber assert that the NME AD methodology of employing surrogate values that are not subsidized effectively removes the costs and financial experience of the respondent from the equation, leaving the company's factor usage rates as the only authentic data from the respondent company that are used in the NV calculation. Consequently, Samling Group and Eswell Timber aver that this methodology renders a countervailing remedy duplicative. Samling Group and Eswell Timber argue that it is within these certainties that the Department's theories regarding double remedies must fit and that, based on *GPX I* and the Department's logic in the *KASR AD Final*, they do not. In sum, Samling Group and Eswell Timber state that the Department must either revise its AD methodology by eliminating the NME methodology, or terminate this CVD investigation.

Citing *GPX I*, Samling Group and Eswell Timber argue that counter to the Department's position in *KASR AD Final*, "the NME AD statute was designed to remedy the inability to apply the CVD law to NME countries, so that subsidization of a foreign producer or exporter in an NME country was addressed through the NME AD methodology."[144] They state that, as a consequence, the Department's "dual imposition of CVD and AD law on products of NME countries creates issues which *do not present themselves when AD margins for ME countries are calculated*."[145] Further, Samling Group and Eswell Timber cite to the CIT's explanation regarding the interaction between NME AD methodology and CVD,[146] and note that the CIT mandated that either the Department not apply the CVD law to the PRC or make certain adjustments.[147]

Samling Group and Eswell Timber see this directive of the CIT to be critical, as they argue that the Department applies the CVD law due to the perceived silence in the statute, and that this application of the CVD law to NMEs raises issues not previously addressed by Congress in the statute or by the Department in its ME practice of not offsetting domestic subsidies. Moreover, Samling Group and Eswell Timber aver that the statutory provision that mandates that export subsidies be offset was created at a time when the Department did not apply CVD laws to NMEs, and that this statutory provision has not been revised since. As such, Samling Group and Eswell Timber assert that this "silence" with regard to domestic subsidies and potential offsets for NME CVD cases could not have been an implicit affirmation that such an offset is not required, but, rather, it could only be an affirmation of the *status quo* at the time, *i.e.*, that no methodologies are required because the Department's practice was not to apply the CVD law to NMEs.[148] Therefore, Samling Group and Eswell Timber find the Department's statement in *KASR AD Final* and accompanying IDM of "{i}f anything…the absence of this additional language implies that Congress intended not to provide additional offset {for domestic subsidies}"[149] to be overly simplistic and to miss the point. In sum, Samling Group and Eswell Timber aver that in *GPX I*, the CIT "invalidated all of the Department's previous arguments" regarding the Department's position on double remedies and, as such, the Department should make an adjustment to offset the respondents' AD margins by their respective CVD rates.

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144 *See GPX I* at 1242 (citing *Georgetown Steel* at 1308, 1316).
145 *Id.*(emphasis in original).
146 *Id.*; *see also U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties*, GAO-05-474, at 28 (June 2005).
147 *Id.* at 1243.
148 *See San Huan New Materials* at 1347, 1355.
149 *See KASR AD Final* and accompanying IDM at Comment 1.

As touched on above, Samling Group and Eswell Timber view the disregard of the respondent's costs and expenses in the calculation of its normal value in the AD investigation and reliance on surrogate values as eliminating all possible effects of countervailable domestic subsides. Samling Group and Eswell Timber argue that by doing this, whatever subsidy benefits the respondent may have received are removed in the AD calculation, and the Department must adjust the AD rate to account for subsidies the respondent did receive. Samling Group and Eswell Timber argue that in the past, the Department has based its opposition to correcting for the imposition of a double remedy largely on the "speculative" premise that the effect of a domestic subsidy may not necessarily have a *pro rata* effect on the price of a product, thereby offsetting the AD margin, *pro rata*.[150] Samling Group and Eswell Timber contend that this approach ignores that the surrogate methodology presumes that domestic subsidies inherently do affect price, resulting in the rejection of an NME company's home market prices and that, as such, no speculation is required.

Samling Group and Eswell Timber find the Department's apparent focus on price is "misguided," contending that the domestic subsidy may affect overhead or profit, which are removed from the normal value calculation in NME cases and, consequently, eliminate the effects of the subsidy in an AD calculation. Samling Group and Eswell Timber further contend that it is theoretically possible that a domestic subsidy could affect a company's factor usage rates and not be addressed by the surrogate value methodology, but that is not the case in the instant CVD investigation. Furthermore, Samling Group and Eswell Timber see the rejection of an offset for all domestic subsidies based on the possible effect of an as yet unknown subsidy program unreasonable.[151]

Samling Group and Eswell Timber aver that the need to remove domestic subsidies from a company's dumping margin calculation is unique to NME cases. Samling Group and Eswell Timber contend that the Department countervails a company's domestic subsidies due to the competitive advantage a company can achieve through reduced costs and expenses, while in an AD ME case, that competitive advantage remains a part of the normal value calculation since it has already been accounted for in the CVD case. This leads Samling Group and Eswell Timber to argue that in the instant case, the AD side removes the competitive advantage by artificially increasing the costs and expenses in the AD calculation, so double counting is inevitable, as both the AD and CVD calculations effectively eliminate the effect of the subsidies. As such, Samling Group and Eswell Timber argue that if an NME methodology is employed, there is no need for a CVD-based remedy as well.

For these reasons, Samling Group and Eswell Timber state that the Department has no lawful basis to assess duties on any domestic subsidies that may be determined to exist for the respondents in this investigation, as the amount of any subsidies are captured in the Department's NME AD methodology. Citing *GPX I*, Samling Group and Eswell Timber assert that the CIT has stated if it is "too difficult for Commerce to determine whether, and to what degree double counting is occurring, {the Department} should refrain from imposing CVDs on NME goods."[152]

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[150] *Id.*
[151] *See GPX I* at n. 10.
[152] *See GPX I* at 1243.

Samling Group and Eswell Timber state that an alternative for the Department is to add the domestic subsidy benefits back into the normal value by applying an offset to the AD margin in the full amount of the subsidy rate. Another alternative, according to Samling Group and Eswell Timber, would be for the Department to treat the PRC as an ME in the AD proceeding. Samling Group and Eswell Timber conclude that if the Department declines to do so, and continues to use the NME AD methodology, then the CVD proceeding should be terminated or an adjustment should be made to account for the double remedy.

Petitioner disagrees with the respondents and submits that the Department should maintain its current position on the application of the CVD law to the PRC. Petitioner states that *GPX II* is on appeal at the CAFC and, as such, the issues encompassed in *GPX I* remain subject to judicial review.[153] Petitioner asserts that due to this, the Department's current position on the application of the CVD law to the PRC remains controlling, and that the legal bases for the Department's conduct of CVD investigations regarding the PRC are well-detailed in *Aluminum Extrusions*.[154] Petitioner adopts the Department's position in *Aluminum Extrusions*, and states that the decision in *GPX I* cannot be controlling, because the CIT's decision *does not preclude* the simultaneous application of CVD and AD investigations (using the NME methodology) regarding the PRC.[155]

Department's Position

We disagree with the GOC, Fine Furniture, Yuhua, Samling Group, and Eswell Timber, 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.[156]

Congress granted the Department the general authority to conduct CVD investigations.[157] In none of these provisions is the granting of this authority limited only to MEs. 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 . . ."[158] Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to MEs, but is defined broadly to apply to a foreign country, among other entities.[159]

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

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[153] *See GPX I* at 1231 and *GPX II* at 1337.
[154] *See Aluminum Extrusions* and accompanying IDM at 45-48, 52-53.
[155] *Id.* at 2 (emphasis in original).
[156] *See CFS from the PRC* and accompanying IDM at Comment 1; *see also CWP from the PRC* and accompanying IDM at Comment 1; *LWRP from the PRC* and accompanying IDM at Comment 1; *LWS from the PRC* IDM at Comment 1; *OTR Tires from the PRC* and accompanying IDM at Comment A.1; *LWTP from the PRC* and accompanying IDM at Comment 1; *CWLP from the PRC* and accompanying IDM at Comment 16; *CWASPP from the PRC* and accompanying IDM at Comment 4; *KASR from the PRC* and accompanying IDM at Comment 1; *Seamless Pipe from the PRC* and accompanying IDM at Comments 1 and 3; *Coated Paper* and accompanying IDM at Comments 1and 3; and *Aluminum Extrusions* and accompanying IDM at Comments 1 and 3.
[157] *See, e.g.*, sections 701 and 771(5) and (5A) of the Act.
[158] *See* section 701(a) of the Act.
[159] *See* section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

found in an NME."[160] The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well.[161] The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."[162] Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government has eliminated price controls on most products . . ."[163] Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the *Wire Rod from Poland* and *Wire Rod from Czechoslovakia* cases is not a significant factor with respect to the PRC's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. As explained in that memo, *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. In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC. [164]

As the Department further 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. 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's prices or costs will be useful for benchmarking purposes, *i.e.*, are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of the PRC's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law cannot be applied to the PRC.

The CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in *Georgetown Steel*.[165] The issue in *Georgetown Steel* was whether the Department could apply CVDs (irrespective of whether any AD duties were also imposed) to potash from the USSR and the German Democratic Republic, and carbon steel wire

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[160] *See Wire Rod from Poland* and *Wire Rod from Czechoslovakia*.
[161] *Id.*
[162] *Id.*
[163] *See* Georgetown Steel Memorandum.
[164] *Id.* at 5.
[165] *See Georgetown Steel* at 1308.

rod from Czechoslovakia and Poland. The Department determined that those economies, which all operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to these exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them.[166] 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."[167] Thus, *Georgetown Steel* did not hold that the Department was free not to apply the CVD law to exports from NME countries, where it was possible to do so. Noting the "broad discretion" due the Department in determining what constituted a subsidy, the Federal Circuit 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 837, 842-45.[168]

The GOC, Samling Group, and Eswell Timber argue that the *Georgetown Steel* Court found that the CVD law cannot apply to NMEs. In making this argument, the respondents cite to select portions of the opinion and ignore the ultimate holding of the case and the Court's reliance on *Chevron* to find the Department had reasonably interpreted the law.[169] The *Georgetown Steel* Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

Recently, the CIT concurred, explaining that "the *Georgetown Steel* court only affirmed {the Department}'s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs."[170] Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was *ultra vires*.

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[166] *See, e.g., Wire Rod from Czechoslovakia*.
[167] *See Georgetown Steel* at 1316.
[168] *See Georgetown Steel* at 1318 (emphasis added).
[169] *Id.*
[170] *See GOC v. United States* (citing *Georgetown Steel* at 1318).

