C-570-938
First Administrative Review
POR: 9/19/2008 – 12/31/2009
Public Document
Office 1

DATE: December 5, 2011

MEMORANDUM TO: Paul Piquado
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 Results in the First Administrative Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China

---

Background

On June 8, 2011, the Department published the *Preliminary Results* of this administrative review.[1] On October 17, 2011, the Department made available to all parties the RZBC Post-Preliminary Analysis, the RZBC Preliminary Creditworthiness Determination, and the Yixing Creditworthiness Determination for 2004-2005. 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 review. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions in this memorandum. Below is a complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties:

General Issues

Comment 1 Application of CVD Law to the PRC and Double Remedy
Comment 2 Whether Application of the CVD Law to NMEs Violates the APA
Comment 3 Countervailability of Input Purchases Made Through Private Trading Companies

Case-Specific

Comment 4 Adjustment of the International Freight Benchmark Used to Measure the Benefit of Steam Coal Sold at LTAR

[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 5 Whether Petitioners' Factual Information Submissions Were Properly Certified
Comment 6 Whether Steam Coal at LTAR is Specific
Comment 7 Whether Sulfuric Acid at LTAR is Specific
Comment 8 Application of AFA to Yixing for Sulfuric Acid LTAR
Comment 9 Use of Prices from Actual Transactions in the PRC (Tier 1 Benchmark) to Measure Benefit of Sulfuric Acid LTAR
Comment 10 Evidence of Policy Lending
Comment 11 Whether Certain Input Suppliers Are Government Authorities

Respondent Specific
Comment 12 Whether Cogeneration is the Parent of Yixing-Union
Comment 13 Application of the Upstream Subsidy Provision for the Steam Coal LTAR
Comment 14 Adequacy of Yixing's Cooperation In Providing Information on Affiliate
Comment 15 Whether the State Ownership Determination for Yixing's Affiliates is Correct
Comment 16 Whether the Department Deprived Yixing of the Opportunity to Review Subsidy Calculations
Comment 17 Correction of AFA Ruling Based on RZBC Submission of Requested Information
Comment 18 Whether Department's Finding that RZBC was Uncreditworthy Is Supported by Record Evidence
Comment 19 Whether the Department Provided the GOC the Opportunity to Correct Deficiencies Found in the *Preliminary Results*

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, 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 – Sulfuric Acid*

Consistent with the *Preliminary Results*, we are applying facts available for the "Sulfuric Acid for LTAR" program in these final results.

On February 22, April 14, and May 3, 2011, we requested information from the GOC about the specific companies that produced the sulfuric acid purchased by the mandatory respondents. Specifically, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Although the GOC provided some of the requested information, it failed to

provide certain necessary information. In particular, for certain suppliers, no information was submitted; for certain other suppliers that had some direct corporate ownership, the GOC failed to provide articles of association for each level of ownership, information as to whether any of the owners, members of the boards of directors or managers were also government officials or CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval; for other suppliers that were directly owned by individuals, the GOC failed to address whether any of the owners, members or the boards of directors or managers were also CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval.

We determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these final results. *See* section 776(a)(2)(A) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC is well aware of the Department's reporting requirements, yet, despite being given multiple opportunities, it either merely stated that it had contacted local authorities for the information or it simply did not submit requested information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. Due to the GOC's failure to provide the necessary ownership information about the producers of the sulfuric acid purchased by the respondents in a timely fashion, we are assuming adversely that all of the respondents' suppliers of sulfuric acid are "authorities" within the meaning of section 771(5)(B) of the Act. For further discussion of the Department's basis for this AFA finding, *see* Comment 11 below.

B. *GOC – RZBC's and Yixing Union's "Other Subsidies"*

Consistent with the *Preliminary Results*, we are applying facts available for the "Other Subsidies" received by RZBC and Yixing Union.

The financial statements and tax returns submitted by the responding companies indicated that they received potentially countervailable subsidies in the form of grants. Consequently, we sought further information from the responding companies about these grants, and also asked the GOC to provide information about the programs under which these grants were given. Specifically, on February 28, 2011, the Department requested from the GOC a full response to the standard questionnaire for these programs. The GOC did not provide the requested information. Consequently, the Department gave the GOC opportunity to remedy this deficiency in supplemental questionnaires dated April 21, 2011, and July 21, 2011. Again, the GOC did not provide the requested responses for most of these "Other Subsidies."

For certain programs identified below under "Programs Determined to be Countervailable: Other Subsidies," information submitted by the GOC and/or the company respondents showed that the grants were specific and countervailable. We normally rely on information from the government to assess program specificity; however, the GOC did not submit this information in all instances. Where Yixing Union or RZBC submitted information about the specificity of programs included in "Other Subsidies," we have relied upon this information to make our determinations. For the remaining grants addressed under "Programs Determined to be Countervailable: Other

Subsidies," however, the GOC did not provide the requested information about the programs under which they were given, and the company-provided information was limited to the amount given, the date of the grant, and the granting authority.
For these "Other Subsidies," we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available." *See* section 776(a)(2)(A) of the Act.

We further determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. Due to the GOC's failure to provide the requested information about the programs under which the grants received by RZBC and Yixing Union were provided, we are assuming adversely that these grants are being provided to a specific enterprise or industry, or group of enterprises or industries. *See* section 771(5A) of the Act.

For certain additional programs identified below under "Programs Determined Not to Confer a Measurable Benefit During the POR," the subsidy did not result in a measurable benefit, or the benefit was expensed prior to the POR (*see* 19 CFR 351.524(a)(2)).

Subsidies Valuation Information

I. Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 9.5 years according to the IRS's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years to 10 years for purposes of setting the AUL. *See PET Film from India*, unchanged in final.

II. 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, at 19 CFR 351.525(b)(6)(ii)-(iv), the regulations direct the Department to attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, or produce an input that is primarily dedicated to the production of the downstream product. In the case of a transfer of a subsidy between cross-owned companies, 19 CFR 351.525(b)(6)(v) directs the Department to attribute the subsidy to the sales of the company that receives the transferred subsidy.

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

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. *See Fabrique*, 166 F. Supp. 2d at 600-604.

A. RZBC

RZBC Co. responded to the Department's original and supplemental questionnaires on behalf of itself, RZBC Group, RZBC Juxian and RZBC I&E. RZBC Co., RZBC Juxian, and RZBC I&E are wholly owned by RZBC Group and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). RZBC Co. and RZBC Juxian are both producers of subject merchandise; RZBC I&E is an exporter of subject merchandise; RZBC Group is a headquarters company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii), (c), and (b)(6)(iii), respectively. Moreover, different cross-owned affiliates among RZBC Co., RZBC Juxian, and RZBC I&E sell merchandise produced by RZBC Co. and RZBC Juxian to unaffiliated parties for both export and domestic sales. Therefore, to attribute properly the benefit from subsidies to RZBC Co. or RZBC Juxian, we are using the sales of RZBC Co.-produced or RZBC Juxian-produced merchandise by any of the three cross-owned affiliates to unaffiliated companies.

In its questionnaire responses, RZBC also identified Sisha and HTI as prior owners of the company, *i.e.*, companies that owned RZBC Co. prior to the POR, but since the cut-off date of December 11, 2001. Given the level of these companies' ownership in RZBC Co., we asked that RZBC also respond on their behalf. These responses were submitted on May 11, 2011. Based on the information provided by RZBC, we determine that these prior owners were "cross-owned" with the RZBC companies (s*ee* 19 CFR 351.525(b)(6)(vi)). In the RZBC Post-Preliminary Analysis, we found certain subsidies reported by Sisha and HTI to be countervailable. Our attribution of these subsidies is explained in Analysis of Programs sections below.[2]

Also, RZBC I&E reported that it exports subject merchandise produced by other, unaffiliated companies, but that this merchandise was not exported to the United States during the POR. Although any subsidies to the unaffiliated producers would normally be cumulated with those of the trading company that sold their merchandise pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where their merchandise was not exported to the United States during the POR or accounted for a very small share of a respondent's exports to the United States.[3] In this review, we have not sent CVD questionnaires to the unaffiliated producers of citric acid whose merchandise was exported by RZBC I&E because their merchandise was not exported to the United States during the POR. Also, we have removed the sales of these products from RZBC I&E's sales for purposes of calculating countervailable subsidy rates for RZBC.

B. Yixing Union

[2] *See* RZBC Post-Preliminary Analysis

[3] *See, e.g., Pasta from Italy Fourth Review*, and accompanying IDM at "Attribution."

Yixing Union responded to the Department's original and supplemental questionnaires on behalf of itself and its parent and electricity supplier, Cogeneration. As in the investigation, we find that Yixing Union and Cogeneration are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). *See Investigation*, and accompanying IDM at 9-10 and Comment 27. Further, because Cogeneration is the parent of Yixing Union, we are attributing the subsidies received by Cogeneration according to the rule established in 19 CFR 351.525(b)(6)(iii).

III. Benchmarks and Discount Rates

The Department is investigating loans received by RZBC and Yixing Union from Chinese policy banks and SOCBs, as well as non-recurring, allocable subsidies. *See* 19 CFR 351.524(b)(1). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

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

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See CFS from the PRC*, and accompanying IDM at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks in the PRC would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because of the Chinese government's significant presence in the banking sector, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external, market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Softwood Lumber From Canada*, and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC*. *See CFS from the PRC*, and accompanying IDM at Comment 10; *LWTP from the PRC*, and accompanying IDM at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita GNIs similar to the PRC. The benchmark interest rate takes into account a key factor involved in interest rate formation (*i.e.*,

the quality of a country's institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC*, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.[4] As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the IMF and 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 the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See LWTP from the PRC*, and accompanying IDM at "Benchmarks and Discount Rates." In the *Investigation*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. *See Investigation*, and accompanying IDM at Comment 14. Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

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

[4] *See* The World Bank Country Classification, http://econ.worldbank.org/.

term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.

Uncreditworthiness Benchmark: As discussed below, the Department is finding that Yixing Union was uncreditworthy in 2004 and 2009, and that Cogeneration was uncreditworthy in 2005. We also find that RZBC Juxian was uncreditworthy in 2006 and RZBC Co. was uncreditworthy in 2007. To construct the uncreditworthy benchmark rate for those years, we used the long-term rates described above as the "long-term interest rate that would be paid by a creditworthy company" in the formula presented in 19 CFR 351.505(a)(3)(iii).

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

For the calculated benchmark and discount rates, *See* Benchmark Interest Rates Memo.

IV. Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department normally examines the following four types of information: (1) receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. *See CVD Preamble*, 63 FR at 65367. For government-owned firms, we will make our creditworthiness determination by examining receipt by the firm of comparable commercial long-term loans and the other factors listed in 19 CFR 351.505 (a)(4)(i).

A. Yixing Union

Petitioners alleged that Yixing Union was uncreditworthy for the period 2004 through 2009. Yixing-Union and Cogeneration received non-recurring subsidies in 2004 and 2005, respectively, for which discount rates need to be calculated.[5] Also, Yixing Union received countervailable national policy loans in 2009. Therefore, we have limited our creditworthiness analyses to those years.

[5] *See* Yixing-Union's IQR at Exhibit 6 and 8. *See also* Cogeneration's IQR at Exhibit 5.

As evidence of its creditworthiness, Cogeneration reported that it received long-term loans in 2004 and 2005 from a foreign, publicly listed company.[6] Under 19 CFR 351.505(a)(4)(ii), for companies not owned by the government, the Department normally considers a company's receipt of a long-term loan from a commercial source to be dispositive of its creditworthiness. However, because of the significant level of state ownership in Cogeneration during 2004 and 2005 through the shares held by Guolian Trust, and because of Cogeneration's ownership in Yixing-Union, we find the private loans Cogeneration received in 2004 and 2005 are not dispositive evidence of Yixing's creditworthiness, pursuant to 19 CFR 351.505(a)(4)(ii). *See* Comment 17.

Instead, based on our analysis of the information described in 19 CFR 351.505(a)(4)(i)(A)-(D), we determine that Yixing Union was uncreditworthy in 2004 and 2005, as well as 2009. Yixing Union's financial information indicates that the company could have problems meeting its costs and financial obligations with its cash flow, making it a significant credit risk to lenders. Moreover, there was no record evidence to suggest that the health of the citric acid industry or Yixing Union was due to improve in the near future for all of those years. For further analysis, *See* Yixing Preliminary Creditworthiness Determination for 2009. *See also* Yixing Preliminary Creditworthiness Determination for 2004 – 2005.

B. RZBC

Petitioners alleged that RZBC was uncreditworthy for the period 2006 through 2009. Due to changes in cross-ownership over the period covered by Petitioners' uncreditworthiness allegation, we treated all RZBC companies as separate entities in 2006 and 2007, and treated all RZBC companies as a collective entity in 2008 and 2009. Our analysis was limited only to the years in which RZBC companies received long-term loans or non-recurring subsidies for which interest benchmarks or discount rates needed to be calculated. No RZBC companies received non-recurring subsidies for which discount rates need to be calculated in the period 2006-2009. RZBC Juxian and RZBC Co. received countervailable long-term loans in 2006 and 2007, respectively, for which discount rates needed to be calculated. Also, the consolidated entity RZBC received countervailable long-term loans in 2008 and 2009. Therefore, we limited our creditworthiness finding to RZBC Juxian in 2006, RZBC Co. in 2007, and to the collective entity RZBC in 2008 and 2009.

As evidence of its creditworthiness, RZBC disputes the peer company information the Department used as a component of its analysis and points to certain financial indicators that contradict the Department's preliminary creditworthiness determinations. RZBC also contends that the Department did not give appropriate consideration to the fact that RZBC Juxian was a newly founded company. Additionally, RZBC questioned the Department's fundamental financial ratio analysis. Therefore, the Department has reexamined record information, again using the guidelines for ascertaining a company's creditworthiness as set forth in 19 CFR 351.505(a)(4)(i)(A)-(D).

Based on our final analysis we have determined that RZBC Juxian was uncreditworthy in 2006,

[6] As indicated below, we have determined that Yixing did not receive preferential lending in these years.

RZBC Co. was uncreditworthy in 2007, and the combined entity RZBC was creditworthy in 2008 and 2009. In the years we determined RZBC companies to be uncreditworthy, we found their financial information indicated that the companies could have problems meeting their costs and financial obligations with cash flow, making them a significant credit risks to lenders. Moreover, as stated above, there was no record evidence to suggest that the health of the citric acid industry, or of RZBC companies, was due to improve in the near future for those years. For further analysis, *see* RZBC Final Creditworthiness Determination. *See also* Comment 18, below.

Analysis of Programs

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

I. Programs Determined To Be Countervailable

A. Government Policy Lending

In the *Investigation*, the Department found that the Shandong Provincial government supported its citric acid industry with policy loans. We also found that there was not a national program or a Jiangsu Province program of policy lending to citric acid producers. *See Investigation*, and accompanying IDM at Comment 5. In this review, Petitioners provided new evidence that caused the Department to examine again allegations of national and Jiangsu provincial policy lending programs. *See* NSA Initiation Memorandum at 6.

As explained below, we determine that a national level policy lending program exists for citric acid as part of the PRC's "light industry" and that there is not a Jiangsu Province policy lending program for citric acid. Because no information has been provided that would cause us to reach a different determination from the *Investigation* for Shandong Province, we determine that the Shandong government's policy lending program continues.

1. National Policy Lending

For the reasons that are fully explained in the *Preliminary Results*, we determine that the GOC has a policy in place to encourage and support the restructuring and updating of the fermentation industry, as one of a limited number of selected key sectors of light industry specifically identified in the *Light Industry Plan*. The *Light Industry Plan* expressly outlines a number of measures to support the fermentation industry, including the encouragement of financial institutions to provide credit. Moreover, consistent with *CFS from the PRC*, we determine that loans from policy banks and SOCBs in the PRC constitute a direct financial contribution from the government under section 771(5)(D)(i) of the Act and that they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercials loans. Finally, we determine that the loans are *de jure* specific because of the GOC's policy, as illustrated in the *Light Industry Plan*, to encourage and support the restructuring and updating of the fermentation industry, including citric acid. As the *Light Industry Plan* became effective in 2009, the Department's finding is limited to loans provided on or after January 1, 2009.

To calculate the benefit, we used the benchmarks described in the "Benchmarks and Discount Rates" section above and the methodology described in 19 CFR 351.505(c)(1) and (2). For loans to Yixing-Union, we divided the benefit by Yixing-Union's total 2009 sales pursuant to 19 CFR 351.525(b)(6)(i). For loans to Cogeneration, we divided the benefit by Yixing's consolidated sales in 2009, in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we determine that Yixing-Union received a countervailable subsidy of 3.66 percent *ad valorem* in 2009. We are treating RZBC's loans as having been given under the Shandong Policy Loan Program discussed next.

2. Shandong Province Policy Loans Program

Consistent with the *Investigation*, we determine that the Shandong Province policy loans constitute a direct financial contribution from the government under section 771(5)(D)(i) of the Act and that they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. We also determine that the loans are *de jure* specific because of the Government of Shandong's policy to develop the citric acid industry.

To calculate the benefit, we used the benchmarks described in the "Benchmarks and Discount Rates" section above and the methodology described in 19 CFR 351.505(c)(1) and (2). Based on our finding that RZBC Juxian was uncreditworthy in 2006 and RZBC Co. was uncreditworthy in 2007, we have applied benchmarks for uncreditworthy companies to applicable loans.

In the *Preliminary Results*, we did not have information on RZBC's interest payments that allowed us to calculate loan benefits for RZBC Co, RZBC Juxian, RZBC IE and RZBC Group separately in 2008 and 2009. After the *Preliminary Results*, RZBC reported all outstanding RZBC loans, and interest paid on these loans separately for 2008 and 2009.[7] Accordingly, for the final results, we have calculated separate countervailable subsidy rates for 2008 and 2009 for this program. To calculate these rates we divided the RZBC companies' benefit amounts in the respective years by the corresponding sales amounts for 2008 and 2009.

In the new loan charts submitted after the *Preliminary Results*, RZBC Co., RZBC Juxian and RZBC I&E reported banker acceptances outstanding in 2008 and 2009 that had not been reported in the loan tables used in the *Preliminary Results*.[8] Record information indicates that RZBC companies incurred interest expenses for these banker acceptances and obtained them through state-owned commercial banks.[9] Therefore, we have included the banker acceptances in our calculation of the benefit conferred the Shandong Province Policy Loan Program.[10]

On this basis, we determine that RZBC received a countervailable subsidy of 2.16 percent *ad valorem* in 2008 and 2.97 percent in 2009.

---

[7] *See* RSQR6 at Exhibits 7(a)-7(f) and 8(a)-8(f). *See also* RSQR2 at 3 and Exhibit 12.
[8] *See* RSQR4 at Exhibits 9(a)-9(b) and 10(a)-10(c). *See also* RSQR2 at 3 and Exhibit 12.
[9] *Id.*
[10] *See Coated Paper from the PRC*, and accompanying IDM at Comment 38.

B. Export Seller's Credit for High- and New-Technology Products

Consistent with the *Investigation*, we determine that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

To calculate the subsidy, we used the benchmark interest rates described in the "Benchmarks and Discount Rates" section above and the methodology described in 19 CFR 351.505(c)(1)and (2). Where applicable, we use uncreditworthy benchmarks. As with Shandong Province Policy loans, we received information that separated interest payments in 2008 and 2009, and information covering all of calendar year 2008. Accordingly, for the final results, we have calculated separate countervailable subsidy rates for 2008 and 2009 for this program. To calculate these rates we divided the RZBC companies' benefit amounts in the respective years by the corresponding exports sales amounts for 2008 and 2009.

On this basis, we determine that RZBC received a countervailable subsidy of 4.25 percent *ad valorem* in 2008 and 1.91 in 2009.

C. Reduced Income Tax Rates to FIEs Based on Location

In the *Investigation* and again in the *Preliminary Results*, the Department found that Yixing-Union paid a reduced tax rate under this program. For purposes of this review, Yixing-Union paid at the reduced rate on its 2007 tax return (filed in 2008). The program was not used by any responding company for the tax returns filed in 2009.

Consistent with the *Investigation* and the *Preliminary Results*, we determine that the reduced tax rates paid by FIEs under this program confer a countervailable subsidy. The reduced rates are a financial contribution in the form of revenue foregone by the GOC and provide a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the reductions afforded by this program are 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 Yixing-Union as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during 2008 by Yixing-Union's sales during 2008, pursuant to 19 CFR 351.525(b)(6)(i). To compute the amount of the tax savings, we compared the tax rate Yixing-Union paid to what it would have paid in the absence of the program (30 percent).

On this basis, we determine that Yixing-Union received a countervailable subsidy of 0.21 percent *ad valorem* under this program in 2008.

D. "Two Free, Three Half" Program

In the *Investigation* and again in the *Preliminary Results*, the Department found that Yixing-Union paid a reduced tax rate under this program. For purposes of this review, Yixing-Union paid at the reduced rate on its 2007 tax return (filed in 2008). The program was not used by any responding company for the tax returns filed in 2009.

Consistent with the *Investigation* and the *Preliminary Results*, we determine that the reduced tax rates paid by FIEs under this program confer a countervailable subsidy. The reduced rates are a financial contribution in the form of revenue foregone by the GOC and provide a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing-Union as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the 2008 by Yixing-Union's sales during the 2008, pursuant to 19 CFR 351.525(b)(6)(i). To compute the amount of the tax savings, we compared the tax rate Yixing-Union paid to what it would have paid in the absence of the program.

On this basis, we determine that Yixing-Union received a countervailable subsidy of 0.41 percent *ad valorem* under this program in 2008.

E. Local Income Tax Exemption/Reduction Program for "Productive" FIEs

In the *Preliminary Results*, the Department found that Yixing-Union and Cogeneration were exempted from or paid reduced local income tax rates under this program on their 2007 tax returns (filed in 2008). The program was not used by any responding company for the tax returns filed in 2009.

Consistent with the *Preliminary Results*, we determine that the exemptions/reduced rates afforded to FIEs under this program confer a countervailable subsidy. The exemptions/reduced rates are a financial contribution in the form of revenue foregone by the GOC and provide a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing-Union and Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1). For tax savings enjoyed by Yixing-Union, we divided the benefit by Yixing-Union's total 2008 sales pursuant to 19 CFR 351.525(b)(6)(i). For tax saving enjoyed by Cogeneration, we divided the benefit by Yixing's 2008 consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii). To compute the amount of the tax savings, we compared the tax rate Yixing-Union and Cogeneration paid to

what they would have paid in the absence of the program (3 percent).
On this basis, we determine that Yixing-Union received a countervailable subsidy of 0.34 percent *ad valorem* under this program in 2008.

F. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs

In the *Preliminary Results*, the Department found that Cogeneration paid a reduced tax rate under this program on its 2007 and 2008 returns (filed in 2008 and 2009, respectively).

Consistent with the *Preliminary Results,* we determine that the reduced tax rates paid by FIEs under this program confer a countervailable subsidy. The reduced rates are a financial contribution in the form of revenue foregone by the GOC and provide a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/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 Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during each calendar year by Yixing's consolidated sales during that year, pursuant to 19 CFR 351.525(b)(6)(iii). To compute the amount of the tax savings, we compared the rate Cogeneration would have paid in the absence of the program (30 percent in 2008 for the 2007 return and 25 percent in 2009 for the 2008 return).

On this basis, we determine that Yixing-Union received a countervailable subsidy of 1.20 percent *ad valorem* under this program in 2008 and 0.18 in 2009.

G. Reduced Income Tax Rate for High or New Technology Enterprises

In the Preliminary Results, we found that RZBC Co. paid a reduced tax rate under this program on its 2008 tax return (filed in 2009).

Consistent with the *Preliminary Results*, we determine that the reduced income tax rate applied to RZBC Co. is a financial contribution in the form of revenue foregone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs*, and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we treated the income tax savings enjoyed by RZBC Co. as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during 2009 by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales during 2009, pursuant to

19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). To compute the amount of the tax savings, we compared the rate RZBC Co. would have paid in the absence of the program (25 percent).

On this basis, we determine that RZBC received a countervailable subsidy of 0.29 percent *ad valorem* under this program in 2009.

H. Income Tax Credits on Purchases of Domestically Produced Equipment

In the Preliminary Results, the Department found that RZBC Co. claimed credits under this program on its 2007 and 2008 tax returns filed respectively in 2008 and 2009. RZBC Juxian claimed credits under this program on its 2008 tax return filed in 2009. No other companies used this program during the POR.

Consistent with the *Preliminary Results*, we determine that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings in each calendar year by RZBC Co's, RZBC I&E's, and RZBC Juxian's sales during that year, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c).

On this basis, we determine that RZBC received a countervailable subsidy of 0.20 percent *ad valorem* under this program in 2008 and 1.38 percent in 2009.

I. VAT and Duty Exemptions on Imported Equipment

Consistent with the *Investigation*, we determine that the VAT and duty exemptions provided by the GOC under this program constitute financial contributions in the form of revenue foregone under section 771(5)(D)(ii) of the Act, and that they confer a benefit in the amount of the exemption. *See* 19 CFR 351.510(a)(1). We further determine that the VAT and duty exemptions under this program are specific under section 771(5A)(D)(i) because the program is limited to FIEs and certain domestic enterprises.

Normally, we treat exemptions from indirect taxes and import charges as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

Where the VAT and duty exemptions in a given year were less than 0.5 percent of the companies' sales, we expensed the exemptions in the year in which they were received,

consistent with 19 CFR 351.524(a). For those years in which the VAT and duty exemptions were greater than 0.5 percent of the companies' sales for that year, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL.

To calculate the benefit, we used the methodology for non-recurring benefits described in 19 CFR 351.524(b). Specifically, we used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for each calendar year in the POR. We used benchmark discount rates for uncreditworthy companies to calculate the amount of the benefit for Yixing-Union or Cogeneration for subsidies received in under this program. RZBC companies did not report receiving applicable subsidies in years in which we found them to be uncreditworthy. Next, we divided the amounts allocated to each calendar year by the relevant sales in that period. VAT and duty exemptions received by RZBC Co. and RZBC Juxian were divided by the combined sales of RZBC Co., RZBC Juxian, and RZBC I&E. The exemptions received by Cogeneration were divided by Yixing's consolidated sales and, the exemptions received by Yixing-Union were divided by Yixing-Union's total sales.

On this basis, we determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008. Yixing's countervailable subsidies in 2008 and 2009 were 0.79 percent and 0.34 percent, respectively.

J. Provision of Sulfuric Acid for LTAR

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that the producers of the sulfuric acid purchased by RZBC and Yixing-Union were "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we determine that citric acid producers have received a financial contribution from the government in the form of the provision of a good. *See* section 771(5)(D)(iii) of the Act.

To determine whether the government's provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. Potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See Softwood Lumber from Canada*, and accompanying IDM at "Market-Based Benchmark" section.

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

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

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

In the instant review, the GOC reported that Chinese state-controlled and collectively-controlled sulfuric acid producers accounted for 56 percent of sulfuric acid production volume in 2008 and 54 percent of domestic sulfuric acid production in 2009.[11] *See* GNSASQR1, Part 2 at 3. In addition, the GOC reports that in 2008 and 2009, respectively, Chinese domestic production accounted for 97.09 and 95.47 percent of domestic consumption of sulfuric acid. *See* GNSAQR at 3. The fact that Chinese SOEs were responsible for such a large percentage of domestic production volume and that imports accounted for such a small share of domestic consumption, makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *See CVD Preamble*, 63 FR at 65348. As further evidence of the government's involvement in the Chinese sulfuric acid market, the GOC reports that it imposed a temporary export tax on sulfuric acid from February 2008 to June 2009. *See* GNSASQR1, Part 2 at 8. Such an export restraint can discourage exports and increase the supply of sulfuric acid in the domestic market, and possibly result in domestic prices that are lower than they would be otherwise. *See KASR from the PRC*, and accompanying IDM at 15. For these reasons, we determine that domestic prices in the PRC cannot serve as viable, tier-one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark.

Turning to tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, Petitioners have placed on the record export values for sulfuric acid from Canada, the European Union, Thailand, India, and the United States in 2009 taken from trade statistics compiled by Canadian Customs, Eurostat, Thai Customs, the Department, the U.S. International Trade Commission, and Global Trade Atlas. *See* PNSA2 at 7-8 and Exhibit 18; s*ee also* Benchmark Submission at 3 and Exhibit 4. The average of the export prices provided by Petitioners represents an average of commercially-available, world market prices for sulfuric acid that would be available to purchasers in the PRC. We note that the Department has relied on similar pricing data from export statistics in other recent CVD proceedings involving the PRC.[12] Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate a single benchmark by month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one

[11] As we have explained elsewhere, these reported ownership percentages may understate the share of production accounted for by SOEs and collectives because of the GOC's method of classifying possible SOEs as FIEs. *See, e.g., Certain Paper from the PRC*, and accompanying IDM at 22.

[12] *See, e.g., Seamless Pipe from the PRC*, 75 FR at 9174; *OCTG from the PRC*; *CWP from the PRC*, and accompanying IDM at 11; and *LWRP from the PRC*, and accompanying IDM at 9.

or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we averaged the international freight rates from Canada, the European Union, Thailand, India and the United States to Shanghai, submitted by Petitioners. *See* PNSA2 at 6 and Exhibit 18, and Benchmark Submission at 4 and Exhibits 2 and 5. We also added inland freight in the PRC based on the respondents' sulfuric acid purchase information,[13] import duties as reported by the GOC, and the VAT applicable to imports of sulfuric acid into the PRC,[14] as both RZBC and Yixing-Union reported their prices to the Department inclusive of inland freight and VAT.

In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. *See, e.g., PC Strand from the PRC*, and accompanying IDM at Comment 13. Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost. *See* Benchmark Submission at Exhibit 4.

The submitted benchmarks covered calendar year 2009. Therefore, we used the benchmark calculated for January 2009 in our calculations for 2008.

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

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided a list of industries that purchase sulfuric acid directly. Using the Industrial Classification for National Economic Activities published by the National Bureau of Statistics, the GOC identifies users in three major industrial categories: Mining, Manufacturing and Electric Power, Gas and Water Production and Supply. *See* GNSAQR at Exhibit 2. The three major industrial categories include 44 more specific categories, 37 of which fall under Manufacturing. These more specific product categories include such items as special chemical manufacturing and manufacture of household chemicals. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See LWRP from the PRC*, and accompanying IDM at Comment 7; *see also KASR from the PRC*, and accompanying IDM at "Provision of Wire Rod for Less Than Adequate Remuneration," and Comment 7 below.

Based on the above, we determine that the GOC conferred a countervailable subsidy on RZBC

[13] *See* RZBC NSA Response at 3-4 and Exhibits 5 and 6.
[14] *See* GNSASQR at A5.

and Yixing-Union through the provision of sulfuric acid for LTAR. To calculate the amount of the benefit, we took the difference between the delivered world market price and what each respondent paid for sulfuric acid, including delivery charges, for each month during the POR. We then totaled the benefit for each calendar year and divided the amount by the sales in that period.

On this basis, we determine that RZBC received a countervailable subsidy of 0.17 percent *ad valorem* in 2008 and 0.59 percent *ad valorem* in 2009. Yixing-Union's countervailable subsidies in those years were 2.63 percent and 11.82 percent, respectively.

K. Land-Use Rights Extension in Yixing City

In 1996, HPP (Cogeneration's predecessor) contributed land-use rights as part of its investment in the establishment of a joint venture, Cogeneration. HPP received its shares in the company and continued to hold the land-use rights. In 2003, Cogeneration applied to the Land Resources Bureau to have the land-use rights transferred and received a granted land-use rights certificate. The certificate that was issued set the term of the land-use rights as 50-years from 2003 (*i.e.*, until 2053) rather than 50 years from 1996, the year in which the land-use rights were contributed to the joint venture.

Consistent with the *Investigation*, we determine that the additional seven years of land-use rights confers a countervailable subsidy on Cogeneration. Cogeneration received a financial contribution in the form of revenue foregone by the GOC on the seven additional years included on the land-use rights certificates, and a benefit in the amount of the foregone revenue. *See* section 771(5)(D)(ii) of the Act. Further, because industrial land-use rights in the PRC are granted for 50 years and Cogeneration received its rights for 57 years, we determine the additional seven years to be specific to Cogeneration within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the initial value of the land by 50 years to derive a per-year amount paid for the land-use rights. We then multiplied this amount by seven years and treated the result as the amount of the revenue foregone. In accordance with 19 CFR 351.524(b)(2), we conducted the "expense" test by dividing the grant amount by Yixing-Union's and Cogeneration's total sales in 2003, and found that the benefit was greater than 0.5 percent.[15] Accordingly, we are allocating the benefit over the ten-year AUL, using the discount rate described in the "Benchmarks and Discount Rates" section above. We divided the allocated amount by Yixing's consolidated sales during the 2008 and 2009, pursuant to 19 CFR 351.525(b)(6)(iii).

On this basis, we determine that Yixing-Union received a countervailable subsidy of 0.07 percent *ad valorem* in 2008 and 0.06 percent in 2009.

L. Other Subsidies Received by RZBC

[15] We note that we did not have inter-company sales between Yixing-Union and Cogeneration in 2003 to subtract. However, the result would not have changed.

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: GOC – RZBC's and Yixing-Union's Other Subsidies," the financial statements and tax returns submitted by the responding companies indicated that they received grants. For certain of the grants, the information submitted by the GOC and/or the responding companies sufficiently demonstrated specificity of the programs under which the grants were given. Where the information was not sufficient, we are employing an adverse inference and determining the programs to be specific.

Among these "Other Subsidies" to RZBC, are 17 different grant programs with measurable benefits during the POR. We determine that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Our specificity findings are described below.

M. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products

This program was established on July 25, 2007, pursuant to the *Provisional Measures on the Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products*. The purpose of the program is to optimize the import and export structure of high and new technology products. According to the GOC, the program is administered by the national Ministries of Finance and Commerce.

Although the GOC responded that export performance or potential is not considered, the implementing measures state, *inter alia*, that they (the measures) are being formulated "to improve the quality and benefits of exports." Also, RZBC states with respect to the two grants it received under this program that "the company must be an exporting company and have export products." *See* RSQR1, at first Section III, App 1. Therefore, we determine that the program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the grants by RZBC Co.'s and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008 and a subsidy of 0.02 percent *ad valorem* in 2009.

N. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers

The fund was established pursuant to *Development Guidelines of Shandong on New Type Industrialization* and *Opinion on Incubation of One Hundred Key Enterprises' Technical Centers and Improvement of their Initiatives*, with distributions occurring under *the Interim Measures on the Special Fund for the Establishment of Key Enterprise Technology Centers in Shandong Province*. It is administered by the Shandong Finance Department and the Shandong Economic and Trade Commission. The fund's purpose is to support the establishment of technical centers by key enterprises by providing funds for the purchase of equipment, training,

technical cooperation and communication.
Because the fund is limited to "key enterprises," with the establishing legislation indicating there would only be 100, we determine that the program is specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's combined sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.13 percent *ad valorem* in 2008.

O. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River

This program was established pursuant to the State Council's *Comprehensive Work Plan on Energy Conservation and Emission Reduction (Guo Fa* 2007 No. 7115) and the State Council's mandate to "strengthen pollution control of Three Rivers, Three Lakes, and the Songhua River." It was implemented under the *Provisional Measure on Special Fund for Pollution Control of Three Rivers, Three Lakes and the Songhua River* promulgated by the Ministry of Finance on November 23, 2007. According to the GOC, the program is administered by the Shandong Finance Department and the Shandong Environmental Protection Bureau. The purpose of the program is to enhance pollution control efforts by financing projects affecting the Huaihe River, Haihe River, Liaohe River, Taihu Lake, Chaohu Lake, Dianchi Lake and the Songhua River.

Because the fund is limited to enterprises located in these designated areas, we determine that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.31 percent *ad valorem* in 2009.

P. Rizhao City: Subsidies to Encourage Enterprise Expansion

According to RZBC it received grants from Rizhao City the purpose of which is to encourage enterprise expansion in order to increase tax revenues. Each grant is linked to a specific area of achievement and the approval documents name the companies that received the grants.

Because the grants were given to a limited number of enterprises, we determine that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit for 2008, for RZBC Group, we divided the amount approved by the combined sales of RZBC in the year of approval and found that the amount was less than 0.5 percent. For 2008, for RZBC Co., we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. For 2009, for RZBC Co., we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.05 percent *ad valorem* in 2008 and 0.04 in 2009.

Q. Rizhao City: Subsidy for Antidumping Investigations

According to RZBC, it received grants from Rizhao City due to RZBC's involvement in foreign antidumping investigations. RZBC's response indicates that in awarding the grants, the government considered whether the company made export sales and cooperated in the antidumping investigations. In RSQR1 at Exhibit CVDS2-40, RZBC submitted an approval document from a local authority that demonstrates this program targets firms that cooperate in antidumping investigations.

Because the grants were contingent upon exportation, we determine that this program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

R. Shandong Province: Subsidy for Antidumping Investigations

As with the Rizhao City program relating to antidumping investigations, RZBC stated that that in awarding these grants, the government considered whether the company made export sales and cooperated in the AD investigations. In RSQR1 at Exhibit CVDS2-24, RZBC submitted an approval document from a local authority that demonstrates this program targets firms that cooperate in antidumping investigations.

Because the grants were contingent upon exportation, we determine that this program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the

subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

S. Subsidy for Technique Improvement

The grant approval documents describing this program are proprietary information. *See* RZBC Prelim Calc Memo for further discussion.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's relevant sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

For the programs listed below, the submitted information was not sufficient to conduct a specificity analysis.

T. Fund for Energy-saving Technological Innovation

This program was established on August 10, 2007, pursuant to the *Circular on the Issuance of Interim Measures on Financial Award Funds to Energy-saving Technological Innovation*. Under the program, enterprises whose energy-saving innovation projects result in energy savings that exceed 10,000 tons of coal will receive an award. The standard award is RMB 200 per ton of coal for the eastern Chinese provinces and RMB 250 per ton of saved coal for the mid-western provinces. The purpose of the program is to encourage reduced energy consumption. According to the circular, the program was set to terminate on December 31, 2010. The program is administered by the national Ministry of Finance and the NDRC.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's combined sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.10 percent *ad valorem* in 2009.

U. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology

This program was established pursuant to the *Provisional Measures Shandong Special Fund for Energy and Water Saving*, and implemented on November 8, 2007, under the Circular of the Shandong Finance Department and Shandong Economic and Trade Commission establishing

Provisional Measures on Shandong Award Fund for Industrialization of Key Energy-saving Technology (Lu Cai Jian {2007} No. 68). The purpose of the program is to encourage reductions in energy consumption and to accelerate the industrialization of key energy-saving technologies in Shandong Province. According to the GOC, the program is administered by the Shandong Finance Department.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.07 percent *ad valorem* in 2008.

V. Shandong Province: Environmental Protection Industry R&D Funds

This program was established on September 24, 2007, under the *Circular on the Issuance of Administrative Rules on Special Funds for Technology R&D Projects of the Environmental Protection Industry of Shandong Province*. It is administered by Shandong Province Finance Department and Shandong Environmental Protection Bureau. The purpose of the program is to promote pollution-preventing technologies and environmental product development, and to strengthen the innovation capability and market competitiveness of the environmental protection industry in Shandong Province.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008.

W. Shandong Province Construction Fund for Promotion of Key Industries

The grant approval documents describing this program are proprietary information.[16] Our analysis of this program using the proprietary information from these documents is provided in the RZBC Post-Preliminary Analysis.[17]

Information provided by RZBC indicates that this program is tied to subject merchandise.[18] Accordingly, to calculate the benefit, we divided the amount of the grant by RZBC's total subject merchandise sales in the year of approval and found that the amount was less than 0.5 percent.[19] Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total

[16] *See* RSQR1 at 10, Section III, Appendix 1, Standard Questions responses and Exhibit 2-32.
[17] *See* RZBC Post Preliminary Analysis at 3- 4.
[18] *See* RSQR1 at 10, Section III, Appendix 1, Standard Questions responses and Exhibit 2-32.
[19] *See* RSQR4 at Exhibits 13 and 14, and at Attachment 2 of this memorandum (Revised Exhibit 3(c) RZBC Co.

amount of the subsidy to the year of receipt. On this basis, we determine that RZBC received a countervailable subsidy of 0.48 percent *ad valorem* in 2009.

X. Enterprise Development Supporting Fund from Zibo City Financial Bureau

The grant approval documents describing this program are proprietary information.[20] Our analysis of this program using the proprietary information from these documents is provided in the RZBC Post-Preliminary Analysis.[21]

This grant was received by Sisha, RZBC Co.'s cross-owned parent company in 2003. At that time, the other three RZBC cross-owned companies considered during the POR did not exist. Accordingly, we have used Sisha's consolidated sales as reported by Sisha as the denominator for the 2003 allocation test pursuant to 19 CFR 351.524(b)(2). We found that the 2003 grant was greater than 0.5 percent of the reported 2003 consolidated sales for 2003. *Id.* Thus, because the 2003 grant was a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we are allocating the benefit over the AUL. We used the discount rates discussed in the "Benchmarks and Discount Rates" section to calculate the benefits in 2008 and 2009. Because RZBC Co. and Sisha ceased to be cross-owned after March 2008, we applied the Sisha/RZBC sales ratio. We then multiplied Sisha's grant allocation for 2008 by the Sisha/RZBC sales ratio to get a 2008 benefit attributable to RZBC. Similarly, we have applied the RZBC/Sisha sales ratio to the 2009 Sisha grant allocation to calculate the benefit attributable to RZBC in 2009. We then divided the benefit attributable to each of those years by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's combined sales in the year of the respective allocation to obtain the *ad valorem* subsidy amounts.

On this basis, we determine that RZBC received a countervailable subsidy of 0.10 percent *ad valorem* in 2008 and 0.08 percent *ad valorem* in 2009.

Y. Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project (Technology Special Fund)

According to the GOC, the Technology Special Fund was established in 2007 pursuant to the Shandong Province *Special Fund Notice.*[22] The GOC states that under this program local financial departments establish funds using their own budgets which are dedicated to supporting the re-development of the following:

- province-certified high-tech enterprises; "incubators" and "incubating enterprises;" and high-tech venture capital investment institutions;
- enterprises transformed from province-owned research institutions;
- technology intermediate agents; and

---

and RZBC Juxian's Consolidated Sales for derivation of subject merchandise sales denominator.

[20] *See* RSQR2 at Exhibit 1, Shandong Luxin High Technology Co., Ltd. CVD Response at 21 and Section III, Appendix 1, Standard Questions.

[21] *See* RZBC Post Preliminary Analysis at 4 - 5.

[22] *See* GSQR3 at Exhibit 3-1, page 1.

- certified high-tech achievements application projects and new products of provincial level or above, as stipulated in Article One of the *Special Fund Notice*.[23]

In addition to the general categories of eligible high-tech enterprises and support organizations listed above, Article One of the *Special Fund Notice* also states that use of the Technology Special Fund "shall be organized pursuant to long and middle science and technology development outline of our province." The provision also states that middle and small size enterprises, and producers of new energy-saving products, environmentally-friendly new material, electronic information, and bio-pharmaceutical products "shall be given priorities." Articles Four and Five of the *Special Fund Notice* describe the process whereby municipal Science and Technology Bureaus, Economic and Trade Commissions and Departments of Finance will collaborate with each other and their provincial-level counterparts to review certification materials submitted by applicants for the Technology Special Fund grants and determine which enterprises will receive these grants.

In light of the priority categories of enterprises stipulated in Article One of the *Special Fund Notice*, we determine that eligibility for these grants is limited as a matter of law to certain enterprises, *i.e.*, producers of certain high-tech products and, hence, is specific under section 771(5A)(D)(i) of the Act.

The *Special Fund Notice* provided by the GOC states at Article Three that "high-tech venture investment institutions," such as HTI, among other qualified entities, are entitled to two years of support after being listed."[24] Approval documentation provided by RZBC indicates that HTI was listed for support under this program in 2007.[25] Based on the two-years-of-support provision of the *Special Fund Notice*, we are treating the grant disbursements received by HTI under the Technology Special Fund program as approved in 2007. Accordingly, for the allocation test specified in 19 CFR 351.524(b)(2), we divided the sum of the 2007 and 2008 grants by HTI's total consolidated sales for 2007. The total grant amount approved was less 0.5 percent of HTI's consolidated sales in 2007. Therefore we have expensed the two grant amounts in the respective years received in accordance with 19 CFR 351.524(b)(2). Thus, the grant received in 2007 was expensed before the POR. We are allocating the total amount of the 2008 subsidy to the year of receipt

As explained above, RZBC and HTI were cross-owned in 2007, the year in which the Technology Special Fund grants were approved for HTI, but ceased to be cross-owned after 2008. Because HTI was cross-owned with RZBC for only part of 2008, we adjusted the 2008 benefit for HTI's grant based on the RZBC/HTI sales ratio.[26] We added Sisha's and RZBC's sales to the reported HTI sales denominator, which did not include them. Accordingly we have calculated RZBC's share of the total HTI grant benefit in 2008 by multiplying the 2008 grant amount by the RZBC/HTI sales ratio. We divided the adjusted benefit amount by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's combined sales in 2008 to obtain the *ad valorem* subsidy amount

[23] *Id.*
[24] *See* GSQR3 at Exhibit 3-1, page 1.
[25] *See* RSQR2 at Exhibit 2, HTI CVD Response at Exhibit 6 attached to the HTI CVD Response.
[26] *See* RZBC Post-Preliminary Analysis at Attachment 2. *See also* RZBC Final Calc Memo.

