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MEMORANDUM TO: Ronald K. Lorentzen
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THROUGH: Christian Marsh *CM*
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for Antidumping and Countervailing Duty Operations

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FROM: The Team

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of High Pressure Steel
Cylinders from the People's Republic of China

I. Summary

The mandatory respondent in this investigation is Beijing Tianhai Industry Co., Ltd. ("BTIC"). It responded to the Department's countervailing duty questionnaire on behalf of itself and its cross-owned affiliates: Tianjin Tianhai High Pressure Container Co., Ltd. ("Tianjin Tianhai"), Langfang Tianhai High Pressure Container Co., Ltd. ("Langfang Tianhai"), and Beijing Jingcheng Machinery Electric Holding Co., Ltd. ("Jingcheng Holding"). Throughout this memorandum, we refer to these companies collectively as the "BTIC Group."

On October 18, 2011, the Department published the Preliminary Determination in this investigation.¹ We conducted verification of the questionnaire responses submitted by BTIC and

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.



the Government of China (“GOC”) between December 7 and December 14, 2011, and released verification reports on January 3, 2012, (for BTIC) and on January 17, 2012, (for the GOC). On March 14, 2012, the Department issued its post-preliminary analysis, which described our findings regarding three programs we were unable to analyze for the Preliminary Determination: Preferential Lending to SOEs, Provision of Electricity for LTAR, and Pension Fund Grants to Jingcheng Holding.

The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs for our final determination. We have also analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

General Issues

- Comment 1** Application of the CVD Law to the People’s Republic of China
- Comment 2** Double Counting/Overlapping Remedies
- Comment 3** Whether the Department Should Have Selected Jindun as a Mandatory or Voluntary Respondent

Provision of Hot-Rolled Steel, Seamless Tube Steel, Standard Commodity Billets and Blooms, and Chromium-Molybdenum Billets and Blooms for LTAR

- Comment 4** Whether a Certain Producer of Seamless Tube Steel Partially-Owned by SOEs is a Government Authority
- Comment 5** Whether a Certain Producer of Seamless Tube Steel Owned by Individuals is a Government Authority
- Comment 6** Countervailability of Seamless Tube Steel Produced by One of BTIC’s Affiliates
- Comment 7** Countervailability of Inputs Purchased from Domestic Trading Companies
- Comment 8** Whether to Limit the Benchmark for Seamless Tube Steel to Certain Countries or Diameters
- Comment 9** Whether to Incorporate VAT and Import Duties into Input Benchmarks

Provision of Electricity for LTAR

- Comment 10** Application of Adverse Facts Available to the Electricity Benchmark
- Comment 11** Alleged Errors in the Department’s Calculations for the Provision of Electricity for LTAR

The Appendix provides several reference tables listing: (i) acronyms and abbreviations of terms; (ii) acronyms or short cites for responses and department memorandum, and (iii) short cites for court and agency decisions.

II. Subsidy Valuation Information

A. Period of Investigation

The period for which we are measuring subsidies, i.e., the period of investigation (“POI”), is January 1, 2010, through December 31, 2010.

B. Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the IRS Tables at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

C. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This 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.²

Our attribution methodology is unchanged from the Preliminary Determination. BTIC, Tianjin Tianhai, and Langfang Tianhai are cross-owned producers of subject merchandise. Accordingly, we are attributing subsidies received by BTIC, Tianjin Tianhai, and Langfang Tianhai to the combined sales of the three companies, excluding sales to other cross-owned companies. Jingcheng Holding is a holding company within the meaning of 19 CFR 351.525(b)(6)(iii). Under 19 CFR 351.525(b)(6)(iii), the Department will attribute subsidies received by a holding company to the consolidated sales of the holding company and its subsidiaries. We have done so for the Pension Fund Grants to Jingcheng Holding discussed in the Department’s post-preliminary analysis and below.

III. **Loan Benchmarks**

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

The Department is investigating loans received by BTIC and its cross-owned affiliates by Chinese SOCBs, which are alleged to have been granted on a preferential, non-commercial basis. The derivation of the Department's benchmark is discussed below.

A. Benchmarks for Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.³ If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁴

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in Coated Paper from the PRC,⁵ loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁶

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in Coated Paper from the PRC⁷ and more recently updated in Thermal Paper from the PRC.⁸ Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in Coated Paper from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.⁹ Beginning in 2010, however, the PRC is in the upper-middle income category. Accordingly, as explained further below, we are using the interest rates of upper-middle income countries to construct the 2010 benchmark.

³ See 19 CFR 351.505(a)(3)(i).

⁴ See 19 CFR 351.505(a)(3)(ii).

⁵ See Coated Paper from the PRC IDM at Comment 10.

⁶ See Softwood Lumber From Canada IDM at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁷ See Coated Paper from the PRC IDM at Comment 10.

⁸ See Thermal Paper from the PRC IDM at 8-10.

⁹ See The World Bank Country Classification, <http://econ.worldbank.org/>.

After identifying the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each of the years from 2001-2009, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.

This contrary result for a single year in ten does not lead us to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, "there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates."¹⁰ However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, while we have continued to rely on the regression-based analysis used since Coated Paper from the PRC to compute the benchmarks for loans taken out prior to the POI, for the 2010 benchmark we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001-2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics ("IFS"). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010 and "lower middle income" for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

The resulting inflation-adjusted benchmark lending rates are in the Department's Interest Rate Benchmark Memorandum. Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

B. Benchmarks for Long-Term Loans

¹⁰ See Federal Reserve Consultation Memo at Attachment 2.

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.¹¹

In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.¹² Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

IV. 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 if 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. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”¹³ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁴

GOC - Preferential Loans to SOEs

The Department examined whether SOEs receive preferential loans through state-owned commercial or policy banks.¹⁵ On September 23, 2011, in our second supplemental questionnaire to the GOC, we asked for information regarding this program. For example, we asked the GOC to provide any laws that address bank lending to SOEs. We also requested the total amount of new loans issued by SOCBs in the PRC in the years 2007-2010, as well as the total amount of new loans issued by SOCBs to SOEs during those years. We asked the GOC to provide this information both for SOCBs as a group and for the “Big Four” SOCBs.

¹¹ See, e.g., Rectangular Pipe from the PRC IDM at 8.

¹² See Citric Acid from the PRC IDM at Comment 14.

¹³ See SRAMs From Taiwan - AD at 8932.

¹⁴ See SAA at 870.

¹⁵ See Initiation Checklist at 7.

Additionally, we requested this information for each of the banks with outstanding loans to BTIC and its cross-owned companies during the POI.¹⁶

In its response dated October 14, 2011, the GOC argued that “there are no laws, regulations or policies that specifically address bank lending to SOEs or to SOEs that produce steel cylinders.” It provided us with the total amount of loans outstanding for the “Big Four” SOCBs at the end of 2009 and 2010, which it obtained from the banks’ public annual reports, but failed to provide the amount of loans provided by the “Big Four” to SOEs. The GOC also failed to provide the same information for SOCBs as a group. In its response, the GOC explained that it was unable to provide the total amount of loans issued to SOEs because the “Big Four” SOCBs do not maintain statistical data by enterprise type.¹⁷

Furthermore, the GOC only reported the amount of loans outstanding, rather than the number of new loans issued, as requested for each year. And although we requested information for the period of 2007-2010, the GOC only provided this data for the years 2009 and 2010. Because the GOC’s response did not provide us with enough information to determine whether this program is specific under section 771(5A)(D)(iii) of the Act, we requested this information a second time in a questionnaire dated October 28, 2011.¹⁸ The GOC filed its response on November 14, 2011.¹⁹ This response also did not contain the information we requested.

In the countervailing duty investigation of OCTG from the PRC, the Department also requested information regarding Preferential Loans for SOEs. In that case, we asked the GOC to provide 1) the total amount of loans made by each of the “Big Four” SOCBs between 2002 and 2008, and 2) how many of those loans were made to SOEs. The GOC was able to provide this information.²⁰ Thus, the GOC’s claim in this proceeding that SOCBs do not maintain loan information specific to SOEs contradicts its responses in OCTG from the PRC.

The statute identifies specificity as one of three necessary elements of a countervailable subsidy.²¹ We normally rely on information from the government to determine whether a program is specific.²² Although it was given two opportunities, the GOC’s responses left us without the necessary information to determine whether this program is specific to SOEs under section 771(5A)(D)(iii) of the Act.

We determine that the GOC has withheld necessary information that was requested of it for this program within the meaning of section 776(a)(2)(A) of the Act. Accordingly, the Department is relying on “facts available.”²³ Moreover, the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. In particular, the GOC’s failure to provide information pertaining to SOCB lending to SOEs, when the record indicates that it

¹⁶ See 2nd SQ to GOC at 1.

¹⁷ See GOC 2nd SQ Response at 1-3.

¹⁸ See 3rd SQ to GOC.

¹⁹ See GOC 3rd SQ Response at 1-2.

²⁰ See OCTG QR Memo to File at Attachment 1.

²¹ See sections 771(5)(A) and 771(5A) of the Act.

²² See, e.g., Carbon Bricks from the PRC IDM at Comment 6.

²³ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

should have been able to do so, constitutes a failure of the GOC to cooperate to the best of its ability. Therefore, we are applying an adverse inference in our use of facts available.²⁴ We are finding as adverse facts available that this program is specific.²⁵ We discuss this program further below under “Analysis of Programs.”

GOC – Provision of Electricity for LTAR

The GOC also did not provide a complete response to the Department’s July 20, 2011 initial questionnaire regarding the provision of electricity for LTAR. In our Initial QR to the GOC, we requested that it provide the provincial price proposals for 2008 and 2010, for each province in which a mandatory respondent or any reported cross-owned company is located. We also asked the GOC to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals, and how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.²⁶ In its September 7, 2011 questionnaire response, the GOC responded that it was unable to obtain this information from the local authorities.²⁷

On September 23, 2011, the Department issued a supplemental questionnaire to the GOC reiterating its request for this information.²⁸ In its October 14, 2011 supplemental questionnaire response, the GOC again stated that “{t}he GOC was unable to obtain this information from the local authorities.”²⁹ In both cases, the GOC did not explain why it was unable to obtain this information, or what steps it undertook to try to obtain it.

After reviewing the GOC’s responses to the Department’s electricity questions, we determine that the GOC’s answers were inadequate and did not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. As a result, the Department is relying on the facts otherwise available in its analysis.³⁰

Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. Therefore, an adverse inference is warranted in the application of facts available.³¹ Drawing an adverse inference, we determine that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

We are also relying on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks for determining the existence and amount of any benefit under this program.³² Since the GOC did provide provincial electricity tariff schedules that were applicable during the POI, we have selected benchmark electricity rates from among these

²⁴ See section 776(b) of the Act.

²⁵ See section 771(5A) of the Act.

²⁶ See Initial QR to GOC at II-20 and II-35 through II-36

²⁷ See GOC Initial QR at 71-75.

²⁸ See 2nd SQ to GOC at 4.

²⁹ See GOC 2nd SQ Response at 8-9.

³⁰ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

³¹ See section 776(b) of the Act.

³² See section 776(b)(4) of the Act.

schedules. For details on the calculation of the subsidy rate for BTIC and its cross-owned affiliates, see below at “Provision of Electricity for LTAR.”

To corroborate the Department’s finding that benefits under this program are specific, we are relying on the Department’s determinations regarding the GOC’s provision of electricity for LTAR in Kitchen Racks from the PRC³³ and Wood Flooring from the PRC.³⁴

GOC – Pension Grants

The Department will investigate potential subsidies it discovers during the course of an investigation, even if those subsidies were not alleged in the countervailing duty petition.³⁵ Upon reviewing BTIC’s response to the Department’s July 20, 2011 initial questionnaire, we identified items in the financial statements of Jingcheng Holding, a cross-owned affiliate, which appeared to be potentially countervailable government subsidies.³⁶

According to BTIC and the GOC, Jingcheng Holding used to be a government agency, the Beijing Machinery Industry Management Bureau (“BMIMB”). In 1997, the agency was converted into Jingcheng Holding, an SOE, but employees who retired before 1997 are considered retired civil servants and remain eligible for government pensions. According to BTIC and the GOC, Jingcheng Holding is responsible for administering the pension benefits of employees who retired prior to the conversion from government agency to SOE. Jingcheng Holding submits an annual budget to the Beijing Finance Bureau that covers these pension benefits. Once Jingcheng Holding receives the pension funds from the Beijing Finance Bureau, it distributes the entirety of the funds to eligible retirees. The Beijing Finance Bureau may also appropriate funds as a condolence payment when a retiree passes away, and can adjust the pensions against inflation.

Although the GOC responded to our questionnaires regarding this program, it failed to provide requested information and documentation at verification. For example, to verify the GOC’s claims regarding the status of former employees of the BMIMB, we asked the GOC to provide documentation showing that the former employees of BMIMB are listed as civil servants within the Beijing Government’s employment/accounting records. GOC officials replied that they could not provide the requested information because the information is maintained by a different government agency, whose representatives were not present at the meeting.³⁷ To verify the

³³ See Kitchen Racks from the PRC IDM at 5-6 and Comment 11.

³⁴ See Wood Flooring from the PRC IDM 13-14 and Comment 4.

³⁵ See section 775 of the Act.

³⁶ We also found items in the financial statements of BTIC for which we requested additional information. The corresponding program was found to not confer a benefit during the POI, and we have not investigated it further. See Preliminary Determination at 64306, under “Beijing Industrial Development Fund.”

³⁷ In our pre-verification instructions to the GOC, we said, “We have identified various agencies that we expect to meet with in our verification of the various programs. However, to ensure that each program is fully verified, we stress that it is ultimately the responsibility of the GOC to identify and contact the relevant local agencies/officials for the program being verified and schedule meetings with these agencies/officials.” In relation to the pension grant specifically, we said, “{f}or this program, the Department requests meetings with officials from the Beijing Finance Bureau, and any other agencies involved with the authorization, processing and payment of the funds BTIC and the GOC have identified as pensions for retired employees of Jingcheng Holding’s predecessor.” See GOC Verification

GOC's claims regarding the status of retired employees of civil service organizations, we asked the GOC to provide documentation regarding other companies with arrangements similar to the one between Jingcheng Holding and the Beijing government. In reply, the GOC informed us that it would not provide this information because it did not consider the information relevant to the investigation of Jingcheng Holding.³⁸

Pursuant to section 776(a)(2)(D) of the Act, if an interested party provides information that cannot be verified as provided in section 782(i) of the Act, the Department may resort to the use of "facts otherwise available." Furthermore, pursuant to section 776(b) of the Act, the Department may use an adverse inference in the application of 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. In this instance, we determine that because the information provided by the GOC could not be verified, it is appropriate to use facts otherwise available. Since the information could not be verified as a result of the GOC's failure to cooperate by not acting to the best of its ability to comply with a request for information, we have applied an adverse inference in our choice of the facts available. As adverse facts available, we determine that the pension grant confers a financial contribution and is specific. We have further analyzed this program below under "Analysis of Programs."

GOC – Government Authorities under Provision of Seamless Tube Steel for Less Than Adequate Remuneration

The Department is investigating the alleged provision of seamless tube steel for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced the seamless tube steel inputs that the BTIC Group purchased during the POI. Specifically, we sought information that would allow us to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.

For any producers of seamless tube steel that were identified by the respondents as majority government-owned, the GOC needed to provide the requested information only if it wished to argue that those producers were not authorities. For any input producers that the GOC claimed were privately owned by individuals and/or companies during the POI, we requested the following:

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials or representatives during the POI.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

Finally, for input producers owned by other corporations (whether in whole or in part) or with

Outline.