The GOC's, Samling Group's, and Eswell Timber's argument that Congress' failure to amend the law subsequent to *Georgetown Steel* demonstrates Congressional intent that the CVD law does not apply to NMEs is also legally flawed. The fact that Congress has not enacted any NME-specific provisions to the CVD law does not mean the Department does not have the legal authority to apply the law to NMEs. The Department's general grant of authority to conduct CVD investigations is sufficient.[171] Given this existing authority, no further statutory authorization is necessary. Furthermore, since the holding in *Georgetown Steel*, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and *countervailing duty measures with respect to products of the People's Republic of China*."[172] 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."[173] 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."[174] In these statutory provisions, Congress is referring, in part, to the PRC's commitment to be bound by the *SCM Agreement* as well as the specific concessions the PRC agreed to in its *Accession Protocol*.

The *Accession Protocol* allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department. In fact, in addition to agreeing to the terms of the *SCM Agreement*, specific provisions were included in the *Accession Protocol* that involve the application of the CVD law to the PRC. For example, Article 15(b) of the *Accession Protocol* provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company.[175] Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME.[176] 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

[171] *See, e.g.*, sections 771(5) and (5A) of the Act.
[172] *See* 22 U.S.C. § 6943(a)(1) (emphasis added).
[173] *See* 22 U.S.C. § 6901(8).
[174] *See* 22 U.S.C. § 6941(5).
[175] *See Accession Protocol.*
[176] *Id.*

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.[177] Neither the *SCM Agreement* nor the PRC's *Accession Protocol* is part of U.S. domestic law. However, the *Accession Protocol*, to which the PRC agreed, is relevant to the PRC's and our international rights and obligations. Congress thought the provisions of the *Accession Protocol* important enough to direct that they be monitored and enforced.

The GOC, Samling Group, and Eswell Timber fail to discuss these statutory provisions and, instead, cite to the fact that Congress did not amend the CVD law in the *OTCA of 1988*. As the CVD law was not being applied to NMEs at that time, there was no reason to amend the CVD law to address concerns unique to NMEs. Further, we are not persuaded by Samling Group and Eswell Timber's argument that sections 731 or 771 of the Act, or the Act as a whole, demonstrate that Congress did not intend the CVD law to apply to NMEs. The fact that the Act does not allow for judicial review of NME designations in AD proceedings, but is silent on this point with respect to CVD proceedings, does not overcome the language of section 701 of the Act and of 22 U.S.C. § 6943(a)(1). Moreover, the CAFC has explained that "congressional inaction is perhaps the weakest of all tools for ascertaining legislative intent, and courts are loath to presume congressional endorsement unless the issue plainly has been the subject of congressional attention."[178] Again, and contrary to Samling Group's and Eswell Timber's argument, the Act's reference to NMEs with respect to AD proceedings is a weak basis for implying that the CVD law does not apply to NMEs. In sum, Congress has never precluded the Department from applying the CVD law to NMEs. Moreover, while Congress (like the CAFC) deferred to the Department's practice, as was discussed in *Georgetown Steel*, of not applying the CVD law to the NMEs at issue, it did not conclude that the Department was unable to do so. To the contrary, Congress did not ratify any rule that the CVD law does not apply to NMEs because the Department never made such a rule.

Samling Group and Eswell Timber additionally argue that the Department cannot make a determination in this case that is different from *Sulfanilic Acid from Hungary*. As an initial matter, the Department has fully explained the differences between *Sulfanilic Acid from Hungary* and applying the CVD law to imports from the PRC.[179] The Department's decision in *Sulfanilic Acid from Hungary* is not categorically applicable to all NMEs. After its initial analysis of the Soviet-styled economies in the *Wire Rod* investigations, the Department began a practice of not looking behind the designation of a country as an NME when determining whether to apply the CVD law to imports from that country (assuming no claim for an MOI was made).[180] Now, the Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will re-examine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that economy, much as it did in the original *Wire Rod* investigations.[181] However, the determination of whether the

[177] *See* 22 U.S.C. § 6941(5).
[178] *See Butterbaugh* at 1342.
[179] *See generally* Georgetown Steel Memorandum.
[180] *See, e.g., Sulfanilic Acid from Hungary*.
[181] *See, e.g.*, Georgetown Steel Memorandum.

CVD law can be applied does not necessarily create different types of NMEs. It is simply recognizing the inherent differences between NMEs.

We disagree with the GOC, Samling Group, and Eswell Timber that the Department cannot apply the CVD law and the AD NME methodology concurrently because such action might result in the unlawful imposition of double remedies. First, the parties' reliance on the *GPX* decisions is misplaced because those decisions are not final and conclusive as a final order has not been issued and all appellate rights have not been exhausted. In any event, the *GPX* court only held that the "potential" for double remedies may exist.[182] Second, the parties 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. Finally, 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 CVD cases.[183]

Regarding the respondents' arguments concerning *WTO Appellate Body Decision* of March 25, 2011, we note that the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[184] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[185] Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.[186] Specifically, with respect to the *WTO Appellate Body Decision* of March 25, 2011, the United States has not yet employed the statutory procedure set forth at 19 U.S.C. 3533(g) to implement the Appellate Body's finding.

Comment 2 Whether Application of the CVD Law to NMEs Violates the APA

The GOC, Samling Group, and Eswell Timber assert that the Department's application of the CVD law to the PRC imports violates APA rulemaking procedures.[187] 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.[188] Samling Group and Eswell Timber explain that whenever the Department makes a new rule or changes a previous rule, it must comply with the APA's notice-and-comment procedures.[189] Samling Group and Eswell Timber explain that

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[182] *See GPX I* at 1234.

[183] *See, e.g., Aluminum Extrusions* and accompanying IDM at Comment 3.; *Drill Pipe from the PRC* and accompanying IDM at Comment 4; *Coated Paper from the PRC* and accompanying IDM at Comment 3; *Seamless Pipe from the PRC* and accompanying IDM at Comment 3; and *OCTG from the PRC* and accompanying IDM at Comment 2.

[184] *See Corus I* at 1347-49; *accord Corus II* at 1375; and *NSK* at 1375.

[185] *See* 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

[186] *See* 19 U.S.C. § 3533(g).

[187] *See* 5 U.S.C. § 553(c).

[188] *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.

[189] *See Shinyei* at 1309.

an agency issues a public notice of the proposed change in rule in the *Federal Register* to give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments, and, after the consideration of these comments, incorporates in the rules adopted a concise general statement of their basis and purpose.[190] Samling Group and Eswell Timber assert that the initiation of a CVD case against the PRC, an NME, is a substantial revision of the Department's previous rule of not applying CVDs to NMEs, and doing so prior to the completion of the appropriate procedures constitutes a retroactive revision of a binding rule and, hence, violates the APA.

Samling Group and Eswell Timber note that the APA defines a rule at 5 U.S.C. § 551(4). They assert that the Department's long-standing statutory interpretation that the CVD law does not apply to NMEs satisfies this requirement as a rule rather than a policy or practice. Samling Group and Eswell Timber assert that in *Alaska Hunters* at 1031, the court found an FAA interpretation followed for almost thirty years, and affirmed in agency adjudication, constituted an authoritative interpretation that could not be altered without notice or comment rulemaking.

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.[191]

Samling Group and Eswell Timber assert the Department issued statements of legal interpretation regarding the imposition of CVDs against NMEs following a notice and comment period no fewer than three times in the past twenty years. The GOC, Samling Group, and Eswell Timber note that a binding rule emerged when: 1) the Department adopted its position not to apply CVD law to NMEs in 1984 after a specific notice-and-comment period;[192] 2) the Department affirmed its 1984 decision not to apply the CVD law to NMEs in the 1993 *Certain Steel Products from Austria (General Issues Appendix),* which was a formal written statement that resolved various issues in the Department's interpretation of U.S. CVD law;[193] and 3) the Department again confirmed it did not intend to impose CVDs on NMEs when it promulgated its regulations in 1998.[194] For the last item, Samling Group and Eswell Timber note in the final *CVD Regulations*, the Department decided to codify a final rule on the concept of benefit, and in its definitive interpretation of that term, the Department explained that: "it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in *Georgetown Steel*. We intend to continue to follow this practice."[195] Samling Group and Eswell Timber also note that in the *Preamble* to *CVD Regulations*, the Department asserted

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[190] *See* 5 U.S.C. § 553(b), (c).

[191] *See* OTR Tires from the PRC Decision Memorandum at 45.

[192] *See Textiles from the PRC* at 46601. The Department published a notice stating:

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

No preliminary or final determination was reached in *Textiles from the PRC* because the petition was eventually withdrawn and the case 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; *see, e.g., Wire Rod from Poland Prelim*.

[193] *See Certain Steel Products from Austria* at 37261.

[194] *See CVD Regulations* at 65360.

[195] *Id.*

it would not apply the subsidy law to NME countries and would not examine subsidy allegations made against an NME country, and it noted that 19 CFR 351.505 (regarding benefits) is not applicable to NMEs.

Samling Group and Eswell Timber assert that the Department did not follow APA procedures in reversing its long-standing position concerning the application of CVDs to NME countries. Samling Group and Eswell Timber note that while the Department issued a notice to the public on December 15, 2006,[196] almost one month after the *CFS from the PRC* petition was filed on November 20, 2006, it never addressed the comments made by the parties before making its preliminary and final decisions. Samling Group and Eswell Timber conclude that because of the Department's failure to follow the required procedures, its actions in initiating this and various other CVD investigations on PRC products are unlawful, and such initiations should be revoked.

Petitioner argues that the Department's application of the CVD law to imports from the PRC does not violate the APA, and that the respondents have no basis for their claim. Petitioner notes that the Department addressed this matter in detail in *Aluminum Extrusions*[197] and adopts this position.

Department's Position

As an initial matter, the Department notes that the GOC, as well as all other parties in this investigation, have been provided due process through the substantial process that is mandated under the CVD law and the Department's Regulations (*e.g.*, opportunity for a hearing, submission of written argument, and submission of rebuttal argument). Moreover, the Department's previous policy of non-application of the CVD law to NMEs is not a "rule" under the APA, but a practice. Contrary to the GOC's argument, the Department has never promulgated a rule pursuant to the APA regarding the application of the CVD law to NMEs.

The Department disagrees 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."[198] The Department's position on this issue is fully explained in *CFS from the PRC*.[199] The "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings, a principle equally applicable to CVD proceedings.[200]

Samling Group and Eswell Timber cite to *Alaska Hunters* at 1033-34, to support their claim that the APA's requirements apply if the Department decides to apply the CVD law to an NME. However, in that case, the FAA had published a notice of general application.[201] This is not analogous to the Department's practice here, where the practice was developed on a case-specific

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196 *See Application of CVD Law*.
197 *See Aluminum Extrusions* and accompanying IDM at 48-50.
198 *See CFS from the PRC* and accompanying IDM at Comment 2 (*citing* 5 U.S.C. § 553(b)(3)(A)).
199 *Id*.
200 *See GSA* at 1349, 1359 (citing *SAA* at 892) ("Antidumping and countervailing proceedings . . . are investigatory in nature.").
201 *Id*. at 1033; *see also Compliance With Parts 119, 121, and 135 by Alaskan Hunt and Fish Guides Who Transport Persons by Air for Compensation or Hire*, 63 FR 4 (Jan. 2, 1998) (notice to operators).

basis – there was no broad notice of general application that the Department would never investigate future CVD complaints against NMEs.