On this basis, we find that RZBC received a countervailable subsidy under the Technology Special Fund program of 0.14 percent *ad valorem* in 2008.

Z. Rizhao City: Special Fund for Enterprise Development

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2009.

AA. Rizhao City: Technological Innovation Grants

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

BB. Rizhao City: Technology Research and Development Fund

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

CC. Shandong Province: Waste Water Treatment Subsidies

No further descriptive information was submitted.

To calculate the benefit, we divided the amounts approved for each year by the RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales for each the year of approval. We found that for all years but 2009, each amount was less than 0.5 percent. Therefore, in accordance with 19 CFR

351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that RZBC received a countervailable subsidy of 0.02 percent *ad valorem* in 2009.

DD. "Other Subsidies" Received by Yixing-Union

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: GOC – RZBC's and Yixing-Union's Other Subsidies," the financial statements and tax returns submitted by the responding companies indicated that they received grants. For certain of the grants, information submitted by the GOC and/or the responding companies sufficiently demonstrated specificity of the programs under which the grants were given. Where the information was not sufficient, we are employing an adverse inference and determining the programs to be specific.

Among these "Other Subsidies" to Yixing-Union are three different grant programs with measurable benefits during the POR.

We determine that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Our specificity findings are described below.

EE. Yixing City: Leading Enterprise Program

According to Yixing-Union, it received grants from Yixing City because it is a leading enterprise.

Because the grants were given to "leading" enterprises, we determine that the program is specific within the meaning of section 771 (5A)(D)(iii)(I) of the Act.

To calculate the benefit, we divided the amount approved by Yixing-Union's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that Yixing-Union received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

FF. Yixing City: Tai Lake Water Improvement Program

According to Yixing, grants under this program are limited to companies located around Tai Lake. Cogeneration was the recipient.

Because the grants under this program are limited to enterprises located in a designated geographic area, we determine that the programs is specific within the meaning of section 771(5)(D)(iv).

To calculate the benefit, we divided the amount approved by Yixing-Union's sales in the year of

approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that Yixing-Union received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

GG. Jiangsu Province Energy Conservation and Emissions Reduction Program

No further descriptive information was provided.

To calculate the benefit, we divided the amount approved by Yixing's consolidated sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we determine that Yixing-Union received a countervailable subsidy of 0.05 percent *ad valorem* in 2009.

II. Programs Determined To Be Not Countervailable

A. Jiangsu Province Policy Lending

In this administrative review, the Department has re-examined an allegation made in the investigation that a program of policy lending to the citric acid industry exists in Jiangsu Province. Petitioners contended that the GOC considers citric acid to be a "new biochemical product" or otherwise among food additive and fine chemical products encouraged by various plans. With regard to lending in Jiangsu Province, Petitioners claimed that citric acid is among the "biochemical products" and "special fine chemicals" encouraged in the Jiangsu Chemical FYP.

The GOC and Yixing-Union responded that there is no preferential lending program in Jiangsu Province for citric acid producers. The GOC further stated that while there are no official criteria that the NDRC uses to determine what constitutes a "new biochemical product," the NDRC has indicated that citric acid "is not considered a new biochemical product because it has been in existence for years." *See* GNSASQR1, Part 1 at 6. The GOC explained that if the NDRC expressly interprets plans in a certain way, the local authorities must follow the interpretation. However, if no NDRC interpretation exists, the GOC indicates that local officials might make their own interpretation of what is covered in the plan. *Id*.

With respect to the question of how the Jiangsu provincial government classifies citric acid, we asked Yixing-Union to report any product certifications it had received from either local or national governments. Yixing-Union reported receiving a "High Technology Product Certificate" in 2009. *See* YSQR3 at 1-2 and Exhibit 1. Yixing stated that it did not receive any benefit as a result of receiving the certificate other than the intangible benefits of improving its reputation. *Id*.

Accordingly, we determine that Jiangsu Province does not provide policy loans to the citric acid industry there.

III. Programs Determined Not to Confer a Measurable Benefit During the POR

Regarding the programs listed below, the net subsidy rates in the POR are less than 0.005 percent *ad valorem* or the benefits were expensed prior to the POR. Therefore, consistent with our past practice, we have not included these programs in our net CVD rate calculations. *See*, *e.g.*, *CFS from the PRC*, and accompanying IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE."

A. Special Funds for Energy Saving and Recycling Program (Yixing-Union)[27]
B. Water Resource Expense Reimbursement Program (Cogeneration) [28]
C. Shandong Province: Energy-saving Award
D. International Market Development Fund Grants for Small and Medium Enterprises

IV. Programs Determined Not to be Used[29]

A. Discounted Loans for Export-Oriented Industries
B. Loans Provided to the Northeast Revitalization Program
C. State Key Technology Renovation Project Fund
D. National Level Grants to Loss-making SOEs
E. Income Tax Exemption Program for Export-Oriented FIEs
F. Tax Benefits to FIEs for Certain Reinvestment of Profits
G. Preferential Income Tax Rate for Research and Development at FIEs
H. Preferential Tax Programs for Encouraged Industries
I. Preferential Tax Policies for Township Enterprises
J. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
K. Income Tax Exemption for FIEs Located in Jiangsu Province
L. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
M. Provincial Level Grants to Loss-making SOEs
N. "Famous Brands" Program – Yixing City
O. Funds for Outward Expansion of Industries in Guangdong Province
P. Administration Fee Exemption in the Yixing Economic Development Zone ("YEDZ")
Q. Tax Grants, Rebates, and Credits in the YEDZ
R. Provision of Construction Services in the YEDZ for LTAR
S. Grants to FIEs for Projects in the YEDZ
T. Provision of Land in the YEDZ for LTAR
U. Provision of Electricity in the YEDZ for LTAR
V. Provision of Water in the YEDZ for LTAR

[27] YSQR1 at 9 and Exhibit SS-8
[28] YSQR1 at 10 and Exhibit SS-14
[29] In this section we refer to programs preliminarily determined to be not used by the two participating respondent companies.

W. Provision of Land in the Zhuqiao Key Open Park for LTAR
X. Provision of Land in Anhui Province for LTAR
Y. Provision of Land to SOEs for LTAR
Z. Exemption from Land-use Fees and Provision of Land for LTAR in Jiangsu Province for LTAR
AA. Torch Program – Grant
BB. Anqui City Energy and Water Savings Grant
CC. Provision of Land in the Anqui Economic Development Zone ("AEDZ") for LTAR

V. Programs for Which More Information Is Required

A. Provision of Steam Coal for LTAR

Upon closer review of the information submitted by the GOC, we have determined that we need more information regarding the *de facto* specificity of this program before we can make a finding as to its countervailability. Accordingly we will address this issue in a future review. For further discussion of this issue, *see* Comment 6.

Analysis of Comments

General Issues

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

The GOC argues 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. Thus, the GOC claims, the Department should revoke its initiation of this review and every other CVD investigation thus far initiated.

GOC Claims Relating to the Statute: The GOC asserts that when analyzing the structure and context of the Act, Congressional intent is clear that the CVD law does not apply to NME countries. In the *Preliminary Results*, 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. The GOC explains, however, that under the proper tools of statutory construction the Department's conclusion is erroneous.

Specifically, citing *Chevron*, 467 U.S. at 843 and *Bell Atlantic*, 131 F.3d at 1047, the GOC argues that the Department must examine the statute's text, legislative history, and structure to ascertain whether Congress intended to prevent the application of CVD law to the PRC. If, after this analysis, Congressional intent is unclear, the Department may use its discretion to determine whether the CVD law should be applied to NMEs. If, however, Congressional intent is clear, the GOC argues that intention is the law and must be given effect.[30]

[30] *See Chevron*, 467 U.S. at 843, n.9.

The GOC maintains that the statutory analysis begins with the plain meaning of the statute under sections 701, 731, 751, and 771 of the Act. Citing *Alaska*, 456 F.3d at 104, the GOC argues that such analysis 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. The GOC further claims that according to well-established canon of statutory interpretation, the use of different words or terms within a statute demonstrates that Congress intended to convey different meanings for those words. Relying on these precepts, the GOC asserts that provisions of the CVD law cannot be wholly segregated from those of the AD law (and *vice versa*), that the two were implemented jointly in the Department's regulations and, consequently, that the meaning of a particular provision cannot be viewed in the vacuum of only the AD or CVD discipline. Thus, the GOC contends, the Department erred in the *Preliminary Results* and in *CFS from the PRC* by limiting its discussion to sections 701 and 771(5) and (5A) of the Act.

As an example the GOC points to the Department's explanation 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.[31] The GOC notes, however, that 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, the GOC contends 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 the GOC, 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. The GOC states that while sections 771(5) and (5A) of the Act do not contain a reference to NMEs, the term is used notably in section 771(18) of the Act which describes the criteria for determining whether a country is an NME. The GOC points, in particular, to the fact that Congress limited any judicial review of NME status to AD investigations and made no mention of judicial review of NME status in CVD investigations. The GOC contends that it is unreasonable to believe that Congress would have limited judicial review of NME designation in one type of investigation but not the very same designation in another. Moreover, the GOC argues, the absence of any references to NMEs in the subsections of section 771 dealing with CVDs and the inclusion of such references in subsections regarding AD make clear that only ADs were to apply to NMEs.

Finally, and 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*. Rather, according to the GOC, 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).[32] Therefore, the GOC claims that the Department cannot legitimately rely on *GOC v. United States* for any purpose other than its jurisdictional finding.

[31] *See CFS from the PRC*, and accompanying IDM at Comment 1.
[32] *See Steel Co.*, 523 U.S. at 94-95.

GOC Claims Relating to *Georgetown Steel* and Subsequent Legislative History: The GOC contends 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.[33] According to the GOC, in *Georgetown Steel* the CAFC addressed the very issue presented here – whether section 303 of the Act (which is virtually identical to the current amended Act) allowed the application of CVDs to NME countries. The GOC argues 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.[34] Moreover, for two decades following *Georgetown Steel*, the GOC states that the Department dismissed CVD petitions involving NME countries based on the CAFC's statutory interpretation,[35] reasoning that Congress could not have intended to apply the CVD law to NMEs. The GOC argues that the Department cannot completely reverse that conclusion without any explanation of how the CVD law might apply to some but not other NMEs.[36]

The GOC claims that the Congress also expressly accepted this long-standing interpretation and that 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.[37] In particular, the *OTCA of 1988* was the first opportunity for Congress to alter the finding in *Georgetown Steel* and, according to the GOC, it refused to do so as evidenced by the rejection of a provision that would have given the Department the discretion to apply the CVD law to NMEs.[38] The same provision made clear, in the GOC's view, that the Department did not have discretion in deciding whether to apply the CVD law to NMEs. The GOC concludes that the rejection of this provision 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 *OTCA of 1988* and the Congressional reaction to *Georgetown Steel.* The GOC states that Congress also failed to amend the CVD laws in 1994, in enacting the *URAA* and in repealing section 303 of the Act, providing additional evidence that Congress agreed that the statute proscribes application of CVDs to NMEs.

GOC Claims Relating to *Sulfanilic Acid from Hungary*: The GOC states that the Department continued its policy of not applying the CVD law to NMEs after the above-cited legislation was enacted citing, in particular, *Sulfanilic Acid from Hungary*. According to the GOC, the Department determined that it could not apply the 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 possible differences between Hungary and Soviet-style NMES of the 1980s. The GOC further asserts that in the year prior to graduating to ME status Hungary was at the same economic level as the PRC is currently. Thus, the GOC argues, the Department has impermissibly interpreted the very same statute to conclude in *CFS from the PRC* that the CVD law can apply to some NMEs, while only four years earlier finding that the CVD law cannot be

---

[33] *See NLRB v. Bell Aerospace*, 416 U.S. at 274-275; *see also San Huan New Materials*, 161 F.3d at 1355.
[34] *Id.* at 1314 and 1318.
[35] *See Lug Nuts from the PRC*; *Oscillating Fans from the PRC*; *Certain Steel Products from Austria (General Issues Appendix)*; *SAA*, pt. 1; *CVD Regulations*; *Sulfanilic Acid from Hungary*.
[36] *See CFS from the PRC*, and accompanying IDM at Comment 3.
[37] *See Merrill Lynch v. Curran*, 456 U.S. at 383, n. 66.
[38] The GOC refers to section 157 of H.R. 3. *See* H.R. Rep. No. 100-40, pt. 1, at 138 (1987).

applied to any NME.

Finally, the GOC asserts the application of the CVD law to the PRC is contradicted by the Department's failure to accord even one PRC industry involved in an AD investigation MOI status or to accord any individual PRC respondent ME status. As evidenced by the use of a country-wide rate for companies not accorded separate rate status in AD cases, the GOC argues 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.

RZBC agrees with the GOC that the Department's application of CVDs to imports from the PRC is illegal because of the PRC is an NME. Specifically, RZBC argues that the absence of any provisions in the statute regarding NMEs and CVD, while such provisions exist for NMEs and ADs, indicates that Congress did not intend for the CVD law to apply to NMEs. RZBC further contends that the CAFC addressed the applicability of the CVD law to NMEs in *Georgetown Steel* and the relevant provisions of the law have not changed since that time despite subsequent AD and CVD legislation.

The GOC makes additional arguments relating to double remedy should the Department not terminate this review based on the arguments presented above.

GOC Claims that a Double Remedy is Imposed: The GOC contends that Congress and the Department are aware that there is a potential for a double remedy when ADs and CVDs are imposed simultaneously. In support, the GOC points to section 772(c)(1)(C) of the Act which provides an offset to the AD margin for export subsidies. Second, the GOC contends that the Department began its "dual remedy practice" in *CFS from the PRC* without any explicit statutory or regulatory direction and, consequently, the Department has encountered a variety of scenarios not present in ME CVD cases and for which no specific statutory or regulatory direction exists. According to the GOC, the Department has responded by establishing PRC CVD-specific methodologies including the definition of "authority," the valuation of loans, and the treatment of privatizations.[39] Despite developing these new PRC-specific methodologies, the Department has been unwilling to undertake statutory and/or regulatory gap-filling measures to adjust for the double remedies it continues to impose on the PRC. The GOC states that this "disparate" approach does not reflect the kind of equilibrium essential to demonstrating good faith between the United States and the PRC, especially given the Department's belief that it has the authority to make novel adjustments to account for gaps in the law. Third, the GOC asserts 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 and, consequently, this methodology renders a countervailing remedy duplicative.

GOC Claims Regarding *GPXI*: Despite the position taken by the Department in *KASR AD Final*, the GOC contends that the CIT clearly held in *GPX I*, that the NME AD statute is designed to address subsidization of NME producers.[40] As a consequence, the *GPX I* court found that the Department's "dual imposition of CVD and AD law on products of NME countries creates issues

[39] *See, e.g., OCTG from the PRC*, and accompanying IDM at Comments 10, 13, 15-17, 20, 22, and 23; *see also OTR Tires from the PRC*, and accompanying IDM at Comments A.4, C.1-C.2, and F.3-F.10.
[40] *See GPX I*, 645 F. Supp 2d at 1242 (citing *Georgetown Steel*, 801 F.2d at 1316).

which *do not present themselves when AD margins for ME countries are calculated*."[41] Thus, according to the GOC, the *GPX I* court mandated that either the Department not apply the CVD law to the PRC or that it make certain adjustments to reduce the likelihood of double counting.[42]

This finding by the *GPX I* court leads the GOC to dispute the Department's position regarding the export subsidy offset provision in section 772(c)(1)(C) of the Act. Specifically, the GOC objects to the position taken by the Department in *KASR AD Final* that the absence of a similar provision for domestic subsidies implies that Congress did not intend for the Department to offset them. [43] The GOC contends, however, that the offset for export subsidies was created at a time when the Department did not apply CVDs to NMEs and, consequently, Congressional silence on domestic subsidy offsets cannot be seen as an affirmation that such offsets should not be made.

In conclusion, the GOC asserts 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.

GOC Claims Relating to the NME AD Methodology and Domestic Subsidies: The GOC restates its view that by disregarding the respondents' costs and expenses in the calculation of their normal value in the companion AD proceeding and relying on surrogate values, the Department eliminates all possible effects of countervailable domestic subsidies. Consequently, according to the GOC, the Department must adjust the AD rate to account for subsidies the respondent did receive. In doing this, the GOC contends that the focus in the AD case would be on the subsidized firm's level of dumping, as it is in ME situations involving both AD and CVD complaints, and not that firm's level of dumping in the absence of subsidies.
The GOC argues that the Department has opposed 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.[44] The GOC maintains that this ignores the automatic presumption of the surrogate methodology that domestic subsidies inherently do affect price. Thus, the GOC claims, no speculation is required.

The GOC further contends that the Department's focus on price alone is "misguided," claiming that even if the subsidy does not result in a firm lowering its price the subsidy will affect the firm's costs. These costs, however, are removed from the normal value calculation in NME cases and, thus, the effects of the subsidy are eliminated in the AD calculation.

The GOC acknowledges 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 claims it is not the case here. Furthermore, the GOC maintains that rejecting an offset for all domestic subsidies based on the possible effect of an as yet unknown subsidy program is

[41] *Id.* (emphasis in original).
[42] *Id.* at 1243.
[43] *See KASR AD Final*, and accompanying IDM at Comment 1.
[44] *Id.*

unreasonable.[45]

The GOC contends that the need to remove the effect of domestic subsidies from a company's dumping margin calculation is unique to NME cases. According to the GOC, the Department countervails a ME company's domestic subsidies due to the competitive advantage that company can achieve through reduced costs and expenses. Under the NME AD methodology, however, any competitive advantage is eliminated by artificially increasing the costs and expenses, with the result that double counting is inevitable because both the AD and CVD calculations effectively eliminate the effect of the subsidies. In other words, the GOC argues, if the NME AD methodology is employed, there is no need for a CVD-based remedy as well. In this connection, the GOC cites *GPX I* to the effect that, if the Department cannot ascertain the extent of double counting, it should refrain from imposing CVDs.[46] As an alternative, the GOC argues as it has in the concurrent AD proceeding, that the Department can apply an offset to the AD margin in the full amount of the domestic subsidy rate.

RZBC comments that the Department should refrain from imposing both AD and CV duties so long as it continues to apply the NME AD methodology to the PRC. According to RZBC, both the CIT, in *GPX I*, and the WTO, in WTO AB decision, have concluded that the Department's practice is in error because it results in double remedies. The Department has acknowledged that it has the discretion not to apply the CVD law to NMEs.[47] Thus, RZBC claims, the Department should use that discretion to avoid unnecessary and redundant litigation in the CIT and WTO.

Yixing points to the CIT's ruling in *GPX II* and *GPX III*. In the former, according to Yixing, the CIT held that the Department cannot apply the CVD law to NMEs because doing so can result in double remedies. The latter, Yixing states, held impermissible the Department's offset of CVDs against the AD margins. Consequently, the Court directed the Department to forego the imposition of CVDs.

Yixing claims that the double counting is acute in this case because the Department's margins are derived in large part from the provision of steam coal and sulfuric acid for LTAR. Yixing points to the Department's findings that the company's purchases of sulfuric acid are subsidized while at the same time using in the AD review a surrogate value for sulfuric acid that does not include any subsidies. Yixing claims that the result is a double remedy for a single, allegedly trade-distorting act. Yixing states that the CIT placed the burden of demonstrating no double remedy on the Department, and not on the respondent. Thus, Yixing contends, unless the Department can demonstrate no double counting is occurring, it should terminate this review.

Yixing further asserts that the Department also bears the burden of demonstrating how the application of different "undistorted" prices does result in more than double counting. Specifically, in the concurrent AD review, the Department used a surrogate value of $750 for sulfuric acid (based on Indonesian import values), while the "undistorted" benchmark world market price for that same input in the CVD review ranged from $146.65 to $263.22. Yixing claims that it is logically inconsistent and absurd to conclude that two different undistorted prices

[45] *See GPX I*, 645 F. Supp. 2d at n. 10.
[46] *See GPX I*, 645 F. Supp. 2d at 1243.
[47] *See Application of CVD Law*.

may apply to the same input. Yixing further asserts that such a result cannot occur in ME AD cases because the Department relies on the actual price paid for the input regardless of whether it was provided for LTAR, with the result that there is no double remedy.

Petitioners state that the Department has previously rejected all of the arguments summarized above in past CVD investigations and in the *Preliminary Results*, and has defended its positions before the CIT. Until the CAFC issues and final and conclusive decision, Petitioners urge the Department to remain consistent with its past precedent and to maintain the positions it is currently defending before the court.

Department's Position

We disagree with the GOC regarding the Department's authority to apply the CVD law to the PRC. The Department's positions on the issues raised are fully explained in multiple cases.[48] Congress granted the Department the general authority to conduct CVD investigations.[49] 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 . . ."[50] 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.[51]

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME."[52] The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well.[53] The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."[54] 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 . . ."[55] 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

---

[48] *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,* and accompanying 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; *Certain Coated Paper from the PRC,* and accompanying IDM at Comments 1and 3; and *Aluminum Extrusions,* and accompanying IDM at Comments 1 and 3.

[49] *See, e.g.*, sections 701 and 771(5) and (5A) of the Act.

[50] *See* section 701(a) of the Act.

[51] *See* section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

[52] *See Wire Rod from Poland* and *Wire Rod from Czechoslovakia*.

[53] *Id*.

[54] *Id*.

[55] *See* Georgetown Steel Memorandum.