³⁸ See GOC Verification Report at 9-13.

less-than-majority state ownership during the POI, we requested information in order to trace back the ownership to the ultimate individual or state owners. For these suppliers, we requested the following:

- The identification of any state ownership of the company's shares; the names of all government entities that own shares, either directly or indirectly, in the company; whether any of the owners are considered "state-owned enterprises" by the government; and the amount of shares held by each government owner.
- For each level of ownership, a translated copy of the section(s) of the articles of association showing the rights and responsibilities of the shareholders and, where appropriate, the board of directors, including all decision making (voting) rules for the operation of the company.
- For each level of ownership, identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.
- A statement of whether any of the shares held by government entities have any special rights, priorities, or privileges, e.g., with regard to voting rights or other management or decision-making for the company; a statement of whether there are any restrictions on conducting, or acting through, extraordinary meetings of shareholders; whether there are any restrictions on the shares held by private shareholders; and the nature of the private shareholders' interest in the company, e.g., operational, strategic, or investment-related, etc.

In its September 2, 2011 questionnaire response, the GOC did provide some information regarding laws affecting government interference in corporate affairs, such as the PRC Company Law and the Civil Servant Law. However, when asked whether the owners, managers, or members of the board of representatives of a producer owned by individuals are government officials or CCP officials or representatives, the GOC responded that it was "unable to respond" to our questions.³⁹

We asked for this information a second time. In its October 18, 2011 response, the GOC provided the names of the owners and members of the board of directors for the producer owned by individuals. It also reiterated its description of the PRC laws regarding government interference in corporate affairs. According to the GOC, "CCP, People's Congress, and Chinese People's Political Consultative Conference are not government bodies. Even if the owners or management of an input supplier are members or representatives in the above organizations, this fact does not lead to interference by the Chinese government in the management and operation of the input supplier." It also argued that the PRC Company Law prohibits interference by "outside organizations" in the management of companies, and that the Civil Servant Law prohibits civil servants from simultaneously holding positions in companies. Finally, it argued that the CCP is a political party, not unlike the Democratic or Republican party in the United States. As a political party, the GOC argues that the main function of the CCP "is political consultation and

³⁹ See the GOC Initial QR at 39-41 and 44-48.

democratic supervision, as it organizes the parties, organizations, and people from all walks of life participation in the CPPCC to participate in the discussion on state affairs.” According to the GOC, “{n}one of the duties or functions of the above organizations consist of interfering in the management and operation of specific enterprises.”

However, the GOC again concluded by informing us that “the GOC cannot obtain the information requested by the Department.”⁴⁰ When asked how the GOC compiled the information it used in its response, the GOC responded that it “believes this question is not relevant to the investigation.” In response to our request that the GOC identify government records or other information that could identify whether “company owners, members of the board of directors or managers were officials or representatives” of various CCP entities,”⁴¹ the GOC responded that it “does not maintain the requested information and the industry and commerce department do not require the company to provide the requested information.” The GOC also failed to respond to a number of other questions, such as whether the input producer owned by individuals had a “primary party organization.”

Notwithstanding the GOC’s objection to the Department’s questions about the role of CCP officials in the management and operations of the seamless tube steel input producer, we have explained our understanding of the CCP’s involvement in the PRC’s economic and political structure in numerous past proceedings.⁴² It is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations.⁴³ The Department considers the information regarding the CCP’s involvement in the PRC’s economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC. This is supported by a publicly-available background report from the U.S. Department of State.⁴⁴ With regard to the GOC’s claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.⁴⁵

We continue to find that the information on the role of CCP officials in the management and operations of the input producers, and in the management and operations of the input producers’ owners, is necessary to our determination of whether these input producers are authorities within the meaning of section 771(5)(B) of the Act. Furthermore, for a different producer from which

⁴⁰ See the GOC 2nd SQ Response (questions 15-16) at 8.

⁴¹ These entities are 1) CCP Congresses, (2) CCP Standing Committees, (3) People’s Congresses, (4) Standing Committees of People’s Congresses, (5) other government administration entities, (6) the Chinese People’s Political Consultative Conferences (CPPCC), as well as (7) the Discipline Inspection Committees of the CCP.

⁴² See, e.g., Seamless Pipe from the PRC IDM at Comment 7; see also Citric Acid from the PRC – Administrative Review IDM at 15; Steel Wire from the PRC IDM at 8.

⁴³ See Essar Steel, 721 F. Supp. 2d at 1298-99 (stating that “{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion” and that “Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin”); NSK CIT, 919 F. Supp. at 447 (“NSK’s assertion that the information it submitted to Commerce provided a sufficient representation of NSK’s cost of manufacturing misses the point that ‘it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.’”); Ansaldo, 628 F. Supp. at 205 (stating that “{i}t is Commerce, not the respondent, that determines what information is to be provided”).

⁴⁴ See, e.g., Seamless Pipe from the PRC IDM at Comment 7.

⁴⁵ See Seamless Pipe from the PRC IDM at 16.

BTIC purchased seamless tube steel, the GOC informed us that none of this producer's owners, members of the board of directors or managers are government or CCP officials or representatives. Although incomplete, its response for this other producer evinces that the GOC is able to access and review the information requested by the Department, even though the GOC has repeatedly argued that it is impossible for it to do so.⁴⁶ Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any information, it should have promptly explained to the Department what attempts it undertook to obtain this information and to propose alternative forms of providing the information.⁴⁷ The GOC did not do so.

Based on the above, we continue to determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our final determination.⁴⁸ Moreover, we continue to determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.⁴⁹ Therefore, based on AFA, we determine that the producer of seamless tube steel owned by individuals from which BTIC purchased inputs during the POI is an "authority" within the meaning of section 771(5)(B) of the Act.

BTIC - Government Authorities under Provision of Seamless Tube Steel for Less Than Adequate Remuneration

In our Initial QR to BTIC at III-14, the Department requested that BTIC provide a spreadsheet showing, among other things, the producers of seamless tube steel it purchased. We also requested that BTIC coordinate with the GOC to ensure that the GOC had the information it needed to accurately respond to the Department's questions in Appendix 5 of the Department's questionnaire, "Information Regarding Input Producers."

At verification, BTIC submitted 'minor corrections' showing that it misreported the producer of a significant portion of its seamless tube steel purchases. Previously, BTIC reported to us that it purchased seamless tube steel made by the company owned by individuals that is discussed above. However, at verification, we learned that most of these purchases were actually produced by an affiliate of this producer.

⁴⁶ See the GOC Initial QR at 43.

⁴⁷ Section 782(c)(1) of the Act states "If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." Furthermore, the Department's questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.

⁴⁸ See section 776(a)(2)(A) of the Act.

⁴⁹ See section 776(b) of the Act.

Because BTIC failed to accurately report its purchases of seamless tube steel, the GOC was unable to fully respond to Appendix 5 of the Department's questionnaire. As a result, necessary information is not on the record. Without this information, the Department is unable to analyze whether the new producer of seamless tube steel is a government authority. By failing to identify this producer until verification, BTIC significantly impeded the proceeding, and we are resorting to the facts otherwise available, pursuant to section 776(a)(2)(C) of the Act. Further, we find that BTIC failed to act to the best of its ability to comply with the Department's request for information regarding its seamless tube steel purchases. Consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we find that the seamless tube steel produced by the producer BTIC first informed us of at verification was produced by a government authority, within the meaning of section 771(5)(B) of the Act.

ANALYSIS OF PROGRAMS

Based upon our analysis of the petition, the responses to our questionnaires, and all other evidence on the record, we determine the following:

V. Programs Determined To Be Countervailable

A. Preferential Loans for SOEs

As explained above under "Use of Facts Otherwise Available and Adverse Inferences," we requested information related to this program from the GOC twice. The GOC failed to provide adequate responses to our questions both times. As a result, necessary information is not on the record. In cases where an interested party withholds information that has been requested or where there is not enough information on the record for us to determine whether a program is specific, we use facts otherwise available.⁵⁰ Furthermore, an adverse inference is warranted where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department.⁵¹ Therefore, we determine as adverse facts available that this program is specific to SOEs.

We also determine that loans from SOCBs to SOEs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. 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.⁵² To calculate the benefit under the preferential loans for SOEs program, we used the benchmarks described under "Loan Benchmarks" above.⁵³ We divided the interest savings during the POI by the combined sales (exclusive of inter-company sales) of BTIC, Tianjin Tianhai and Langfang Tianhai during the POI, in accordance with 19 CFR 351.525(b)(6)(ii).

On this basis, we determine that BTIC received a countervailable subsidy of 0.32 percent ad valorem.

⁵⁰ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

⁵¹ See section 776(b) of the Act.

⁵² See section 771(5)(E)(ii) of the Act.

⁵³ See also 19 CFR 351.505(c).

B. “Two Free, Three Half” Program for Foreign-Invested Enterprises (“FIEs”)

Under Article 8 of the FIE Tax Law, an FIE that is “productive” and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. According to the GOC, the “Two Free, Three Half” program was terminated effective January 1, 2008, by the Enterprise Income Tax Law but companies already enjoying the preference were permitted to continue paying taxes at reduced rates. Tianjin Tianhai paid taxes at a reduced rate under this program during the POI.

The Department has previously found the “Two Free, Three Half” program to confer countervailable subsidies.⁵⁴ Consistent with the earlier cases, we determine that the “Two Free, Three Half” income tax exemption/reduction confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.⁵⁵ We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income savings enjoyed by Tianjin Tianhai as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared Tianjin Tianhai’s tax rate to the rate it would have paid in the absence of the program. We divided Tianjin Tianhai’s tax savings for the return filed during the POI by the combined sales (exclusive of inter-company sales) of BTIC, Tianjin Tianhai and Langfang Tianhai during the POI, in accordance with 19 CFR 351.525(b)(6)(ii).

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

C. Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone

Under Article 4 of the “Official Reply of the State Council Concerning the Establishment of the Tianjin Port Free Trade Zone,” FIEs located in the Tianjin Port Free Trade Zone were permitted to pay a reduced income tax at a rate of 15 percent. According to the GOC, this program terminated on January 1, 2008, but companies that enjoyed the reduced tax rate are gradually transitioning to the national tax rate of 25 percent. Consequently, Tianjin Tianhai paid taxes at a reduced rate of 20 percent under this program during the POI.

We determine that the Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone program confers a countervailable subsidy. The reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.⁵⁶ We also determine that the exemption/reduction afforded by the program is

⁵⁴ See Coated Paper from the PRC IDM at 11-12; see also Seamless Pipe from the PRC IDM at 25.

⁵⁵ See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

⁵⁶ See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

regionally specific under section 771(5A)(D)(iv) of the Act, because it is limited to companies that are located in the Tianjin Port Free Trade Zone.

To calculate the benefit, we treated the income tax savings enjoyed by Tianjin Tianhai as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared Tianjin Tianhai's tax rate to the rate it would have paid in the absence of the program. We divided Tianjin Tianhai's tax savings for the return filed during the POI by the combined sales of BTIC, Tianjin Tianhai and Langfang Tianhai (exclusive of inter-company sales) during the POI, in accordance with 19 CFR 351.525(b)(6)(ii).

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

D. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission or its provincial branch provides a certificate to enterprises that receive the exemption. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. BTIC and Langfang Tianhai received VAT and tariff exemptions under this program as FIEs.

The Department has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.⁵⁷ Consistent with the earlier cases, we determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of the VAT and tariff savings.⁵⁸ As described above, FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. We also determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, i.e., FIEs and domestic enterprises involved in "encouraged" projects.⁵⁹

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.⁶⁰ In the instant investigation, BTIC and Langfang Tianhai have provided a list of VAT and tariff exemptions that they received for capital equipment imported after December 11,

⁵⁷ See Coated Paper from the PRC IDM at 13 - 14; see also Seamless Pipe from the PRC IDM at 23 - 25.

⁵⁸ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

⁵⁹ See Coated Paper from the PRC IDM at Comment 16.

⁶⁰ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

2001. Based on BTIC's information, we determine that the VAT and tariff exemptions BTIC received were for capital equipment.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.⁶¹ We determine that, for each year in which BTIC and Langfang Tianhai received benefits under this program, the amount received did not exceed 0.5 percent of relevant sales for that year. Pursuant to 19 CFR 351.524(b)(2), we have expensed the entire amount received for both firms to the years in which they received the exemptions.

On this basis, we determine that BTIC received a countervailable benefit of 0.01 percent ad valorem for this program.

E. Provision of Hot-Rolled Steel for Less Than Adequate Remuneration ("LTAR")

BTIC reported purchasing hot-rolled steel, although not for use in the production of subject merchandise, and identified the producers of the hot-rolled steel it purchased during the POI. The GOC reported that these hot-rolled steel producers are majority owned and controlled by the GOC. In OTR Tires from the PRC, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an "authority."⁶² Thus, we determine these suppliers are "authorities" within the meaning of section 771(5)(B) of the Act.

We determine that the GOC is conferring a countervailable subsidy through its provision of hot-rolled steel for LTAR. We determine that authorities are providing a good and, hence, a financial contribution under section 771(5)(D)(iii) of the Act and that a benefit is being conferred because the hot-rolled steel is being provided for LTAR, as explained below. Further, the GOC has reported that hot-rolled steel is used by a "wide variety of steel consuming industries." Because hot-rolled steel is only provided to steel consuming industries, we determine that the subsidy is being provided to a limited number of industries and is, therefore, specific.⁶³ This finding is consistent with prior Department determinations.⁶⁴

The Department's regulations at 19 CFR 351.511(a)(2) set out the bases for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration of a government provided good or service. The potential benchmarks listed in this regulation, in order of preference are: (1) market prices from actual transactions within the country under investigation for the government-provided good (e.g., actual sales, actual imports, or competitively run government auctions) ("tier one" benchmarks); (2) world market prices that would be available to purchasers in the country under investigation ("tier two" benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price ("tier three" benchmarks). As we explained in Softwood Lumber from Canada, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under

⁶¹ See 19 CFR 351.524(b).

⁶² See OTR Tires from the PRC IDM at 10.

⁶³ See section 771(5A)(D)(iii)(I) of the Act.

⁶⁴ See, e.g., CWP From the PRC IDM at 9.

investigation.⁶⁵

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.”⁶⁶ The CVD Preamble further recognizes that distortion can occur when the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market.

Based on the GOC’s response, companies that the GOC classified as state-owned accounted for 70 percent of hot-rolled steel production in the PRC during the POI and, therefore, government-owned providers constitute a majority of the market. Moreover, imports as a share of domestic consumption are insignificant. Thus, we determine that domestic prices in the PRC for hot-rolled steel are distorted such that they cannot be used as a tier one benchmark. 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, both Petitioner and BTIC have submitted prices that they suggest are appropriate bases for constructing a benchmark. Based on our review of the proposed benchmarks, we are relying on prices from both MEPS and the SBB for hot-rolled strip, hot-rolled coil, and hot-rolled plate/sheet. Pursuant to 19 CFR 351.511(a)(2)(ii), we are averaging the selected prices. Since ocean freight to the PRC is to be added into the benchmark price (see below), we did not rely on any MEPS or SBB prices that included ocean freight, thereby ensuring that ocean freight would not be counted twice.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included ocean freight and the freight charges that would be incurred to deliver hot-rolled steel to BTIC’s plants. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of hot-rolled steel into the PRC.⁶⁷ We have compared these prices to BTIC’s actual purchase prices, including taxes and delivery charges.