Samling Group and Eswell Timber cite to determinations where they claim the Department established a rule under the APA that the agency would not apply the CVD law to the PRC. As discussed above, the argument premised on these determinations is incorrect because it does not create binding rules under the APA through its administrative determinations. Instead, in these determinations the Department expounds on its practice in light of the facts before the Department in each proceeding. Furthermore, in the determinations to which the GOC cites, the Department never found that Congress exempted the PRC from the CVD law.

The Department concluded that Congress had never clearly spoken to this issue.[202] 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."[203] The Department based its decision upon the economic realities of these Soviet-bloc economies; it did not create a sweeping rule against ever applying the CVD law to NMEs. Indeed, the Department's subsequent actions demonstrate that it did not create a rule against the application of CVD law to NMEs. For example, in 1992, the Department initiated a CVD investigation against the PRC, notwithstanding its status as an NME, after determining that certain industry sectors were sufficiently outside of government control.[204]

Samling Group and Eswell Timber reference *Certain Steel Products from Austria (General Issues Appendix)*, again claiming that a reference to the Department's practice elevated that practice to the level of a rule. However, the statement is simply an explanation that the CVD law is not concerned with the subsequent use or effect of a subsidy and that "*Georgetown Steel* cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient's production."[205] This reference to *Georgetown Steel* does not set forth a broad rule, but merely acknowledged the Department's practice regarding non-application of the CVD law to NMEs.

The Department has appropriately, and consistently, determined that formal rulemaking was not appropriate for this type of decision. Contrary to the Samling Group's and Eswell Timber's claims, instead of promulgating a rule when it drafted other CVD rules, the Department reiterated its position that the decision to not apply the CVD law in prior investigations involving NMEs was a practice.[206]

In a subsequent determination, the Department continued to explain that it has a practice of not applying the CVD law to NMEs, and did not refer to this practice as a rule. "The Preamble to the Department's regulations states that . . . it is important to note here our *practice* of not

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[202] *Id.*

[203] *Id.*; *see also Wire Rod from Czechoslovakia*.

[204] *See Lug Nuts from China Initiation*. The Department ultimately rescinded the CVD investigation on the basis of the AD investigation, the litigation, and a subsequent remand determination, concluding that it was not an MOI. *See Lug Nuts from the PRC*.

[205] *See Certain Steel Products from Austria (General Issues Appendix)* at 37261.

[206] *See CVD Preamble* at 65360 (emphasis added). *See also Certain Steel Products from Austria (General Issues Appendix)* at 37261.

applying the CVD law to non-market economies. . . . We intend to continue to follow this *practice*."[207] The claim that the Department has somehow created a rule, when it has neither referred to its practice as such nor adopted notice-and-comment rulemaking for this practice, is erroneous.

We disagree with the Samling Group's and Eswell Timber's contention that the application of the CVD law to the PRC constitutes a retroactive amendment to a binding rule that requires a formal rulemaking. An agency has broad discretion to determine whether notice-and-comment rulemaking or case-by-case adjudication is the more appropriate procedure for changing a policy or a practice.[208] Here, the decision of whether a subsidy can be calculated in an NME hinges on the facts of the case, and should be made exercising the Department's "informed discretion."[209] The CIT recently agreed, stating that:

> While the Department acknowledges that it has a policy or practice of not applying countervailing duty law to NMEs, *see*, *e.g.*, Request for Comment, Commerce has not promulgated a regulation confirming that it will not apply countervailing duty law to NMEs. In the absence of a rule, Commerce need not follow the notice-and-comment obligations found in the APA, 5 U.S.C. § 553, and instead may change its policy by "*ad hoc* litigation." *See Chenery Corp.* at 203.[210]

The CIT has repeatedly recognized the Department's discretion to modify its practice and has upheld decisions by the Department to change its policies on a case-by-case basis rather than by rulemaking when it has provided a reasonable explanation for any change in policy.[211]

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

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[207] *See Sulfanilic Acid from Hungary* and accompanying IDM at Comment 1 (emphasis added)

[208] *See, e.g., Chenery Corp*. at 202-03 ("the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency").

[209] *See Chenery Corp*. at 203.

[210] *See GOC v. United States* at 1282.

[211] *See, e.g., Budd Co., Wheel & Brake Div. v. United States*, 746 F. Supp. 1093 (CIT 1990) (holding that the Department did not engage in rulemaking when it modified its hyperinflation methodology: "because it fully explained its decision on the record of the case it did not deprive plaintiff of procedural fairness under the APA or otherwise"); *Sonco Steel Tube Div. v. United States*, 694 F. Supp. 959, 966 (CIT 1988) (formal rulemaking procedures were not required in determining whether it was appropriate to deduct further manufacturing profit from the exporter's sales price). This is because it is necessary for the Department to have the flexibility to observe the actual operation of its policy through the administrative process and as opposed to formalized rulemaking. *See Ceramica Regiomontana, S.A. v. United States*, 10 CIT 399, 404-05, aff'd, 810 F.2d 1137 (Fed. Cir. 1987). The Department provided a fully reasoned analysis for its change of practice in this case. *See LWTP from the PRC* and accompanying IDM at Comment 1; *see also* Georgetown Steel Memorandum.

market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC.[212]

Furthermore, there is no requirement that the Department address each instance where a prior practice was applied when changing that practice. The Department is only required to provide a "reasoned analysis" for its change.[213] As explained by the U.S. Supreme Court:

> An agency is not required to establish rules of conduct to last forever, but rather must be given ample latitude to adapt its rules and policies to the demands of changing circumstances.[214]

As such, we find that our practice is not in violation of the APA.

Comment 3 Requests for Information Regarding Other Programs

The GOC states that the Department's May 4, 2011, and May 9, 2011, requests for all grants and other subsidies received since December 11, 2001, goes beyond the investigatory practices the Department is authorized to use under both U.S. and international law. As such, the GOC argues that the Department should withdraw its Post-Preliminary Analysis findings as well as record information provided in response to these requests, because they were "unduly broad and non-specific."

The GOC argues that the requests by the Department were unlawful under U.S. law because they did not identify individual programs, and that the Department did not adhere to its regulations regarding the requirements and sufficiency of a petition regarding allegations of individual "countervailable subsidies."[215] Furthermore, the GOC alleges that since the Department did not conduct a sufficiency evaluation with regard to its requests, the Department did not conform to 19 CFR 351.311, which specifies the process through which the Department may self-initiate the examination of a subsidy program.

The GOC also alleges that the Department violated the WTO *SCM Agreement* by engaging in a "fishing expedition," due to the timing of the requests and the threat to use AFA. The GOC states that the Department disregarded the requirements of Articles 11.1 and 11.2 of the *SCM Agreement*, by the fact that Petitioner did not lodge any new subsidy allegations and, furthermore, that the Department was in violation of Article 11.3 of the *SCM Agreement* because it does not appear that the agency evaluated their sufficiency.

The GOC recognizes that in special circumstances the Department has the right to self-initiate an allegation, consistent with Article 11.6 of the *SCM Agreement*; however, it believes the Department lacked sufficient evidence to warrant such requests in this case. As a result, the GOC sees this as being in violation of Article 13 due to the lack of a consultation, and reaffirms its position that the Department should withdraw its Post-Preliminary Analysis findings in this

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[212] *See* Georgetown Steel Memorandum at 5.
[213] *See, e.g., Rust v. Sullivan* at 187.
[214] *Id.* at 186-87 (citations and internal quotations omitted).
[215] *See* CFR 351.202(b)(7)(ii)(B).

investigation.

Department's Position

The Department's examination and analysis of the programs in the post-preliminary analyses[216] was proper. Section 775 of the Act provides that if the Department, during the course of a proceeding, discovers a practice that "appears to be a countervailable subsidy," it shall include that practice in the proceeding. In response to our request in the original questionnaire to report information on other forms of assistance provided by the GOC, neither the GOC nor the respondent companies provided any information.[217] The financial statements that Layo and Yuhua submitted with their original questionnaire responses, however, identified other assistance provided by the GOC.[218] To confirm that the respondents did not omit any other subsidy programs, we again requested that the GOC and the respondents provide information on any previously unreported assistance received since December 11, 2001.[219] In the FF3SR, L2SR, and Y2SR, the respondent companies disclosed additional programs they had not reported in their original questionnaire responses.

Obtaining information on these programs prior to verification maximizes the opportunities which parties are provided to comment prior to the final determination. Without the information that the respondents provided in the FF3SR, L2SR, and Y2SR, we would have discovered these subsidy programs for the first time at verification. In accordance with section 775 of the Act, the Department shall include such practices in the proceeding, where appropriate pursuant to 19 CFR 351.311. Accordingly, asking these questions early in the proceeding resulted in a more complete record.

Therefore, we find that the questionnaires were necessary to allow us to analyze properly any subsidies that the respondents had not previously reported. Further, we find that analyzing these subsidies in this investigation was necessary under section 775 of the Act. As a result, we have made no changes to the post-preliminary analyses.

Comment 4 Provision of Electricity for Less Than Adequate Remuneration

The GOC maintains, without elaboration, that it did not fail to cooperate with the Department's investigation of electricity, but argues that if the Department continues to apply AFA for the final determination, the Department must select a different benchmark for Fine Furniture. Citing *DeCecco*, the GOC contends that the rate assigned cannot be punitive and must reasonably estimate the respondent's actual rate (including a deterrent to non-compliance). To avoid such a result, the GOC urges the Department to adopt as its benchmark the rates from Hainan province. According to the GOC, Hainan has a rate category structure that is similar the rate category structure in Shanghai (where Fine Furniture is located) and, of the provinces with that rate category structure, Hainan has the highest rates. Alternatively, if the Department decides to use

[216] *See* Fine Furniture Post-Preliminary Analysis, Layo Post-Preliminary Analysis, and Yuhua Post-Preliminary Analysis.
[217] *See* GQR at 59-60, LQR at 11-12, YQR at 14, and FFQR at 25.
[218] *See* L1SR at 6 and Y1SR at 3-4.
[219] *See* G3Q, F3Q, L2Q, and Y2Q.

rates from Zhejiang as its benchmark, the GOC urges use of the "Large Industrial User" rates. According to the GOC, the only reason Fine Furniture pays "Industry and Commerce and Others" rates in Shanghai is because Shanghai merged its industrial and non-industrial rate categories. Moreover, based on its transformer capacity, Fine Furniture would be subject to the "Large Industrial User" rate if it were located in Zhejiang.