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 memorandum, *Georgetown Steel* does not rest on the absence of market-determined prices, and the decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC. 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. [56]

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*.[57] The issue in *Georgetown Steel* was whether the Department could apply CVDs (irrespective of whether any ADs were also imposed) to potash from the USSR and the German Democratic Republic, and carbon steel wire rod from Czechoslovakia and Poland. The Department determined that those economies, which all operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to these exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them.[58] 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."[59] 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

[56] *Id* at 5.
[57] *See Georgetown Steel*, 801 F.2d at 1308.
[58] *See, e.g., Wire Rod from Czechoslovakia*.
[59] *See Georgetown Steel*, 801 F.2d at 1316.

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.[60]

The GOC and RZBC 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.[61] 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."[62] Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was *ultra vires*.

The GOC's and RZBC's further 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.[63] 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*

---

[60] *See Georgetown Steel*, 801 F.2d at 1318 (emphasis added).
[61] *Id*.
[62] *See GOC v. United States*, 483 F. Supp. 2d at 1282 (citing *Georgetown Steel*, 801 F.2d at 1318).
[63] *See, e.g.*, sections 771(5) and (5A) of the Act.

respect to products of the People's Republic of China."[64] 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."[65] 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."[66] 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.[67] Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME.[68] There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the *Accession Protocol* entered into effect. Although WTO agreements such as the *Accession Protocol* do not grant direct rights under U.S. law, the *Accession Protocol* contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO," contemplates the application of the CVD law to the PRC.[69] 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 and RZBC 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 the GOC's and RZBC's argument that sections 731 or 771 of the Act, or the Act as a whole, demonstrate that Congress did not intend

[64] *See* 22 U.S.C. § 6943(a)(1) (emphasis added).
[65] *See* 22 U.S.C. § 6901(8).
[66] *See* 22 U.S.C. § 6941(5).
[67] *See Accession Protocol.*
[68] *Id.*
[69] *See* 22 U.S.C. § 6941(5).

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). More importantly, the designation of a country as an NME has no consequence under the CVD law. The reference in section 771(18)(A) of the Act to "fair value" clearly relates to the determination of normal value in an AD proceedings, as evidenced by the alternate methodology for determining normal value in NMEs established under section 773(c) of the Act. Regardless, 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."[70] Again, and contrary to the GOC's and RZBC'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.

The GOC additionally argues 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.[71] 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).[72] 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.[73] However, the determination of whether the 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 and Yixing 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 I* court only held that the "potential" for double remedies may exist.[74] 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

[70] *See Butterbaugh*, 336 F.3d at 1342.
[71] *See generally* Georgetown Steel Memorandum.
[72] *See, e.g., Sulfanilic Acid from Hungary*.
[73] *See, e.g.,* Georgetown Steel Memorandum.
[74] *See GPX I*, 645 F. Supp. 2d at 1234.

to avoid a double remedy is possible, it would only be in the context of the AD review. We note that this position is consistent with the Department's decisions in recent PRC CVD cases.[75]

Regarding the respondents' arguments concerning *WTO AB Decision*, 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.[76] 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.[77] 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.[78] Specifically, with respect to the *WTO AB Decision*, 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.

Finally, with respect to Yixing's argument that the use of different "undistorted" values in the AD and CVD reviews is illogical, we note that the AD and CVD laws and regulations establish different methodologies and procedures for determining surrogate values in NME AD proceedings (*see* section 773(c)(4) of the Act and 19 CFR 351.408) and benchmarks in CVD proceedings (*see* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)). Because the AD and CVD reviews are different proceedings operating under different provisions of the statute and the Department's regulations, it is in no way surprising or illogical that different values would be used as a surrogate value in an NME AD proceeding and as a benchmark in a CVD proceeding.

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

The GOC asserts that the Department's sudden change of practice regarding the application of the CVD law to NMEs violates APA rulemaking procedures.[79] The GOC states that whenever the Department makes a new rule or changes a previous rule, it must comply with the APA's notice-and-comment procedures.[80] According to the GOC, the APA requires the agency to issue a public notice of the proposed change in rule in the *Federal Register*, to give interested persons an opportunity to participate through submission of written data, views, or arguments, and, after the consideration of these comments, to incorporate in the rules adopted a concise general statement of their basis and purpose.[81] The GOC asserts 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.

---

[75] *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.

[76] *See Corus I*, 395 F.3d at 1347-49; *accord Corus II*, 502 F.3d at 1375; and *NSK*, 510 F.3d at 1375.

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

[78] *See* 19 U.S.C. § 3533(g).

[79] *See* 5 U.S.C. § 553(c).

[80] *See Shinyei*, 355 F.3d at 1309.

[81] *See* 5 U.S.C. § 553(b), (c).

The GOC contends that the Department's long-standing statutory interpretation that the CVD law does not apply to NMEs meets the APA's definition of a "rule" at 5 U.S.C. § 551(4).[82] In support, the GOC points to three instances in which the Department allegedly created a binding rule regarding the imposition of CVDs against NMEs. Specifically, the GOC contends 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;[83] 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;[84] and 3) the Department again confirmed it did not intend to impose CVDs on NMEs when it promulgated its regulations in 1998.[85] For the last item, the GOC states that 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."[86] The GOC also points to the *CVD Preamble*, where the Department asserted 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.

The GOC contends that the Department did not follow APA procedures when it reversed its long-standing position concerning the application of CVDs to NME countries. While the Department issued a notice to the public on December 15, 2006,[87] almost one month after the *CFS from the PRC* petition was filed on November 20, 2006, the GOC states that the Department never addressed the comments made by the parties before making its preliminary and final decisions. The GOC concludes that because of the Department's failure to follow the required procedures, its actions in initiating this review and various CVD investigations on PRC products are unlawful, and such initiations should be revoked.

RZBC shares the views of the GOC that the Department's change in practice was subject to the APA's notice-and-comment procedures.

Petitioners state that the Department has previously rejected the arguments summarized above in past CVD investigations and in the *Preliminary Results*, and has defended its positions before the CIT. Until the CAFC issues and final and conclusive decision, Petitioners urge the Department to remain consistent with its past precedent and to maintain the positions it is currently defending

---

[82] *See Alaska Hunters*, 177 F.3d at 1031.

[83] *See Textiles from the PRC*, 48 FR 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.*

[84] *See Certain Steel Products from Austria*, 58 FR at 37261.

[85] *See CVD Regulations*, 63 FR at 65360.

[86] *Id*.

[87] *See Application of CVD Law*.

before the court.

Department's Position

As an initial matter, the Department notes that the GOC and RZBC, 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 and RZBC'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."[88] The Department's position on this issue is fully explained in *CFS from the PRC*.[89] 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.[90]

The GOC cites *Alaska Hunters*, 177 F.3d at 1033-34, to support its claim that the APA's requirements apply if the Department decides to apply the CVD law to an NME. However, in that case, the Federal Aviation Administration had published a notice of general application.[91] This is not analogous to the situation here, where the practice was developed on a case-specific basis – there was no broad notice of general application that the Department would never investigate future CVD complaints against NMEs.

The GOC points to Department actions that the GOC claims 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 the Department 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.[92] 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."[93] 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

---

[88] *See CFS from the PRC*, and accompanying IDM at Comment 2 (*citing* 5 U.S.C. § 553(b)(3)(A)).
[89] *Id*.
[90] *See GSA*, 77 F. Supp. 2d at 1359 (citing *SAA* at 892) ("Antidumping and countervailing proceedings . . . are investigatory in nature.").
[91] *Id*. at 1033; *see also Alaskan Guide Compliance*.
[92] *Id.*
[93] *Id*.; *see also Wire Rod from Czechoslovakia*.

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.[94]

The GOC further cites to *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."[95] 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 GOC'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.[96]

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 applying the CVD law to non-market economies. . . . We intend to continue to follow this *practice*."[97] 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.

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

Comment 3 Countervailability of Input Purchases Made Through Private Trading Companies

Affirmative Comments

The GOC argues that the provision of sulfuric acid by unrelated privately-held trading companies should not be countervailed because the Department has made no finding that the trading companies in question provided respondents with a financial contribution within the meaning of the statute. The GOC contends the 19 USC 1677(5) and the court decision in *Delverde SRL v. United States* dictate that the Department must find both a financial contribution and a benefit to the respondent end user. The GOC asserts that it is insufficient to find only a financial contribution to an unrelated trading company and then a benefit to an end user. The

---

[94] *See Lug Nuts from the PRC 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*.

[95] *See Certain Steel Products from Austria (General Issues Appendix)*, 58 FR at 37261.

[96] *See CVD Preamble*, 63 FR at 65360 (emphasis added). *See also Certain Steel Products from Austria (General Issues Appendix)*, 58 FR at 37261.

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

GOC states that in this case the Department made no findings that the trading companies from which the respondents purchased sulfuric acid received both a financial contribution and benefit by virtue of their purchase of sulfuric acid from state-owned producers. The GOC argues that absent a finding, the Department may not conduct an upstream subsidy analysis, but must instead demonstrate how the trading companies themselves provided a financial contribution. According to the GOC, this requires a finding that the trading companies themselves are "authorities" or were otherwise "entrusted or directed" by the government to provide a financial contribution. The GOC maintains that without the establishment of financial contribution, it makes no difference whether the price paid by the respondents was below the benchmark because there is no subsidy.

Rebuttal Comments

Petitioners submit that Department followed its established practice of countervailing purchases made through private entities that receive financial contributions from a government authority. Petitioners note that in recent determinations the Department has rejected the GOC's argument that the Department must establish that both the trading company and the respondent have received a financial contribution and benefit in order to countervail an input purchase through a private trading company. [98] Petitioners assert that in this case the Department has determined the GOC provided a financial contribution to the trading company (by providing sulfuric acid) and that at least a portion of the benefit is conferred on the respondents that purchase the sulfuric acid because the respondents are able to purchase it below the benchmark value. [99] Petitioners maintain that this methodology accurately captures the subsidy received by the respondents.

Department Position

We disagree with GOC that the Department is required to establish that the trading company itself provides a financial contribution in this situation. Under section 771(5)(B) of the Act, a subsidy is deemed to exist when there is a financial contribution "to a person" and a "benefit is thereby conferred." Consistent with *KASR from the PRC*,[100] *CWP from the PRC*,[101] *LWRP from the PRC*[102] and *OTR Tires from the PRC*,[103] we find that the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase the sulfuric acid, while all or some portion of the benefit is conferred on the respondent citric acid producers through their purchases of sulfuric acid from the trading company suppliers. Under these facts, the Department was not required to make separate finding that the trading companies provided financial contribution to the respondent citric acid producers.

---

[98] Petitioners cite *e.g.*, *CWP from the PRC,* and accompanying IDM at 9-10, *LWRP from the PRC,* and accompanying IDM at 8-9and *OTR Tires from the PRC*, and accompanying IDM.
[99] See *e.g.*, *CWP from the PRC,* and accompanying IDM at 9-10.
[100] *See KASR from the PRC,* and accompanying IDM at Comment 6.
[101] *See CWP from the PRC,* and accompanying IDM at 10 and Comment 7.
[102] *See LWRP from the PRC,* and accompanying IDM at 8.
[103] *See OTR Tires from the PRC,* and accompanying IDM at 10 and Comment D.4.

Case-Specific

Comment 4 Adjustment of the International Freight Benchmark Used to Measure the Benefit of Steam Coal Sold at Less than Adequate Remuneration ("LTAR")

Affirmative Comments

Petitioners assert that the freight calculation used in the *Preliminary Results* does not account for shipping distances. Petitioners suggest the Department remedy this deficiency by deriving a monthly average per-metric-ton, per-nautical-mile shipping cost to the port-to-port distances based on average freight rates from Australia and Indonesia. Petitioners contend that this methodology is consistent with our preliminary benchmark for internal freight, which does account for distance.

Rebuttal Comments

Yixing notes that there is no regulatory requirement for a delivery adjustment. Instead, it argues that the regulations direct the Department to use as benchmark a price that reflects what a firm paid or would have paid if it were to import the product. Given the prohibitive freight costs that Yixing-Union would incur if it sourced its steam coal from more distant countries, it argues that the Department should limit the freight benchmark to steam coal sourced from Indonesia.

Department's Position

As explained above, the Department is not finding a countervailable subsidy at this time with respect to the GOC's provision of steam coal. Thus, this issue is moot.

Comment 5 Whether Petitioners' Factual Information Submissions Were Properly Certified

Affirmative Comments

RZBC asserts that, pursuant to 19 CFR 351.303(g), submissions containing factual information must include certifications from the person officially responsible for the information and that person's legal counsel or other representative. RZBC alleges that Petitioners failed to provide the certification from the petitioning companies for any of their submissions. RZBC contends that this failure calls into question the accuracy of Petitioners' factual information and, thus, the Department must reject Petitioners' submissions.

Rebuttal Comments

Petitioners contend that they have certified the accuracy of new factual information as required by the Department's regulations. Petitioners agree that they did not certify the accuracy of factual information that was submitted by other parties to this administrative review. However, Petitioners do not believe that this deficiency conflicts with the Department's certification requirements.

Department's Position

19 CFR 351.303(g), states "a person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section." The regulation explicitly states that the certification contained in paragraph (g)(1) "must" be filed with each submission of factual information.

At this late stage in this review, we are not rejecting Petitioners' numerous submissions and are not requiring them to re-file those submissions with the proper certifications. We note that for some, but not all, of these submissions, Petitioners provided the certification required by paragraph (g)(2) of the regulation. However, Petitioners did not provide the certification required by paragraph (g)(1) of the regulation.

The certification regulation requires that a person must file with each submission containing factual information the certification required by paragraph (g)(1) and, if the person has legal counsel or another representative, also the certification required by paragraph (g)(2).[104] The certification requirement in (g)(1) applies to submissions containing factual information, regardless of whether that factual information is new or not, regardless of whether that factual information previously was placed on the record by another interested party, and regardless of whether the submitter's counsel was the one who procured the information. If the submitter has legal counsel or another representative, then the (g)(2) requirement also applies. Petitioners' arguments that they need not certify if the factual information was not new or was generated by another party, and that counsel's certification is sufficient if counsel was the one who obtained the information, are not correct readings of the regulation.

Comment 6 Whether Steam Coal at LTAR is Specific

Affirmative Comments

The GOC and Yixing dispute the Department's finding of *de facto* specificity with respect to the GOC's provision of steam coal. Yixing points to the *Preliminary Results* in which the Department cites to a list of six major industrial categories of direct purchasers of steam coal provided by the GOC. Three of these major categories were further broken down to 40 specific categories, including the Production and Supply of Electric Power and Heat Power. Contrary to the Department's preliminary finding, Yixing and the GOC contend that the industries listed by the GOC are not limited in number, but rather comprise a large and diverse array of industries.

Citing to Section 771(5A)(D)(iii)(I) of the Act, Yixing and the GOC state that a subsidy is specific if "{t}he actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." Yixing contends that nearly every significant industry is encompassed by the list provided by the GOC, and, thus, purchasers of steam coal are not limited in number. Moreover, Yixing contends that the Department's finding in the *Preliminary Results* goes against the purpose of the specificity test, which is to ensure that subsidies distributed

[104] We note that all subsequent reviews under this order are subject to the requirements in the *Interim Final Rule* published on February 10, 2011. *See Interim Final Rule*.

widely throughout an economy are not countervailed.[105]

The GOC points out that, in determining whether a particular industry or enterprise is limited, the Department will focus on the makeup, rather than the number, of users of a program.[106] The GOC argues that this premise was confirmed by *PPG*, which held that, although the number of firms eligible for a program must be considered, this number is not controlling, and that instead the actual make up of the firms must be evaluated to determine whether a group of firms comprise a specific industry or group of industries.[107] Yixing contends that the number of actual users within each of the broad and diverse industries identified by the GOC would be far too numerous to lead to a reasonable finding of specificity. Yixing points to *Hot-Rolled Flats from Thailand*, in which the Department found that 351 companies identified under a debt restructuring program did not constitute a limited number on either an industry or enterprise basis.

The GOC also argues that the Department's specificity finding with respect to steam coal conflicts with its past practice. Specifically, the GOC cites to *Coated Free Sheet from Indonesia*, where the Department found the provision of stumpage for LTAR to be specific based on the fact that five out of 23 industries made use of timber, and that harvesting timber required a license.[108] The GOC further cites to *Softwood Lumber from Canada Prelim*, in which the Department found the provision of stumpage for LTAR to be specific because it was used by a single group of industries.[109]

Furthermore, Yixing contends that the Department's specificity finding with respect to steam coal conflicts with principles identified by the SAA. Notably, Yixing states that the SAA's explanation of specificity states that its intended function is to avoid the imposition of CVDs where the widespread availability and use of a subsidy is spread throughout an economy. Yixing further notes that in situations where the number of actual users of a subsidy is too large, as it contends is the case here, the SAA guides the Department to examine predominant use and disproportionality factors. *See* SAA at 259-260. However, Yixing notes that the Department has not addressed these factors. Therefore, Yixing contends that because the potential recipients of the alleged steam coal LTAR are not limited in number and because there is insufficient record evidence to support a finding of predominant use or disproportionality, the Department should find that steam coal at LTAR is not specific.

Yixing and the GOC conclude that the Department erred in its specificity finding regarding the alleged steam coal LTAR because the record demonstrates it is not limited in number. The GOC and Yixing note that the CIT has upheld the Department's prior findings that programs were not specific because the benefits of the programs were distributed to a large number of customers and industries.[110] Accordingly, Yixing and the GOC contend that the Department should reverse its specificity finding for the final results.

---

[105] *See CVD Preamble*, 63 FR at 65357.
[106] *Id.*.
[107] *See PPG*, 978 F.2d at 1241.
[108] *See Coated Free Sheet from Indonesia*.
[109] *See Softwood Lumber from Canada Prelim.*
[110] *See Bethlehem Steel*, 25 CIT at 322. *See also Royal Thai Government*, 341 F. Supp. 2d at 1319.

Rebuttal Comments

Petitioners reject Yixing's and the GOC's claims, and maintain that the Department should continue to find that the alleged provision of steam coal at LTAR is specific. Petitioners argue that, contrary to Yixing's and the GOC's contentions, the provision of steam coal at LTAR within the PRC is limited to a few industries, with the predominant user being power generators. To support their claim, Petitioners assert that approximately two-thirds of the PRC's energy is sourced from coal-fired plants[111] and these plants account for no less than 50 percent of total coal use.[112] Therefore, Petitioners conclude that this high concentration of steam coal use by the power generation industry is sufficient to support the Department's preliminary finding that the alleged steam coal subsidy is *de facto* specific.

Petitioners also dispute Yixing's and the GOC's claims that the industries that utilize steam coal are not limited in number because of the number and variance of the industries. Petitioners contend that the industries are limited in number and note that in past proceedings, the Department has found a greater number of industries with a wider dispersion of uses to be specific within the meaning of the statute.[113] Therefore, Petitioners argue the Department should continue to find the alleged steam coal subsidy is specific.

Department's Position

In the *Preliminary Results*, we stated that the GOC identified users of steam coal in the six major industrial categories of Mining; Manufacturing; Electric Power, Gas and Water Production Supply; Construction; Transport, Storage and Post; and Wholesale and Resale Trades, Hotels and Catering Services. Distributed among the first three categories are 40 more specific categories including Production and Supply of Electric Power and Heat Power under the major Category of Electric Power, Gas and Water Production Supply.

Upon closer inspection of the industrial user list, the large number and diverse array of industries identified does not support our preliminary finding that steam coal is provided to a limited number of industries. Users of steam coal listed in the GOC's Industrial Classification for National Economic Activities range from producers of electricity, heat suppliers and manufacturers of processed food and nuclear fuel to offices, hotels and caterers. Within the major industrial category of manufacturing alone users include food processors, nuclear fuel processors, smelters and pressers of ferrous and non-ferrous metal, and manufacturers of textiles, medicine, chemicals, transport equipment, among many others. [114] Further, we do not have sufficient record evidence pointing to predominant or disproportionate use. Although Petitioners submitted information that 50 percent of the PRC's energy is sourced from coal, we failed to seek information from the GOC on the extent of use by the steam coal consuming industries. Based on record information, there is no indication that steam coal is *de jure* specific under 771(5A)(D)(i) of the Act. Therefore, we are not able at this time to determine whether steam

[111] *See* PNSA1 at Exhibit 24 at 9, 12 (2008 Minerals Yearbook).
[112] *Id*.
[113] *See CWP from the PRC*, and accompanying IDM at 9-12; *LWRP from the PRC*, and accompanying IDM at 8-9; *CWLP from the PRC*, and accompanying IDM at 18-20; *Lawn Groomers from the PRC*, and accompanying IDM at 12-17; *KASR from the PRC*, and accompanying IDM at 14-16; *OCTG from the PRC*, and accompanying IDM at 15.
[114] *Id*.

coal is being provided by the GOC to a specific industry or enterprise or group of industries or enterprises. Instead, we intend to revisit the *de facto* specificity of this program in a future review.

Comment 7 Whether Sulfuric Acid at LTAR is Specific

Affirmative Comments

The GOC disputes the Department's preliminary finding that sulfuric acid was provided to a limited number of industries and is, therefore, countervailable. Citing to a list of 45 user industries it submitted, the GOC, Yixing, and RZBC assert that the record shows that numerous and diverse industries purchase sulfuric acid.[115]

Citing section 771(5A) of the Act, the GOC contends that, for the Department to find inputs for LTAR countervailable, the program must be specific to an enterprise or industry within the jurisdiction of the authority providing the subsidy. The GOC states that the purpose of the specificity test is to ensure that subsidies distributed widely throughout an economy are not countervailed.[116] The GOC points out that, in making a specificity finding, the Department will focus on the makeup, rather than the number, of users of a program.[117] The GOC argues that this premise was confirmed by *PPG*, which held that, although the number of firms eligible for a program must be considered, this number is not controlling, and that instead the actual make up of the firms must be evaluated to determine whether a group of firms comprise a specific industry or group of industries.[118]

Yixing, RZBC and the GOC argue that the number of industries that use sulfuric acid as an input is too large to be considered a specific group of industries. In light of the large number of enterprises and industries that use sulfuric acid, Yixing argues that the Department's finding of a specific group is inconsistent with the interpretation of the statutory language provided by the SAA, and leads to the absurd results that the specificity test was designed to avoid.[119]

The GOC argues that, in finding the provision of sulfuric for LTAR to be specific and countervailable, the Department diverged from its previous practice. The GOC cites to *Coated Free Sheet from Indonesia*, in which the Department found the provision of stumpage for LTAR to be specific based on the fact that five out of 23 industries made use of timber, and that harvesting timber required a license.[120] The GOC further cites to *Softwood Lumber from Canada Prelim*, in which the Department found the provision of stumpage for LTAR to be specific because it was used by a single group of industries.[121] In *Bethlehem Steel* and *Royal Thai Government*, according to the GOC, the CIT upheld the Department's findings that programs were not specific because the benefits of the programs were distributed to a large number of customers and industries.[122]

---

[115] *See* GNSASQR1 at Exhibit 6.
[116] *See CVD Preamble*, 63 FR at 65357.
[117] *Id*.
[118] *See also PPG*, 978 F.2d at 1241.
[119] *See* SAA at 259-260. *See also Carlisle*, 564 F. Supp. at 834.
[120] *See Coated Free Sheet from Indonesia*, and accompanying IDM at 18-25.
[121] *See Softwood Lumber from Canada Prelim*, 71 FR at 33932.
[122] *See Bethlehem Steel Corp.*, 25 CIT at 322. *See also Royal Thai Government*, 341 F. Supp. 2d at 1319.