Based on this comparison, we determine that hot-rolled steel was provided for LTAR and that a subsidy exists in the amount of the difference between the benchmark and what BTIC paid.⁶⁸

On this basis, we determine that BTIC received a countervailable subsidy of 0.13 percent ad valorem under this program.

⁶⁵ See Softwood Lumber from Canada IDM at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁶⁶ See CVD Preamble at 65377.

⁶⁷ See Final Calc Memo for a full explanation of how we derived the benchmark.

⁶⁸ See 19 CFR 351.511(a).

F. Provision of Seamless Tube Steel for LTAR

BTIC reported purchasing seamless tube steel for the production of subject merchandise and identified the producers from which it purchased this input. The GOC provided ownership information indicating that certain seamless tube steel producers are SOEs. Thus, we determine these producers are “authorities” within the meaning of section 771(5)(B) of the Act. As described above under “Use of Facts Otherwise Available and Adverse Inferences,” we are finding that two producers are government “authorities” as AFA.

We determine that the GOC is conferring a countervailable subsidy through its provision of seamless tube steel for LTAR. We determine that authorities are providing a good and, hence, a financial contribution under section 771(5)(D)(iii) of the Act. Furthermore, we determine that a benefit is being conferred because the seamless tube steel is being provided for LTAR, as explained below. The GOC has reported that seamless tube steel is used by a “wide variety of steel consuming industries,” and the GOC specifically identified the following uses: plumbing and heating systems, air conditioning units, sprinklers, and in the construction and repair of refineries and chemical plants.⁶⁹ Because seamless tube steel is only provided to steel consuming industries, we determine that the subsidy is being provided to a limited number of industries and is, therefore, specific.⁷⁰

We have selected our benchmark for measuring the adequacy of the remuneration in accordance with 19 CFR 351.511(a)(2). With regard to tier one, market prices from actual transactions within the country under investigation, the GOC has reported that companies that it has designated as state-owned accounted for 38 percent of seamless tube steel production in the PRC during the POI. We determine that this level of government ownership is substantial. Combining this with the fact that imports as a share of domestic consumption are insignificant, we determine that domestic prices in the PRC for seamless tube steel are distorted such that they cannot be used as a tier one benchmark. 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, both Petitioner and BTIC have submitted prices that they suggest are appropriate bases for constructing a benchmark. Based on our review of the proposed benchmarks, we are relying on FOB and export prices from Steel Orbis for seamless tube steel. Pursuant to 19 CFR 351.511(a)(2)(ii), we are averaging the selected prices. Since ocean freight to the PRC is to be added into the benchmark price (see below), we did not rely on any prices that included ocean freight, thereby ensuring that ocean freight would not be counted twice.

As explained above, the Department adjusts the benchmark price to include delivery charges and import duties. Regarding delivery charges, we have included ocean freight and the freight charges that would be incurred to deliver seamless tube steel to BTIC’s plants. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of seamless tube steel into the PRC.⁷¹ We have compared these prices to BTIC’s actual purchase prices,

⁶⁹ See the GOC Initial QR at 36.

⁷⁰ See section 771(5A)(D)(iii)(I) of the Act.

⁷¹ See Final Calc Memo for a full explanation of how we derived the benchmark.

including taxes and delivery charges.

Based on this comparison, we determine that seamless tube steel was provided for LTAR and that a subsidy exists in the amount of the difference between the benchmark and what BTIC paid.⁷²

On this basis, we determine that BTIC received a countervailable subsidy of 14.18 percent ad valorem under this program.

G. Provision of Standard Commodity Steel Billets and Blooms, and High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms for LTAR

BTIC reported purchasing standard commodity steel billets and blooms (“commodity billets”) and high-quality chromium molybdenum alloy steel billets and blooms (“CrMo billets”) (collectively, “billets”) for the production of subject merchandise and identified several producers of these inputs. The GOC provided ownership information for these input producers indicating that all are directly or indirectly majority owned by the GOC. As explained above, the Department has determined that majority government ownership of an input producer is sufficient to qualify it as an “authority.”

We determine that the GOC is conferring a countervailable subsidy through its provision of billets for LTAR. We determine that authorities are providing a good and, hence, a financial contribution under section 771(5)(D)(iii) of the Act and that a benefit is being conferred because the billets are being provided for LTAR, as explained below. Further, the GOC has reported that billets are used by a “wide variety of steel consuming industries.” Because billets are provided only to steel consuming industries, we determine that the subsidy is being provided to a limited number of industries and is, therefore, specific.⁷³

We have selected our benchmark for measuring the adequacy of the remuneration in accordance with 19 CFR 351.511(a)(2). With regard to tier one, market prices from actual transactions within the country under investigation, the GOC has reported that companies it designates as government-owned accounted for 60 percent of crude steel production in the PRC during the POI. (Because the PRC’s State Statistical Bureau does not track production of commodity billets or high-quality chromium molybdenum alloy steel billets, the GOC responded with information on crude steel production.) Therefore, government-owned providers constitute a majority of the market.⁷⁴ Moreover, imports as a share of domestic consumption are insignificant. Thus, we determine that domestic prices in the PRC for billets are distorted such that they cannot be used as a tier one benchmark. 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, the Department has been unable to locate benchmark prices for CrMo billets, and no world market prices for CrMo billets were placed on the record of this investigation. Therefore, we have relied

⁷² See 19 CFR 351.511(a).

⁷³ See section 771(5A)(D)(iii)(I) of the Act.

⁷⁴ See CVD Preamble at 65377.

on a single benchmark for both types of billets. Both Petitioner and BTIC have submitted billet prices. Based on our review of the proposed benchmarks, we are relying on FOB and export prices from the SBB and the London Metal Exchange for billets. Pursuant to 19 CFR 351.511(a)(2)(ii), we are averaging the submitted prices. Since ocean freight to the PRC is to be added into the benchmark price (see below), we did not rely on any prices that included ocean freight, thereby ensuring that ocean freight would not be counted twice.

As explained above, the Department adjusts the benchmark price to include delivery charges and import duties. Regarding delivery charges, we have included ocean freight and the freight charges that would be incurred to deliver billets to BTIC's plants. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of billets into the PRC.⁷⁵ We have compared these prices to BTIC's actual purchase prices, including taxes and delivery charges.

Based on this comparison, we determine that commodity billets were provided for LTAR and that a subsidy exists in the amount of the difference between the benchmark and what the respondents paid.⁷⁶ We determine that BTIC received a countervailable subsidy of 0.03 percent ad valorem with respect to the provision of this input. Regarding CrMo billets, we determine that BTIC did not receive a benefit from its purchases during the POI.

H. Provision of Electricity for LTAR

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

In a countervailing duty case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as adverse facts available, typically finds that a financial contribution exists under the alleged program and that the program is specific. With regards to benefit, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable.

Consistent with the Department's practice, we determine that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A) of the Act. To determine the existence and amount of any benefit from this program, we used the information provided by the respondents regarding the amounts of electricity that they purchased and the rates they paid for that electricity during the POI. As our benchmark, we have relied on an adverse inference and selected the highest electricity rates that were in effect during the POI because of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.⁷⁷ Specifically, we used the highest peak, rush, normal, and valley rates for the "large industrial"

⁷⁵ See Final Calc Memo for a full explanation of how we derived the benchmark.

⁷⁶ See 19 CFR 351.511(a).

⁷⁷ See section 776(b)(4) of the Act.

user category, in addition to the highest provincial rate for transformer capacity.⁷⁸

Consistent with our approach in Drill Pipe from the PRC,⁷⁹ to measure whether the respondents received a benefit under this program, we first calculated the variable electricity cost they paid by multiplying the monthly kWh consumed at each price category (e.g., peak, rush, normal and valley) by the corresponding electricity rates charged at each price category by the respective province. Next, we calculated the benchmark variable electricity cost by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category, as reflected in the electricity rate benchmark chart. In comments, BTIC asserts that the Department selected the wrong benchmark rates for each price category because of incorrect translations submitted by the GOC for Zhejiang Province. We do not find BTIC's arguments persuasive, and have continued to use the same benchmark electricity rates as in the post-preliminary analysis. See Comment 10, below, for explanation concerning these price category translations.

To calculate the benefit for each month, we subtracted the variable electricity cost paid by each respondent during the POI from the monthly benchmark variable electricity cost. To measure whether the respondents received a benefit with regard to their transformer capacity charge (a.k.a., base charge), we first multiplied the monthly transformer capacity charged to the companies by the corresponding consumption quantity, where appropriate. Next, we calculated the benchmark transformer capacity cost by multiplying the companies' consumption quantities by the highest transformer capacity rate reflected in the electricity rate benchmark chart. We adjusted the transformer capacity charge in the benchmark after consideration of arguments made by BTIC. See Comment 11, below, for explanation concerning this change.

To calculate the benefit, we subtracted the transformer costs paid by the companies during the POI from the benchmark transmitter costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondents' variable electricity payments and transformer capacity payments.

To calculate the net subsidy rate pertaining to electricity payments made by the respondents, we divided the benefit amount by the combined sales of BTIC, Tianjin Tianhai, and Langfang Tianhai (net of inter-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we determine that BTIC received a countervailable subsidy of 1.10 percent ad valorem.

I. Pension Fund Grants

As explained above under "Use of Facts Otherwise Available and Adverse Inferences," we were unable to fully verify information submitted by the GOC for this program because the GOC did not provide requested documentation for verification. In cases where information provided by a party cannot be verified (see section 776(a)(2)(D) of the Act), we use facts otherwise available. Section 776(b) of the Act stipulates that an adverse inference is warranted where a party fails to

⁷⁸ See the GOC 2nd SQ Response at Exhibit 1.

⁷⁹ See Drill Pipe from the PRC IDM at 25-27.

cooperate by not acting to the best of its ability to comply with a request for information from the Department. In this instance, the GOC opted to withhold information at verification because it deemed it not relevant to the investigation. Therefore, as facts available, we determine that pension grants to Jingcheng Holding confer a direct financial contribution from the GOC within the meaning of sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and are specific within the meaning of section 771(5A) of the Act.

We have treated the funds received by Jingcheng Holding as a recurring benefit. Jingcheng Holding sends the GOC a yearly budget request, pursuant to a prior understanding between Jingcheng Holding and the GOC, based on Jingcheng Holding's conversion from a government agency to an SOE.⁸⁰ Jingcheng Holding can reasonably expect to continue receiving additional benefits on an ongoing basis from year to year.⁸¹ Thus, to calculate the countervailable subsidy, we followed the methodology found at 19 CFR 351.524(a). We divided the amount received by Jingcheng Holding in the POI by Jingcheng Holding's consolidated sales in the POI, which is consistent with 19 CFR 351.525(b)(6)(iii).

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

VI. Programs Determined To Be Not Countervailable

A. Provision of Land-Use Rights in the Tianjin Port Free Trade Zone for LTAR

BTIC submitted information regarding Tianjin Tianhai's purchase of land-use rights showing that Tianjin Tianhai is located in the Tianjin Port Free Trade Zone ("TPFTZ") and that the company purchased its land-use rights from the land bureau for that Zone. Additionally, the GOC submitted the *Regulation of the Tianjin Harbour Free Trade Zone for Land Administration*. This regulation does not show any preference in providing land-use rights for particular areas within the TPFTZ.

The Department has found that when land is in an industrial park located within the seller's (e.g., county's or municipality's) jurisdiction, the provision of land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act.⁸² However, with respect to the land-use rights within the TPFTZ, the jurisdiction of the granting authority does not extend beyond the TPFTZ. As such, the provision of land-use rights under this program is not limited to an enterprise or industry located within a designated geographical region. Therefore, we determine that the provision of land-use rights to Tianjin Tianhai within the TPFTZ is not specific under section 771(5A)(D)(iv) of the Act and, thus, this program does not confer a countervailable subsidy.

VII. Programs Determined To Be Not Used By Respondents During the POI or To Not Provide Benefits During the POI

A. Provision of Welded Tube Steel for LTAR

⁸⁰ See GOC 3rd SQ Response at 8 and 12-13.

⁸¹ See BTIC 3rd SQ Response at 2-4; see also 19 CFR 351.524(c)(2)(i).

⁸² See, e.g., Sacks from the PRC IDM at Comment 8.

BTIC reported purchasing welded tube steel, although not for use in the production of subject merchandise. BTIC submitted the amount it purchased in the POI and the price paid, but not the date(s) or terms of the purchase. The GOC did not provide any requested information regarding welded tube steel.

Even under adverse inferences regarding financial contribution, specificity, unsuitability of tier one benchmarks, and the dates and terms of the purchases, we determine that this program did not result in a measurable benefit during the POI. Therefore, consistent with Coated Paper from the PRC,⁸³ we are not including this subsidy in our calculation.

B. Subsidies Provided in the Tianjin Binhai New Area (“TBNA”) and the Tianjin Economic and Technological Development Area

The GOC and BTIC reported that Tianjin Tianhai received benefits under three programs by virtue of its location in the TBNA. The first is addressed under “Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone” above. The payment to Tianjin Tianhai under the second program, the Energy Saving and Emission Reduction Fund, was less than 0.5 percent of BTIC’s sales in the year of receipt, 2009. Therefore, because any potential subsidy would have been expensed prior to the POI in accordance with 19 CFR 351.524(b)(2), we have not analyzed this program further and have not included it our calculations.

Similarly, payments to Tianjin Tianhai under the third program, the Enterprise Development Fund, were less than 0.5 percent of BTIC’s sales in the years of receipt, 2008 and 2009. Therefore, because any potential subsidy would have been expensed prior to the POI in accordance with 19 CFR 351.524(b)(2), we have not analyzed this program further and have not included it our calculations.

C. Beijing Industrial Development Fund

BTIC reported receiving grants under this program in 2008 and 2009. Payments to BTIC under this program were less than 0.5 percent of BTIC’s sales in the years of receipt, 2008 and 2009. Therefore, because any potential subsidy would have been expensed prior to the POI in accordance with 19 CFR 351.524(b)(2), we have not analyzed this program further and have not included it our calculations.

D. Provision of Land and/or Land Use Rights to SOEs at LTAR

E. Loan and Interest Forgiveness for SOEs

F. The State Key Technology Renovation Project Fund

G. Circular on Issuance of Foreign Trade Development Support Fund

H. Rebates for Export and Credit Insurance Fees

⁸³ See Coated Paper from the PRC IDM at 15.

- I. GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China Top World Brands
- J. Preferential Lending to Steel Product Producers Under the Ninth Five-Year Plan
- K. Treasury Bond Loans
- L. Preferential Lending to Steel Cylinders Producers and Exporters Classified as “Honorable Enterprises”
- M. Income Tax Reductions for Export-Oriented FIEs
- N. Preferential Tax Programs for FIEs that are Engaged in Research and Development
- O. Income Tax Reduction for FIEs that Reinvest Profits in Export-Oriented Enterprises
- P. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
- Q. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
- R. VAT Refunds for FIEs Purchasing Domestically Produced Equipment
- S. VAT Exemptions for Central Region

Analysis of Comments

Comment 1: Application of the CVD Law to the People's Republic of China

Affirmative Arguments

BTIC and the GOC argue that the Department should terminate the investigation without issuing a CVD order. In their view, Public Law 112-99, which was enacted on March 13, 2012, and expressly permits the application of the CVD law to NME countries, is unconstitutional.