Fine Furniture also argues that the Department erred in applying AFA in its *Preliminary Determination*. First, Fine Furniture argues it should not be penalized for the GOC's failure to cooperate. Fine Furniture points out that the Department made no finding that Fine Furniture failed in any way to respond to the Department's requests for information. Citing *Tianjin*, *Nippon Steel*, and *SKF USA*, Fine Furniture claims that the Department is precluded from applying AFA unless it finds that Fine Furniture also failed to cooperate. Fine Furniture also claims that the Department made no clear finding of specificity with respect to the electricity program and that, while the allegation may have been that the program was regionally specific, the record does not support such a conclusion because the rates paid by Fine Furniture exceed the rates in many other provinces. Additionally, Fine Furniture argues that the Department's decision to apply AFA is arbitrary because it disproportionately affects Fine Furniture *vis-a-vis* the other mandatory respondents, simply because those respondents happen to be located in Zhejiang province.

If the Department does not abandon its application of facts available entirely, Fine Furniture urges the Department to rely instead on neutral facts available. Citing *LWTP from the PRC*, Fine Furniture contends that the Department has previously used neutral facts available when there were insufficient facts on the record. Fine Furniture also sees application of neutral facts available as consistent with *Tianjin*, because the court there ordered the Department to either find a failure to cooperate on the part of the respondent or to apply neutral facts available. Moreover, to apply AFA, the *Tianjin* court ruled that the agency must link the responsive and non-responsive parties and that the Department has no basis in this investigation to link Fine Furniture to the GOC's failure. According to Fine Furniture, neutral facts available could be applied by relying on an average of the "Large Industrial User" rates from all provinces that have them or, alternatively, an average of the "Industry and Commerce and Others" rates from all provinces that have them.

Finally, if the Department continues to apply AFA, Fine Furniture contends that the agency should use the "Large Industrial User" rates from Zhejiang as its benchmark. In support, Fine Furniture restates the claims of the GOC regarding Fine Furniture's transformer capacity and the incomparability of Shanghai's and Zhejiang's rate structures.

Chinafloors concurs in the arguments made by Fine Furniture.

Petitioner argues that the GOC has still not provided the information requested by the Department and, as such, the Department should maintain the benchmark used in the *Preliminary Determination*.

Petitioner also disputes Fine Furniture's reliance on *Tianjin*, *Nippon Steel*, and *SKF USA* in arguing that the Department is precluded from applying AFA. Petitioner contends that those

rulings were made in the context of AD, not CVD, investigations which Petitioner sees as a critical distinction. Petitioner states that since there are two parties in the construct of a countervailable subsidy, *i.e.*, the government, which provides or makes the provision for the subsidy, and the producer/exporter, which receives the financial benefit of the subsidy, it is inherently logical that the Department "requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters."[220] Petitioner states that this is why the government of the subject country is consulted upon the filing of a CVD petition, pursuant to Article 13.1 of the *WTO SCM Agreement*, something which is not required upon the filing of an AD petition. Petitioner further states that this is also why the government of the subject country itself receives a questionnaire from the Department in a CVD investigation, while there is no equivalent questionnaire issued in AD investigations. Petitioner submits that if the GOC withholds necessary information regarding a subsidy program under investigation its failure is properly taken into account when calculating the amount of the subsidy provided to the respondents.

Contrary to the GOC's and Fine Furniture's arguments, Petitioner states that the Department should continue to use the "Industrial and Commerce and Other" rate in Zhejiang as its benchmark. Petitioner asserts that, during the POI, Fine Furniture was subject to rates in Shanghai under the "Industry and Commerce and Other" category and, consequently, it is the appropriate category under the Zhejiang grid for comparison. Petitioner concludes that while it is significant that the Shanghai power grid merged user categories prior to the POI, the merge resulted in uniformity between industrial and commercial electricity prices in Shanghai, which would mean that the appropriate comparison category in Zhejiang would be the "Industrial and Commerce and Other" category.

Department's Position

We have addressed comments by parties separately by type of argument.

Use of Adverse Facts Available to Electricity for LTAR

The Department agrees with Petitioner and is continuing to calculate a subsidy for electricity for LTAR based upon partial adverse inferences as a result of the GOC's failure to provide requested information.

As we discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section under the "A. GOC – Electricity," as well as section I. 4 of the "Analysis of Programs," 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 alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. As in past cases, the GOC did not provide what we requested, so we have found that the program provides a countervailable subsidy to the respondents.[221] Here, we requested that the GOC provide us, *inter alia*, copies of the 2006 and

[220] *See Preliminary Determination* at 19041.
[221] *See, e.g., KASR from the PRC* and accompanying IDM at 2-3; *see also Seamless Pipe from the PRC* and

2008 Provincial Price Proposals.[222] Because the requested price proposals are part of the GOC's electricity price adjustment process,[223] the documents are necessary for the Department's analysis of the program. Accordingly, we are applying an adverse inference, and using the highest rates on the record of this proceeding to determine the benefit to the respondents received.

The *SAA* states that "{n}ew section 776(b) permits Commerce and the Commission to draw an adverse inference where a party has not cooperated in a proceeding. A party is uncooperative if it has not acted to the best of its ability to comply with requests for necessary information. Where a party has not cooperated, Commerce and the Commission may employ adverse inferences about the information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." We determine that the GOC, as a respondent party to this proceeding, failed to cooperate to the best of its ability because it failed to put forth its maximum efforts to obtain the requested information. Accordingly, the Department is applying AFA in determining whether electricity was provided for LTAR.

We disagree with Fine Furniture that we are constrained in relying upon adverse inferences. Fine Furniture's argument presumes that the Department could never apply adverse inferences in a CVD investigation where the government of the country being investigated fails to reply to any of the Department's questionnaires, but the mandatory respondents have supplied certain information. The problem with this argument is that it prohibits the Department from effectively determining whether a financial contribution is provided by the government, and whether the benefit is specific. The Department often relies upon information that only the government could possess.

Likewise, we disagree with Fine Furniture's contention that *Tianjin* and *SKF USA* are applicable. As an initial matter, these cases were appeals of AD proceedings where the producer which failed to provide the cost of production information was not a named party to the proceeding receiving questionnaires from the Department. Importantly, and contrary to the holdings there, the Federal Circuit has explained that parties may have to pay enhanced AD duties because of the uncooperativeness of interested parties from whom they purchase goods.[224] Like the importer in *KYD, Inc.*, the exporters in CVD proceedings are dependent upon the cooperation of their government.

Notwithstanding the foregoing discussion of the Department's authority to apply adverse inferences, 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. As in the *Preliminary Determination*, we have found this to be the case for this final determination.

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accompanying IDM at 2-4.

[222] *See* InitQ at Section II, Appendix 3.

[223] *See, e.g., Magnesia Bricks from the PRC* and accompanying IDM at Comment 8, wherein the Department quoted the GOC as reporting that these price proposals "are part of the price setting process within China for electricity."

[224] *See KYD, Inc.* at 760, 768.

Benchmark

Information in the GFIS, which the GOC submitted after the *Preliminary Determination*, shows that the Shanghai Price Bureau of the National Development and Reform Commission mandated a merger of the industrial and commercial user categories in June 2008.[225] This explains why the user categories for Shanghai are not consistent with those in other provinces such as Zhejiang, which had separate categories for "Large Industrial Users" and "General Industrial and Commercial Electricity and Other Electricity" during the POI. Moreover, Fine Furniture's transformer capacity places it within the capacity parameters of the "Large Industrial User" category in Zhejiang, not the "General Industrial and Commercial Electricity and Other Electricity" category.[226] Finally, prior to merging its user categories, the Shanghai Electric Company classified Fine Furniture as a "Large Industrial User."[227] Based on this information, we find that the "Large Industrial User" category provides the appropriate benchmark for calculating a benefit from Fine Furniture's purchases of electricity during the POI.

We do not agree that the GOC's proposal to compare Fine Furniture's rates to the highest rates on record for another province with a merged rate category yields the most appropriate comparison. As explained above, we have continued to apply an adverse inference within the selection of the benchmark, thus we are seeking the highest rates applicable to a company with Fine Furniture's user characteristics. This outcome is not accomplished by limiting our selection to provinces whose rate structures rely on similar user categories.

Therefore, we have calculated the benefit from Fine Furniture's electricity purchases using the highest rates on the record for the "Large Industrial User" category, which are the peak, middle, and valley rates for Zhejiang Province. In addition, as noted above under the "Programs Determined to Be Countervailable" section, we are including "Basic Electricity Tariffs" in our benchmark. The highest Basic Electricity Tariffs on the record for "Large Industrial Users" are from Guizhou Province.[228]

Comment 5 Application of AFA to Non-Cooperative Respondents

The GOC states its concern with the Department's "apparent new practice" of assigning company-specific AFA rates for exporters not responding to the Department's Q&V questionnaire and then grouping non-mandatory exporters in a basket category (*i.e.*, "all others"). The GOC argues that this approach appears to be unique to the PRC, and raises questions as to whether it unreasonably promotes affirmative subsidy findings, inflated findings, and raises concerns regarding the United States' MFN obligations under the WTO.

Petitioner submits that the application of AFA to the 127 non-cooperating companies who did not respond to the Department's Q&V questionnaire should be maintained in this final determination. Petitioner argues that since the issuance of the *Preliminary Determination*, the GOC has not provided any information to demonstrate that non-cooperating companies are not

[225] *See* GFIS at Exhibit 4, page 2.
[226] *Id.* at Exhibits 1 and 2, FFQR at Exhibit 16a, and Fine Furniture Verification Report at 10 and Exhibit 7a.
[227] *Id.*, citing FFQR at Exhibit 16 and GFIS at Exhibit 5.
[228] *See* GFIS at Exhibits E-5 and E-6.

located in provinces whose income tax reduction and exemption programs are being investigated. As such, Petitioner concludes that the AFA rate as calculated in the *Preliminary Determination* should be affirmed.

Department's Position

In investigations where the Department does not rely upon CBP data for respondent selection, it typically sends Q&V questionnaires to all the producers/exporters identified in the Petition. In this investigation, the Department determined it was necessary to issue Q&V questionnaires, *inter alia*, because the HTSUS categories that include the subject merchandise are extremely broad and contain many products other than the subject merchandise.[229] If the recipients of those questionnaires do not respond, they are treated like any other companies that do not respond to our questionnaires, and the Department applies facts available with an adverse inference.