RZBC notes that, in *OTR Tires from the PRC*, the Department found the provision of rubber to be specific to the tire industry partly because the tire industry was the largest consumer of natural and synthetic rubber in the country.[123] However, RZBC maintains, there is no record evidence indicating that the citric acid industry is the largest consumer of sulfuric acid in the instant case.

Rebuttal Comments

Petitioners dispute the respondents' claims that the provision of sulfuric acid is not specific because it is used by a wide variety of industries. Petitioners argue that the lists provided by the GOC and Yixing are artificially extended because they included subsets of known industries. Petitioners sort the specific subcategories of sulfuric acid users reported by the GOC into groups comprising six different industries. Petitioners assert that based on the GOC's submission, only six industries use sulfuric acid and six industries is a sufficiently limited number for a program to be specific. Petitioners cite to *Certain Steel Products from Belgium*, in which the Department found six industries to be specific.[124]

Petitioners also argue that the finding of specificity for the provision of sulfuric acid inputs is consistent with the record evidence that the GOC maintains a policy to provide sulfuric acid to key industries, including producers of subject merchandise. Petitioners argue that the Eleventh Five-Year Plan for the Chemical Industry focuses on enhancing predominant downstream uses of sulfuric acid, including in the production of inorganic salts, a category which Petitioners assert includes citrate salts.[125]

Department Position

We disagree with the respondents that the number of industries that use sulfuric acid as an input is too large to be considered a specific group of industries. In the Department position for Comment 6 above, we stated that in the case of steam coal for LTAR, we would revisit the issue of the specificity in a future review, in part, because we recognize that the GOC's Industrial Classification for National Economic Activities shows a very diverse range of industries use coal and we require more information on the proportion of use in order to make a finding on steam coal. With regard to sulfuric acid, in the *Preliminary Results*, we considered users in three major industrial categories reported by the GOC: Mining, Manufacturing and Electric Power, Gas and Water Production and Supply for our analysis of sulfuric acid specificity. Within these three major categories are 44 more specific categories, 37 of which fall under Manufacturing. This denotes a concentration of users in the major industrial area that clearly includes citric acid production. The idea that the citric acid industry is part of a limited group of users is reinforced by the fact that a number of 37 subcategories identified in the Manufacturing major industrial category appear to be closely related to the citric acid industry in terms of processes and outputs. These subcategories include the specific activities of manufacturing of raw chemicals, chemical products, household chemical products, food and beverages. The GOC itself has observed that the Department, in determining whether a particular industry or enterprise fits within the term "limited," does not necessarily limit its consideration to the number of enterprises, but must also

[123] *See OTR Tires from the PRC*, and accompanying IDM at Comment D.1.
[124] *See Steel Products from Belgium*, 58 FR at 37276.
[125] *See* New Subsidy Allegation at Exhibit 4.

be "focused on the make-up of the users."[126] The make-up of the users as well as the number of industries or enterprises they represent are both factors in our analysis of whether the users of sulfuric acid are limited in number. In terms of the number of major industrial categories that comprise direct users of sulfuric acid, we continue to find the three major groups originally identified by the GOC are a limited number consistent with 771(5A)(D)(iii)(I) of the Act. The concentration of sub-categories in the Manufacturing industry only reinforces the finding that the number of types of users is limited. As noted above, while there is some variety among the Manufacturing sub-categories, there is clearly a close relationship between many of the sub-categories (*e.g.*, the chemical processors) that indicates a limited group of users.

Petitioners' analysis in their rebuttal comments that shows that the subcategories reported in in the GOC's three major industrial categories can be re-organized in six more focused industry groups underlines our previous observation that the subcategories themselves provide evidence of how concentrated the community of sulfuric acid users is in the PRC.

Therefore, consistent with the *Preliminary Results*, we continue to find that the industries named by the GOC as consumers of sulfuric acid in the PRC are limited in number and, hence, the subsidy is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on our review of the data and consistent with our past practice.

Comment 8 Application of Adverse Facts Available to Yixing for Sulfuric Acid LTAR

Yixing's Affirmative Comments

Yixing argues that the Department's application of AFA (treating all producers of sulfuric acid as "authorities") to the GOC in the *Preliminary Results* was, in reality, an adverse determination against Yixing. Yixing asserts that it has fully cooperated with each of the Department's requests in this review. Yixing further claims that, as there is no provision of the statute allowing the application of AFA to a cooperating party,[127] it is unlawful for the Department's application of AFA to the GOC to adversely impact Yixing, a separate interested party in the review.

Additionally, Yixing contends that the AFA application to the GOC regarding sulfuric acid suppliers effectively created a "benefit" to Yixing-Union. Because the alleged subsidy is limited to the conveyance of a benefit through the provision of sulfuric acid at LTAR by GOC "authorities," suppliers who are not authorities could not have conveyed any benefit. Thus, by assuming, as AFA against the GOC, that all suppliers of sulfuric acid are "authorities," the Department effectively punished Yixing-Union for the GOC's non-cooperation, rather than punishing the GOC. Yixing illustrates that the effect of this adverse assumption resulted in a benefit comprising over half of Yixing's overall subsidy rate in both 2008 and 2009.

Yixing states that it is unlawful to apply AFA to a cooperative party.[128] Citing *SKFUSA*, Yixing notes the court's finding that it "cannot accept a construction of 19 U.S.C 1677e(b) under which the party who suffers the effect of the adverse inference is not the party who failed to cooperate.[129]" Yixing contends this parallels the instant case, where Yixing-Union (which

[126] *See* GOC Brief at 48. *See also CVD Preamble*, 63 FR at 65357.
[127] *See F.lli De Cecco di Filippo Fara S. Martino*, 216 F.3d at 1027.
[128] *See, e.g., Tianjin*, Slip Op. 2011-17 at 3-4.
[129] *SKF USA, 675* F. Supp. 2d. at 1275.

Yixing contends was fully cooperative), is being punished for the GOC's failure to cooperate.

Finally, Yixing argues that the Department should have relied on Yixing-Union to provide the information allegedly not provided by the GOC. Yixing asserts that, because the requested information pertains to Yixing-Union's suppliers, Yixing-Union would be in a better position to obtain information regarding its own suppliers. Further, Yixing contends that, although Yixing-Union may have been more likely to have been able to obtain the ownership information of its suppliers, the Department never requested Yixing-Union provide this information and only requested it from the GOC.

Petitioners' Rebuttal

Petitioners dismiss Yixing's contentions that the Department's application of AFA punished Yixing, rather than the GOC. Petitioners first highlight that the Department's application of AFA to the GOC effectively does adversely affect the GOC. Petitioners contend that the impact caused by a likely decrease in exports due to the imposition of CVD duties is the reduction of the government's tax base. Thus, the GOC is adversely impacted by the application of AFA, which results in the finding of a countervailable subsidy program against which CVDs may be applied. Petitioners assert that if the Department did not apply AFA, governments would not have an incentive to cooperate with the Department's information requests in CVD proceedings. Petitioners argue that, contrary to Yixing's arguments, the Department has satisfied the statutory standard for the application of AFA.

Petitioners further dispute Yixing's claims that the Department unlawfully punished Yixing through the application of AFA to the GOC. Rather, Petitioners contend there is nothing in the CVD statute requiring the Department to tailor its application of AFA to prevent other parties from bearing its impact. Moreover, Petitioners state that the CIT has upheld similar determinations in other cases where a company was adversely affected by the Department's application of AFA to a government. Specifically, in *Essar Steel*, the court found that "{w}here the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry." The court also found that the Department "applied AFA against only the Government of India, with the result that Commerce found that the {government} provided a financial contribution to a specific industry." Therefore, Petitioners assert that in the instant review the Department was correct to apply AFA, finding that Chinese sulfuric acid producers are government "authorities" capable of conferring a countervailable benefit.

Department's Position

The Department has previously explained its practice with respect to the application of AFA to governments in the context of CVD proceedings. In general, the Department's practice is to apply adverse inferences and assume that alleged subsidy programs constitute a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.[130] Therefore, consistent with our practice, in investigating the alleged provision of sulfuric acid at LTAR, where the GOC did not provide sufficient information as requested by the Department, the Department applied AFA to the GOC by finding that Chinese sulfuric acid

[130] *See Hot-Rolled Steel from India*, and accompanying IDM at Comment 6. *See also Pistachios from Iran*, and accompanying IDM at Comment 2.

suppliers are "authorities," which, in effect lead to a determination that the program constitutes a financial contribution.

In response to Yixing's claim that the Department cannot apply AFA to a cooperative party, we note that we have not applied AFA to Yixing. Rather, the Department was clear in its application of AFA to the GOC on this particular issue. The GOC was the interested party that withheld information and failed to cooperate by not acting to the best of its ability, and the Act authorizes the Department to use an adverse inference against the GOC.

However, the Department acknowledges that the effect of applying AFA to a government may impact respondents.[131] As the CIT has recognized, "{w}here the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry.[132]" This is because the foreign government is in the best position to provide information regarding financial contribution and benefit.[133] Obviously, this has an effect on the respondent company, but this does not mean that the application of AFA was unlawful. The respondent company always has a chance to demonstrate that it did not use, or benefit from, the program at issue.

We find Yixing's citation to *SKF USA* to be inapposite, because that case involved dumping respondents, and not a foreign government in a CVD proceeding. In light of our established practice regarding this issue, as affirmed by the CIT, we find that the application of AFA to the GOC was not unlawful because of its effect on Yixing.

Comment 9 Use of Prices from Actual Transactions in the PRC (Tier-One Benchmark) to Measure Benefit of Sulfuric Acid LTAR

Affirmative Comments

The GOC and RZBC allege that the Department inappropriately used a tier-two benchmark of world market prices to calculate the subsidy rate from the provision of sulfuric acid for LTAR. The GOC and RZBC contend that the Department should have used a tier-one benchmark because record evidence demonstrates that the sulfuric acid industry is not dominated by SOEs and that SOEs do not significantly distort sulfuric acid prices. The GOC claims that the sulfuric acid industry is independent, large, and diverse. Absent any evidence of coordination, says the GOC, the Department has no basis to presume that these SOE entities collude to suppress prices and effectuate government policy.[134]

The GOC alleges that the Department itself recognized in 2007 that the GOC has eliminated price controls on most products.[135] Moreover, the GOC contends that the Department's reference to a temporary sulfuric acid export tax as possibly suppressing domestic prices violates the high standard described in *Leather from Argentina* to demonstrate that export restrictions

[131] *Id*.
[132] *Essar Steel*, 721 F. Supp. 2d at 1297.
[133] *Id.*
[134] *See generally, OTR Tires from the PRC*, and accompanying IDM, finding a SOE respondent free from *de jure* or *de facto* control by the government when there was no evidence of government participation in setting prices or evidence that the government exercised control over daily operations.
[135] *See* Georgetown Steel Memorandum.

have a direct and discernable effect on price.[136] The GOC states that there are no other circumstances, such as export quotas or other government controls, to suggest market distortion.

The GOC argues that 19 CFR 351.511 clarifies that even when government providers are present in a market, a finding of significant distortion and reliance on a tier-two benchmark should be an exceptional occurrence. The GOC refers to the significant analysis that the Department made to justify a tier-two benchmark in the *Softwood Lumber from Canada*, and alleges that a comparable analysis has not been performed in the instant review. Accordingly, the GOC and RZBC request that the Department turn to a tier-one benchmark, *i.e.*, market prices from actual transactions within the PRC, to value the benefit for the sulfuric acid for LTAR program.

RZBC argues that it is the Department's prior practice to rely upon a price paid by the company as benchmark when a company imports a significant amount of the input in question.[137] RZBC contends that demand and prices for sulfuric acid are high within the PRC. Thus, says RZBC, it bought the majority of its sulfuric acid from MEs from which it knew it could obtain a constant supply. RZBC notes that, in many cases, it paid less for sulfuric acid obtained from MEs than the supposed subsidized rate available from suppliers in the PRC.

RZBC further alleges that the Department's benchmark is faulty because it is not specific to the industrial grade of sulfuric acid used by RZBC. RZBC contends that if the Department accounted for price differences for various grades in the world benchmark, it would find that the PRC price for this input is very similar or higher than the world price.

Lastly, RZBC argues that failure to use the actual ME purchase price by RZBC as benchmark is inconsistent with the Department's AD practice, where it uses the ME transaction price for the margin calculation if this price accounts for more than 33 percent of a respondent's imports. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback, and Request for Comments*, 71 FR 61716, 61719 (Oct. 19, 2006)("*Antidumping Methodologies*"). RZBC claims it has exceed this 33 percent threshold for imports of sulfuric acid.

Rebuttal Comments

Petitioners allege that the GOC's and RZBC's arguments that the Department should not find price distortion because the sulfuric acid market is not dominated by SOEs run counter to the Department's practice. Petitioners note that in *KASR from the PRC*, the Department found market distortion because 1) the GOC played a "predominant role" in the market for the input; 2) input imports were negligible; and 3) the existence of export restraints on the input. Petitioners note that record evidence demonstrates an identical fact pattern in the instant review for sulfuric acid. Moreover, Petitioners assert that the GOC's identification of SOEs is likely too low, as it provided only incomplete, first-tier ownership information regarding most of the suppliers in this case.

Petitioners further argue that the GOC maintains tight control over the sulfuric acid industry in

[136] *See Leather from Argentina* at 2. Analysis of Current Embargo.

[137] *See Essar Steel*, 721 F. Supp. 2d at 1292 (citing 19 CFR 351.511(a)(2)(i)); *see also OTR Tires from the PRC*, and accompanying IDM at Comment D.6.

the PRC, which may lead to price distortion. As evidence of this, Petitioners point to the chemical industry's identification as a favored industry in the PRC, its presence in national five-year plans, and its designation as a "pillar" industry by the State-owned Assets Supervision and Administration Commission of the State Council of China. Petitioners note that the Department has recognized in past investigations that "pillar" industries are subject to significant state influence, and that producers in a pillar industry rely upon the state for the provision of their material inputs.[138]

Petitioners conclude that there is ample evidence on the record to demonstrate how the PRC's control of the sulfuric acid industry influences prices. Petitioners point to their New Subsidy Allegations at Exhibit 18, which provides a comparison of average export prices from 29 countries to PRC prices.

Department's Position

We agree that the fact pattern here is comparable to that in *KASR from the PRC*, and will continue to rely on tier-two benchmarks for these final results. The GOC itself reported that government-owned manufacturers accounted for 54 to 56 percent of sulfuric acid production during the POR. Moreover, GOC data showing that domestic production accounted for over 90 percent of domestic consumption indicates that Chinese imports of this input are negligible. The predominant share of the market accounted for by state-owned production supports a finding of significant distortion in the PRC market for sulfuric acid whether produced domestically or imported. While we acknowledge that the record does not contain conclusive evidence that the export restraints in place during the POR resulted in lower prices, the presence of these restraints is further evidence of the government's predominant role in the sulfuric acid market.

Further, RZBC's reference to the Department's *Antidumping Methodologies* is misplaced, as these have little bearing on our CVD practices. The level of RZBC's imports from third-countries is irrelevant to this issue, as our benchmark analysis relates to country-wide, not firm-specific, behavior. Moreover, the Department considers imports as tier-one, given that imports are priced according to the market to which they are being imported into.

Finally, RZBC's comment that the benchmark is not specific to the grade of sulfuric acid that RZBC uses is untimely at this stage of the proceeding. Throughout the proceeding, the Department invited parties to provide benchmark information. RZBC did not avail itself of this opportunity, and, thus, we continue to rely upon the record information to measure the benefit of this subsidy.

Comment 10 Evidence of Policy Lending

A. National Policy Lending

Affirmative Comments

The GOC disputes the Department's finding that a national countervailable policy lending

[138] *See, e.g.*, *OCTG from the PRC*, and accompanying IDM at 14, *KASR from the PRC*, and accompanying IDM at 51-52.

program exists in the PRC. The GOC dismisses the Department's reliance on financial support statements in the Light Industry Plan, noting that this plan does not specifically propose provision of loans or credit at preferential rates. The GOC asserts that the purpose of every such plan is to promote the industries covered by the plan, and general statements of promotion cannot support a finding of preferential lending.

Rebuttal Comments

Petitioners allege that the record demonstrates that the GOC has actively managed citric acid capacity and provided long-term preferential financing. Petitioners point to the Light Industry Plan as evidence of a national policy lending program. Petitioners contend that the Department has previously found that language such as "increase financial support" sufficiently supports a finding of directed lending.[139]

Department's Position

As noted by Petitioners, the Department has previously found that language such as that contained within the Light Industry Plan is evidence of a national lending program.[140] The Light Industry Plan states that the GOC intends to "increase financial support," and "encourage financial institutions to increase credit support for light industry enterprises." *See* Light Industry Plan at 4(F). The Light Industry Plan also states that the GOC will encourage guarantee institutions to provide credit guarantee and financing services for small and medium sized light industry enterprises and help light industry enterprises to facilitate trade finance. *Id.* Citric acid production is a light industry. *See Preliminary Results*, 76 FR at 33226-27. These references in the Light Industry Plan to increasing financial support and increasing credit support are sufficient, consistent with our previous determinations, to find a GOC policy lending program to the citric acid industry.

B. Shandong Province Policy Lending

Affirmative Comments

The GOC disputes the Department's finding of a Shandong Province Policy Lending program, noting that this finding is based on the Shandong Province Tenth Five-Year Chemical Plan, which does not cover the instant POR. Further, the GOC contends that the subsequent Shandong Province Eleventh Five-Year Chemical Plan was not issued by the GOC. The GOC alleges that the Department's primary basis for countervailing the Shandong Province Policy Lending program was loan documents from a respondent to the investigation. The GOC argues that, since that respondent is not a party to the instant proceeding the contents of these loan documents are irrelevant.

The GOC further disagrees with the Department's policy of not requiring a link between policy statements in five year plans and the actual loans distributed to a particular respondent.[141] The GOC asserts that both the court and the WTO's Subsidies and Countervailing Measures

[139] *See Coated Free Sheet from Indonesia*, and accompanying IDM at 52-53; *see also Micron Tech. Inc. v. United States* and *Hynix Semiconductor Inc. v. United States*, (affirming the Department's conclusion that government directed program of financial contributions existed based largely on circumstantial evidence).
[140] *See, e.g., CFS from the PRC*, and accompanying IDM at Comment 8.
[141] Citing, *e.g.*, *Aluminum Extrusions from the PRC*, and accompanying IDM at Comment 23.

Agreement (Art. 11.2) require that the existence of a subsidy program be established by substantial evidence rather than simple assertions.[142] The GOC asserts that the Department's blind reliance on policy statements ignores the fact that there is no mandatory element to the implementation of GOC's five-year plans. Further, the GOC notes that there is no evidence that the loans reported by respondents in this review were issued pursuant to such plans.

Rebuttal Comments

Petitioners allege that, in the original investigation, the Department found that it was unimportant that the Shandong Province Tenth Five-Year Chemical Plan was not published, as it was intended to be issued to local governments, rather than publicly. Petitioners dismiss the GOC's argument that the Department should ignore the loan documents discovered in the investigation, and note that the GOC cites no precedent for its claim that this evidence may not be used. Moreover, state Petitioners, the loan documents from the investigation are not specific to a citric acid producer; rather, they reference the citric acid industry generally. Petitioners claim that this demonstrates that the citric acid industry in Shandong is singled out for preferential treatment. Petitioners contend that the Department's finding of a national policy lending program supports a finding of an active provincial policy in Shandong.

Department's Position

The Shandong Province Policy Lending Program was found to be countervailable in the *Investigation* and the GOC has provided no information to demonstrate that there has been any change in the program. Instead, the GOC essentially reargues the evidence relied upon by the Department in the *Investigation*. In particular, we disagree that the loan documents pertaining to a company not covered by this review are irrelevant. As Petitioners have pointed out, these documents related to the citric acid industry as a whole.

Where the Department has previously determined that program is countervailable or not countervailable, the burden is on the challenging party to present new evidence that would cause the Department to revisit its prior finding.[143] The GOC has not met that burden here.

Comment 11 Whether Certain Input Suppliers Are Government Authorities

Affirmative Comments

The GOC admits that it failed to provide certain information that the Department believed necessary to its determination as to whether suppliers of sulfuric acid and steam coal are government authorities. Specifically, the GOC acknowledges that it did not state whether owners, managers, or board of director members of certain suppliers were GOC or CCP officials, for all but one company. The GOC also concedes that it did not answer whether strategic decisions of these suppliers were subject to the GOC's review. However, the GOC asserts that the Department's resulting adverse inference that all sulfuric acid and steam coal suppliers are authorities is overly broad. The GOC contends that the Department can only use facts available to fill a gap in the record.[144] The GOC argues that the Department never asked whether these

[142] *See China First v. United States*.
[143] *See Certain Pasta from Italy*, and accompanying IDM at 27.
[144] *See Zheijiang Dunan v. United States*.

input suppliers are government authorities, thus, the question of whether they are authorities is not a gap in the record.

The GOC further asserts that, even if the Department's adverse inference results in a finding that high-level company positions are populated by government or CCP officials, it must also determine whether this fact alone renders a particular supplier a government authority. The GOC argues that the Department's discretion in choosing sources and facts it will rely upon to support an adverse inference is not unbounded.[145] Further, says the GOC, the Department's selection of adverse facts must be supported by record evidence, have some grounding in commercial reality, and cannot apply to information that is irrelevant or inconsequential.[146]

The GOC opines that the Department's adverse inference to the missing information flies in the face of these court decisions because record evidence here demonstrates that these suppliers could not be government authorities. The GOC contends that the Department ignores record information that shows: 1) PRC laws state that owners, directors, or managers of a company cannot be government officials; 2) several suppliers here were ultimately owned by individuals; and 3) the government has no influence or control over an individually-owned company even if the owners, managers, or directors are CCP officials. The GOC also asserts that the adverse inference ignores the Department's own past findings[147] that government control of privately owned companies is illegal in the PRC.