According to the GOC and BTIC, Public Law 112-99 violates the separation of powers because this legislation impermissibly interferes in the judicial function of an Article III Court. Specifically, according to BTIC, the executive and legislative branches immediately initiated efforts to change the law upon the CAFC's decision in GPX Fed. Cir. Thus, BTIC contends, the executive and legislative branches purposefully targeted GPX Fed. Cir. while it resided in the 'gray area' between publication and the court's consideration of the motions for rehearing. This period (between publication of a court's decision and the deadline for seeking rehearing) is for parties to identify any important issue of fact or law overlooked by the court. In BTIC's view, it is a gross abuse of the legal system to turn this period into a judicial limbo in which the executive and legislative branches may effectively review and rewrite a court's decision, a function reserved to the judiciary.

The GOC and BTIC also insist that Public Law 112-99 violates the Due Process Clause of the Constitution. Citing Princess Cruises, BTIC asserts that the new amendment has considerable retroactive effect. Further, says BTIC, in violation of Pension Benefit Guar. Corp., the U.S. government has failed to establish that Public Law 112-99's retroactive application furthers a legitimate legislative purpose. Referencing Landgraf, BTIC argues that the retroactive portion of the amendment violates BTIC's Due Process rights.

Rebuttal Arguments

The petitioner counters that the "dramatic allegations" by BTIC and the GOC regarding the unconstitutionality of Public Law 112-99 do not explain how the Department is empowered to refuse to follow a validly-enacted federal law on constitutional grounds. Moreover, the petitioner argues that this CVD investigation is not the appropriate context in which to challenge the law – particularly since the Department does not have the authority to nullify Congressional law based on its own constitutional analysis.

The petitioner also observes that the Department has already recognized the validity and effect of the new legislation in the final determination for Steel Wheels from the PRC.⁸⁴ Since the Department has consistently applied the CVD law to the PRC in the past, and since Congress has reaffirmed the validity of the Department's practice by passing Public Law 112-99, the petitioner argues that the Department should continue to apply the CVD law to the PRC and other non-market economies in this and future cases.

⁸⁴ See Steel Wheels from the PRC IDM at Comment 1.

Department's Position

Separation of Powers

We disagree with the GOC and BTIC that Public Law 112-99 violates the constitutional separation of powers. Public Law 112-99 is a valid exercise of legislative power pursuant to Article I of the Constitution. The Department, as part of the executive branch, is obligated to follow this law. The Federal Circuit itself, in GPX, indicated that Congress could change the statute to make clear that the CVD law applies to NME countries, stating that “if Commerce believes that the law should be changed, the appropriate approach is to seek legislative change.”⁸⁵

Much of BTIC's argument regarding the separation of powers relies on its assertion that the legislative and executive branches of government have interfered with the judicial branch. However, the judicial branch has no role in the Department's countervailing duty investigations; the judicial branch's role is to decide cases when the Department's final decisions are litigated. Because this proceeding is still at the investigation, not litigation, stage, much of BTIC's argument simply is misplaced.

Retroactivity

BTIC is incorrect that Public Law 112-99 violates the Due Process Clause of the Constitution. Public Law 112-99 amends section 701 of the Act to state that the merchandise on which CVDs shall be imposed under section 701(a) of the Act includes merchandise from an NME country (subject to one exception not relevant here). That law further states that it applies to all CVD proceedings initiated on or after November 20, 2006. The present investigation was initiated on May 31, 2011, so Public Law 112-99 applies to this investigation.

We disagree with BTIC that Public Law 112-99 is economic legislation that “imposes a new obligation, duty, or disability upon Chinese companies’ and the Chinese Government’s past actions” by making subsidies in China “unlawful.”⁸⁶ Public Law 112-99 simply confirms the Department's obligation to impose CVDs on merchandise from countries designated as NME countries. That obligation or duty rests on the Department, not on Chinese companies or the Chinese government. Moreover, subsidies are not “unlawful” but rather are trade-distorting measures that are remediable through the use of CVDs. Any suggestion by BTIC that it was unaware that its product may be subject to CVDs is belied by the Department's application of the CVD law to subsidized imports from China since 2006. Therefore, BTIC's reliance on court cases interpreting laws that retroactively affected economic behavior is misplaced.

Even if Public Law 112-99 constitutes economic legislation with retroactive effect, it nevertheless is constitutional. According to the Supreme Court, “{i}t is now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a

⁸⁵ See GPX (Fed. Cir.), 666 F.3d at 745.

⁸⁶ BTIC Case Brief at 8.

presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.”⁸⁷ The Supreme Court has been “clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.”⁸⁸ “This is true even though the effect of the legislation is to impose a new duty or liability based on past acts.”⁸⁹

BTIC’s reliance upon Landgraf is misplaced. In Landgraf, the Supreme Court analyzed whether an ambiguous statute should have retroactive effect and concluded, based upon the presumption against retroactivity, that it should not. Public Law 112-99, on the other hand, has an express effective date. Unlike in Landgraf, there is no ambiguity. In Landgraf, the Supreme Court stated that “congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.”⁹⁰ Public Law 112-99 requires that it apply to CVD investigations initiated on or after November 20, 2006. Landgraf simply did not address the issue BTIC here raises, which is whether an expressly retroactive statute is constitutional. In fact, Landgraf indicates that an expressly retroactive statute is constitutional, because the Supreme Court noted that “constitutional impediments to retroactive civil legislation are now modest....”⁹¹ The other case that BTIC principally relies upon, Princess Cruises, which followed Landgraf, also did not address the constitutionality of a federal statute and, therefore, BTIC’s reliance on Princess Cruises also is misplaced.⁹²

The only constitutional requirement for a retroactive statute is that there be “a legitimate legislative purpose furthered by rational means.”⁹³ Public Law 112-99 has a legitimate legislative purpose, which is, among other aims, to reaffirm the Department’s authority to apply the CVD law to NME countries. The means chosen by Congress are rational because Congress wanted to ensure that, among other things, domestic producers and consumers would be free to obtain relief from unfairly subsidized goods from NME countries.⁹⁴ The Supreme Court regularly has sustained retroactive laws against due process challenges, including in some of the cases cited by BTIC.⁹⁵ Therefore, we disagree with BTIC and the GOC that Public Law 112-99 constitutes an unconstitutional violation of the Due Process Clause.

Comment 2: Double Counting/Overlapping Remedies

Affirmative Arguments

⁸⁷ Usery, 428 U.S. at 15.

⁸⁸ Id. at 16.

⁸⁹ Id.

⁹⁰ Landgraf, 511 U.S. at 272 (quoting Bowen, 488 U.S. at 208).

⁹¹ Id.

⁹² Princess Cruises, 397 F.3d 1358.

⁹³ See General Motors, 503 U.S. 191 (citing Pension Benefit Guar. Corp., 467 U.S. at 717).

⁹⁴ See, e.g., 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Rep. Camp).

⁹⁵ See General Motors, 503 U.S. at 191-92 (finding that retroactive statute met the standard of “a legitimate legislative purpose furthered by rational means”); Pension Benefit Guar. Corp., 467 U.S. at 729 (upholding retroactive statute against due process challenge and explaining that “[p]rovided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches”).

BTIC, Jindun and the GOC argue that, despite Public Law 112-99, the Department should terminate this investigation because of the occurrence of double-counting, which is expressly prohibited pursuant to the GPX decisions. BTIC claims that the Georgetown Steel case recognized that the “NME AD statute was designed to remedy the inability to apply CVD law to NME countries, so that the subsidization of a foreign producer or exporter in an NME country was addressed through the NME AD methodology.”⁹⁶

BTIC and the GOC also cite to the Federal Circuit’s holdings in Wheatland (affirming that deducting Section 201 safeguard duties from the export duties may create an artificial dumping margin, and consequently Commerce would be punitively collecting additional antidumping duties) and U.S. Steel Group I (affirming the position that deducting CVD duties from the export price would “create a greater dumping margin in the form of a second remedy for the domestic remedy”) to indicate that the Department must employ a reasonable interpretation of AD/CVD statutes in the face of double-counting or double-remedy concerns.⁹⁷

The GOC separately argues that the United States’ WTO obligations require an adjustment for double-counting. It cites the WTO AB Decision finding that “investigating authorities may not, in fixing the appropriate amount of countervailing duties, simply ignore that anti-dumping duties have been imposed to offset the same subsidization.”⁹⁸

Rebuttal Arguments

The petitioner cites to Kitchen Racks from the PRC as an example of a case in which the Department has already heard, and rejected, similar arguments. In Kitchen Racks from the PRC, the Department stated that “[i]f any adjustment to avoid a double remedy is possible, it would only be in the context of an AD investigation.” BTIC and Jindun have already raised double remedy arguments in the parallel AD investigation. Therefore, the petitioner argues that they may not raise the same arguments in this proceeding.

Department’s Position

We disagree with the argument 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, reliance on the GPX (Fed. Cir.) decision is misplaced because the Federal Circuit’s GPX decision is not final. Parties have sought rehearing of that decision and still have an opportunity to exercise additional appeal rights. Additionally, the court has yet to issue its mandate. In any event, the GPX court only held that the “potential” for double remedies may exist.⁹⁹ Second, the parties have not cited to any statutory authority for not imposing CVDs so as to avoid the alleged double remedies or for making an adjustment to the CVD calculations to prevent an incidence of alleged double remedies. Finally, if any adjustment to avoid a double remedy is possible, it would only be in the context of an AD proceeding. We note that this

⁹⁶ See Georgetown Steel, 801 F.2d at 1316.

⁹⁷ See Wheatland, 495 F.3d at 1358 (Fed. Cir. 2007); U.S. Steel Group I, 15 F. Supp. 2d at 900; U.S. Steel Group II, 225 F.3d at 1285.

⁹⁸ See WTO AB Decision, para. 571.

⁹⁹ See GPX, 645 F.2d at 1240.

position is consistent with the Department's decisions in recent PRC CVD cases.¹⁰⁰

Regarding the arguments concerning the WTO AB Decision, 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.¹⁰¹ 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.¹⁰² 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.¹⁰³ 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.

Comment 3: Whether the Department Should Have Selected Jindun as a Mandatory or Voluntary Respondent

Affirmative Arguments

According to Jindun, the Department was wrong to not select it as a respondent. Jindun argues that its filings, including its request for voluntary treatment, questionnaire response, and pre-preliminary comments, met the Department's deadlines for this proceeding. According to Jindun, the Department did not review Jindun's submissions, issue supplemental questionnaires, or explain why Jindun's request for voluntary treatment was ignored. In doing these things, Jindun alleges that the Department disregarded both the statute and case precedent.

Jindun offers numerous reasons why it believes the Department's decision was in error.

First, Jindun asserts that the Department should have selected it as a mandatory respondent. It cites the Department's statement in the Respondent Selection Memorandum that, because there are "minimally ten, and potentially greater than ten" producers or exporters of subject merchandise, it is "impracticable to examine each producer and exporter individually." According to Jindun, the Department then selected a single mandatory respondent without "a valid or legally sound explanation." Furthermore, Jindun claims, the Department should have selected it as a mandatory respondent because the import data on the record show BTIC and Jindun as the only two known producers and/or exporters of the subject merchandise. It also cites the court's decision in Zhejiang that "Commerce may not rely on its workload caused by other antidumping proceedings in assessing whether the number of exporters and producers is 'large,' and thus deciding that individual determinations are impracticable. Commerce cannot rewrite the statute based on staffing issues."¹⁰⁴

¹⁰⁰ See, e.g., Aluminum Extrusions from the PRC IDM at Comment 3; Drill Pipe from the PRC IDM at Comment 4; Coated Paper from the PRC IDM at Comment 3; Seamless Pipe from the PRC IDM at Comment 3; and OCTG from the PRC IDM at Comment 2.

¹⁰¹ See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; and NSK Fed. Cir., 510 F.3d at 1380.

¹⁰² See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

¹⁰³ See 19 U.S.C. § 3533(g).

¹⁰⁴ See Zhejiang, 637 F Supp. 2d at 1264.

Second, Jindun references section 777A(e)(1) of the Act, which states that the Department “shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.” Jindun argues that the only exception to this requirement is provided in section 777A(e)(2) of the Act, which allows the Department to limit the number of respondents if it finds “that it is not practicable to determine individual countervailable subsidy rates . . . because of the large number of exporters or producers involved in the investigation or review.” Jindun points to the court’s rulings in Zhejiang¹⁰⁵ and Carpenter Tech¹⁰⁶ as support. In particular, Jindun emphasizes that the court in Zhejiang found that four exporters and producers “does not appear to satisfy the requirement that the number be ‘large’ under any ordinary understanding of the word.”¹⁰⁷ Given that the current investigation involved only two possible respondents, Jindun argues that the Department’s failure to examine both is inconsistent with court precedent.

Third, even if the Department is justified in not selecting Jindun as a mandatory respondent, Jindun alleges that the Department’s failure to accept it as a voluntary respondent conflicts with the Department’s international obligations, its established practice, and with court precedent. It again cites Zhejiang, in which the court indicated that “Commerce must calculate an individual dumping margin for any voluntary respondent who submits the information requested from the mandatory respondents ‘by the date specified’ for the mandatory respondents if ‘the number of exporters and producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.’”¹⁰⁸

Jindun also argues that the Department’s practice of accepting voluntary respondents is supported in the SAA.¹⁰⁹ It cites Article 6.10.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 as evidence that the Department must accept voluntary respondents, and “shall . . . determine an individual margin . . . for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to {the Department} and prevent the timely completion of the investigation. Voluntary responses should not be discouraged.”

¹⁰⁵ Id. at 1264.

¹⁰⁶ See Carpenter Tech, 662 F Supp. 2d at 1343.

¹⁰⁷ See Zhejiang, 637 F Supp. 2d at 1264.

¹⁰⁸ See Zhejiang, 637 F. Supp 2d at 1265.

¹⁰⁹ Jindun cites to the SAA at 872. This section states that “{a}s a practical matter, however, Commerce may not be able to examine all exporters and producers, for example, when there is a large number of exporters and producers. In such situations, Commerce either limits its examination to those firms accounting for the largest volume of exports to the United States or employs sampling techniques. Commerce will calculate individual dumping margins for those firms selected for examination and an ‘all others’ rate to be applied to those firms not selected for examination.” Presumably, Jindun intended to cite to the SAA at 873, which states that “Commerce, consistent with Article 6.10.2 of the Agreement, will not discourage voluntary responses and will endeavor to investigate all firms that voluntarily provide timely responses in the form required,” although “Commerce may decline to analyze voluntary responses because it would be unduly burdensome and would preclude the completion of timely investigations or reviews.”

Fourth, Jindun alleges that the Department's refusal to accept it as either a mandatory or a voluntary respondent has violated its rights to due process. Jindun cites two CIT decisions as upholding the principle of parties' "rights to be heard."¹¹⁰ Jindun also highlights the provision at section 777A(e) of the Act that "individual countervailing duty rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5)." It characterizes the Department's application of an all-others rate based on BTIC's participation to Jindun as "unreasonable, unfair, arbitrary, and capricious," and charges the Department with an "abuse of discretion," in violation of 5 U.S.C. § 706(2)(A).

Fifth, Jindun argues that the Department failed to explain in the Preliminary Determination how this investigation presents unusual challenges that justify its decision to limit the investigation to a single respondent. Jindun asserts that there is nothing unusually difficult or burdensome about this investigation. It observes that the Department conducts numerous countervailing duty investigations and administrative reviews each year involving many more than two respondents.