We disagree with the GOC that the Department's practice of assigning AFA to companies not responding to a Q&V questionnaire constitutes is a "new practice."[230] We further disagree that the practice unfairly singles out the PRC. For example, in *Frozen Fish Fillets from Vietnam AD*, the Department sent Q&V questionnaires to 53 Vietnamese companies and selected four for individual examination. We applied AFA to those companies that failed to respond to the Q&V questionnaire.[231] More importantly, the application of AFA to companies that do not respond to Q&V questionnaires is necessary in situations where the number of potential respondents is large and the CBP data is not adequate for respondent selection, because without the Q&V data the Department lacks the necessary information for its respondent selection.[232] Thus, consistent with our *Preliminary Determination*, we are continuing to apply AFA to the companies that did not respond to our Q&V questionnaire.

Comment 6 Removal of Companies in the List of AFA Companies

Kornbest

On March 23, 2011, the Department received a request to correct the *Preliminary Determination* for Kang Da and Kornbest. This letter requested removal of Kornbest from the list of companies receiving the AFA rate, pointing to Kang Da's December 16, 2010, Q&V response, in which Kang Da states that it exports to the U.S. market through its affiliated Hong Kong company, Kornbest. Therefore, Kang Da and Kornbest argue, Kornbest's exports to the United States were reported via Kang Da's Q&V response and Kornbest should be removed from the list of companies receiving the AFA rate.

On June 24, 2011, the Department issued a questionnaire to Kang Da and Kornbest. The questionnaire sought additional information regarding the ownership structure of Kornbest and

[229] In the Petition at 18-19, Petitioner notes that a substantial portion of wood flooring imports are classified within HTSUS headings that also cover imports of plywood, which is not in the scope of this investigation.
[230] *See KASR from the PRC Prelim* at 683.
[231] *See Frozen Fish Fillets from Vietnam AD* at 4986, 4987, 4990, and 4992.
[232] *See, e.g., Bags from Vietnam AD* at 56813, 56814; *Steel Plate from Korea AD* at 48716; *Frozen Shrimp from Brazil AD* at 12081; *Frozen Shrimp from Thailand AD* at 12088; and *Rebar from Turkey AD* at 24535.

whether or not Kornbest exclusively exported Kang Da merchandise.

On July 1, 2011, Kang Da and Kornbest withdrew their request to amend the *Preliminary Determination*, as Kornbest was closing as part of a corporate reorganization.

Elegant Living and Times Flooring

On March 24, 2011, the Department received a ministerial error allegation from Samling Group, requesting that Elegant Living and Times Flooring be removed from the list of AFA companies. Regarding Elegant Living, Samling Group states that there is no company within the Samling Group or within the PRC with this name. Instead, Samling Group notes that the address and phone number in the Petition match the address and phone number of Baroque Timber, which filed a timely Q&V response. Furthermore, Samling Group states that Elegant Living is a brand produced by Baroque Timber. According to Samling Group, this information makes it clear that the reference to Elegant Living in the Petition is actually a reference to Baroque Timber. Therefore, since Baroque Timber filed a timely Q&V response, Samling Group states that Elegant Living should be removed from the list of AFA companies.

Regarding Times Flooring, Samling Group states that Times Flooring is actually Suzhou Times. The address and phone number listed for Times Flooring in the Petition match the address and phone number for Suzhou Times, which submitted a timely Q&V response. As such, Samling Group asserts that the reference to Times Flooring should be removed from the list of AFA companies.

On June 24, 2011, the Department issued a questionnaire to Samling Group regarding ownership documentation for both Baroque Timber and Suzhou Times. On June 30, 2011, and July 1, 2011, Samling Group submitted ownership documentation which, according to Samling Group, demonstrated that Elegant Living and Times Flooring were not names of real companies, but rather inaccurate representations of Baroque Timber and Times Flooring.

Samling Group argues that because Elegant Living has the same address as Baroque Timber, which timely filed a Q&V questionnaire response, and because Times Flooring has a name similar to that of a real Samling Group company (Suzhou Times), which timely filed a Q&V questionnaire response, the Department should be satisfied and remove Elegant Living and Times Flooring from the list of non-cooperative companies.

Eswell Enterprise

On March 25, 2011, the Department received a ministerial error allegation from Eswell Timber. In the allegation, Eswell Timber requests that the Department remove Eswell Timber's parent company, Eswell Enterprise, from the AFA list. Eswell Timber, which filed a timely Q&V response, states that it identified Eswell Enterprise as its parent company in a separate rate application in the companion AD investigation. According to the allegation, Eswell Enterprise does not independently export subject merchandise to the United States other than indirectly through the sales of its subsidiary, Eswell Timber. Because Eswell Enterprise is Eswell Timber's parent company, Eswell Timber states that its response should be deemed filed by

Eswell Enterprise and, therefore, the Department should remove Eswell Enterprise from the list of AFA companies.

On June 24, 2011, the Department issued a questionnaire to Eswell Timber regarding ownership documentation. On June 30, 2011, Eswell Timber responded by providing information which, according to Eswell Timber, demonstrates that Eswell Enterprise was the largest shareholder of Eswell Timber. Eswell Timber concludes that since there is no record evidence that contradicts this, Eswell Enterprises should be omitted from the list of AFA companies for this final determination.

In its case brief, Eswell Timber argues that Eswell Enterprise should not have been listed as a non-cooperative company because it is the parent of Eswell Timber and it did not independently export subject merchandise to the United States.

UA Wood Floors

On April 4, 2011, Petitioner asked the Department to remove UA Wood Floors from the list of AFA companies. Petitioner had included UA Wood Floors in the Petition, but was subsequently informed that UA Wood Floors is not a producer or exporter of subject merchandise in the PRC. Petitioner conditioned the redaction on the Department receiving confirmation from UA Wood Floors that it is neither a producer nor exporter of subject merchandise from the PRC.

On April 5, 2011, the Department received from UA Wood Floors, a photocopy of a signed statement from the company confirming that it is not a producer or an exporter of wood flooring from the PRC. The letter also included a copy of the original sealed and certified document from the Ministry of Economic Affairs from the Republic of China Taiwan stating that UA Wood Floors is not a corporate business organized in the PRC.

Shenzhen Shi Huanwei

On April 15, 2011, the Department received a letter from Shenzhenshi Huanwei requesting the Department to ensure that proper cash deposits were being collected, *i.e.*, deposits at the "All-Others" rate. Shenzhenshi Huanwei indicated that its name was confusingly similar to the "Shenzhen Shi Huanwei" listed in the AFA companies.

On April 28, 2011, the Department issued Shenzhenshi Huanwei a letter[233] confirming that it timely submitted Q&V data on December 16, 2010, and as such, was entitled to the "All-Others" preliminary net subsidy rate identified in the *Preliminary Determination*.[234]

On June 24, 2011, the Department requested additional information from Shenzhenshi Huanwei. On July 1, 2011, Shenzhenshi Huanwei submitted documentation demonstrating its company

[233] *See* Letter from Susan Kuhbach, Director, Office 1, AD/CVD Operations, Import Administration, "Re: Multilayered Wood Flooring from the People's Republic of China," April 28, 2011.
[234] *See Preliminary Determination* at 19034, 19043; *see also* Letter to All Interested Parties from Nancy Decker, Program Manager, Office 1, AD/CVD Operations, Import Administration, "RE: Antidumping and Countervailing Duty Investigations: Multilayered Wood Flooring from the People's Republic of China," May 25, 2011.

ownership and history.

Lizhong

Lizhong requests the Department to include the name of Lizhong as the "Requester" in this final determination, and references a request to change the customs instructions memorandum in the corresponding AD investigation of wood flooring from the PRC.[235]

Department's Position

Based on record information, we find that Times Flooring; UA Wood Floors; and Shenzhen Shi Huanwei, should not be considered non-cooperative companies. As such, we have removed them from the list of AFA companies for this final determination. In the case of UA Wood Floors, we are satisfied that it is a Taiwanese company and, therefore, accept Petitioner's suggested redaction of this company. Regarding Times Flooring, and Shenzhen Shi Huanwei, a close examination of the documents submitted indicates that Times Flooring is Suzhou Times and Shenzhen Shi Huanwei is Shenzhenshi Huanwei. Accordingly we conclude that each company received the questionnaire despite minor differences in names. Specifically, the names are similar and the addresses listed for Times Flooring and Shenzhen Shi Huanwei in the Petition are nearly identical to the actual addresses of Suzhou Times and Shenzhenshi Huanwei.

Regarding Elegant Living, the fact that Samling Group submitted a Q&V questionnaire response on behalf of Baroque Timber is not sufficient to justify removing Elegant Living from the AFA list. While Samling Group claims that there is no company called Elegant Living, there *are* several companies in Samling Group with Elegant Living in their names, including one located in the PRC, "Shanghai Elegant Living Timber Products Co., Ltd."[236] Therefore, because there are possibly multiple companies separate and apart from Baroque Timber, additional Q&V questionnaire responses should have been submitted, even if they indicated "no exports." Without this information, the Department could not properly consider these companies in the respondent selection process. Since Samling Group did not respond on behalf of Elegant Living, the company to which the Department sent the Q&V, Elegant Living will not be removed from the list of AFA companies. Baroque Timber will continue to be treated as a responsive company and its exports will be assessed under the "all others" rate.

Similarly, record evidence indicates that Eswell Enterprise is a separate and distinct company from Eswell Timber. Being a distinct company which received a Q&V from the Department, it should have responded to the Department's Q&V questionnaire and chose not to. The fact that Eswell Timber chose to self-report is not a justification to remove Eswell Enterprise from the list of AFA companies, as they both should have submitted a Q&V questionnaire response. Eswell Timber will continue to be treated as a responsive company and its exports will be assessed under the "all others" rate.

The Department notes that there was no mention in the *Preliminary Determination* of Lizhong.

[235] *See* Lizhong Case Brief at 9.

[236] *See* Submission to the Department, "Samling Group Response to Request for Information," (June, 30, 2011) at Exhibit B (Public Version).

Furthermore, we note that Lizhong's request and argument are applicable to the AD investigation, and have no relevance in this CVD investigation.

Comment 7 "All-Others" Rate Calculation

The GOC states its position that all three mandatory respondents should receive *de minimis* subsidy rates for this final determination. As such, the GOC states that the 67 companies that responded to the Department's Q&V questionnaire, but were not selected as mandatory respondents, should also be granted *de minimis* rates. Under this scenario, the GOC states that the Department should then terminate this investigation. Chinafloors and Lizhong concur with this position.

Petitioner argues that if the Department were to issue a *de minimis* rate to all three mandatory respondents in this final determination, then the Department should average the AFA rate for non-cooperating companies with the three *de minimis* rates to arrive at an "all-others" rate.

Department's Position

Because we have not calculated *de minimis* rates for all three mandatory respondents, this issue is moot.