Thus, the GOC requests that the Department reconsider its adverse inference that all sulfuric acid and coal suppliers are government authorities. At a minimum, the GOC requests that the Department reverse this finding for the six individually or foreign-owned companies for which the GOC did provide a partial response to the Department's ownership and government review questions.

Rebuttal Comments

Petitioners assert that because the GOC did not provide critical information needed by the Department to identify government authorities for the purposes of the sulfuric acid and steam coal subsidy programs, the statutory standard for the application of AFA has been met. Moreover, say Petitioners, even if the Department resorted to neutral facts available, record information supports a finding of complete state control over the coal industry.

Citing *Essar Steel*,[148] Petitioners submit that the application of AFA in this case is consistent with past practice and has been upheld by the CIT in an analogous situation. Petitioners claim that in *Essar Steel*, the Department applied AFA to establish the countervailability of an Indian subsidy program after the Indian government's failure to produce usable information regarding the program. Petitioners argue that the Department must apply AFA in these circumstances to preserve its ability to investigate alleged subsidy programs.

Petitioners state that in *Zheijiang Dunan v. United States*, record information was available to fill

[145] *See S*ection 776(b) of the Act. *See also F.lli De Cecco di Filippo Fara S. Martino.*
[146] *See Gallant Ocean.*
[147] The GOC cites to *Carbon Steel Plate From the PRC*, and accompanying IDM at Comment 2.
[148] *Essar Steel*, 721 F. Supp 2d at 1299.

a "gap" in the record. Petitioners distinguish the instant review from *Zheijiang Dunan v. United States* by noting that here, the Department is completely lacking certain facts that would help it determine whether input suppliers are government authorities. Petitioners note that the GOC's reference to PRC law is misplaced, as the Department has no way to determine whether this law is observed in practice. Moreover, Petitioners note that the law referenced by the GOC applies only to civil servants, not party officials, who may wield more government authority than civil servants under the Chinese system.

Petitioners allege that the GOC's reference to the *Carbon Steel Plate from the PRC* is irrelevant, as that analysis stated that the "Company Law" established an absence of *de jure* over privately owned companies in the PRC. In the instant case, state Petitioners, the Department has not found *de jure* control, rather it has applied an adverse inference that the entities are authorities within the meaning of the statute, in cases in which the complete ownership structure of an input supplier is unclear and based on the predominant position of the GOC in the sulfuric acid and steam coal industries.

Petitioners state that the Department cannot conclude that input suppliers are free from government influence or control simply because their first-tier owners are private individuals. Petitioners claim these private individuals could still hold influential party or government positions. Moreover, say Petitioners, there is still the unanswered question of second- or third-tier ownership. Petitioners allege that the GOC has impeded the Department's investigation into this critical issue by not readily supplying responses on the issue of ownership or control.

Department's Position

As explained above, the Department is not finding a countervailable subsidy at this time with respect to the GOC's provision of steam coal. Thus, these arguments as they pertain to steam coal producers are moot.

With respect to sulfuric acid producers, the GOC itself admits it failed to provide information which the Department deems necessary to fully analyze the government authority status of these input producers. For some producers, the GOC provided no responses at all. For others, it provided certain information to varying degrees. The GOC provided a complete response for none. We disagree with the GOC that this missing information is not necessary to our government authority analysis. Ownership information is necessary to determine whether the government controls the producer in question, which is essential to our "authority" determination. Information as to the party or other affiliations of the owners, and of the managers and boards of directors, also is necessary to determine whether there is government control over the producer.

The adverse inference that the entities are authorities within the meaning of the statute is supported in cases such as this where the complete ownership structure of an input supplier is unclear. For those producers for which the GOC did not provide any requested information, we are adversely assuming that they are government-owned and, therefore, are "authorities" within the meaning of the Act.

Moreover, private ownership is not in itself sufficient to support a finding that a company is free

of government influence or control. To the extent that the owners or the managers of the producers are CCP officials or otherwise influenced by certain entities, the Department has inquired into the means by which the GOC may exercise control over company operations. The GOC has not responded to the Department's inquiries. Therefore, for those firms which the GOC claimed were wholly or partially-privately owned producers, but for which the GOC did not provide a complete response on whether owner, board members, or manager were also CCP officials, we are adversely assuming that there were owners, mangers, or directors that were CCP officials and that the GOC exercised control over company operations through this means.

Respondent-Specific

Comment 12 Whether Cogeneration is the Parent of Yixing-Union

Yixing's Affirmative Comments

Yixing contests the Department's preliminary finding that Cogeneration is the parent company of Yixing-Union. Pointing to the Chart of Affiliations submitted in its initial questionnaire response, Yixing argues that Cogeneration does not control Yixing-Union by virtue of the ownership percentage Cogeneration holds in Yixing-Union.[149] Yixing argues that, although the Department found that Cogeneration was Yixing-Union's parent company in the *Investigation*, each review is a separate exercise of administrative procedure, opening the possibility of different conclusions based on different facts accumulated.[150] Yixing additionally points to *Citrosuco Paulista* in stating that the Department is not obligated to follow prior decisions if new arguments or facts are presented that support a different conclusion.[151]

Referring to ownership information on the record in the instant review, Yixing contends that Saha-Union and Guolian Trust are the true parent companies of Yixing-Union, rather than Cogeneration. Yixing claims that these entities control Yixing-Union by virtue of their combined direct and indirect ownership of Yixing-Union. Yixing concludes that because the majority of Yixing-Union's ownership is concentrated among a small group of investors, it is those investors that effectively have ultimate control over Yixing-Union, not Cogeneration.

Finally, Yixing notes that, rather than consolidating Yixing-Union's financial results with its own, Cogeneration treats its ownership interest in Yixing-Union as a long-term investment. Yixing states that the Department has found this factor to be determinative in other cases.[152]

Petitioners' Rebuttal

Although Petitioners agree with Yixing's assertion that each proceeding has its own, new factual record, Petitioners suggest that no new information has been presented on this record to lead the Department to depart from its finding in the *Investigation* with respect to Cogeneration's relationship with Yixing-Union.[153] Petitioners highlight that in the *Investigation* the Department

[149] *See* Cogeneration's IQR at Exhibit 1.
[150] *See Cinca S.A. de C.V.*
[151] *See Citrosuco Paulista.*
[152] *See Seamless Pipe From the PRC*, and accompanying IDM at Comment 29. *See also OCTG from the PRC Prelim*, and accompanying IDM at 19-22 .
[153] *See Investigation* and accompanying IDM at Comment 27.

determined that, because Cogeneration appoints the majority of Yixing-Union's board members and appoints the chairman who casts the tie-breaking vote in the event that the board is deadlocked, Cogeneration exerts control over Yixing-Union.[154] Petitioners note that the Department routinely maintains findings from investigations or earlier administrative reviews if no evidence is presented that would suggest a change to that finding is in order.[155] Moreover, Petitioners point out that Yixing itself has repeatedly identified Cogeneration as Yixing-Union's parent company on the record of the instant proceeding. Therefore, because Yixing has reported Cogeneration is Yixing-Union's parent company and because there is no evidence on the record to encourage the Department to depart from its findings in the *Investigation*, Petitioners maintain that the Department was correct in its preliminary determination that Cogeneration is Yixing-Union's parent company in this administrative review.

Petitioners rebut Yixing's assertions that Cogeneration should not be considered Yixing-Union's parent company on the basis that Cogeneration does not consolidate Yixing-Union's sales with its own. Petitioners contend that Yixing incorrectly deduced from the Department's finding in *Seamless Pipe from the PRC* and *OCTG from the PRC Prelim*, that in order to consider a company a parent company, the parent must consolidate the sales of its cross-owned affiliates in its financial statements. Petitioners assert that it was undisputed in that case that TPCO was the parent company to its subsidiaries. Petitioners further note that, in addition to the clear differences between TPCO in *OCTG from the PRC Prelim* and the relationship between Yixing-Union and Cogeneration in this administrative review, the Department's analysis of cross-ownership and corporate relationships is fact intensive and varies from case-to-case.[156] Petitioners allege that many Chinese companies, including RZBC, the other respondent in the instant review, do not consolidate their financial statements, even when they are part of the same corporate group. Therefore, Petitioners conclude that the fact that Cogeneration does not consolidate Yixing-Union's sales in its financial statements is irrelevant to the Department's assessment of the companies' relationship.

Department's Position

We agree with Petitioners and Yixing that each proceeding has its own factual record. However, as noted by Petitioners, in CVD proceedings the Department frequently maintains determinations where no new evidence is presented in subsequent reviews to contradict a previous finding.[157] In this case, we find that Yixing has not provided any information on the record of this administrative review indicating the relationship between Cogeneration and Yixing-Union has changed since the *Investigation* where the Department specifically addressed this issue. Moreover, we find that record evidence in this proceeding supports a continued finding that Cogeneration is Yixing-Union's parent company.

---

[154] *Id.*

[155] *See, e.g., Hot-Rolled Steel from Brazil*, 75 FR at 64075 (unchanged at Final).

[156] *See, e.g., Wood Flooring from the PRC*, and accompanying IDM at 7 (noting that "the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.")

[157] *See Certain Pasta from Italy*, and accompanying IDM at 27 ("It is the Department's practice not to revisit past findings unless new factual information or evidence of changed circumstances has been placed on the record of the proceeding that would cause the Department to deviate from past practice."); *PPG*, 978 F.2d at 539-540 (upholding the Department's determination not to reinvestigate program absent sufficient new evidence).

In the *Investigation* the Department found that Cogeneration was Yixing-Union's parent company because it held a significant level of ownership, Cogeneration possessed the ability to appoint six of Yixing-Union's ten board members, and Cogeneration appointed the chair of Yixing-Union's board of directors, who casts the tie-breaking vote in the case of a deadlock.[158] Record information demonstrates Cogeneration has maintained the same level of ownership in Yixing-Union throughout the POR as in the investigation period. No information on this record indicates the companies' voting structure or the appointment of board members has changed since the *Investigation*. Rather, the record supports a continued finding that Cogeneration is Yixing-Union's parent company.

In its initial questionnaire, the Department requested information from Yixing-Union as to whether it and any of its affiliates share a board of directors, whether members of each of these affiliates' board sit on the board(s) of the other company(ies), and how voting rights are distributed among board members.[159] Additionally, the Department requested that Yixing-Union "provide a complete questionnaire response for affiliates where "cross-ownership" exists and where, 1) the affiliate produces the subject merchandise; 2) the affiliate is a holding company or a parent company (with its own operations) of your company; the affiliate supplies an input product to you that is primarily dedicated to the production of the subject merchandise; or where the affiliate has received a subsidy and transferred it to your company." First, Yixing did not respond directly to the Department's request relating to the board of directors and distribution of voting rights. Second, Yixing-Union has reported that Cogeneration is not a producer of subject merchandise, argued that Cogeneration does not provide an input product that is primarily dedicated to the production of the subject merchandise, and has not reported that Cogeneration transferred and subsidies to Yixing-Union. Thus, the only remaining criterion requiring Yixing-Union to provide a complete questionnaire response on behalf of Cogeneration is whether the affiliate, Cogeneration, is a holding company or a parent company. Moreover, Yixing explicitly identified Cogeneration as its parent in its response.[160]

We disagree with Yixing's claim that Cogeneration is not Yixing-Union's parent company on the basis that it does not consolidate Yixing-Union's sales with its own. In its argument, Yixing points to *OCTG from the PRC Prelim* in which the Department mentioned the fact that TPCO consolidated its financial statements with entities in which it owned more than 50% of the total equity shares. In *OCTG from the PRC Prelim*, the Department provided a detailed discussion of how it determined whether TPCO was the parent of several companies in which it held an ownership claim. The mention of consolidated financial statements was only discussed in relation to the sales denominator to be used in the Department's attribution of subsidies, not as a determinative factor in evaluating whether TPCO was a parent company, as Yixing claims.

Therefore, consistent with the Department's determination in the *Investigation* and because Yixing has also identified Cogeneration as Yixing-Union's parent company, we continue to find that Cogeneration is Yixing-Union's parent company, pursuant to 19 CFR 351.525(b)(6)(iii).

---

[158] *See Investigation*, and accompanying IDM at Comment 27.
[159] *See* Yixing-Union's IQR at 2.
[160] *See* Yixing-Union's IQR at 3 ("The parent company, Yixing-Union Cogeneration Co., Ltd…meets the 'cross-ownership' criteria…").

Comment 13 Application of the Upstream Subsidy Provision for the Steam Coal LTAR

Affirmative Comments

As discussed in Comment 12, above, Yixing disputes the Department's preliminary determination that Cogeneration is the parent company of Yixing-Union. However, Yixing argues that even if Cogeneration were Yixing-Union's parent company, the Department applied the wrong methodology in attributing the subsidies received by Cogeneration to Yixing-Union.

Yixing contends that Cogeneration is an input supplier, providing electricity to Yixing-Union. Yixing notes that the relative quantity of the inputs provided by Cogeneration to Yixing-Union compared with Cogeneration's total sales indicates that the inputs provided are not primarily dedicated to the downstream product, citric acid. Therefore, Yixing claims that it is not reasonable to assume that the purpose of the alleged steam coal subsidy is to ultimately benefit citric acid and suggests that the Department should rather have applied the upstream subsidy provision. However, Yixing also notes that in applying the upstream subsidy provision, the Department must establish there to be a "significant effect" on the cost of manufacturing or producing the merchandise, and contends that the record lacks such analysis or finding.

Rebuttal Comments

Petitioners dismiss Yixing's contentions, claiming that the upstream subsidy provision only applies to cross-owned input suppliers, not parent companies. Rather, Petitioners contend that the Department correctly attributed subsidies received by Cogeneration to Yixing-Union. Petitioners submit that, according to 19 CFR 351.525(b)(6)(iii), when a subsidy is received by a cross-owned parent or holding company, any subsidy received by that company will be directly attributed to the subsidiary. Thus, because Cogeneration is Yixing-Union's parent company, as previously discussed, Petitioners maintain that any subsidies Cogeneration received should be directly attributed to Yixing-Union. Furthermore, Petitioners assert that because the upstream subsidy provision is not applicable to parent companies, the issue of examining whether there is "significant effect" with respect to inputs Cogeneration provided to Yixing-Union is irrelevant.

Department's Position:

We disagree that the upstream subsidies provision cited by Yixing applies in this situation. Having decided that Cogeneration is the parent of Yixing-Union (*see* Comment 12, above), our regulations at 19 CFR 351.525(b)(6)(iii), clearly prescribe that its subsidies be attributed to Cogeneration's and Yixing-Union's sales.

In this review, we have continued to allocate the subsidies received by Cogeneration, using the attribution rule for parent companies, as we did in the *Investigation*. This is supported by the extent to which to which the finances of the two companies are intertwined. Moreover, to the extent that Yixing's argument relies on its supposition that steam coal subsidies would not be given to promote citric acid production, the steam coal subsidy is not being countervailed in these final results.

Comment 14 Adequacy of Yixing's Cooperation In Providing Information on Affiliate

Affirmative Comments

Yixing disagrees with the Department's decision to apply AFA to Yixing with respect to the ownership information it allegedly did not provide with respect to JSH. Specifically, Yixing states that despite the difficulty it faced in obtaining detailed ownership information pertaining to JSH, a previously liquidated company, it responded to the best of its ability by providing JSH's articles of association and a website showing that Hengtong, one of JSH's owners, was a privately operated enterprise. Although Yixing acknowledges that the information it provided may not answer the question of the ownership of Hengtong, Yixing states that it is the only information it had available to it. Accordingly, as Yixing provided the Department with the most complete response it claims it could have provided, Yixing maintains that it was not uncooperative and, thus, the Department's post-preliminary AFA determination is unwarranted.

Yixing further contends that AFA was not warranted because Yixing did not withhold information from the Department. Yixing states that pursuant to section 776(a) of the Act, the Department is permitted to apply AFA in circumstances where, among other reasons, an interested party withholds information. However, Yixing claims it is incorrect to conclude that it withheld information because it did not possess the requested information. Yixing contends that it is not possible for a party to withhold information that it does not possess.[161] While Yixing concedes that it is reasonable to expect Cogeneration to possess ownership information pertaining to JSH, Yixing argues that it is not reasonable to assume that Cogeneration possesses information relating to the ultimate owners of JSH, given that JSH is no longer in existence and given that there is no affiliation between Yixing and JSH's ultimate owners. Yixing asserts that it provided the Department with the best information it could find and thus, AFA was unwarranted.

Rebuttal Comments

Petitioners disagree with Yixing's contentions, and argue that the Department was correct in applying AFA to Yixing for not providing the requested information. Petitioners state that the CIT has repeatedly found that "the burden of creating an accurate record rests with the respondent, not the United States Department of Commerce."[162] Petitioners further point out that Yixing itself acknowledges that it may not have provided the complete ownership information requested by the Department. Therefore, because Yixing provided incomplete information with respect to the ownership of JSH, Petitioners maintain that Yixing has not met its evidentiary burden and, thus, has not offered the Department any reason to adjust its application of AFA in this regard.

Department's Position

Yixing has demonstrated that it acted to the best of its ability in attempting to provide the information requested by the Department. Yixing provided the ownership percentages, portions of the articles of association for JSH, as well as the application for liquidation, despite the fact that the company had been liquidated prior to the POR. Although we continue to find that

[161] *See Washington International Insurance Company v. United States*, Court No. 08-00156, Slip Op. 09-78 (July 29, 2009).
[162] *See e.g.*, *Ta Chen Stainless Steel Pipe*, Slip Op. 00-107 at 7.

Yixing did not provide the complete ownership information requested with respect to Hengtong, we find that Yixing acted to the best of its ability in attempting to provide that information.

Therefore, we are no longer applying AFA regarding Cogeneration's ownership in this period. However, as explained in the Final BPI Memo, we have found a significant level of state ownership in Cogeneration during 2004 and 2005 through the shares held by Guolian Trust.

Comment 15 Whether the State Ownership Determination for Yixing's Affiliates is Correct

Affirmative Comments

Yixing argues that even if the Department maintains its application of AFA with respect to the ownership structure of JSH (discussed in Comment 14, above), it is incorrect to determine Yixing was state owned during the 2004 and 2005 period.

As AFA, the Department made an assumption that Cogeneration, and by extension, Yixing-Union, was government owned because Yixing did not provide the full ownership information for Hengtong, one of Cogeneration's prior owners. However, Yixing asserts that even if Hengtong were government owned, the Department made an arithmetical error in attributing the assumed state ownership of Hengtong to Cogeneration. Yixing suggests an alternative method of attributing the assumed state ownership of Hengtong to Cogeneration based on the percentages of the intermediate owners. (Due to the proprietary nature of this discussion, please *see* Final BPI Memo for further detail regarding this issue.) Yixing argues that using its suggested methodology results in an ultimate level of state ownership that would not lead the Department to conclude Cogeneration was state owned during 2004 and 2005. Therefore, the long-term loans Cogeneration obtained during 2004 and 2005 from a foreign company, in Yixing's view, would constitute dispositive evidence of Yixing's creditworthiness for the 2004 and 2005 period, pursuant to 19 CFR 351.505(a)(4)(i)(A).

Rebuttal Comments

Petitioners disagree with Yixing. Rather, Petitioners contend that the adversely assumed state ownership in Hengtong likely directly controlled JSH's interests. Therefore, Petitioners argue that the Department's method of attributing the adversely assumed state ownership was correct. Petitioners further argue the Department's AFA determination is supported by the USITC Report on China which states that all power companies must be under state control.[163] Thus, Petitioners contend that the Department's determination that Yixing was state-owned during 2004 and 2005 is justified.

Department's Position

As explained above, the Department finds the level of state-ownership in Cogeneration in 2004 – 2005 was significant based on direct ownership by Guolian Trust.[164] Thus, the ownership share held by Hengtong and Yixing's calculations are not relevant to our finding.

[163] *See* New Subsidy Allegations at Exhibit 6 at 26-27 (USITC Report on China).
[164] *See* Final BPI Memo.

Comment 16 Whether the Department Deprived Yixing of the Opportunity to Review Subsidy Calculations

Affirmative Comments

Yixing disagrees with the Department's decision not to release calculations relating to information discussed in its post-preliminary analysis. Yixing points to the *Preliminary Results* in which the Department stated "The Department plans to issue a post-preliminary analysis, as warranted, presenting its analysis of issues not addressed in these preliminary results."[165] Yixing also mentions that in the Department's October 17, 2011 letter it discussed its intention to "issue an interim analysis describing our preliminary findings before the final results." Yixing asserts that despite these indications from the Department, none of the documents released by the Department included any interim analysis describing its preliminary findings. Yixing takes particular issue with the fact that the Department did not release any analysis, calculation, or decision relating to how it planned to treat information collected subsequent to the *Preliminary Results*. Further, although the Department did issue a post-preliminary creditworthiness finding with respect to Yixing, it did not provide any calculations showing the impact of its determination in this regard.

Pointing to 19 CFR 351.224, Yixing states that the Department has long had a practice of providing parties with the details of its AD and CVD calculations to promote transparency. Yixing contends that in this case, however, the Department has departed from this practice. Yixing asserts that it is vital that the Department allow parties meaningful participation in its proceedings, specifically with respect to the opportunity to review and comment on the agency's determinations before they are finalized. Yixing contends that by not issuing margin calculations relating to the Department's post-preliminary analysis, the Department has deprived parties this opportunity. Thus, if any party has cause to object, the only recourse it now has is to appeal the decision to the courts.

Department's Position

We disagree with Yixing and find that the Department released the appropriate analysis associated with the items identified in the *Preliminary Results*. In the *Preliminary Results* the Department stated "The Department plans to issue a post-preliminary analysis, as warranted, presenting its analysis of issues not addressed in these preliminary results." The Department did not state that it would recalculate the CVD rates based on information collected or analyzed subsequent to the *Preliminary Results*. Thus, the Department did exactly as it informed parties it would do.