Finally, Jindun argues that the Department is legally required to apply the most accurate rates possible to individual respondents. It cites Shakeproof as support.¹¹¹

The GOC echoes several of Jindun's arguments. It also cites section 777A(e)(2)(A)(ii) of the Act, arguing that the statute refers to exporters or producers in the plural, *ergo*, it conceives of more than one respondent being selected. The GOC cites Schaeffler, in which it argues the court analyzed the term "large" as used by the statute and concluded that it "does not encompass a quantity of one."¹¹² It also joins Jindun in citing to Carpenter Tech. According to the GOC, since Jindun submitted a "full and timely questionnaire response," it was improper for the Department to select only one respondent and to ignore Jindun's proffer of a voluntary response.

Rebuttal Arguments

The petitioner replies that the Department has now heard Jindun's request for treatment as a voluntary respondent four times. It reviews the reasons given by the Department in the Respondent Selection Memorandum for limiting its selection of respondents to BTIC. They include "the workload required for investigating BTIC's complex corporate structure," the fact "that BTIC was identified by itself and the petitioner as responsible for the overwhelming majority of exports of steel cylinders to the United States for the year 2010," and the fact that "the data from CBP and DOT support this claim."¹¹³ The petitioner also mentions the Department's reference to its heavy workload involving other CVD cases.¹¹⁴

According to the petitioner, the Department has made similar decisions in the past not to examine voluntary respondents due to limited resources.¹¹⁵ It concludes that there is no reason to alter the Department's decision to limit its investigation to BTIC.

¹¹⁰ See Barnhart, 588 F. Supp. at 1438; Obron Atl. Corp., 862 F. Supp. at 382.

¹¹¹ See Shakeproof, 268 F.3d at 1382.

¹¹² See Schaeffler, 781 F. Supp. 2d 1358.

¹¹³ See Respondent Selection Memorandum at 5.

¹¹⁴ Id. at 4.

¹¹⁵ See Steel Wheels from the PRC and CWP from the PRC – Prelim at 63876.

Department's Position

When faced with a large number of exporters/producers, section 777A(e)(2) of the Act provides the Department with the discretion to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. We disagree with Jindun that there were only two known exporters or producers of the subject merchandise. As described in the Respondent Selection Memorandum, we found there to be at least ten, and potentially more than ten, exporters or producers of the subject merchandise. This qualifies as a “large” number. Consistent with section 777A(e)(2) of the Act, the Department found that it was not practicable to investigate all of these producers or exporters, and we limited individual examination to a reasonable number of respondents. Based on the facts of this case, we found it reasonable to examine a single respondent. Jindun’s argument that it deserved to be selected as a mandatory respondent hinges on its claim that the Department found there to be only two exporters or producers of the subject merchandise, and that two is not a “large” number. Because Jindun is incorrect with this claim, we disagree that the Department was required to select Jindun as a mandatory respondent. Furthermore, even had the circumstances of this case not precluded the Department from examining another respondent, the data we examined during the respondent selection process shows that at least one other DOT-registered producer of steel cylinders exported a greater quantity of the subject merchandise to the United States than Jindun did.

However, we recognize that section 782(a) of the Act establishes a separate standard for the treatment of voluntary respondents. As a result, the Department analyzed the burden and time considerations, under section 782(a)(2) of individually reviewing an additional voluntary respondent separate from the mandatory respondent selection process provided for by section 777A(e)(2) of the Act. Because the determination of whether the number of companies eligible for voluntary status “is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the review” is made after Commerce has limited its examination to a reasonable number under section 777A(c) of the Act, that determination must be made in that context. In other words, the question of whether to accept an additional, voluntary respondent must be considered in light of the company(ies) to which Commerce already limited its examination under section 777A(c)(2), the circumstances of the investigation and the Department’s resources. Under this analysis, even one company requesting voluntary status may be “large” if individual examination of that company would be unduly burdensome and inhibit the timely completion of the review.

In determining whether the Department was able to individually investigate an additional company as a voluntary respondent, consistent with section 782(a) of the Act, we contemplated whether doing so would have been unduly burdensome and whether it would have inhibited the timely completion of the investigation. We considered that the impracticability and burdensome nature of reviewing an additional respondent does not lie solely in acquiring responses to the Department’s initial questionnaire. Instead, the majority of the burden lies in the analysis and verification of each company’s responses to the questionnaire, as well as the corresponding exhibits and data (such as financial statements). This process regularly results in finding numerous deficient responses to the initial questionnaire. As a result, such deficient responses require the Department to draft supplemental questionnaires. Unlike the Department’s original

questionnaire, these are specific to each respondent and address each company's own unique deficient responses, thereby creating an additional burden to the Department.

In an original investigation such as this, the Department faces additional burdens and time constraints. The statutory deadline for a preliminary determination in a countervailing duty investigation is 65 days, which can be extended in certain circumstances to 130 days.¹¹⁶ The statutory deadline for the final determination is 75 days after the preliminary determination, which can be extended in certain circumstances to be aligned with the final determination of a parallel antidumping investigation.¹¹⁷ Fully extended, the Department has less than one year to complete a countervailing duty investigation, during which time it gathers and analyzes company-specific information and government program data for an industry that it has not likely previously examined. Further, the statute requires verification of the information used in the final determination in investigations.¹¹⁸ Given these time constraints and requirements, the decision to examine a voluntary respondent must be made early in the investigation, and in particular, prior to a preliminary determination. The short time following a preliminary determination provides sufficient time only to collect minimal additional or missing information, examine any new programs on which an investigation was initiated subsequent to the original initiation, conduct verifications, provide a final opportunity for parties to comment on the record and time for the Department to analyze the data and comments.

This case presented additional burdens. As suggested early in the investigation,, BTIC is not a simple company. It has numerous affiliates. We analyzed whether these affiliates met the Department's standard for cross-ownership found at 19 CFR 351.525(b)(6)(ii-vi). Three other companies met the cross-ownership standard, making it necessary to analyze the unique circumstances of, and subsidies received by, all four companies. BTIC alluded to this complexity in its August 18, 2011 request for more time to submit its initial questionnaire response, when it informed us that it needed more time because "{t}he BTIC companies have complicated accounting systems and financial statements that, in some instances, are consolidated with other non-cross owned entities...{a}dditionally extra time is needed as this case involves multiple programs on inputs for less than adequate remuneration. The BTIC companies have a complicated input purchase scheme with multiple entities purchasing inputs and reselling to other affiliates."¹¹⁹

Countervailing duty proceedings are unique in that the foreign government plays an essential role as a party to the proceeding. Thus, we considered not only the burden involved in analyzing BTIC's responses, but also the burden involved in analyzing the GOC's responses. In practice, the burden of analyzing the responses provided by a foreign government can match, and even exceed, the burden imposed by analyzing a respondent company. In this investigation, it was necessary to issue an initial questionnaire and three supplemental questionnaires to the GOC. In response, the GOC submitted almost 2,000 pages of information that we considered in our determinations. The questionnaire responses from both BTIC and the GOC were subject to verification. The Department spent five days verifying BTIC and Tianjin Tianhai at two

¹¹⁶ See section 703(b) and (c) of the Act.

¹¹⁷ See section 705(a) of the Act.

¹¹⁸ See section 782(i)(1) of the Act.

¹¹⁹ See BTIC IQR Extension Request at 1-2.

locations in the PRC and spent two days verifying the GOC at government offices in Tianjin and Beijing.

In responding to both the original and supplemental questionnaires prior to the Preliminary Determination, both BTIC and the GOC requested and received numerous extensions of time. Even without the burden of taking on an additional company as a voluntary respondent, the petitioner requested that the deadline for the Preliminary Determination be extended. And, even having extended these deadlines, we were unable to collect and evaluate necessary information for some programs from parties prior to the deadline for the Preliminary Determination, making it necessary to analyze certain programs in a subsequent post-preliminary analysis. Based on this analysis, reviewing an additional respondent's questionnaire responses, issuing it supplemental questionnaires, analyzing its particular circumstances and subsidy programs, verifying all of the information submitted, and calculating an additional individual subsidy rate would have unduly burdened the Department and inhibited the timely completion of this investigation, within the meaning of section 782(a) of the Act.

Comment 4: Whether a Certain Producer of Seamless Tube Steel Partially-Owned by SOEs is a Government Authority

The comments and rebuttals received for this issue discuss the identity and ownership structure of one of BTIC's suppliers of seamless tube steel. Because this discussion is largely proprietary, we have summarized comments from parties, and our response, in a separate memorandum.¹²⁰

Comment 5: Whether a Certain Producer of Seamless Tube Steel Owned by Individuals is a Government Authority

One of BTIC's input producers is owned by individuals. The Department asked the GOC for information regarding whether these individuals are government or CCP officials or representatives, which the GOC failed to provide.

Affirmative Arguments

BTIC and the GOC argue that the Department should not apply AFA to the GOC and find that this input supplier is a government authority. According to BTIC and the GOC, the Department may only apply an adverse inference regarding missing pieces of information, and because the Department did not ask specifically whether the producer is a government authority, that information cannot be considered "missing."

Even if the Department applies adverse inferences regarding this information, BTIC and the GOC cite de Cecco¹²¹ and Gallant Ocean¹²² as support for their argument that the Department may not apply an adverse inference to "information that is irrelevant or inconsequential to the Department's determination." Neither may it "automatically... consider these companies to be government authorities without any factual support." In the opinion of BTIC and the GOC, an

¹²⁰ See BPI Memo.

¹²¹ See de Cecco, 216 F.3d at 1032.

¹²² See Gallant Ocean, 602 F.3d at 1324.

adverse inference that the owners, managers or board members of this producer are CCP officials is not sufficient basis to then find that the producer is a government authority.

BTIC and the GOC go on to explain that Chinese law dictates that civil servants are prohibited from holding positions in Chinese companies. They also cite Steel Plate from the PRC in arguing that the Department has never encountered a scenario where a company owned by individuals was controlled by the government.¹²³ Even if the owners, managers or board members of the producer in question were CCP officials or representatives, BTIC and the GOC jointly argue that the PRC Company Law precludes the government from exerting control over an individually-owned company.

Rebuttal Arguments

The petitioner replies that the Department's practice under these circumstances is to apply an adverse inference to the missing information, as it did in Steel Wheels from the PRC. In that case, the Department found that "the GOC in all instances, did not provide the information regarding whether the owners of the input producers were officials of the CCP and the extent to which CCP officials influenced the manner in which they conducted their firm's operations." As a result, the Department stated that "because the GOC failed to provide the requested ownership information, we are applying an adverse inference that the HRS producers at issue were government authorities that provided a financial contribution as described under section 771(5)(D)(iv) of the Act."¹²⁴

The petitioner claims that the circumstances in this case are no different and, therefore, the Department should continue its practice of finding, as adverse facts available, that suppliers for which the GOC did not provide requested information regarding government officials and CCP officials and representatives are government authorities.

Department's Position

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, the GOC failed to provide this necessary information. The Department has requested CCP-related information from the GOC in this and many other proceedings.¹²⁵ Moreover, the Department has explained its understanding of the CCP's involvement in the PRC's economic and political structure in the current, as well as past, proceedings, and has explained that it considers the information regarding the CCP's involvement in the PRC's economic and political structure to be important because public information suggests that the CCP exerts significant control over activities in the PRC. This is supported by the background report from the U.S. Department of State, also referenced in prior investigations.¹²⁶ More fundamentally, as mentioned above, it is for the Department, and not the respondents, to determine what information is necessary and must be provided.¹²⁷

¹²³ See Steel Plate from the PRC IDM at Comment 2.

¹²⁴ See Steel Wheels from the PRC IDM at 9, see also Citric Acid from the PRC IDM at 2-3.

¹²⁵ See, e.g., Wire Decking from the PRC IDM at Comment 2; and Steel Wire from the PRC IDM at Comment 5.

¹²⁶ See, e.g., Seamless Pipe from the PRC IDM at Comment 7.

¹²⁷ See, e.g., Ansaldo, 628 F. Supp. at 205 (stating that "it is Commerce, not the respondent, that determines what

By substantially failing to respond to our questions, the GOC withheld information that was requested of it regarding the CCP's role in the ownership and management of the relevant input producer. Therefore, we find, as AFA, that the owners, managers and board members of this producer are CCP officials, and that their presence renders this producer an "authority" within the meaning of section 771(5)(B) of the Act.

Comment 6: Countervailability of Seamless Tube Steel Produced by One of BTIC's Affiliates

Affirmative Arguments

BTIC asserts that the Department inappropriately countervailed inputs purchased by BTIC and its cross-owned affiliates that were produced by a company owning a minority interest in Tianjin Tianhai. The identity of this producer is proprietary information. Although the input producer in question is an affiliate of Tianjin Tianhai, it did not meet the Department's standard for cross-ownership. At the Preliminary Determination, the Department analyzed these transactions under 19 CFR 351.511 and found that BTIC had received a countervailable subsidy through the provision of seamless tube steel for LTAR.

BTIC cites an administrative review of the antidumping order on Orange Juice from Brazil in arguing that the "Department is required to analyze the arm's-length nature of affiliated transactions."¹²⁸ It also cites section 773(f)(2) of the Act, which states that "{a} transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration." It goes on to argue that in the "CVD context," the affiliated nature of the sale makes it impossible to measure the effect and benefit of the LTAR subsidy. In other words, BTIC believes that the Department would not be able to distinguish between whether the reduced price BTIC received was the result of the seamless tube steel for LTAR program, or whether it was by virtue of BTIC's affiliation with the input producer.

In BTIC's opinion, this alleged problem is made worse by the Department's "indirect analysis of the existence of LTAR programs in Chinese CVD cases." BTIC argues that the connection between policy statements and actual selling of seamless steel tube is "circumstantial at best." BTIC argues that there is no express law requiring Chinese SOE steel tube producers to provide steel tube for LTAR to producers of steel cylinders, and there is no direct evidence that the producer in question does so. According to BTIC, in light of the alleged lack of direct evidence regarding the seamless steel tube for LTAR program, the Department should not simply presume that the reduced prices paid by BTIC for that input are a result of that program. Rather, the

information is to be provided"). The Court in Ansaldo criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company."

¹²⁸ See Orange Juice from Brazil IDM at Comment 14.

Department must rely on the more likely explanation – that the reduced prices are the result of the affiliation between the two entities.

Because of this affiliation, BTIC argues that these transactions are more appropriately analyzed under 19 CFR 351.523, the regulation regarding upstream subsidies. BTIC also argues that the Department has consistently implemented 19 CFR 351.511 in countervailing non-affiliated input purchases in Chinese CVD cases, and “has not and could not” apply that section of the regulations to input purchases from affiliates. It then goes on to cite a discussion in the CVD Preamble regarding the function of the upstream subsidy investigation.¹²⁹ BTIC also cites Coated Paper from Indonesia to argue that the Department has found that “focusing upon inputs purchased from affiliates and used to produce subject merchandise in upstream subsidy investigations is strictly consistent with the statute.”

Rebuttal Arguments

The petitioner first addresses BTIC’s arguments regarding inputs that were produced by Tianjin Tianhai’s affiliate. It argues that, having informed the Department that it purchased seamless tube steel from unaffiliated third-party trading companies, BTIC cannot now argue that it purchased the steel directly from the input producer. The petitioner considers BTIC’s description of upstream subsidy allegations between input producers and an affiliated respondent to be irrelevant, because no such transactions have occurred in this instance.

The petitioner continues by arguing that, in order for seamless tube steel to pass from the affiliated input producer to BTIC, it had to pass through two unaffiliated transactions: first, from the input producer to the trading company, and second, from the trading company to BTIC. According to the petitioner, the input producer would have no motivation to discount the steel when selling it to the trading company, and the trading company would have no motivation to discount the steel when selling it to BTIC. From the petitioner’s perspective, the idea that these unaffiliated trading companies somehow conspired to pass affiliated pricing from the input producer to BTIC is nonsensical. Hence, the only reasonable explanation for the reduced prices BTIC paid for its seamless tube steel is that an SOE (the input producer) provided the input at less than adequate remuneration.