Scope-Related Issues

Background

On May 19, 2011, the Department released the Scope Memo concurrently with the *Wood Flooring AD Preliminary Determination*. In this memorandum, the Department established its position on: 1) whether to modify the scope language by removing the term "plywood flooring;" 2) whether to clarify the scope language regarding the second group of HTSUS subheadings; and 3) whether to exclude any of the following from the scope of the investigations: a) Asian Birch or Acacia; b) products consisting of seven plies or more; c) products containing high-density fiberboard or oriented strand board; d) products with a natural or ultra-violet oil top surface coatings; e) sawn and sliced peeled products; f) "softwood" flooring; or g) "unfinished" flooring.[237]

Concomitantly with the Scope Memo, we stated in the *AD Preliminary Determination* that:

> CBP has indicated to the Department that imports of subject merchandise entering under HTSUS subheadings 4409.10.0500; 4409.10.2000; 4409.29.0515; 4409.29.0525; 4409.29.0535; 4409.29.0545; 4409.29.0555; 4409.29.0565; 4409.29.2530; 4409.29.2550; 4409.29.2560; 4418.71.1000; 4418.79.0000; and 4418.90.4605 would be **incorrectly classified**. Therefore we invite comment on whether those HTSUS subheadings should be eliminated from the scope description. These comments may be submitted to the Department no later than 20 days after the date of publication of this notice, and rebuttal

[237] *See* Scope Memo.

comments no later than five days later.[238]

Subsequent to this, the Department received comments on the scope of the investigations from US Floors, a domestic importer of plywood veneer;[239] Swiff Train, *et al.*, domestic importers of plywood veneer;[240] Richmond, a domestic importer of plywood veneer;[241] Style Limited, a Chinese producer of strand-woven lignocellulosic flooring;[242] Petitioner;[243] and Lumber Liquidators, *et al.*, domestic importers and a Chinese producer of subject merchandise.[244] Each of the comments is addressed individually below.

Comment 8 Exclusion Request for Plywood Panels or Veneer

US Floors argues that plywood panels are a separate and distinct product from multilayered wood flooring. In particular, US Floors asserts that plywood sheets are used in a number of applications, such as cabinetry, furniture, retailer building, and the recreational vehicle industry, while multilayered wood flooring is used solely as flooring.[245]

US Floors states that while the scope language is "clear that it only applies to multilayered wood flooring" and that "{p}lywood panels are not included within the scope of the investigation," clarification is necessary to prevent confusion on the part of CBP at importation. This is because hardwood plywood and certain types of wood flooring are both classified under HTS subheading 4412. US Floors acknowledges that the written language of the scope controls but argues that CBP often refers to HTS numbers to determine whether a product is subject to an AD order, and that CBP requests for importer samples of products may create delays for importers in receiving their goods. Therefore, US Floors asks the Department to clarify that plywood panels are not covered in order to prevent "unnecessary delays and confusion," as these potential delays could "negatively impact US Floors'…operations."

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[238] *See Wood Flooring AD Preliminary Determination* at 30667 (emphasis added).
[239] *See* Letter from U.S. Floors, Inc. to the Department "Re: Multilayered Flooring From the People's Republic of China: Request to Clarify Scope," (May 19, 2010) {*sic*}.
[240] *See* Letter from Swiff Train Co., BR Custom Surface, Galleher Inc., DPR International, LLC, Real Wood Floors, Metropolitan Hardwood Floors, Shenyang Haobainian Wood Co., Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd, GTP International, Wood Brokerage International, Bridgewell Resources, and Patriot Timber Products to the Department "Re: Scope Comments – Multilayered Wood Flooring from the People's Republic of China," (June 6, 2011). Hereafter, these submitters are referred to as "Swiff Train, *et al*."
[241] *See* Letter from Richmond International Forest Products to the Department "Re: Response to Request for Comments With Respect To Scope of Antidumping And Countervailing Duty Investigation Of Multilayered Wood Flooring From The People's Republic of China (A-570-970/C-570-971)," (June 13, 2011).
[242] *See* Style Limited's June 15 Scope Comments *see also* Style Limited's Case Brief; and Style Limited's Rebuttal Brief.
[243] *See* Letter from Petitioner to the Department "Re: Multilayered Wood Flooring from the People's Republic of China," (June 15, 2011); *see also* Letter from Petitioner to the Department "Re: Multilayered Wood Flooring from the People's Republic of China," (August 3, 2011).
[244] *See* Letter from Lumber Liquidators Services, LLC, Home Legend, LLC, and Armstrong Wood Products (Kunshan) Co., Ltd. to the Department "Multilayered Wood Flooring from China – Case Brief of Lumber Liquidators Services, LLC, Home Legend, LLC, and Armstrong Wood Products (Kunshan) Co., Ltd." (August 9, 2011), submitted in the AD investigation of wood flooring from the PRC (A-570-970) and placed on the record of this investigation. Hereafter, these submitters are referred to as "Lumber Liquidators, *et al*."
[245] *See ITC Section 332 Report*.

Swiff Train, *et al*., submit three nearly identical letters from Wood Brokerage International, Bridgewell Resources LLC, and Patriot Timber Products, Inc., expressing their concern that the scope of these investigations covers products that use plywood veneer for purposes other than wood flooring. Swiff Train, *et al*., assert that if they were to rewrite the scope description, removing the word "flooring," it would describe plywood veneer used for any application. Swiff Train, *et al*., state their concern that Petitioner has expanded the scope to cover products that are not produced by Petitioner, and that the U.S. plywood industry did not file or participate in these investigations. Swiff Train, *et al*., conclude by requesting the Department to clarify whether plywood veneer imports are covered by the scope of these investigations.

Richmond states that it imports plywood veneer products that are used in a broad range of non-flooring applications, such as cabinetry and furniture, but which fit the physical characteristics of subject merchandise set forth in the scope. Richmond alleges that the scope is "extraordinarily" broad in that it identifies physical characteristics basic to all plywood veneer panel products regardless of their use, rather than characteristics that distinguish plywood flooring and, therefore, encompasses plywood veneer products used for non-flooring applications. Furthermore, Richmond states that beyond the end use of the plywood panels it imports, there is no identifiable physical basis in the scope language for distinguishing the plywood veneer products it imports, and that as such, this "overly inclusive and end-use based approach" runs counter to the Department's stated policy and procedural goals.

Richmond argues that the Department's *Antidumping Manual* states that "{t}he focus of the scope should be on the physical characteristics of the merchandise, rather than the end use of the merchandise,"[246] and that one procedural aim of an investigation is to ensure that the scope is accurate and narrowly focused. Richmond further argues that the *Antidumping Manual* guides the Department to define the scope of an investigation as accurately as possible to ensure that products in which the affected industry has no interest are removed or not included. To reinforce this point, Richmond cites *Cellular Mobile Telephones* in stating that the Department has the "inherent power to establish the parameters of the investigation" and that:

> {w}ithout this inherent authority, the Department would be tied to an initial scope definition that is based on whatever information the petitioner may have had available at the time of initiating the case, and which may not make sense in light of the information available to the Department or subsequently obtained in the investigation.[247]

In this regard, Richmond states that the Department's inherent authority to define the scope of an investigation has been confirmed by the CIT in *Diversified Products* and *Wheatland Tube*.[248]

Due to the nature of the scope language as currently constructed, Richmond argues that there is no basis on which to fashion an order that is administrable. Richmond further argues that due to CBP's designation of enforcement of AD and CVD orders as a "Priority Trade Issue," the issue of administrability of the scope becomes exacerbated because there is no basis for an import specialist to determine, based on the condition of plywood panels at importation, whether entries

[246] *See 2009 Antidumping Manual*, Chapter 2 at 12.
[247] *See Cellular Mobile Telephones*.
[248] *See Diversified Products* at 883, 887, and *Wheatland Tube* at 149, 155.

of plywood panels that fit the physical description of the scope language should enter as Type 1 (*i.e.*, duty-free entries) or Type 3 (*i.e.*, entries subject to an order). Richmond states that this situation becomes more complex due to the number of HTSUS subheadings within the scope that cover both flooring and non-flooring plywood panels, and by the inclusion of HTSUS subheadings that do not apply to subject merchandise, as CBP noted in its comments.[249]

Richmond states that importers of non-flooring plywood panels will face multiple CBP-related issues due to the scope as currently constructed, and submits that the Department should seek a subheading provision through the Section 484(f) Committee to apply a suffix within the tariff schedule stating "for use solely or principally as flooring." Richmond concludes by stating that amended subheadings in the tariff schedule would allow for more clear enforcement and would benefit all parties involved.

Petitioner states that it does not have a fundamental issue with the requests of US Floors, Swiff Train, *et al*., or Richmond, and confirms that panels and veneers are not included in the current scope definition. However, Petitioner asserts its concern that any imported flooring product that meets the definition of subject merchandise would be termed "plywood panel" or "plywood veneer" as a mechanism to circumvent any orders or deposit requirements that may result from these investigations.

Department's Position

The Department has not excluded plywood panels and/or veneers because the requests made by US Floors, Swiff Train, *et al*., and Richmond are based on end-use arguments. In *Off-The-Road Tires from the PRC*, the Department stated that,

> {a} scope based upon end-use application…raises administrative problems for the Department. In certain instances the actual end-use of merchandise may be unknown to the producers or exporters investigated by the Department. Any certifications or assertions made by the exporter/producer about the end-use of particular sales would be difficult, if not impossible, to verify. As a result, the Department's analysis would depend on a generally unverifiable supposition about the end-use of individual sales, and would be subject to manipulation.[250]

Lacking a physical characteristic or characteristics that would serve to identify the products of concern to US Floors, Swiff Train, *et al*., and Richmond, we are not able to clarify the scope to include the end-use language as requested. Regarding Richmond's comment about the inclusion of HTSUS numbers that do not cover subject merchandise, we have removed these from the scope description. *See* Comment 10 "Scope Language Regarding HTSUS Subheadings" below.

Comment 9 Strand-Woven Lignocellulosic Flooring

Style Limited requests an exclusion for strand-woven lignocellulosic flooring, known commercially as ReStyle.™ Style Limited states that while its product is a type of engineered

[249] *See* Scope Memo at 4 and Attachment 2.
[250] *See Off-The-Road Tires from the PRC* and accompanying IDM at 192.

flooring with a plywood core, the product does not utilize a wood face veneer but rather a top layer cut from a block of material produced using strand-woven technology.[251] Style Limited states that this patented technology can transform any type of wood into a high density product with three times the hardness of oak, while thinner than solid hardwood flooring.

Style Limited requests that the Department exclude its flooring from the scope because the domestic multilayered wood flooring industry does not produce, nor does it have the capability to produce, strand-woven lignocellulosic flooring (*i.e.*, it has a completely different production process using specialized pressing equipment).

Style Limited asserts that the existence of two U.S. patents and a U.S. trademark demonstrates that its strand-woven lignocellulosic flooring is a unique item that is not produced in the United States by Petitioner and, as such, should be excluded from the scope. As further evidence of this, Style Limited cites *Certain Lined Paper* and *Cased Pencils PRC* as evidence that the Department has excluded patented products before.[252] Finally, Style Limited argues that due to Petitioner's lack of an objection to an exclusion for strand-woven lignocellulosic flooring, the Department should insert exclusion language in the scope description.