The Department generally limits post-preliminary analyses to programs for which there is not enough information to make a preliminary finding regarding countervailability or significant methodological changes. In this instance, the Department only lacked information needed to make a preliminary finding with respect to the certain programs, as discussed above. The Department additionally lacked information required to ascertain Yixing's creditworthiness during 2004-2005, full year data for 2008 with respect to interest payments, notes payable, coal, and sulfuric acid purchases. However, with the exception of Yixing's creditworthiness in 2004-2005, the programs related to the remaining pieces of missing information had already been

[165] *See Preliminary Results*, 76 FR at 33238.

determined countervailable. Therefore, the information obtained in relation to these programs subsequent to the *Preliminary Results* does not necessitate a post-preliminary analysis of those programs or calculations relating to those data.

The Department released its RZBC Post-Preliminary Analysis, RZBC Preliminary Creditworthy Analysis, and Yixing Preliminary Creditworthiness Determination for 2004-2005 to interested parties. Further, on October 17, 2011, the Department provided parties time to comment on the preliminary results and post-preliminary issues in case briefs. Therefore, we disagree with Yixing that the Department deprived parties of a meaningful opportunity to review and comment in this proceeding.

Comment 17 Correction of AFA Ruling Based on RZBC Submission of Requested Information

Affirmative Comments

RZBC disputes the Department's application of AFA to RZBC in the *Preliminary Results* because it withheld certain sulfuric acid producers' information. RZBC contends that it has since corrected the record and provided the requested information.[166] RZBC maintains that it has acted to the best of its ability to obtain the requested information, and has fully cooperated with the Department to provide the requested information.

Department's Position

Prior to the *Preliminary Results*, RZBC identified certain producers of sulfuric acid it purchased, but failed to provide the producer information for all of its purchases. Accordingly, we determined that RZBC withheld necessary information that was requested of it and, thus, the Department relied on "facts available" for the *Preliminary Results*. Moreover, we determined that RZBC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference was warranted in the application of facts available consistent with section 776(b) of the Act. Due to RZBC's failure to identify the producers of certain sulfuric acid it purchased, in the *Preliminary Results* we assumed adversely that these producers of sulfuric acid are "authorities" within the meaning of section 771(5)(B) of the Act.

In a supplemental questionnaire issued by the Department on June 8, 2011, we asked RZBC to resubmit its sulfuric acid purchase charts and to include all purchases for full calendar years 2008 and 2009. In its RSQR4, RZBC provided the requested information, including the previously missing producer names. As these charts were provided in response to a specific Department request, we agree that RZBC provided all the information requested of it and that the application of AFA to RZBC is not warranted.

We note, however, that the GOC's failure to provide complete ownership information regarding the producers of the sulfuric acid purchased by RZBC has resulted in the Department adversely assuming that these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

[166] *See* RSQR4 at Exhibit 5.

Comment 18 Whether Department's Finding that RZBC was Uncreditworthy Is Supported by Record Evidence

Affirmative Comments

RZBC asserts that the Department did not provide a clear standard in making its preliminary creditworthiness determination for the company.[167] In particular, RZBC claims that the Department did not clearly explain its analysis, nor did it reference record evidence, to support its conclusions.

RZBC further asserts that the Department did not accord proper weight to certain facts which are proprietary in nature. For a full discussion, *see* RZBC Final Creditworthiness Determination.

Rebuttal Comments

Petitioners dispute RZBC's claim that the Department did not clearly reference record evidence to support its conclusions. Petitioners argue that the Department cited ample record evidence, including the RZBC companies' financial ratios, in support of its findings. Furthermore, Petitioners argue, RZBC provided no alternative interpretation of the RZBC companies' financial ratios.

Department's Position

In conducting its creditworthiness analysis, the Department is essentially placing itself in the position of a commercial bank at the time the long-term loan in question is being approved and asking, would the bank make this loan? In answering this question, a commercial bank would look at numerous financial indicators to get an entire picture of a firm's health. This analysis cannot be reduced to a simple formula. Indeed, the Department previously considered and rejected a formulaic approach. As we stated in *CVD Preamble*, "we changed the definition {of uncreditworthiness} from the 1989 Proposed Regulations because we found that the old definition did not contain a general principle to guide our determinations of uncreditworthiness. Instead, the 1989 Proposed Regulation relied on a formulaic approach to determining creditworthiness that was too restrictive. We believe that the general principle adopted in these regulations (*i.e.*, an uncreditworthy firm is one which could not have obtained long-term financing from conventional sources) will give us the flexibility to address situations that would not have met the formulaic approach for finding a company uncreditworthy."[168]

Within this framework, we have explained the financial information we considered, our analysis of the information, and the bases for our conclusions. Our findings are based on record evidence, specifically the evidence of RZBC's financial ratios, profitability, and general ability to receive commercial financing. Further, we considered, as addressed below, whether the feasibility study indicated that RZBC Juxian was creditworthy, and we considered the peer group data submitted by Petitioners. All of these items are record evidence.

[167] *See* RZBC Preliminary Creditworthiness Determination.
[168] *See CVD Preamble*, 63 FR at 65366.

Additional considerations the Department failed to address

Affirmative Comments

RZBC asserts that the Department incorrectly included long-term loans in its creditworthiness analysis. RZBC notes that the Department will find a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.[169] RZBC argues that a commercial bank, in determining whether to issue a long-term loan, would examine a firm's finances prior to, and not after, the issuance of the loan. Therefore, insists RZBC, the Department must exclude the long-term loans from the financial analysis, and consider RZBC's financial ratios as they were prior to receipt of the long-term loans at issue.

RZBC further argues that the Department failed to distinguish between secured, guaranteed and unsecured loans in its creditworthiness analysis. RZBC asserts that such a consideration would be of primary importance to bank when determining whether to issue a long-term loan. RZBC contends that, in failing to distinguish between different loan types, the Department fails to account for the relative safety afforded by guaranteed and secured loans.

RZBC notes that, in making a creditworthiness determination, the Department may consider, among other factors, evidence of a firm's future financial position.[170] Referencing RZBC Juxian's financial ratios in 2007, 2008, and 2009, RZBC asserts that the Department failed to consider RZBC Juxian's future financial position in its preliminary finding of uncreditworthiness for 2006. RZBC argues that RZBC's financial ratios substantially improved in 2008 and 2009. RZBC also argues that the Department failed to account for RZBC Co.'s future position in 2008 and 2009 as required by the regulations.

Rebuttal Comments

Petitioners dispute RZBC's contention that the Department must exclude RZBC's long-term loans from its financial analysis. Petitioners note that, since the Department first began conducting creditworthiness analyses, the Department has based its financial ratio analysis on the unadjusted balance sheet of each respondent.[171] Petitioners argue that, in deciding whether to issue a long-term loan, a commercial lender would consider the impact of the new loan on the potential borrower's financial position after receipt of the loan. Petitioners also argue that simply excluding the long-term loans at issue from the liabilities side of the balance sheet would not exclude their effects entirely, and that the numerous adjustments required would be unadministrable. Petitioners note that the Department has previously recognized the difficulties inherent in adjusting financial ratios for previously received subsidies.[172]

Petitioners also disagree with RZBC's assertion that the Department should consider loan type in its analysis. Petitioners contend that loan type is not an indication of RZBC's creditworthiness. To the contrary, assert Petitioners, a commercial bank would interpret the need for collateral or a guarantee as an indicator of insufficient ability to financially support a loan. Furthermore, argue

[169] *See* 19 CFR 351.505(a)(4)(i).
[170] *See* 19 CFR 351.505(a)(4)(i)(D).
[171] *See Steel Sheet from Argentina Prelim*.
[172] *See CVD Preamble*, 63 FR at 65368.

Petitioners, a commercial bank would consider the quality of collateral or guarantee when assessing such a loan. Petitioners assert that, in the instant case, a commercial bank would find fault with the quality of the guarantors of RZBC's long-term loans.

Department's Position

Regarding RZBC's assertion that the Department should exclude long-term loans from its financial ratio analysis, the Department agrees with Petitioners that such a methodology departs from previous Department practice, and would be unadministrable. Petitioners correctly note that, in the *CVD Preamble*, the Department stated that "trying to adjust for previously received subsidies would be an extremely difficult and highly speculative exercise."[173] Likewise, accurately adjusting RZBC's financial statements to remove the long-term loans at issue would be a nearly impossible exercise. Furthermore, we agree with Petitioners that a bank would indeed account for a firm's financial ratios after receipt of a loan. When examining a firm, a commercial bank will ensure that it will be repaid in full and on time. Therefore, a commercial bank would necessarily examine a firm's projected financial ratios after receipt of a loan.

Similarly, regarding RZBC's assertion that the Department failed to consider that the loans under investigation are secured and/or guaranteed, we disagree that this is relevant in this case, consistent with previous Department practice.[174] The loans under review are countervailable, so it is not appropriate to rely on the lending practices of the banks providing these loans as evidence of creditworthiness. Second, some commercial banks may require a security or guarantee from uncreditworthy companies to protect the bank's interest. Protecting the bank's interest and the existence of a security or guarantee does not prove a company's creditworthiness, but rather that the bank has sought to protect its interests.

We note that RZBC, referencing 19 CFR 351.505(a)(4)(i)(D), argues that the Department erred in not performing its financial ratio analysis for RZBC Juxian in 2007, 2008, and 2009, and for RZBC Co. in 2008 and 2009. However, as noted above, the Department makes its creditworthiness determination based on information available at the time of the government-provided loan.[175] As such data were not available at the time that RZBC Juxian and RZBC Co. obtained their loans in 2006 and 2007, respectively, the Department cannot include these financial ratios in its analysis.

A. The Department erred in using the peer group obtained from Infinancials by Petitioners

Affirmative Comments

RZBC challenges the Department's use of peer median financial ratios, provided by Petitioners and calculated from peer groups obtained by Petitioners from the Infinancials database, as a benchmark in its creditworthiness analysis. RZBC alleges that Petitioners distorted the peer groups obtained from the Infinancials database by selecting matching criteria and individual peer group members to reflect negatively on RZBC's financial position. RZBC argues that Petitioners failed to explain why only ten, and not all 50, relevant companies were included in

[173] *See CVD Preamble*, 63 FR at 65368.
[174] *See CFS from the PRC*, and accompanying IDM at Comment 12.
[175] *See* 19 CFR 351.505(a)(4)(i).

the peer groups. RZBC also notes that the ten companies used to form the peer groups provided by Petitioners differ between 2006/2007 and 2008/2009, and that Petitioners fail to explain this discrepancy as well.

RZBC, further referencing the peer groups provided by Petitioners from the Infinancials database, asserts that the peer groups provided by Petitioners are unrepresentative of RZBC and the citric acid industry as a whole. RZBC notes that Petitioners selected BBCA as a surrogate for RZBC when obtaining peer groups from the Infinancials database. However, BBCA has a wide range of interests, including the manufacture of organic acid and other biological chemical products, raw material feed, and protein feed. RZBC also argues that, although BBCA is presumably the most representative company for which Infinancials data was provided Petitioners did not include BBCA in the peer group from which the peer median ratios were obtained, nor did the Department include BBCA's financial data in its creditworthiness analysis. RZBC notes that none of the manufacturers or exporters of subject merchandise that Petitioners originally requested for review is included in the peer groups selected from the Infinancials database.[176] RZBC argues that there is no record evidence that any of the companies included in the Infinancials list of the 50 most relevant companies produce subject merchandise.

Rebuttal Comments

Petitioners argue that the Department was correct in its use of peer group data obtained by Petitioners from the Infinancials database as a benchmark in its creditworthiness analysis. Petitioners dispute RZBC's contention that the surrogate chosen by Petitioners when obtaining the Infinancials data, BBCA, is not representative of RBZC or the citric acid industry as a whole. Petitioners note that BBCA was chosen by the Department as a mandatory respondent in the *Investigation*. Petitioners argue that the description of BBCA cited to by RZBC confirms that BBCA is indeed similar to RZBC.[177]

Petitioners rebut RZBC's allegation that the matching criteria and individual peer group members selected by Petitioners were designed to reflect negatively on RZBC's financial position. Petitioners assert that no such manual intervention occurred. Petitioners contend that Infinancials automatically generated the peer groups and identified appropriate industry sectors, weighting factors, and companies. Petitioners argue that, to the extent that the peer groups differed between 2006/2007 and 2008/2009, this was a reflection of the variation in data available to Infinancials.

Petitioners assert that RZBC ignores the data availability challenges faced by the Department when conducting its creditworthiness analysis. Petitioners argue that the financial statements of private Chinese companies are difficult to obtain, and that this limitation is not unique to Infinancials. Petitioners note that RZBC has presented no alternative data source upon which the Department could base its peer group analysis.

Department's Position

We agree, in part, with Petitioners' position that peer groups obtained by Petitioners from the Infinancials database should be included in this analysis. Record evidence does not confirm

[176] *See* Petitioners' Request for Administrative Review, dated June 1, 2010.
[177] *See* Petitioners' Uncreditworthiness Allegation at Exhibit 3.

RZBC's allegation that Petitioners manipulated the peer groups used as a comparison in the RZBC Preliminary Creditworthiness Determination by selecting matching criteria and individual peer group members to reflect poorly on RZBC's creditworthiness. To the contrary, Petitioners state in their Uncreditworthiness Allegation for RZBC that "Infinancials weighted matching characteristics for BBCA in order to maintain the appropriate peer group. Infinancials scored the peer group companies from highest to lowest and selected the top companies. It then calculated financial ratios for those companies and returned a 'peer median.'"[178]

We disagree that the peer groups are wholly unrepresentative. First, as Petitioners note, BBCA, the company Petitioners chose as the basis for the peer groups, was a mandatory respondent in the *Investigation* and is, therefore, a reasonable comparison for a producer of subject merchandise. Second, while we note that the "50 most relevant companies" selected by Infinancials have relevancy scores of, at best, 28%, Petitioners faced serious constraints in obtaining this data. We agree with Petitioners' assertion that the financial statements of private Chinese companies are difficult to obtain. We also note that RZBC did not place any peer comparison of its own on the record, nor did it try to corroborate the results Petitioners obtained from Infinancials.

Thus, while we do not dismiss Petitioners' peer groups as self-selected or irrelevant, the peer groups are not dispositive evidence of RZBC's creditworthiness or uncreditworthiness. To the contrary, the peer groups are simply one more piece of evidence for the Department to consider in its analysis. However, in this instance, the Department agrees with RZBC that RZBC Juxian's start-up position complicates a comparison to peer group data. The start-up costs experienced by newly founded companies influences financial indicators and reduces comparability well-established companies. Since RZBC Juxian was a newly founded company in 2006, the Department agrees it would not be appropriate to compare RZBC Juxian to a peer group comprised of mature companies. Therefore, in its final creditworthiness determination, the Department has not considered the peer group analysis in its analysis of RZBC Juxian's creditworthiness.

B. Creditworthiness of RZBC Juxian in 2006

Affirmative Comments

RZBC asserts that, contrary to the Department's preliminary determination of uncreditworthiness for RZBC Juxian in 2006, RZBC Juxian was in a strong financial position. RZBC argues that the Department failed to consider that RZBC Juxian was a newly founded company in 2006. RZBC notes that, in the RZBC Preliminary Creditworthiness Determination, the Department stated that, in past cases concerning newly founded companies, the Department has examined other factors, such as the financial health of parents and affiliates.[179] RZBC argues, however, that the Department failed to account for record evidence indicating that RZBC Co. owned a substantial share of RZBC Juxian in 2006 and that RZBC Co.'s strong financial position in 2006 is evidence of RZBC Juxian's creditworthiness in that year. Moreover, RZBC asserts, the Department did not provide any analysis of other factors in the instant case, nor did it provide any analysis of how RZBC Juxian's recent founding affected its creditworthiness determination.

[178] *See* Petitioners' Uncreditworthiness Allegation at 9-10.
[179] *See* RZBC Preliminary Creditworthiness Determination at 5.

RZBC contests the Department's preliminary finding that the feasibility study placed on the record by RZBC Juxian is not probative of RZBC Juxian's creditworthiness. RZBC notes that the Department did not find the feasibility study probative because it was not prepared prior to an agreement between a lender and a firm on the terms of a loan, and because it was not independently prepared.[180] RZBC contends that the report was prepared nearly two months before RZBC Juxian received long-term loans, and was prepared without the discipline of an order in mind. RZBC claims that the information contained in the report would serve as probative evidence of creditworthiness to a commercial bank in deciding whether to issue a long-term loan to RZBC Juxian.

Rebuttal Comments

Petitioners argue that the Department was correct in finding RZBC Juxian uncreditworthy in 2006. Petitioners assert that such a finding was supported by ample record evidence, and argue that RZBC offers no support for an alternative interpretation of RZBC Juxian's financial ratios. Petitioners dispute RZBC's assertion that the Department did not properly consider cross-ownership between RZBC Co. and RZBC Juxian. Petitioners argue that RZBC does not show that levels of cross-ownership in 2006 approximated the levels observed by the Department in 2008 and 2009, when the Department considered the consolidated entity in its creditworthiness analysis.

Petitioners disagree with RZBC's claim that the Department failed to consider that RZBC Juxian was a newly founded company in its creditworthiness analysis. Petitioners state that, although RZBC claims that the Department should have cited other factors in its analysis, RZBC cites no additional evidence that the Department should have considered.

Petitioners argue that the Department correctly found the feasibility study submitted by RZBC has no probative value in determining RZBC Juxian's creditworthiness. Petitioners claim that there is no evidence that the feasibility study was prepared independently or in connection with a lending decision. Petitioners contend that the information contained in the feasibility study contrasts with RZBC Juxian's financial ratios during the period.

Department's Position

We continue to find that RZBC Juxian could not have obtained long-term loans from conventional commercial sources in 2006. For a full discussion, *see* RZBC Final Creditworthiness Memorandum.

According to 19 CFR 351.505(a)(4)(i)(D), the Department may examine, among other factors, "evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan." We agree with RZBC that the feasibility study for RZBC Juxian provided in RZBC's response to the Department's Fourth Supplemental Questionnaire was in fact prepared prior to RZBC Juxian's receipt of any long-term loans. However, as noted in the RZBC Preliminary Creditworthiness Determination, there is no

[180] *See* RZBC Preliminary Creditworthiness Determination at 5.

evidence on the record that the feasibility study was independently prepared.[181] Furthermore, the feasibility study does not provide sufficient evidence of RZBC Juxian's future financial position. While the feasibility study does provide data on projected production, it provides no projection of future market conditions, sales and revenue, or how such conditions may influence RZBC Juxian's creditworthiness. Therefore, consistent with the RZBC Preliminary Creditworthiness Determination, we find that the feasibility study is not probative evidence of RZBC Juxian's creditworthiness.

In past cases involving newly-founded companies, the Department has determined it was appropriate to examine other factors, such as the financial health of parents and affiliates, to determine whether the newly formed company is creditworthy.[182] We have examined such evidence in this review, but have found it inconclusive in the case of RZBC Juxian. As noted above, the feasibility study submitted by RZBC is not probative of RZBC Juxian's creditworthiness. We have also considered RZBC Co.'s financial position due to its substantial ownership share in RZBC Juxian. However, we do not find that RZBC Co.'s financial position in 2006 was such that it would enable RZBC Juxian to obtain long-term loans from commercial sources. *See* RZBC Final Creditworthiness Memorandum.

While RZBC complains that the Department failed to analyze other factors, we agree with Petitioners that RZBC cited no additional evidence that the Department should have considered. Thus, we continue to find that RZBC Juxian was uncreditworthy in 2006.

C. Creditworthiness of RZBC Co. in 2007

Affirmative Comments

RZBC asserts that the Department erred in finding RZBC Co. uncreditworthy in 2007. RZBC claims that RZBC Co.'s liquidity ratios were sufficient to obtain a long-term loan from a commercial bank, and that RZBC Co.'s debt and income ratios compare favorably with BBCA, the firm that Petitioners used as a surrogate in obtaining a peer group from the Infinancials database.

Rebuttal Comments

Petitioners dispute RZBC's assertion that the Department erred in finding RZBC Co. uncreditworthy in 2007.

Department's Position

We continue to find that RZBC Co. could not have obtained long-term loans from conventional commercial sources in 2007. Because our analysis relies extensively upon proprietary data, *see* RZBC Final Creditworthiness Memorandum.

[181] *See* RZBC Preliminary Creditworthiness Determination at 5.

[182] *See CFS from the PRC*, and accompanying IDM at Comment 12, and *OTR Tires from the PRC Prelim*, 75 FR at 64271.

D. Creditworthiness of the consolidated entity RZBC in 2008 and 2009

Affirmative Comments

RZBC asserts that the Department erred in finding the consolidated entity RZBC uncreditworthy in 2008 and 2009. RZBC argues that, as a result of double-digit profit margins, return on equity, and return on assets, RZBC would have been able to obtain a long-term loan from a conventional commercial source in 2008 and 2009. RZBC disputes the Department's reliance on RZBC's liquidity ratios in finding RZBC uncreditworthy in 2008 and 2009.

Rebuttal Comments

Petitioners argue that the Department cited ample record evidence in finding the combined RZBC entity uncreditworthy in 2008 and 2009. Petitioners assert that the combined entity could not have obtained long-term loans from commercial sources in 2008 and 2009, and that RZBC has provided no reason for the Department to reconsider its analysis.

Department's Position

For these final results, we have concluded that the consolidated RZBC companies could have obtained long-term loans from conventional commercial sources in 2008 and 2009. Consequently, in a change from the RZBC Preliminary Creditworthiness Determination, we find the consolidated RZBC companies to be creditworthy in 2008 and 2009. For a full discussion, *see* RZBC Final Creditworthiness Memorandum.

Comment 19 Whether the Department Provided the GOC the Opportunity to Correct Deficiencies Found in the *Preliminary Results*

Affirmative Comments

The GOC asserts that in the *Preliminary Results* the Department improperly applied AFA based on its assessment that the GOC failed to cooperate to the best of its ability in providing the Department with requested information regarding respondents' suppliers of sulfuric acid and steam coal. Citing *Nippon Steel*, the GOC contends that finding that a respondent has not cooperated to the best of its ability requires a showing that the respondent has failed "to put forth its maximum efforts to investigate and obtain the requested information …"[183] The GOC insists that in this case it clearly did the maximum it was able to do to obtain information requested by the Department with respect to the respondents' suppliers of steam coal and sulfuric acid. The majority of the information the GOC was not able to provide on a timely basis, it claims, was outside of its control. Further, the GOC claims in these instances that it indicated it required extra time, but that it ultimately would provide the requested information. In one instance, according to the GOC, it submitted the information one day late and the Department rejected the submission. In the GOC's view its failure was not due to a lack of cooperation but, instead, to the inherent difficulty of gathering information from various and disparate sources within very short deadlines.