The petitioner explains that it saw no need to make an upstream subsidy allegation because BTIC did not actually purchase seamless tube steel from an affiliate. Instead, it argues that BTIC’s purchases of seamless tube steel from unaffiliated third parties were properly analyzed as countervailable transactions under 19 CFR 351.511. And, according to the petitioner, even if the Department were to reverse its finding at the Preliminary Determination and treat the sales between BTIC and the trading companies as affiliated transactions between BTIC and the input producer, the presence of the unaffiliated trading companies would render these transactions “arm’s-length” transactions. Thus, the petitioner argues, it would still be appropriate to analyze them under 19 CFR 351.511.

Department’s Position

¹²⁹ See CVD Preamble at 65401.

In its initial questionnaire response, BTIC reported:

“BTIC and Tianjin Tianhai purchased seamless tube during the POI that was produced by {an affiliated producer}. However, these products were sold by {a company owned by the affiliated producer} to three unaffiliated intermediate, third-party trading companies which then resold the materials to BTIC and Tianjin Tianhai. Based on these facts, the {affiliated producer is} not cross-owned with the BTIC companies for two reasons. First, the BTIC Group's purchases of seamless tube produced by the {affiliated producer} were purchased from an unaffiliated third party. Thus, the {affiliated producer is} not the input supplier to BTIC Group.”¹³⁰

BTIC’s arguments that the Department inappropriately countervailed these purchases pursuant to 19 CFR 351.511 hinge on its claim that these purchases are “affiliated transactions.” However, record evidence shows that the transactions for which we are measuring the benefit conferred were not between BTIC and the affiliated producer. Thus, we do not reach the substantive arguments raised by BTIC, and have continued to countervail these transactions under 19 CFR 351.511.

Comment 7: Countervailability of Inputs Purchased from Domestic Trading Companies

Affirmative Arguments

BTIC is joined by the GOC in arguing that regardless of whether the Department finds the producers of inputs used by the BTIC Group are government authorities, purchases of those inputs are not countervailable if they have been made through private trading companies. They point out that the Department has not found that the trading companies through which the BTIC Group purchased its inputs provided the BTIC Group with both a financial contribution and a benefit. They argue that both section 771(5) of the Act and court precedent restrict the Department from finding a countervailable subsidy absent both a financial contribution and a benefit to the respondent company.¹³¹ As described by BTIC and the GOC, it is not enough to find a financial contribution to an unrelated trading company, but a benefit to the BTIC Group.

Thus, BTIC and the GOC assert that the Department may not conduct an upstream subsidy analysis without first finding that the trading companies in question provided the BTIC Group with both a financial contribution and a benefit. Instead, in their view, the Department must show that the trading companies themselves provided both a financial contribution and a benefit to the BTIC Group through the sale of inputs. In order to do this, BTIC and the GOC contend that Department must find that the trading companies are “authorities” within the meaning of the statute. Since no such finding has been made, BTIC and the GOC argue that the Department should refrain from countervailing all inputs purchased through trading companies.

Rebuttal Arguments

¹³⁰ See BTIC Initial QR at III-4.

¹³¹ See Delverde SRL, 202 F.3d at 1365.

The petitioner argues that the Department acted correctly in countervailing the BTIC Group's purchases of inputs from unaffiliated third-party trading companies. It argues that the fact that BTIC purchased its inputs from trading companies does not negate the fact that the BTIC Group purchased subsidized steel and, therefore, received a benefit. The petitioner cites the Department's determination in Kitchen Racks from the PRC; specifically, that “{i}n CWP from the PRC, the Department determined that when a respondent purchases an input from a trading company, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent is less than adequate remuneration.”¹³² Thus, as in Kitchen Racks from the PRC and CWP from the PRC, the petitioner argues that the Department should countervail inputs produced by government authorities but sold through trading companies.

Department's Position

We disagree with the GOC and BTIC 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.” In Wire Decking from the PRC, the Department observed that “{i}n prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an ‘authority’ within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR.” In other words, the question of whether a subsidy is conferred hinges on whether the producer of the input - not the trading company - is an “authority” within the meaning of section 771(5)(B) of the Act.

Consistent with case precedent,¹³³ we determine that the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase steel inputs, while all or some portion of the benefit is conferred on the BTIC and its cross-owned affiliates through their purchases of steel inputs from the trading company suppliers. The statute does not require the Department to make a separate finding that the trading companies provided a financial contribution to BTIC.

Comment 8: Whether to Limit the Benchmark for Seamless Tube Steel to Certain Countries or Diameters

Affirmative Argument

BTIC argues that the Department should revise the benchmark it uses to calculate the benefit that BTIC and its cross-owned affiliates received through their purchase of seamless tube steel for LTAR. It presents three possibilities for the Department to consider.

¹³² See Kitchen Racks from the PRC IDM at Comment 6.

¹³³ See Steel Wire from the PRC IDM at Comment 5; Steel Wheels from the PRC IDM at Comment 9; Citric Acid from the PRC – Administrative Review IDM at Comment 3; Kitchen Racks from the PRC IDM at Comment 6; CWP from the PRC IDM at 10 and Comment 7; Rectangular Pipe from the PRC IDM at 8; and OTR Tires from the PRC IDM at 10 and Comment D.4.

First, BTIC argues that the Department is required to select the most accurate benchmark possible. To this end, BTIC proposes that the Department use diameter-specific seamless tube steel prices from Ukraine, instead of incorporating prices from Italy and Iran that are not diameter-specific. In support, it cites OTR Tires from the PRC, in which the Department stated that “in order to accurately reflect the benefit provided through these sales of natural rubber and synthetic rubber at less than adequate remuneration, the Department must make “an apples-to-apples” comparison.”¹³⁴ It also cites Coated Paper from Indonesia, in which the Department stated that “a species-specific benchmark is the most appropriate basis for calculating a stumpage benefit,” and Softwood Lumber from Canada - NSR, in which, according to BTIC, the Department selected a regionally-specific benchmark.¹³⁵ For purchases of seamless tube steel that fall outside of the diameter ranges, BTIC argues that the benchmark should be an average of both Ukrainian categories or an average of the other seamless tube steel prices on the record.

If the Department opts not to calculate a diameter-specific benchmark, BTIC argues that the Department should use the lowest monthly price for seamless tube from any country on the record. BTIC bases this argument on its view that although 19 CFR 351.511(a)(2)(ii) instructs that “where there is more than one commercially available market price, the Secretary will average such prices to the extent practicable,” the Department is not required to do. Since benchmark prices from any one country would, according to BTIC, suffice to meet the regulation, BTIC argues that the Department should use the lowest available price for each month. Furthermore, BTIC argues that averaging the available prices on the record would yield a world benchmark that does not comply with the requirement that the benchmark price be “available to the purchaser in the country in question.”

If the Department also rejects this argument, BTIC argues that the Department should average the monthly prices on the record from Italy, Iran and Ukraine to yield the benchmark price.

Rebuttal Argument

In its reply, the petitioner argues that BTIC has not provided a compelling justification for the Department to depart from its practice of averaging. Nor is there justification for the Department to ignore the “plain language” of the regulation, which explicitly requires the Department to average the commercially available world market prices submitted by all parties to the investigation to the extent practicable. Regarding BTIC’s references to Coated Paper from Indonesia and Softwood Lumber from Canada, the petitioner alleges that these cases, involving price data for pulpwood and standing timber inputs, are not comparable to the instant case, involving seamless tube steel inputs. Instead, the petitioner recommends that the Department adopt BTIC’s third argument, and average the available benchmark prices on the record from the Ukraine, Iran, and Italy.

Department’s Position

As alluded to by parties, 19 CFR 351.511 specifies the following:

¹³⁴ See OTR Tires from the PRC IDM at Comment D.7.

¹³⁵ See Softwood Lumber from Canada - NSR at IDM Comment 1

“If there is no usable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. Where there is more than one commercially viable world market price, the Secretary will average such prices to the extent practicable, making due allowance for factors affecting comparability.”

In this instance, BTIC has neither provided compelling evidence that averaging the prices on the record is not “practicable,” nor has it shown that using diameter-specific prices from Ukraine would yield a more accurate benefit than would averaging those prices with other benchmark prices on the record (from Iran and Italy). For example, BTIC has provided no information regarding why diameter is a significant characteristic for seamless tube steel, other than to provide a comparison of its seamless tube steel purchases by diameter and conclude that “BTIC Group’s purchases easily fall within these two categories demonstrating that this diameter division is a common one in the seamless tube industry.” More importantly, BTIC does not address whether there is a correlation between tube diameter and price, *i.e.*, that diameter affects the comparability of the various benchmarks. Nor does it show that an average of the available prices (which apply to all diameters of seamless tube steel) would have a distortive effect on the benefit calculation.

The regulation, cited above, is clear that the Department “will average” world market prices when multiple prices are available and they are comparable. Regarding world market prices, the Department has evaluated the Ukraine and Iranian prices from Steel Orbis that BTIC placed on the record on November 30, 2011, and finds them to be FOB export prices and, therefore, sufficiently reliable and representative.¹³⁶ The Department also continues to find the Italian prices from Steel Orbis, submitted by the petitioner, to be sufficiently reliable and representative. Furthermore, there is no evidence on the record of this investigation that these three world market prices are not comparable to the seamless tube steel purchased by BTIC. Finally, there is no impediment to calculating an average of these three prices.

Accordingly, because all three sets of world market prices are reliable and representative and because there is no evidence on the record to conclude that such prices would not be available to BTIC, the Department, consistent with the regulations, has averaged the prices from all three sources and is using that average as the benchmark. There is no basis in the regulations for selecting either a single world market price or the lowest monthly world market price in identifying the monthly benchmark as BTIC advocates.

Comment 9: Whether to Incorporate VAT and Import Duties into Input Benchmarks

Affirmative Argument

¹³⁶ See BTIC New Benchmark Data at Exhibit 1.

BTIC argues that the Department should not incorporate VAT and import duties into the benchmark for purchases of seamless tube steel, hot-rolled steel, standard commodity billets and blooms, and chromium-molybdenum billet and blooms that were exported as part of the final product. BTIC again cites to OTR Tires from the PRC and the Department's statement that "in order to accurately reflect the benefit provided through these sales of natural rubber and synthetic rubber at less than adequate remuneration, the Department must make an apples-to-apples comparison." To achieve such a comparison, BTIC observes, the Department compared "the delivered benchmark price (i.e., import price) to the delivered price paid on the countervailable domestic purchases." BTIC argues that since the GOC exempts companies from paying import duties and VAT on raw materials if those materials are consumed in a final product that is ultimately exported, in that case, the Department "calculated a pro rata amount of import duties and VAT that should have been paid after accounting for imports consumed in exported products."

BTIC points out that because Tianjin Tianhai is in a free trade zone, it is exempt from paying import duties and VAT on imported material due to its location in the zone. BTIC further observes that at verification, the Department confirmed that Tianjin Tianhai does not pay import duties and VAT on imported equipment because of its location. For these reasons, BTIC asserts that, in order to comply with 19 CFR 351.511(a)(2)(iv), the Department must adjust the benchmark to approximate BTIC's Group's experience. Namely, had BTIC or its cross-owned affiliates imported steel inputs, they would not have paid import duties or VAT on inputs incorporated into exported final products; and in particular, Tianjin Tianhai would not have paid import duties or VAT on any imported products.

Rebuttal Argument

According to the petitioner, the Department rejected a similar appeal in OCTG from the PRC.¹³⁷ Since the regulation specifies that the Department adjust the benchmark price according to the price a firm would pay, and not the price the respondent would pay, the petitioner argues that the Department should base its calculation on prices representative of the rates a company in the PRC would have paid, without considering the specific circumstances of any particular company.

Department's Position

First, BTIC's reliance on OTR Tires from the PRC is misplaced. In OTR Tires from the PRC 1st AR, similar to the situation in our instant investigation, the Department relied on world market prices under 351.511(a)(2)(ii) for the benchmark.¹³⁸ In that instance, the Department added to the world market benchmark input prices "VAT and import duties calculated in accordance with the standard PRC VAT and duty rates rates for these products." Therefore, in calculating the

¹³⁷ "Although Jianli contends that the benchmark should reflect prices Jianli itself would have paid, 19 CFR 351.511(a)(2)(iv) directs the Department to adjust the price for freight "to reflect the price a firm actually paid or would pay if it imported the product" (emphasis added). Thus, so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark." See OCTG from the PRC IDM at 85.

¹³⁸ See Preliminary Results of OTR Tires from the PRC 1st AR at 64272-73. Affirmed in Final Results.

world market benchmark in OTR Tires from the PRC 1st AR, the Department, consistent with established practice set forth in our regulations, included both VAT and import duties in the benchmark.

Section 351.511(a)(2)(iv) of our regulations is clear in its requirement to use delivered prices which includes all delivery charges and import duties. As BTIC acknowledges, “the Department must make an apples-to-apples comparison” in determining whether the provision of a good provides a benefit. The domestic inputs purchased by BTIC are delivered prices which include all delivery charges and VAT. Therefore, in order to ensure an “apples-to-apples” comparison between these domestic input purchases and the world-market benchmark, our regulations require the use of delivered prices, which include import duties and VAT. To suggest, as BTIC does, that the Department should compare a domestic delivered input price inclusive of VAT to a non-delivered, VAT-exclusive benchmark price results in a distorted benefit calculation and is inconsistent with the requirements of 19 CFR 351.511(a)(2)(iv). These domestically-produced steel inputs would compete with world-market inputs based on delivered prices that would include all delivery charges, taxes and duties required for sale within the Chinese market.

Comment 10: Application of Adverse Facts Available to the Electricity Benchmark

In our post-preliminary determination, we found that the GOC failed to provide information that we requested regarding how electricity prices are determined in the PRC.

Affirmative Arguments

BTIC argues it should not be penalized for the GOC’s failure to cooperate. BTIC points out that the Department made no finding that BTIC failed in any way to respond to the Department’s requests for information. Citing Tianjin, Nippon Steel, and SKF USA, BTIC claims that the Department is precluded from applying AFA unless it finds that BTIC also failed to cooperate.

In a similar vein, both BTIC and the GOC claim that while the Department cited information related to financial contribution and specificity as the basis for applying an adverse inference, the Department applied an adverse inference to the benchmark, which those parties argue is tied to the benefit. Furthermore, according to BTIC and the GOC, the Department may only use an adverse inference in its choice of facts available to fill in a gap in the record. In this instance, BTIC and the GOC argue that the Department has no basis to apply an adverse inference to the electricity benchmark when it never actually requested benchmark information from parties.

If the Department does not abandon its application of facts available entirely, BTIC and the GOC urge the Department to rely instead on neutral facts available. According to the GOC, the Department should average the peak, normal and valley rates, as well as base prices, from each province and use this averaged benchmark rate to calculate the BTIC Group’s subsidy rate for this final determination.

Rebuttal Arguments

First, the petitioner observes that the Department's methodology in this case is not new. It points out that the Department has consistently applied adverse facts available with respect to the financial contribution, specificity and benefit of the electricity program as a result of the GOC's failure to provide the same information, case after case. The petitioner suggests that, contrary to BTIC's arguments, the GOC's consistent failure to provide this information suggests that the Department's application of adverse facts available is not sufficient to compel the GOC to provide this information, and that the Department should adopt a more adverse methodology in the future.