Department's Position

We find that an exclusion for strand-woven lignocellulosic flooring is not warranted because, by its very definition, strand-woven lignocellulosic flooring is not subject merchandise. Section 771(25) of the Act states that "{t}he term 'subject merchandise' means the class or kind of merchandise that is within the scope of an investigation…"[253] The scope of this investigation states that "{m}ultilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[254]..."[255] According to Style Limited, "{u}nlike the subject merchandise…the product does not utilize a wood face veneer"[256] and "strand-woven lignocellulosic flooring does not utilize a face veneer as defined by the scope of this investigation."[257] As such, an exclusion for strand-woven lignocellulosic flooring is not necessary because it is not subject merchandise.

Comment 10 Scope Language Regarding HTSUS Subheadings

In the Scope Memo, the Department noted that CBP submitted comments on the scope of the investigations recommending that the following scope language should be clarified:

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[251] Style Limited states that it uses "wood as a base material, then partially opens the lignocellulose structure of the wood, removes a portion of the natural chemical elements, introduces new materials, compresses the material and chemical compound together, then heat activates it to create a monolithic block that is stronger that the original material."
[252] *See Certain Lined Paper* at 56949, 56950; *see also Cased Pencils PRC* at 12323, 12324.
[253] *See* Section 1677 of the Act.
[254] A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.
[255] *See Preliminary Determination* at 19035.
[256] *See* Style Limited's Case Brief at 2.
[257] *Id.* at 6.

> "In addition, imports of subject merchandise may enter the U.S. under the following HTSUS subheadings: 4409.10.0500; 4409.10.2000; 4409.29.0515; 4409.29.0525; 4409.29.0535; 4409.29.0545; 4409.29.0555; 4409.29.0565; 4409.29.2530; 4409.29.2550; 4409.29.2560; 4418.71.1000; 4418.79.0000; and 4418.90.4605."

Specifically, CBP recommended changing the scope language to state that "imports of subject merchandise may enter the U.S. *incorrectly classified* under the following HTSUS subheadings…"[258] CBP stated that without the phrase "incorrectly classified," it would appear that the second group of classifications is somehow correct, and that this case is not intended to capture goods correctly classified under those HTSUS numbers.

Petitioner asserts that it agrees with CBP's recommendation. Petitioner states that it strikes a correct balance between recognizing that the specific subheadings should not include subject merchandise, while also recognizing that misclassifications are common with respect to this group of imports.

Department's Position

As CBP has stated, subject merchandise entering under this group of HTSUS subheadings would be incorrectly classified (*i.e.*, these subheadings inherently do **not** include subject merchandise). While we acknowledge Petitioner's concern over potential misclassifications, we disagree that these HTSUS numbers should be included in the description of the scope of these investigations. As noted above, section 771(25) of the Act states that "{t}he term 'subject merchandise' means the class or kind of merchandise that is within the scope of an investigation…"[259] Therefore, in accordance with section 771(25) of the Act, the Department has removed the HTSUS subheadings that do not include subject merchandise for this and the AD final determination.

Comment 11 Continued Requests for Certain Exclusions

Lumber Liquidators, *et al.*, reiterate their exclusion requests as argued in their November 30, 2010,[260] and April 13, 2011,[261] submissions, stating that the Department must exclude certain products from the scope of the investigations because they are either not manufactured by the domestic industry, or are not finished (*i.e.*, "unfinished") wood flooring. Specifically, these are exclusions for: 1) products made from Asian Birch or Acacia; 2) products consisting of seven plies or more; 3) products containing a high-density fiberboard core and click lock joint technology; 4) and "unfinished" flooring. Lumber Liquidators, *et al.*, assert that Petitioner's arguments and the Department's conclusions in the Scope Memo are incorrect and must be revised for purposes of this final determination.

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[258] *See* Scope Memo at Attachment 2 (emphasis in original).
[259] *See* section 771(25) of the Act.
[260] *See* Letter from Lumber Liquidators Services, LLC; Home Legend, LLC; US Floors, Inc.; and Metropolitan Hardwood Floors, Inc. to the Department, "Multilayered Wood Flooring from China—Comments on the Scope of the Investigation," November 30, 2010.
[261] *See* Letter from Lumber Liquidators Services, LLC and Home Legend, LLC to the Department, "Multilayered Wood Flooring from China—Rebuttal Comments on Scope of the Investigation," April 13, 2011.

Lumber Liquidators, *et al*., reference *Mitsubishi Electric*, stating that the Department has inherent discretion to ascertain the scope of its orders, the exercise of which "must reflect (the Department's) judgment regarding the scope and form of an order that will best effectuate the purpose of the AD laws and the violation found" and "{t}he responsibility to determine the proper scope of the investigation and of the AD order…is that of the Administration, not of the complainant before the agency."[262] Lumber Liquidators, *et al*., assert that this supports their argument that the Department has the ability and discretion to narrow the scope of an investigation by removing products where the scope is found to be overly-inclusive and should not rely on Petitioner's assertions, because Petitioner's arguments are "mere conjecture and speculation."[263]

Petitioner reiterates its positions as summarized in the Scope Memo,[264] as well as its support of the Department's conclusions in the Scope Memo.

Department's Position

The arguments Lumber Liquidators, *et al*., present in their case brief are based almost entirely on their previous submissions,[265] both of which were received before the release of the Scope Memo, and were addressed within the Scope Memo.[266] Regarding Lumber Liquidators, *et al.*'s request for an exclusion for flooring with a HDF core and click lock joint technology, the ITC has stated that "{s}ome manufacturers incorporate a click and lock system,"[267] and as stated in the Scope Memo, an exclusion for HDF is not supported by the record.

Regarding Lumber Liquidators, *et al.*'s reliance on *Mitsubishi Electric* and *Valkia*, we find the references to these court cases to be misplaced. The Department does consult the petitioner during the initiation process of an investigation to ensure that the products for which the petitioner is seeking relief are included within the scope. However, the Department has the final decision on the scope, and in this case, we do not find that the scope is overly-inclusive. As such, we affirm our conclusions as stated in the Scope Memo,[268] and are not adopting Lumber Liquidators, *et al*.'s proposed exclusions for this final determination.

[262] *See Mitsubishi Electric* at 1577, 1582-1583.
[263] *See Valkia* at 907, 920.
[264] *See* Scope Memo at 2-3.
[265] *See* Letter from Lumber Liquidators Services, LLC; Home Legend, LLC; US Floors, Inc.; and Metropolitan Hardwood Floors, Inc. to the Department, "Multilayered Wood Flooring from China—Comments on the Scope of the Investigation," November 30, 2010; and Letter from Lumber Liquidators Services, LLC and Home Legend, LLC to the Department, "Multilayered Wood Flooring from China—Rebuttal Comments on Scope of the Investigation," April 13, 2011.
[266] *See* Scope Memo at 5-10.
[267] *See ITC Preliminary Determination* at I-9.
[268] *See* Scope Memo at 5-10.

Recommendation

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

AGREE ____ DISAGREE ____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
APA	Administrative Procedures Act
AUL	Average useful life
Baroque Timber	Baroque Timber Industries (Zhongshan) Co., Ltd.
BPI	Business proprietary information
Brilliant	Jiaxing Brilliant Import & Export Co., Ltd.
CAFC	U.S. Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
CRU	The Department's Central Records Unit (Room 7046 in the HCHB Building)
CVD	Countervailing Duty
Department	Department of Commerce
Elegant Living	Elegant Living Corporation
Eswell Enterprise	Shanghai Eswell Enterprise Co., Ltd
Eswell Timber	Shanghai Eswell Timber Co., Ltd.
EV	Entered-Value
FIE	Foreign-Invested Enterprise
FF Plantation	Fine Furniture Plantation (Shishou) Ltd.
Fine Furniture	Fine Furniture (Shanghai) Ltd.
GNIs	Gross National Incomes
GOC	Government of the People's Republic of China
Great Wood	Great Wood (Tonghua) Ltd.
HDF	High-density fiberboard
HTS or HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
IFS	International Financial Statistics
IMF	International Monetary Fund
IRS	Internal Revenue Service
Kang Da	Guangzhou Pan Yu Kang Da Board Co., Ltd.
Kornbest	Kornbest Enterprises Ltd.
KVA	Kilovolt-ampere

KW	Kilowatt
Layo	Zhejiang Layo Wood Industry Co., Ltd.
Lizhong	Shanghai Lizhong Products Co., Ltd., d/b/a The Lizhong Wood Industry Limited Company of Shanghai
LTAR	Less than adequate remuneration
Lumber Liquidators, *et al*.	Lumber Liquidators Services, LLC, Home Legend LLC, and Armstrong Wood Products (Kunshan) Co., Ltd.
MOI	Market-Oriented Industry
NDRC	National Development and Reform Commission
NME	Non-market economy
Petitioner	Coalition for American Hardwood Parity (Anderson Hardwood Floors, LLC; Award Hardwood Floors; Baker's Creek Wood Floors, Inc.; From the Forest; Howell Hardwood Flooring; Mannington Mills, Inc.; Nydree Flooring; Shaw Industries Group, Inc.)
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
Q&V	quantity and value
Richmond	Richmond International Forest Products, LLC
RMB	Renminbi
SAA	Statement of Administrative Action
Samling Group	Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Ltd., Samling Global USA, Ind., Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd.
Shenzhen Shi Huanwei	Shenzhen Shi Huanwei Woods Co., Ltd.
Shenzhenshi Huanwei	Shenzhenshi Huanwei Woods Co., Ltd.
Suzhou Times	Suzhou Times Flooring Co., Ltd.
Swiff Train Co., *et al*.	Swiff Train Co., BR Custom Surface, Galleher Inc., DPR International, LLC, Real Wood Floors, Metropolitan Hardwood Floors, Shenyang Haobainian Wood Co., Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd, GTP International, Wood Brokerage International, Bridgewell Resources LLC, and Patriot Timber Products, Inc.
Times Flooring	Times Flooring Co., Ltd.
U.S.C.	United States Code
US Floors	U.S. Floors Inc.
WTO	World Trade Organization
VAT	Value Added Tax
Yuhua	Zhejiang Yuhua Timber Co., Ltd.
ZBQTS	Zhejiang Bureau of Quality and Technical Supervision