The GOC further contends that the Department should have allowed it to cure the deficiencies that led to the Department's application of AFA in the *Preliminary Results*. In this regard, the

[183] *Nippon Steel*, 337 F.3d at 1382-1383.

GOC highlights its attempt to file a submission on May 18, 2011, to supplement a timely filing from May 17, 2011, with the requested input supplier information. In the May 17, 2011 submission, the GOC states it indicated that additional missing information that the Department requested was in transit and would be filed the following day. Nonetheless, the Department rejected the GOC's May 18, 2011 supplemental response as untimely.[184] The GOC contends that its May 18, 2011 supplemental response was filed before the *Preliminary Results* and that the Department had ample time remaining in the proceeding to consider the supplemental response because the record remained open and the Department continued to seek information from the parties.

The GOC contends that the Department's decision not to allow the GOC to cure perceived deficiencies following the *Preliminary Results* is contrary to precedent and section 782(d) of the Act.[185] In this connection, the GOC cites to *Agro Dutch* where the court found that section 782(d) of the Act allowed the respondent to cure previous deficiencies and, therefore, close the gap in information necessary for the proceeding to continue.[186]

The GOC further contends that the refusal to allow the GOC an opportunity to cure deficiencies marks a stark reversal from the Department's practice in CVD cases against the PRC. For example, in *OCTG from the PRC* the Department granted the GOC the opportunity to submit ownership information after the preliminary determination. Moreover, citing *Timken,*[187] the GOC argues that respondents should be permitted an opportunity to submit information following the preliminary results when doing so would result in a more accurate determination.

Finally, the GOC argues that the Department's actions constitute a change of policy without adequate notice to the parties involved in the instant case. The GOC contends that the Department is, for the first time, requiring an extension for every piece of information that the GOC cannot respond to in its questionnaire response. The GOC cites to *Shikoku*[188] where adequate notice is required before Commerce can alter its methodology.

Rebuttal Comments

None submitted.

Department's Position

We disagree that the Department failed to give the GOC an opportunity to remedy its deficient responses and incorrectly applied AFA to the GOC due to the GOC's failure to cooperate to the best of ability.

[184] The GOC also alleges that the Department may have improperly considered the GOC's actions in previous CVD cases in determining that the GOC did not act to the best of its ability, stating that "The GOC is well aware of the Department's reporting requirements by now" in the *Preliminary Results*, 76 FR at 33222.
[185] *See, e.g., Iron Pipe Fittings from the PRC,* 71 FR at 37053 (where the Department provided respondents with an additional opportunity to cure deficiencies after the Preliminary Results).
[186] *Agro Dutch,* 31 CIT at 2054-2055.
[187] *Timken,* 28 CIT at 339.
[188] *Shikoku,* 1795 F. Supp. at 421-22.

When we issued the original NSA QR to the GOC on February 22, 2011, we included a specific request to the GOC that it coordinate with the respondent companies to ensure that it had a complete list of producers/suppliers of both steam coal and sulfuric acid. The Department described the specific information it needed on the input suppliers in an attached Input Supplier Appendix**.**

We extended the initial March 8, 2011 deadline for the GOC response to March 18, 2011, by which time the respondent companies had identified a number of their input producers. In its March 18, 2011 response, the GOC identified the reported producers who were government controlled, but failed to respond to any of the additional questions included in the Input Supplier Appendix for the producers that it claimed were not government controlled. On April 14, and again on May 3, 2011, we informed the GOC of the deficiencies in its March 18 response, and provided the GOC with an opportunity to remedy its deficiencies by responding to the questions it did not answer on March 18.

In its May 4, 2011 supplemental questionnaire response, the GOC provided brief narrative explanations and/or some documentation regarding the identities of the owners and the percentages of ownership for eight of nine sulfuric acid input producers identified at that time by the respondent companies.[189] However, in this submission, the GOC specifically did not provide any of the other information requested in the Input Supplier appendix which included questions on whether members of the owners, board of directors or managers of the input producers were also CCP officials and whether management decisions of the input producers were subject to government approval.

The Department's final extended deadline for the GOC to submit requested information on the input suppliers was May 17, 2011. In its submission of that date, the GOC identified the name of the ninth sulfuric acid supplier reported by the respondent companies and stated that information on this company and one other sulfuric acid producer was in transit.[190] The GOC did not file a request for an extension to submit the information in transit. In May 17, 2011, the GOC also provided documentation of the ultimate ownership of a third previously identified sulfuric acid producer.[191] The GOC stated that ownership information demonstrated the "ultimate owners are individuals, none of whom are CCP or government officials."[192] It also stated that the management decisions of this company are not subject to government approval.[193] However, it did not provide any information on whether the managers or members of the board of this company are CCP officials.

We further disagree that the Department contravened section 782(d) of the Act. As explained above, the GOC was given additional chances to provide the requested information. Moreover, having been involved in numerous CVD proceedings involving inputs allegedly provided for LTAR, the GOC is well aware of the Department's informational requirements and should be practiced in gathering this information. Additionally, the GOC as a respondent party is well

[189] GNSASQR1, Part 2 at 10 and Exhibits 2-1 through 2-7.
[190] GNSASQR2 at 1-2.
[191] *Id.* at Exhibit 3.
[192] *Id.* at 3.
[193] *Id.* at 3.

aware that that the Department enforces its deadlines. While properly requested extensions of deadlines may be granted, respondents cannot simply decide if and when they will respond. Respect for deadlines is vital to the efficient administration of the Department's proceedings, particularly given the statutory timelines which govern these proceedings. The receipt of information frequently requires follow-on requests for clarification or supplementation. The Department sets its deadlines for certain information with these requirements in mind, and the fact that the record remains open to some information does not license parties to submit any and all information when they see fit. Therefore, the Department properly rejected the GOC's attempted May 18, 2011 submission, a submission for which the deadline had passed and the GOC had not sought an extension

While we acknowledge that section 782(d) of the Act directs the Department to provide parties the opportunity to clarify or remedy deficiencies, the provision is not an open-ended grant to respondents. Specifically, this section states that the opportunity will be provided, "to the extent practicable." As importantly, this section also provides that if the Department finds that a response to correct a deficiency is not submitted within the applicable time limits, it may disregard all or part of the subsequent responses.

Thus, we maintain that we afforded the GOC ample opportunity to provide the information needed for our determination and that our rejection of untimely submitted data is consistent with the statute.

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 ____

_____

Paul Piquado
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
BBCA	Anhui BBCA Biochemical Co. Ltd.
BPI	Business proprietary information
CAFC	U.S. Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CCP	Chinese Communist Party
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
citric acid	citric acid and certain citrate salts
Cogeneration	Yixing-Union Cogeneration Co., Ltd.
Construction Fund	Shandong Province Construction Fund for Promotion of Key Industries
Corn Processor Plan	2007 On Healthy Development of the Corn Industrial Processing Industry
CRU	The Department's Central Records Unit (Room 7046 in the HCHB Building)
CVD	Countervailing Duty
Department	Department of Commerce
ETIL	Enterprise Income Tax Law of the People's Republic of China
EXIM	Export-Import Bank of China
FIE	Foreign-Invested Enterprise
GNIs	Gross National Incomes
GOC	Government of the People's Republic of China
Guolian Trust	Guolian Trust Co., Ltd.
HNTEs	high- and new-technology enterprises
HPP	Yixing Heat and Power Plant
HTI	Shandong Province High-Tech Investment Co. Ltd.
RZBC/HTI Sales Ratio	The ratio of RZBC's sales to the combined consolidated HTI denominator which includes HTI, Sisha and RZBC sales in 2008
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
Jiangsu Chemical FYP	Jiangsu Province 11th Five Year Plan – Chemical
JSH	Jiang Su Henglianyuan Investment Co.
Hengtong	Hengtong Group Co., Ltd.
LIBOR	London Interbank Offered Rate
Light Industry Plan	Notice of the State Council on Light Industry Adjustment and Revitalization Plan
LTAR	Less than adequate remuneration
ME	Market Economy
Measures on Recognition of HNTEs	Measures on Recognition of High and New Technology Enterprises (GUOKEFAHUO {2008} No. 172)
MOI	Market-Oriented Industry
NDRC	National Development and Reform Commission
2008 Minerals Yearbook	U.S. Department of the Interior, U.S. Geological Survey, 2008 Minerals Yearbook - China (Advance Release)
NME	Non-market economy
Petitioners	Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas LLC
PNTR	Permanent Normal Trade Relations
POR	Period of Review
PRC	People's Republic of China
Q&V	quantity and value
Respondents	RZBC and Yixing
RMB	Renminbi
RZBC	Collective entity of RZBC Co., RZBC I&E, RZBC Juxian, and RZBC Group
RZBC Co.	RZBC Co., Ltd.
RZBC Group	RZBC Group Co., Ltd.
RZBC I&E	RZBC Import & Export Co., Ltd.
RZBC Juxian	RZBC (Juxian) Co., Ltd.
RZBC/ Sisha sales ratio	The ratio of RZBC's 2008 sales to Sisha's combined consolidated 2008 sales (which includes Sisha and RZBC sales)
SAA	Statement of Administrative Action
Saha-Union	Saha-Union Public Co., Ltd
Sisha	Sisha Co., Ltd.
SOEs	State-Owned Enterprises
Shandong Province Tenth Five-	Shandong Province Development Plan of Chemical

Year Chemical Plan	Industry during “Tenth Five-Year Plan” Period
Shandong Province Eleventh Five-Year Chemical Plan	Shandong Province Eleventh Five-Year Petro-Chemical Plan
SOCBs	State-Owned Commercial Bank
Special Fund Notice	Notice on Better Use of Special Fiscal Fund to Support the Development of High and New Technology Industry
Technology Special Fund	Financial Special Fund for Supporting High and New Technology Industry Development Project
TPCO	Tianjin Pipe Co.
U.S.C.	United States Code
USDA	United States Department of Agriculture
VAT	Value Added Tax
WTO	World Trade Organization
Yixing-Union	Yixing-Union Biochemical Co., Ltd.
Yixing	Collective entity of Yixing-Union and Cogeneration
2010 Phase-out Plan	Guiding Category for Phasing-out outdated manufacturing devices and Products of Certain Industries (2010 edition)
YEDZ	Yixing Economic Development Zone

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GQR	GOC's Initial CVD Questionnaire Response: Citric Acid from the People's Republic of China (February 14, 2011)
GSQR	GOC's First Supplemental CVD Questionnaire Response: Citric Acid from the People's Republic of China (February 28, 2011)
GNSAQR	GOC's Initial New Subsidy Allegation Questionnaire Response (March 18, 2011)
GNSASQR1, Part 1	GOC New Subsidy Allegation First Supplemental Questionnaire Response (Part 1) (April 27, 2011)
GNSASQR1, Part 2	GOC New Subsidy Allegation First Supplemental Questionnaire Response (Part 2) (May 4, 2011)
GNSASQR2	GOC New Subsidy Allegation Second Supplemental Questionnaire Response (May 17, 2011)
GOC NSA Comments	GOC Comments on Petitioners' Additional New Subsidy Allegation (December 27, 2010)
GOC Brief	GOC's Case Brief dated October 24, 2011.
	Petitioners
PNSA1	Petitioners' Additional Subsidy allegations (December 15, 2010)
PNSA2	Additional Subsidy Allegation: Factual Information Submission (December 15, 2010)
Petitioners' Uncreditworthiness Allegation	Petitioners' Submission: Allegation of Uncreditworthiness for RZBC, dated April 27, 2011
Benchmark Submission	Petitioners' Submission: Submission of Factual Information (April 15, 2011)
	Yixing
Cogeneration's IQR	Cogeneration's Initial Questionnaire Response, dated November 8, 2010
Yixing-Union's IQR	Yixing-Union's Initial Questionnaire Response, dated November 8, 2010
YSQR1	Supplemental Questionnaire Response of Yixing--Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd., dated March 28, 2011
YSQR3	Third Supplemental Countervailing Duty Questionnaire Response of Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd., dated May 16, 2011
	RZBC

RSQR1	RZBC First Supplemental Questionnaire (response) (March 28, 2011)
RSQR2	RZBC Second Supplemental Questionnaire (response) (May 11, 2011)
RSQR4	RZBC Fourth Supplemental Questionnaire (response) (July 29, 2011)
RSQR6	RZBC Sixth Supplemental Questionnaire (response) (September 12, 2011)
RZBC NSA Response	RZBC Respondents' New Subsidy Allegation Supplemental Questionnaire Response (May 3, 2011)
RZBC Preliminary Creditworthiness Determination	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, from David Layton, International Trade Specialist, through Yasmin Nair, AD/CVD Operations, Office 1, dated September 29, 2011, Preliminary Creditworthiness Determination for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); and RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group) (collectively, "RZBC") dated September 29, 2011. (Public Version)*
RZBC Final Creditworthiness Determination	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, from David Layton, International Trade Specialist, through Yasmin Nair, AD/CVD Operations, Office 1, dated December 5, 2011, Final Creditworthiness Determination for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); RZBC (Juxian) Co., Ltd. ("RZBC Juxian") and RZBC Group Co., Ltd. ("RZBC Group) (collectively, "RZBC") dated December 5, 2011 (Public Version)*
RZBC Final Calc Memo	Memorandum to the File from David Layton, International Trade Compliance Analyst, AD/CVD Operations, Office 1, "Final Determination Calculation Memorandum for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); and RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group) (collectively, "RZBC")," (December 5, 2011) (Public Version)*
	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)*

NSA Initiation Memorandum	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, from David Layton and Seth Isenberg, International Trade Specialist, through Yasmin Nair, AD/CVD Operations, Office 1, dated February 10, 2011, Analysis of New Subsidy Allegations
NSA QR	New Subsidy Allegation Questionnaire, sent February 22, 2011
Yixing Final Calc Memo	Memorandum to the File from Austin Redington, International Trade Compliance Analyst, AD/CVD Operations, Office 1, "Final Determination Calculation Memorandum for Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd. (Public Version)*
Yixing Preliminary Creditworthiness Determination for 2009	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, from Austin Redington, International Trade Specialist, through Yasmin Nair, AD/CVD Operations, Office 1, dated May 31, 2011, Preliminary Creditworthiness Determination for Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd. (Public Version)*
Yixing Preliminary Creditworthiness Determination for 2004 - 2005	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, through Yasmin Nair, AD/CVD Operations, Office 1, from Austin Redington, International Trade Specialist AD/CVD Operations, Office 1, dated October 11, 2011, Preliminary Creditworthiness Determination for Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd. (Public Version)*
RZBC Post-Preliminary Analysis	Memorandum from The Team, AD/CVD Operations, Office 1, through Susan H. Kuhbach, Senior 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 October 13, 2011, "Post-Preliminary Analysis Memorandum for RZBC Co., Ltd. ("RZBC Co."), RZBC Import & Export Co., Ltd. ("RZBC I&E"), RZBC (Juxian) Co., Ltd. ("RZBC Juxian"), and RZBC Group Co., Ltd. ("RZBC Group") (collectively, "RZBC")
RZBC Preliminary Creditworthiness Determination	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, from David Layton, International Trade Specialist, through Yasmin Nair, AD/CVD Operations, Office 1, dated September

	29, 2011, Preliminary Creditworthiness Determination for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); and RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group) (collectively, "RZBC") (Public Version)*
RZBC Final Creditworthiness Determination	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, from David Layton, International Trade Specialist, through Yasmin Nair, AD/CVD Operations, Office 1, dated December 5, 2011, Final Creditworthiness Determination for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); RZBC (Juxian) Co., Ltd. ("RZBC Juxian") and RZBC Group Co., Ltd. ("RZBC Group) (collectively, "RZBC") (Public Version)*
RZBC Final Calc Memo	Memorandum to the File from David Layton, International Trade Compliance Analyst, AD/CVD Operations, Office 1, "Final Results Calculation Memorandum for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); and RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group) (collectively, "RZBC")," (December 5 11, 2011) (Public Version)*
Final BPI Memo	Memorandum to the File from Austin Redington, International Trade Compliance Analyst, AD/CVD Operations, Office 1, "Proprietary Discussion of Comment 15 from the Issues and Decision Memorandum for the Final Results" dated December 5, 2011.
RZBC Prelim Calc Memo	Memorandum to the File from Seth Isenberg, International Trade Compliance Analyst, AD/CVD Operations, Office 1, Preliminary Determination Calculation Memorandum for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group") (collectively, "RZBC")
Benchmark Interest Rates Memo	Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Office 1, AD/CVD Operations, regarding "Benchmark Interest Rates" (March 28, 2011

* on file in the Department's Central Records Unit ("CRU") (Room 7046 in the HCHB Building); documents dated from August 8, 2011, onward are also on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System, accessible in the CRU.

LITIGATION TABLE

Short Cite	Cases
Agro Dutch	*Agro Dutch Indus. v. United States,* 31 2047 (CIT 2007)
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)
Bethlehem Steel	*Bethlehem Steel Corp. v. United States*, 25 CIT 307 (CIT 2011)
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)
China First v. United States	*China First Pencil Co., Ltd. v. United States*, 721 F. Supp. 2d 1369, 1372 (CIT 2010)
Cinca S.A. de C.V.	*Cinca, S.A. de C.V. v. United States*, 966 F. Supp. 1230 (CIT 1997)
Citrosuco Paulista	*Citrosuco Paulista, S.A. v. United States*, 12 CIT 1196 (CIT 1988)
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)
Delverde SRL v. United States	*Delverde SRL v. United States*, 202 F.3d 1360 (Fed. Cir. 2000)
Diversified Products	*Diversified Products Corporation v. United States*, 572 F. Supp. 883 (CIT 1983)
Essar Steel	*Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285 (CIT 2010)
F.lli De Cecco di Filippo Fara S. Martino	*F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027 (Fed. Cir. 2000)
Fabrique	*Fabrique de Fer de Charleroi, S.A. v. United States*, 166 F. Supp. 2d 593 (CIT 2001)
Gallant Ocean	*Gallant Ocean (Thail.) Co. v. United States*, 602 F.3d. 1319 (Fed. Cir. 2010).
Georgetown Steel	*Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986)

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)
GPX III	*GPX Int'l Tire Corp. v. United States*, Consol. Ct. No. 08-00285, Slip Op. 10-112 (Ct. Int'l Trade October 1, 2010)
GSA	*GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349 (CIT 1999)
Hynix Semiconductor Inc. v. United States	*Hynix Semiconductor Inc. v. United States*, 425 F. Supp. 2d 1287, 1295-1301 (CIT 2006)
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)
Micron Tech. Inc. v. United States	*Micron Tech. Inc. v. United States*, 535 F. Supp. 2d 1336, 1341 (CIT 2007)
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)
NLRB v. Bell Aerospace	*NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974)
NSK	*NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007)
PPG	*PPG Industries v. United States*, 978 F.2d 1232 (CAFC 1992).
Royal Thai Government	*Royal Thai Government v. United States*, 341 F. Supp. 2d 1315 (CIT 2004)
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)
Shikoku	*Shikoku Chems. Corp. v. United States*, 1795 F. Supp. 417 (1992)
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)
Ta Chen Stainless Steel Pipe	*Ta Chen Stainless Steel Pipe v. United States*, Slip Op. 00-107 (CIT)(2000).
Tianjin	*Tianjin Magnesium International Co., Ltd. vs. United States*, Slip. Op. 2011-17 (CIT 2011)
Timken	*Timken US Corp v United States*, 28 C.I.T. 329 (CIT 2004)
Valkia	*Valkia Ltd. vs. United States*, 28 CIT 907 (CIT 2004).
Washington International v.	*Washington International Insurance Company v. United*

United States	*States*, Court No. 08-00156, Slip Op. 09-78 (July 29, 2009)
Wheatland Tube	*Wheatland Tube v. United States*, 973 F. Supp. 149 (CIT 1997).
PPG v United States	*PPG Industries, Inc. v. United States*, 14 C.I.T. 522 (1990)
Zheijiang Dunan v. United States	*Zheijiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333 (Fed. Cir. 2011)

III. 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 the PRC	*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 the PRC 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
Investigation	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (Apr. 13, 2009).
Investigation Prelim	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 73 FR 54367 (September 19, 2008)
Preliminary Results	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 76 FR 33219 (June 8, 2010)
	Coated Free Sheet- Indonesia

Coated Free Sheet from Indonesia	*Coated Free Sheet from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007)
	Coated Paper from the 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	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: 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).
OTR Tires from the PRC Prelim	*New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 (October 19, 2010)
	Oil Country Tubular Goods – PRC
OCTG from the PRC Prelim	*Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210 (September 15, 2009)
OCTG 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).
Softwood Lumber from Canada Prelim	*Notice of Preliminary Results and Extension of Final Result of Countervailing Duty Administrative Review." Certain Softwood Lumber Products from Canada*, 71 FR 33,932 (June 26, 2006).
	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 - CVD
Wood Flooring from the PRC	*Multilayered Wood Flooring From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 76 FR 19034 (April 6, 2011).
	PET Film- India
PET Film from India	*Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review*, 72 FR 43607 (August 6, 2007)
	Hot-Rolled Steel- Brazil
Hot-Rolled Steel from Brazil	*Certain Hot-Rolled Flat-Rolled Carbon- Quality Steel Products From Brazil: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64700 (October 20, 2010)
	Certain Pasta- Italy
Pasta from Italy Fourth Review	*Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001)
Certain Pasta from Italy	*Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657

	(December 7, 2004)
	Leather- Argentina
Leather from Argentina	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather From Argentina*, 55 FR 40212 (October 2, 1990)
	Steel Sheet- Argentina
Steel Sheet from Argentina Prelim	*Cold-Rolled Carbon Steel Sheet from Argentina: Preliminary Affirmative Countervailing Duty Determination*, 49 FR 5151 (February 10, 1984)
	Carbon Steel Plate- PRC
Carbon Steel Plate from the PRC	*Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (Feb. 24, 2010)
	Iron Pipe Fittings- PRC
Iron Pipe Fittings from the PRC	*Malleable Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (June 29, 2006)
	Hot Rolled Steel- Thailand
Hot-Rolled Flats from Thailand	*Certain Hot-Rolled Carbon Steel Flat Products Final Affirmative Countervailing Duty Determination*, 66 FR 50410, (October 3, 2001)
	Certain Steel from Belgium
Certain Steel Products from Belgium	*Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium*, 58 FR 37273 (July 9, 1993)

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)
Alaskan Guide Compliance	*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).
APA	*Administrative Procedures Act*, 5 U.S.C. section 500 *et seq*.
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)
Interim Final Rule	*Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011).
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)