In addition to arguing that BTIC's cites to antidumping proceedings are without merit, the petitioner cites to Citric Acid from the PRC – Administrative Review, in which the Department acknowledged that “the effect of applying AFA to a government may impact respondents,” but went on to explain that such an impact does not render the application of AFA unlawful. The petitioner argues that, as in Citric Acid from the PRC – Administrative Review, the GOC has failed to respond in this case, and the Department acted lawfully in applying adverse facts available as it did.

Department's Position

The arguments raised by BTIC regarding the appropriateness of “penalizing” BTIC for the GOC's failure to cooperate have been raised by respondents in a number of previous proceedings, such as Wood Flooring from the PRC¹³⁹ and Citric Acid from the PRC – Administrative Review. BTIC raises no new arguments in this investigation that would lead us to depart from our previous determinations regarding this issue. As described in Citric Acid from the PRC – Administrative Review, we applied adverse facts available to the GOC, and although we recognize that such a finding may affect the respondent, such an effect does not render the application of adverse facts available unlawful. Accordingly, for the reasons described in those and other proceedings, we have continued to apply adverse facts available to the GOC for its failure to cooperate to the best of its ability by complying with our request for information regarding electricity, as described above under “Use of Facts Otherwise Available and Adverse Inferences.”

Furthermore, the Department has continued to apply AFA with respect to its selected electricity benchmark for this final determination. The information that the GOC failed to provide pertains directly to evaluating whether a benefit has been conferred. Section 351.511(a)(2)(i) of our regulations states the Department will normally seek to make this evaluation based on a comparison between the price paid by the respondent and a market-determined price obtained from actual transactions in the country in question (the tier one benchmark). In its initial questionnaire response, the GOC states that the “electricity price adjustment in China is decided by the government.”¹⁴⁰ Thus, the GOC's role in the electricity market rules out the use of a benchmark under 19 CFR 351.511(a)(2)(i).

¹³⁹ See Wood Flooring from the PRC IDM at Comment 4.

¹⁴⁰ See the GOC's Initial QR at 72.

Accordingly, where an actual market-determined, in-country price is unavailable, 19 CFR 351.511(a)(2)(ii) establishes that the Department will seek a world market price where it is reasonable to conclude that such a price would be available to purchasers in the country. The CVD Preamble, which describes the intent behind 19 CFR 351.511(a)(2)(ii), specifically states that “{w}e will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market.”¹⁴¹ The CVD Preamble also uses electricity as an example where it is not reasonable to conclude that a world market price would be available to an in-country purchaser.¹⁴²

Having determined that the first two sources in the hierarchy of benchmarks set forth in the regulations are not applicable to identifying a benchmark for the electricity benefit calculation, the Department turned to 19 CFR 351.511(a)(2)(iii), which establishes that, when no world market price is available, the Department will assess whether the government price is consistent with market principles. In order to make this assessment, the Department asked the GOC a series of questions about the way electricity rates were determined in the provinces or municipalities where the respondents have locations. In its questionnaire responses, as explained above in the “Use of Facts Otherwise Available and Adverse Inferences” section for electricity, the GOC provided no province-specific information.

The GOC’s decision not to provide this information makes it impossible for the Department to evaluate whether the government-determined prices are consistent with market principles. Furthermore, because the GOC readily acknowledges that the government determines the electricity prices in the country, its refusal to provide a detailed explanation about how these prices are calculated means that the GOC did not cooperate to the best of its ability. Therefore, while BTIC and the GOC argue that the missing information has no relation to the establishment of benefit and benchmark and, thus, the Department cannot apply AFA, the Department’s questions are clearly relevant to establishing a benchmark for the benefit calculation. Because the GOC refused to cooperate, the Department acted within its authority, as established in section 776(b) of the Act, in applying AFA to determine the benchmark to use in the benefit calculation in the post-preliminary analysis.

Concerning comments that the Department never requested benchmark information from the parties and, therefore, has no basis for applying AFA, the Department disagrees. First, the Department requested the GOC to provide the electricity rate schedules for all provinces,¹⁴³ and the GOC complied. Second, as explained above, the Department determined that it was not possible to rely on either of the first two options for determining the benchmark under the regulatory hierarchy. Not only does the CVD Preamble specifically discuss electricity as a scenario in which the application of this specific regulation would likely not be practicable but, evidence the GOC placed on the record regarding electricity pricing reinforces the Department’s conclusion that no Chinese market prices are available and that using a world-market price is unreasonable. Therefore, the Department had no basis for requesting, or even considering, internal or world-market prices for electricity, and was, instead, correct in requesting the

¹⁴¹ See CVD Preamble, 63 FR at 65377.

¹⁴² Id.

¹⁴³ See GOC Initial QR at 75.

information necessary to assess whether the electricity rates determined by the government were consistent with market principles as established in 19 CFR 351.511(a)(2)(iii). The fact that the GOC refused to provide responses to questions that would allow the Department to make this assessment means that, even if a party had provided world-market prices, (1) the Department would not have considered the information based on its decision regarding 19 CFR 351.511(a)(2)(ii) and (2) that information would not have cured the GOC's deficiencies and thus, would not have changed the Department's decision to apply AFA to the selection of the electricity benchmark.

Additionally, the GOC's refusal to respond to the Department's questions rendered the provincial electricity rates unreliable. Section 776(b) of the Act clearly states that the Department "in reaching the applicable determination...may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available" and provides the basis for which an adverse inference may be made. The statute also describes the various sources upon which the Department may rely to obtain the information for making the adverse inference, including information placed on the record of the proceeding. The Department's selection of the highest non-seasonal electricity rate for each electricity category benchmark is, therefore, reasonable and permissible under section 776(b) of the Act. Additionally, the selection of the highest non-seasonal electricity rate for each electricity category benchmark is consistent with the Department's past practice regarding the provision of electricity for LTAR.¹⁴⁴ As such, any argument that the Department's not requesting electricity benchmark information should result in a facts available determination instead of AFA is incorrect; the Department's application of AFA in this case in accordance with section 776(a) and (b) of the Act.

Although BTIC contends that the Department has, in previous cases, made it clear that the identification of benchmarks is not susceptible to AFA, it has not cited to any specific Department determinations or results. While it does cite to a CIT case which it argues requires the Department to resort to AFA only when it cannot use record evidence to, in some way, arrive at the missing information,¹⁴⁵ there is no record evidence in this case that can be used to arrive at the missing information, or that can substitute for the missing information. As the Department has explained, the GOC withheld the information that was necessary for the Department's analysis. Without the missing information from the GOC, the Department had no way of properly assessing whether the GOC-determined electricity prices are consistent with market principles. As such, the Department acted in accordance with the statutory provisions in applying AFA. Finally, because the Department appropriately applied AFA to the selection of the electricity benchmark, it will not consider BTIC's argument that the Department should calculate an averaged electricity benchmark based on facts available.

Comment 11: Alleged Errors in the Department's Calculations for the Provision of Electricity for LTAR

Transformer Capacity

¹⁴⁴ See, e.g., *Drill Pipe from the PRC* IDM at 10-12.

¹⁴⁵ See *Zhejiang Dunan*, 652 F.3d at 1348.

In the Department's post-preliminary analysis, we stated that we would select "the highest electricity rates that were in effect during the POI as our benchmarks." For the "basic" charge, we selected the "max demand" category in Guizhou Province as our benchmark.

Affirmative Arguments

BTIC argues that, even as AFA, the "max demand" category is an inappropriate benchmark. According to BTIC, the BTIC Group companies do not pay the "max demand" category for Beijing, Hebei Province or Tianjin (the locations of BTIC, Langfang Tianhai and Tianjin Tianhai, respectively). Furthermore, BTIC argues that the Department verified that it pays the "transformer capacity" basic charge. BTIC also observes that, as in Guizhou Province, the Beijing Grid electricity schedule also contains both a "transformer capacity" charge and a "max demand" charge, the latter of which does not apply to BTIC. In sum, BTIC asks that the Department reduce the "basic charge" benchmark from 45 to 30 yuan/kva.

Rebuttal Arguments

The petitioner observes that the Department, as adverse facts available, intended to select "the highest provincial rate for the base rate" and use the "highest electricity rate charged at each price category." Therefore, whether BTIC and its cross-owned affiliates were actually subject to the "max demand" category is irrelevant. The petitioner argues that the Department should continue to compare BTIC's electricity use against the "max demand" category.

Department's Position

We agree with BTIC. Our intention in applying facts available was to select the highest rates for each applicable rate category. The "transformer capacity" basic charge, not the "max demand" basic charge, is what BTIC paid during the POI.¹⁴⁶ Although the "max demand" category and the "transformer capacity" category are both "basic charges," they are different categories in the same sense that "peak," "normal" and "valley" are different categories for electricity consumption.¹⁴⁷ Therefore, we have recalculated BTIC's benefit using the highest "transformer capacity" rate on the record.

The Appropriate Rush, Peak, Normal and Valley Benchmark

In our post-preliminary analysis, we selected electricity rates from Zhejiang Province to serve as benchmarks for BTIC's electricity purchases in the peak, normal and valley rate categories. Since Zhejiang did not appear to have a "sharp peak" (or "rush") price, we used the corresponding price from the Beijing Yizhuang Economic Zone schedule. We relied upon the translated rate schedules submitted by the GOC for calculations, which showed four rate categories: "electricity rate per degree," "sharp," "peak," and "peak."

Affirmative Argument

¹⁴⁶ See BTIC Case Brief at 49, citing BTIC Verification Report at Verification Exhibits 7a-7c.

¹⁴⁷ This treatment of basic charges is consistent with the Department's treatment of basic charges in Steel Wheels from the PRC. See Steel Wheels from the PRC IDM at 28.

According to BTIC, it is clear that since the GOC's translation does not contain "normal" and "valley" categories and duplicates the peak category, the translation is incorrect. Furthermore, BTIC argues that the schedule clearly contains four prices for electricity, in descending order. Rather than a missing "sharp" rate, BTIC asserts that it is the "normal" and "valley" prices that are missing, or rather, misidentified. BTIC would therefore have the Department use the "electricity rate per degree" as the "normal" charge, and the lower "peak" rate as the "valley" charge. BTIC also submitted a corrected translation of the GOC's previously submitted rate schedule for Zhejiang Province, which it claims proves its position is correct. The corrected translation consists of the Chinese copy of the Zhejiang schedule submitted by the GOC, with "normal," "sharp," "peak," and "off-peak" categories labeled in pen in the order claimed by BTIC.

Rebuttal Argument

To begin with, the petitioner alleges that BTIC's rate schedule "correction" is in fact untimely new factual information that should be rejected. However, should the Department not reject this information, the petitioner argues that BTIC's analysis of the Zhejiang Province rate schedule is based on "speculation and conjecture." According to the petitioner, the Department has already verified the rate schedules, and it issued its post-preliminary analysis after the verification's conclusion. Accordingly, the petitioner concludes that the Department should continue to use the electricity rates relied upon at the post-preliminary analysis.

Department's Position

Although we are not rejecting the "corrected" translation as untimely filed factual information, we otherwise agree with the petitioner. The translations in the GOC 2QR and the BTIC Case Brief do not correspond.¹⁴⁸ As a result, we cannot determine that either the GOC's translation or BTIC's translation represents a "correct" translation, as BTIC asserts on page 50 of the BTIC Case Brief.

Regardless of the differences between the GOC's and BTIC's translations, however, BTIC's contention that the Zhejiang Province rate schedule has four time period categories directly contradicts information in the Zhejiang Province rate schedule itself. Footnote 2 of this rate schedule states the following:

Large Industrial, normal industrial & commercial electricity break downs (*sic*) to six periods, critical peak (19:00-21:00), peak (8:00-11:00, 13:00-19:00; 21:00-22:00), valley (11:00-13:00, 22:00-8:00 of the following day).¹⁴⁹

These three categories (*i.e.*, critical peak, peak, and valley) cover all 24 hours of a day. Therefore, BTIC's assertion that the Zhejiang Province schedule has four time period categories contradicts the actual rate schedule on the record.

¹⁴⁸ See GOC 2nd SQ Response at Exhibit 1, "Distribution electricity rate schedule of grid in Zhejiang province;" see also BTIC Case Brief at page 3 of Attachment 1.

¹⁴⁹ See GOC 2SQR at Exhibit 1.

Therefore, we have no basis to accept BTIC's assertions regarding the Zhejiang Province rate schedule. BTIC made no other arguments on the Department's calculation methodology that relate to this issue, such as the comparability of rate schedules across Chinese provinces. As a result, we have continued to use the rates from the post-preliminary analysis for this final determination.

BTIC Group's "Other" Charges

Affirmative Argument

BTIC argues that the Department wrongly excluded charges in the column labeled "other" in the electricity purchase tables submitted by BTIC for BTIC and its cross-owned affiliate, Langfang Tianhai. As a result of excluding these charges, BTIC alleges that the Department calculated lower per-unit rates than BTIC actually paid for sharp, peak, normal and valley usage. When compared to the benchmark, these lower per-unit charges resulted in an inflated benefit. According to BTIC, the rates calculated for BTIC in the post-preliminary analysis are lower than the rates on the Beijing and Hebei Province electricity rate schedules, even though the Department verified that those companies paid the rates on the schedules.

In order to match the charges paid by BTIC and Langfang Tianhai with the charges on the applicable electricity rate schedules, BTIC explains that it is necessary to incorporate the "other" charges into each applicable rate category. It provides a chart showing that when these "other" charges (with labels such as "City Utilities Additional Price, Sanxia Expenses, Area Expenses and Renewable Energy Sources Additional") are incorporated into the sharp, peak, normal and valley categories paid by BTIC and Langfang Tianhai, the rates paid by the companies match the rates on the appropriate schedule. BTIC provides a pair of charts with its case brief that reflect its suggested approach. It asserts this chart is not new factual information. Rather, it argues that the chart is identical to the charts submitted in its initial questionnaire response, except that the "other" charges have been distributed across the rate categories, as appropriate.

Rebuttal Argument

The petitioner replies that BTIC's argument is based on an untimely-filed electricity usage chart, which the Department should reject. According to the petitioner, the Department carefully considered its verification findings in its post-preliminary analysis and should continue to use the same methodology for the final determination.

Department's Position

We agree with BTIC. As BTIC stated at page 55 of the BTIC Case Brief, BTIC reported its "other" charges in a separate column in the BQR. However, BTIC has demonstrated through record information that the other charges are part of the overall time period-specific electricity charges that BTIC paid during the POI.¹⁵⁰ For its time period-specific electricity charges, we

¹⁵⁰ See BTIC Case Brief at 54, citing the BTIC Initial QR at Exhibit 20 (electricity bills for BTIC and Langfang).

verified that BTIC paid its standard and "other" charges.¹⁵¹ The sum of the standard and "other" charges equals the rates on the Beijing and Hebei Province rate schedules for different time period categories.¹⁵² Therefore, we have incorporated these other charges into BTIC's time period-specific electricity expenses for the POI.

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

AGREE

☒

DISAGREE

☐

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

April 30, 2012

(Date)

¹⁵¹ See BTIC Verification Report at 15.

¹⁵² See BTIC Case Brief at 54; see also GOC 2nd SQ Response at Exhibit 1.