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GQR	GOC's Initial CVD Questionnaire Response: Multilayered Wood Flooring from the People's Republic of China (February 14, 2011)
G1SR	GOC's First Supplemental CVD Questionnaire Response: Multilayered Wood Flooring from the People's Republic of China (February25, 2011)
G2SR	GOC's Second Supplemental CVD Questionnaire Response: Multilayered Wood Flooring from the People's Republic of China (March 28, 2011)
GFIS	Information to Clarify the Factual Record: Multilayered Wood Flooring from the People's Republic of China (May 3, 2011)
	Petitioner
Petition	Petition for the Imposition of Antidumping and Countervailing Duties: Mulitlayered {sic} Wood Flooring from the People's Republic of China (October 21, 2010)
	Fine Furniture
FFQR	Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Questionnaire Response of Fine Furniture (Shanghai) Limited (February 14, 2011)
FF3SR	Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Third Supplemental Countervailing Duty Questionnaire Response of Fine Furniture (Shanghai) Limited (May 13, 2011)
	Layo
LQR	Multilayered Wood Flooring from the People's Republic of China: Questionnaire Response (February 14, 2011)
LQR (Brilliant)	Multilayered Wood Flooring from the People's Republic of China: Questionnaire Response (February 14, 2011)
L1SR	Multilayered Wood Flooring from the People's Republic of China: Questionnaire Response (February 25, 2011)
L2SR	Multilayered Wood Flooring from the People's Republic of China: Questionnaire Response (May 13, 2011)
	Yuhua

YQR	Multilayered Wood Flooring from the People's Republic of China: Yuhua's Countervailing Duty Questionnaire Response (February 14, 2011)
Y1SR	Multilayered Wood Flooring from the People's Republic of China: Supplemental CVD Response (February 25, 2011)
Y2SR	Multilayered Wood Flooring from the People's Republic of China: 2d {sic} Supplemental CVD Response (May 13, 2011)
	Style Limited
Style Limited's Case Brief	Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China - Case Brief for Consideration Prior to the Final Determination (August 3, 2011)
Style Limited's Rebuttal Brief	Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China - Rebuttal Brief for Consideration Prior to the Final Determination (August 8, 2011)
	Lizhong
Lizhong Case Brief	Multilayered Wood Flooring from the People's Republic of China: Voluntary Respondent Shanghai Lizhong Case Brief (August 3, 2011)
	Department
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)*
Fine Furniture Final Calc Memo	Memorandum to the File from Shane Subler, International Trade Compliance Analyst, AD/CVD Operations, Office 1, "Final Determination Calculation Memorandum for (Fine Furniture)," (October 11, 2011)
Fine Furniture Post-Preliminary Analysis	Memorandum from Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated July 22, 2011, "Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Post-Preliminary Analysis Memorandum for Fine Furniture (Shanghai) Ltd., Great Wood (Tonghua) Ltd., and Fine Furniture Plantation (Shishou) Ltd. (collectively, "Fine

	Furniture")" (Public Version)
Fine Furniture Verification Report	Memorandum from Shane Subler and Joshua Morris, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, "Verification Report: (Fine Furniture)," (July 6, 2011)
Initiation Checklist	*Countervailing Duty Investigation Initiation Checklist: Multilayered Wood Flooring from the People's Republic of China* (November 18, 2010)
Initiation Notice	*Multilayered Wood Flooring from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 75 FR 70719 (November 18, 2010)
InitQ	Department's Initial Questionnaire (January 3, 2011)
Layo Final Calc Memo	Memorandum to the File, "Final Determination Calculation Memorandum for (Layo)," (October 11, 2011)
Layo Post-Preliminary Analysis	Memorandum from Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated July 22, 2011, "Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Post-Preliminary Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd. and Jiaxing Brilliant Import & Export Co., Ltd. (collectively, "Layo")" (Public Version)
Removal of BPI Memo	Memorandum to the File from Shane Subler and Patricia Tran, International Trade Compliance Analysts, Office 1, AD/CVD Operations, dated March 11, 2011, "RE: Removal of Proprietary Treatment of Names in responses."*
Respondent Selection Memo	Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Selection of Respondents for the Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China" (December 30, 2010)*
Scope Memo	Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Susan Kuhbach, Director, Office 1, and Nancy Decker, Program Manager, Office 1, from Joshua Morris, International Trade Compliance Analyst, Office 1, dated May 19, 2011, "re**:** Antidumping and Countervailing Duty Investigations: Multilayered Wood Flooring from the People's Republic of China, subject:

	Scope"
Layo Final Calc Memo	Memorandum to the File, "Final Determination Calculation Memorandum for (Layo)," (October 11, 2011)
Yuhua Post-Preliminary Analysis	Memorandum from Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated July 22, 2011, "Countervailing Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Post-Preliminary Analysis Memorandum for Zhejiang Yuhua Timber Co., Ltd. ("Yuhua")" (Public Version)

* on file in the Department's Central Records Unit (Room 7046 in the HCHB Building)

III. LITIGATION TABLE

Short Cite	**Cases**
Alaska	*Alaska v. Attorney General,* 456 F.3d 88 (3d Cir. 2006)
Alaska Hunters	*Alaska Professional Hunters Assn. v. FAA*, 177 F.3d 1030 (D.C. Cir. 1999)
American Spring	*American Spring Wire Corp. v. U.S.*, 569 F. Supp. 73 (CIT 1983)
Bell Atlantic	*Bell Atlantic Telephone v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997)
Butterbaugh	*Butterbaugh v. Department of Justice*, 336 F.3d 1332 (Fed. Cir. 2003)
Carlisle Tire	*Carlisle Tire & Rubber Co. v. United States*, 634 F. Supp. 419 (CIT 1986)
Chenery Corp.	*SEC v. Chenery Corp.*, 332 U.S. 194 (1947)
Chevron	*Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)
Corus I	*Corus Staal BV v. Dep't of Commerce*, 395 F.3d 1343 (Fed. Cir. 2005)
Corus II	*Corus Staal BV v. United States*, 502 F.3d 1370 (Fed. Cir. 2007)
Diversified Products	*Diversified Products Corporation v. United States*, 572 F. Supp. 883 (CIT 1983)
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)
GOC v. United States	*Gov't of the People's Republic of China v. United States*, 483 F. Supp. 2d 1274 (CIT 2007)
GPX I	*GPX International Tire Corp. v. United States*, 645 F. Supp. 2d 1231 (CIT 2009)
GPX II	*GPX International Tire Corp. v. United States*, No. 10-84, slip op. (CIT Aug 4, 2010)
GSA	*GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349 (CIT 1999)
KYD, Inc.	*KYD, Inc. v. United States*, 607 F.3d 760 (Fed. Cir. 2010)
McCarthy	*SEC v. McCarthy*, 322 F.3d 650 (9th Cir. 2003)
Merrill Lynch v. Curran	*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982)
Mitsubishi Electric	*Mitsubishi Electric Corp. v. United States*, 898 F.2d 1577 (Fed.Cir. 1990).
Nippon Steel	*Nippon Steel v. United States*, 337 F.3d 1373 (Fed. Cir. 2003)
NSK	*NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007)
Rust v. Sullivan	*Rust v. Sullivan*, 500 U.S. 173 (1991)
San Huan New Materials	*San Huan New Materials High Tech, Inc. v. International*

	Trade Commission, 161 F.3d 1347 (Fed. Cir. 1999)
Shinyei	*Shinyei Corp. of Am. v. United States*, 355 F.3d 1297 (Fed. Cir. 2004)
SKF USA	*SKF USA Inc. v. United States*, 675 F. Supp. 2d. 1264 (CIT 2009)
Steel Co.	*Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998)
Tianjin	*Tianjin Magnesium International Co., Ltd. vs. United States*, Slip. Op. 2011-17, (CIT 2011)
Valkia	*Valkia Ltd. vs. United States*, 28 CIT 907 (CIT 2004).
Wheatland Tube	*Wheatland Tube v. United States*, 973 F. Supp. 149 (CIT 1997).

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
Aluminum Extrusions	*Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011).
	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 (December 15, 2006).
	Bags from Vietnam AD
Bags from Vietnam AD	*Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 56813 (November 3, 2009).
	Cased Pencils PRC
Cased Pencils PRC	*Certain Cased Pencils From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order*, 76 FR 12323 (March 7, 2011).
	Certain Lined Paper
Certain Lined Paper	*Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006).
	CVD Preamble
CVD Preamble	*Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998).
	CVD Regulations
CVD Regulations	*Countervailing Duty Regulations*, 63 FR 65377 (November 25, 1998).
	Cellular Mobile Telephone
Cellular Mobile Telephone	*Cellular Mobile Telephone and Subassemblies From Japan: Final Determination of Sales at Less-Than-Fair-Value*, 50 FR 45447 (October 31, 1985)
	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 – 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	*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 from the PRC	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (Apr. 13, 2009).
	Coated Free Sheet Paper – PRC
CFS from the PRC	*Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007).
	Coated Paper from the PRC

Coated Paper from the PRC	*See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010).
	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).
	Frozen Fish Filets from Vietnam
Frozen Fish Fillets from Vietnam AD	*Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003) (unchanged in final).
	Frozen Shrimp from Brazil AD
Frozen Shrimp from Brazil AD	*Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12081 (March 6, 2008).
	Frozen Shrimp from Thailand AD
Frozen Shrimp from Thailand AD	*Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12088 (March 6, 2008).
	Kitchen Appliance Shelving & Racks – PRC
KASR from the PRC Prelim	*Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 74 FR 683 (January 7, 2009).
KASR from the PRC	*Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009).
KASR 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).
	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).
	Magnesia Bricks - PRC
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 - PRC
Ribbons	*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 – PRC
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
Oscillating 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).
	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).
	Rebar from Turkey AD
Rebar from Turkey AD	*Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke in Part*, 73 FR 24535 (May 5, 2008).
	Seamless Pipe from the PRC
Seamless Pipe from the PRC	*Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010).
	Softwood Lumber Products – Canada

Softwood Lumber from Canada	*Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002).
	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).
	Steel Plate from Korea AD
Steel Plate from Korea AD	*Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Administrative Review in Part*, 74 FR 48716 (September 24, 2009).
	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).
	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 Initiation	*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).
Lawn Groomers from the PRC	*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, 70975 (November 24, 2008); unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty*

	Determination, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences."
	Wood Flooring - AD
Wood Flooring AD Preliminary Determination	*Multilayered Wood Flooring From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 76 FR 30656 (May 26, 2011).*
	Wood Flooring - CVD
Preliminary Determination	*Multilayered Wood Flooring From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 76 FR 19034 (April 6, 2011).

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

Short Cite	**Full Name**
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.
ITC Section 332 Report	*Wood Flooring and Hardwood Plywood: Competitive Conditions Affecting the U.S. Industries*, Inv. No. 332-48, USITC Pub. 4031 (August 2008).
OTCA of 1988	*Omnibus Trade and Competitiveness Act of 1988*, Pub.L.No. 100-418, 102 Stat. 1007
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)
TAA of 1979	Trade Agreements Act of 1979
URAA	*Uruguay Round Agreements Act*, Pub L. No. 103-465, 108 Stat. 4809 (1994)
WTO AB Decision	*United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011)