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Complete Title
Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AUL	Average Useful Life
Big Four	Agricultural Bank of China, Bank of China, China Construction Bank, Industrial and Commercial Bank of China
BTIC	Beijing Tianhai Industry Co., Ltd.
BTIC Group	BTIC, Tianjin Tianhai, Langfang Tianhai, and Jingcheng Holding; collectively
CAFC	Court of Appeals for the Federal Circuit
CCP	Chinese Communist Party
CFR	Code of Federal Regulations
CIT	Court of International Trade
CVD	Countervailing Duty
Department	Department of Commerce
FIE	Foreign-Invested Enterprise
FOB	Free on Board
GOC	Government of the People's Republic of China
IDM	Issues and Decision Memorandum
IRS Tables	U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System
Jindun	Zhejiang Jindun Pressure Vessel Co., Ltd.
Jingcheng Holding	Beijing Jingcheng Machinery Electric Holding Co., Ltd.
kWh	Kilowatt hour
Langfang Tianhai	Langfang Tianhai High Pressure Container Co., Ltd.
LTAR	Less Than Adequate Remuneration
ME	Market Economy
MEPS	MEPS International, Ltd.
NME	Non-Market Economy
Petitioner	Norris Cylinder Company
POI	Period of Investigation
PRC	People's Republic of China

Acronym/Abbreviation	Complete Title
QR	Questionnaire Response
RMB	Renminbi
SBB	Steel Business Briefing
SOCB	State Owned and Controlled Bank
SOE	State Owned Enterprise
SQ	Supplemental Questionnaire
steel cylinders	High Pressure Steel Cylinders
Tianjin Tianhai	Tianjin Tianhai High Pressure Container Co., Ltd.
VAT	Value Added Tax
WTO	World Trade Organization

II. LITIGATION TABLE

Short Citation	Complete Court Case Title
<u>Ansaldo</u>	<u>Ansaldo Componenti, S.p.A. v. United States</u> , 628 F. Supp. 198 (CIT 1986)
<u>Barnhart</u>	<u>Barnhart v. United States Treasury Dept.</u> , 588 F. Supp 1432 (CIT 1984)
<u>Bowen</u>	<u>Bowen v. Georgetown University Hospital</u> , 488 U.S. 204 (1988)
<u>Carpenter Tech.</u>	<u>Carpenter Tech. Corp. v. United States</u> , 662 F. Supp. 2d 1337 (CIT 2009)
<u>Chevron</u>	<u>Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.</u> , 467 U.S. 837 (1984)
<u>Corus I</u>	<u>Corus Staal BV v. Dep't of Commerce</u> , 395 F.3d 1343 (Fed. Cir. 2005)
<u>Corus II</u>	<u>Corus Staal BV v. United States</u> , 502 F.3d 1370 (Fed. Cir. 2007)
<u>de Cecco</u>	<u>F.lli de Cecco di Filippo Fara S. Martino S.p.A. v. United States</u> , 216 F.3d 1027 (Fed. Cir. 2000)
<u>Delverde SRL</u>	<u>Delverde SRL v. United States</u> , 202 F.3d 1360 (Fed. Cir. 2000)
<u>Essar Steel</u>	<u>Essar Steel Ltd. v. United States</u> , 721 F. Supp. 2d 1285 (CIT 2010)
<u>Fabrique</u>	<u>Fabrique de Fer de Charleroi, SA v. United States</u> , 166 F. Supp. 2d 593 (CIT 2001).
<u>Gallant Ocean</u>	<u>Gallant Ocean (Thail.) Co. v. United States</u> , 602 F.3d 1319 (Fed. Cir. 2010).
<u>General Motors</u>	<u>General Motors Corp. v. Romein</u> , 503 U.S. 181 (1992)
<u>Georgetown Steel</u>	<u>Georgetown Steel Corp. v. United States</u> , 801 F.2d 1308 (Fed. Cir. 1986)
<u>Gerber</u>	<u>Gerber Good (Yunnan) Co. v. United States</u> , 387 F. Supp. 2d 1270 (CIT 2005).

Short Citation	Complete Court Case Title
<u>GPX</u>	<u>GPX International Tire Corp.</u> , 645 F. Supp. 2d 1231 (CIT 2009)
<u>GPX (Fed. Cir.)</u>	<u>GPX Int'l Tires Corp. v. United States</u> , 666 F.3d 732 (Fed. Cir. 2011).
<u>Landgraf</u>	<u>Landgraf v. Usi Film Prods.</u> , 511 U.S. 244 (1994)
<u>NSK CIT</u>	<u>NSK, Ltd. v. United States</u> , 919 F. Supp. 442 (CIT 1996)
<u>NSK Fed. Cir.</u>	<u>NSK Ltd. v. United States</u> , 510 F.3d 1375 (Fed. Cir. 2007)
<u>Obron Atl. Corp.</u>	<u>United States v. Obron Atl. Corp.</u> , 862 F. Supp 378, 382 (CIT 1994)
<u>Pension Benefit Guar. Corp.</u>	<u>Pension Benefit Guar. Corp., v. R.A. Gray & Co.</u> , 467 U.S. 717 (1984)
<u>Princess Cruises</u>	<u>Princess Cruises, Inc. v. United States</u> , 397 F.3d 1358 (Fed. Cir. 2005)
<u>Schaeffler</u>	<u>Schaeffler Italia S.r.l. v. United States</u> , 781 F. Supp. 2d 1358 (CIT 2011).
<u>Shakeproof</u>	<u>Shakeproof Assembly Components Div. of Ill. Tool Works v. United States</u> , 268 F.3d 1376 (Fed. Cir. 2001).
<u>SKF USA</u>	<u>SKF USA Inc. et al v. United States</u> , 675 F. Supp. 2d 1264 (CIT 2009)
<u>Tianjin</u>	<u>Tianjin Magnesium International Co., Ltd v. United States</u> , Slip Op. 2011-17, 2011 Ct. Intl. Trade Lexis 16 (CIT 2011).
<u>U.S. Steel Group I</u>	<u>U.S. Steel Group v. United States</u> , 15 F. Supp. 2d 892 (CIT 1998)
<u>U.S. Steel Group II</u>	<u>U.S. Steel Group v. United States</u> , 225 F.3d 1284 (Fed. Cir. 2000)
<u>Usery</u>	<u>Usery v. Turner Elkhorn Mining Co.</u> , 428 U.S. 1 (1976).
<u>Wheatland</u>	<u>Wheatland Tube Co. v. United States</u> , 495 F.3d 1355, 1358 (Fed. Cir. 2007)
<u>Zhejiang</u>	<u>Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp v. United States</u> , 637 F. Supp. 2d 1260 (CIT 2009)
<u>Zhejiang Dunan</u>	<u>Zhejiang Dunan Hetian Metal Co., Ltd. v. United States</u> , 652 F.3d 1333 (Fed. Cir. 2010)

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 Citation	Administrative Case Determinations
<u>Aluminum Extrusions from the PRC</u>	<u>Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 76 FR 18521 (April 4, 2011) and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
<u>Carbon Bricks from the PRC</u>	<u>Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum
<u>Citric Acid from the PRC</u>	<u>Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision Memorandum
<u>Citric Acid from the PRC – Administrative Review</u>	<u>Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review</u> , 76 FR 77206 (December 12, 2011)
<u>Coated Paper from Indonesia</u>	<u>Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination</u> , 75 FR 59209 (September 27, 2010) and accompanying Issues and Decision Memorandum.
<u>Coated Paper from the PRC</u>	<u>Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 72 FR 60645 (October 25, 2007) and accompanying Issues and Decision Memorandum.
<u>CWP from the PRC</u>	<u>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</u> , 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum
<u>CWP from the PRC – Prelim</u>	<u>Circular Welded Carbon-Quality Steel Pipe from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination</u> , 72 FR 63875 (November 13, 2007)
<u>Drill Pipe from the PRC</u>	<u>Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination</u> , 76 FR 1971 (January 11, 2011) and accompanying Issues and Decision Memorandum
<u>Kitchen Racks from the PRC</u>	<u>Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 74 FR 37012 (July 27, 2009) and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
<u>OCTG from the PRC</u>	<u>Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination</u> , 74 FR 64045 (December 7, 2009)
<u>Orange Juice from Brazil</u>	<u>Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative review and Notice of Intent Not to Revoke Antidumping Duty Order in Part</u> , 75 FR 50999 (August 18, 2010)
<u>OTR Tires from the PRC</u>	<u>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</u> , 73 FR 40480 (July 15, 2008)
<u>Preliminary Results of OTR Tires from the PRC 1st AR</u>	<u>New Pneumatic Off-the-Road Tires From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review</u> , 75 FR 64268 (October 19, 2010), unchanged in the final results.
<u>Rectangular Pipe from the PRC</u>	<u>Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination</u> , 73 FR 35642 (June 24, 2008)
<u>Sacks from the PRC</u>	<u>Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances</u> , 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum
<u>Seamless Pipe from the PRC</u>	<u>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</u> , 75 FR 57444 (September 21, 2010)
<u>Softwood Lumber from Canada</u>	<u>Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada</u> , 67 FR 15545 (April 2, 2002)
<u>Softwood Lumber from Canada – NSR</u>	<u>Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada</u> , 70 FR 56640 (September 28, 2005)
<u>SRAMs from Taiwan - AD</u>	<u>Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan</u> , 63 FR 8909 (February 23, 1998) and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
<u>Steel Plate from the PRC</u>	<u>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</u> , 75 FR 8301 (February 24, 2010)
<u>Steel Wheels from the PRC</u>	<u>Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination</u> , 77 FR 17017 (March 23, 2012) and accompanying Issues and Decision Memorandum
<u>Steel Wire from the PRC</u>	<u>Galvanized Steel Wire from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 77 FR 17418 (March 26, 2012)
<u>Thermal Paper from the PRC</u>	<u>Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum
<u>Wire Decking from the PRC</u>	<u>Wire Decking from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 75 FR 32902 (June 10, 2010) and accompanying Issues and Decision Memorandum
<u>Wood Flooring from the PRC</u>	<u>Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 76 FR 64313 (October 18, 2011) and accompanying Issues and Decision Memorandum

IV. CASE-RELATED DOCUMENTS

Short Citation	Complete Document Title
2 nd SQ to GOC	Letter from the Department to the GOC, “Supplemental Questionnaire - Investigation of High Pressure Steel Cylinders from the People's Republic of China” (September 23, 2011).
3 rd SQ to GOC	Letter from the Department to the GOC, “Supplemental Questionnaire – High Pressure Steel Cylinders from the People’s Republic of China” (October 28, 2011).
BPI Memo	Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, “Proprietary Discussion of Comment 4 from the Issues and Decision Memorandum for the Final Determination” (April 30, 2012).

Short Citation	Complete Document Title
BTIC Case Brief	Letter to the Department from BTIC, “BTIC Group’s Administrative Case Brief in the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China” dated March 23, 2012
BTIC Initial QR	Letter from BTIC to the Department, “BTIC Response to Initial Questionnaire, in the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People's Republic of China” (September 2, 2011)
BTIC IQR Extension Request	Letter from BTIC to the Department, “BTIC Request for Extension for Initial Questionnaire Response” (August 18, 2011).
BTIC New Benchmark Data	Letter from BTIC to the Department, “BTIC Proposed Benchmark Information” at Exhibit 1 (November 30, 2011).
BTIC Verification Report	Memorandum from Shane Subler and Christopher Siepmann, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations Office 1, “Verification Report: Beijing Tianhai Industry Co., Ltd. (“BTIC”), Tianjin Tianhai High Pressure Container Co., Ltd. (“Tianjin Tianhai”), Langfang Tianhai High Pressure Container Co., Ltd. (“Langfang Tianhai”), Beijing Jingcheng Machinery Electric Holding Co., Ltd. (“Jingcheng Holding”); (collectively, “BTIC Companies”) (January 3, 2012).
Federal Reserve Consultation Memo	Memorandum from David Neubacher, International Trade Analyst to the File, “Consultations with Government Agencies” (October 17, 2007) in the CVD investigation of <u>Coated Paper from the PRC</u> , attached to the post-preliminary analysis in this case at Attachment 2
Final Calc Memo	Memorandum from Christopher Siepmann, International Trade Compliance Analyst, to Susan Kuhbach, Office Director, AD/CVD Operations Office 1, “Final Determination Calculation Memorandum for Beijing Tianhai Industry Co., Ltd.” (April 30, 2012).
GOC 2 nd SQ Response	Letter from the GOC to the Department, “GOC Second Supplemental Questionnaire Response in the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China” (October 14, 2011).
GOC 2 nd SQ Response (questions 15-16)	Letter from the GOC to the Department, “GOC Second Supplemental Questionnaire Response – Questions 15 and 16 in the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China” (October 18, 2011).

Short Citation	Complete Document Title
GOC 3 rd SQ Response	Letter from the GOC to the Department, “GOC Third Supplemental Questionnaire Response in the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China” (November 14, 2011)
GOC Initial QR	Letter from the GOC to the Department, “GOC Initial Questionnaire Response in the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China” (September 7, 2011).
GOC Verification Outline	Letter from the Department to the GOC, “Investigation of High Pressure Steel Cylinders from the People’s Republic of China” (“November 30, 2011).
GOC Verification Report	Memorandum from Shane Subler and Christopher Siepmann, International Trade Analysts, to Susan H. Kuhbach, Office Director, “Verification Report: Government of the People’s Republic of China (“GOC”) (January 17, 2012).
Initial QR to BTIC	Letter from the Department to BTIC, “Countervailing Duty Investigation: High Pressure Steel Cylinders from the People’s Republic of China” (July 20, 2011).
Initial QR to GOC	Letter from the Department to the GOC, “Countervailing Duty Investigation: High Pressure Steel Cylinders from the People’s Republic of China” (July 20, 2011).
Initiation Checklist	Countervailing Duty Investigation Initiation Checklist,” dated May 31, 2011
Interest Rate Benchmark Memorandum	Memorandum from Shane Subler, International Trade Compliance Analyst to the File, “Countervailing Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China: Interest Rate Benchmark Memorandum (March 14, 2012)
OCTG QR Memo to File	Memorandum from Christopher Siepmann, International Trade Compliance Analyst to the File, “Placement of information onto the record” at Attachment 1 (December 2, 2011)
Petition	Letter to the Department " The Petitions for the Imposition of Antidumping and Countervailing Duties Against High Pressure Steel Cylinders from the People’s Republic of China,” dated May 11, 2011.

Short Citation	Complete Document Title
post-preliminary analysis	Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, “Post-Preliminary Analysis Memorandum for Beijing Tianhai Industry Co., Ltd.” dated March 14, 2012
Prelim Calc Memo	Memorandum from Christopher Siepmann, International Trade Compliance Analyst, to Susan Kuhbach, Office Director, AD/CVD Operations Office 1, “Preliminary Results Calculation Memorandum for Beijing Tianhai Industry Co., Ltd.” (October 11, 2011)
<u>Preliminary Determination</u>	<u>High Pressure Steel Cylinders from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Determination</u> , 76 FR 64301 (October 18, 2011)
Respondent Selection Memorandum	Memorandum from Scott Holland, International Trade Compliance Analyst to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Selection of Respondents for the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China” (July 13, 2011)

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

Short Cite	Complete Title
<u>CVD Preamble</u>	<u>Countervailing Duties; Final Rule</u> , 63 FR 65348 (November 25, 1998)
<u>SAA</u>	<u>Statement of Administrative Action accompanying the Uruguay Round Agreements Act</u> , H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
<u>URAA</u>	<u>Uruguay Round Agreements Act</u> , Pub L. No. 103-465, 108 Stat. 4809 (1994)
<u>WTO AB Decision</u>	<u>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</u> , WT/DS379/AB/R (March 11, 2011)