C-570-942
Administrative Review
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October 1, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Countervailing Duty Administrative Review: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China

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Summary

The Department of Commerce ("the Department") is conducting an administrative review of the countervailing duty ("CVD") order on certain kitchen appliance shelving and racks ("kitchen racks") from the People's Republic of China ("PRC"). The period of review ("POR") is January 1, 2010, through December 31, 2010. We are rescinding the review with respect to six companies. We have preliminarily found that the remaining respondent, New King Shan (Zhu Hai) Co., Ltd. ("NKS"), received countervailable subsidies during the POR.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties on all appropriate entries of subject merchandise during the POR. For the companies for which this review is rescinded, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption.

Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue final results no later than 120 days from the date of publication of this notice.

Background

On September 14, 2009, the Department published a CVD order on kitchen racks from the PRC.[1]

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[1] See *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Order*, 74 FR 46973 (September 14, 2009).

On September 2, 2011, we published a notice of "Opportunity to Request Administrative Review" for the CVD order for the calendar year 2010.[2]

Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b), multiple requests for an administrative review of the CVD order on kitchen racks from the PRC were submitted on September 30, 2011: 1) Electrolux North America, Inc., Electrolux Home Products, Inc. and Electrolux Major Appliances, importers of the subject merchandise, requested a review of NKS; 2) NKS, a producer and exporter of the subject merchandise, requested a review of itself; 3) SSW Holding Company, Inc. and Nashville Wire Products, Inc. ("Petitioners") requested a review of Asia Pacific CIS (Wuxi) Co., Ltd.; Guangdong Wireking Co., Ltd. (formerly known as Foshun Shunde Wireking Housewares & Hardware); Hangzhou Dunli Import & Export Co., Ltd. and Hangzhou Dunli Industry Co., Ltd.; Hengtong Hardware Manufacturing (Huizhou) Co., Ltd.; Jiangsu Weixi Group Co.; Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia) ("Leader Metal"); and NKS and its parent company King Shan Wire.

In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review on October 31, 2011.[3] On November 18, 2011, we released CBP data under an administrative protective order ("APO") to all interested parties that had obtained access to information covered by the APO and invited comments regarding respondent selection. The Department did not receive any comments.

On December 30, 2011, we selected NKS and Leader Metal as mandatory respondents.[4] On January 10, and January 27, 2012, Petitioners timely withdrew their review request of all seven companies for which they requested review. Review requests for NKS by the other interested parties were not withdrawn, leaving NKS as the only remaining respondent in this administrative review.[5]

We issued initial CVD questionnaires to both NKS and the Government of China ("GOC") on February 3, 2012, and received a timely response from NKS on March 22, 2012 ("NQR"). We did not receive a response from the GOC. Petitioners submitted comments regarding NQR on April 2, 2012.

On May 1, 2012, we extended the deadline for the preliminary results by 120 days, to October 1, 2012.[6]

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[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 54735, 54737 (September 2, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 67133, 67141-42 (October 31, 2011).

[4] *See* Memorandum to Susan H. Kuhbach from Jennifer Meek, regarding "Selection of Respondents for the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China" (December 30, 2011).

[5] *See* Memorandum to The File from Jennifer Meek, regarding "Rescission of Selected Respondents and Issuance of the Initial Questionnaires for the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China" (February 3, 2012).

[6] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 77 FR 27029 (May 8, 2012).

On June 22, 2012, we issued a supplemental questionnaire to NKS and received a timely response from NKS on July 20, 2012 ("NSQR1"). Petitioners submitted comments regarding NSQR1 on August 6, 2012.

On August 22, 2012, we issued a second supplemental questionnaire to NKS and received timely partial responses on September 7, 2012 ("NSQR2-A) and September 18, 2012 ("NSQR2-B"). We issued a third supplemental questionnaire to NKS on September 12, 2012, and received a timely response on September 14, 2012 ("NSQR3").

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Act

Scope of the Order

The scope of the order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens. Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and sub-frames (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Sub-frames from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of the order is shelving in which the support surface is glass.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available," subject to section 782(d) of the Act, 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. Section 776(b) of the Act also authorizes the Department to use as adverse facts available ("AFA"), information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[7] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[8]

GOC

Although we confirmed that the GOC received our questionnaire,[9] it did not submit a response. Accordingly, we preliminarily determine that the GOC has withheld information and significantly impeded this proceeding.[10] We further preliminarily determine an adverse inference is warranted, pursuant to section 776(b) of the Act. By not responding to requests for information, the GOC did not cooperate to the best of its ability in this review and impeded the Department's ability to make findings with respect to aspects of programs that rely on government-provided information. Specifically, the Department solicited information from the GOC to determine: 1) whether suppliers of steel strip and wire rod are authorities under the Wire Rod and Steel Strip at Less than Adequate Remuneration ("LTAR") programs; and 2) the specificity of various grants listed in NKS' financial statements.[11]

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[7] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

[8] *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

[9] *See* Memorandum to The File from Jennifer Meek, regarding "Telephone Conversation with Chinese Embassy Official Confirming Receipt of Initial Countervailing Duty Questionnaire for the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China" (August 14, 2012).

[10] *See* sections 776(a)(2)(A) and (a)(2)(C) of the Act.

[11] For the other programs countervailed in the investigation and/or the previous review, the countervailability of each program will remain the same as no new information has been presented to prompt a review of the previous

1. Steel Strip and Wire Rod for LTAR

The Department sought information from the GOC about the producers of the steel strip and wire rod purchased by NKS. In particular, for the steel strip and wire rod producers that supplied NKS that are not majority-owned by the GOC, the GOC was asked, *inter alia*, to trace back the ownership to the ultimate individual or state owners.[12]

Given the GOC's lack of a response, we have no information concerning government ownership or control of any of the companies that supplied steel strip or wire rod to NKS. Thus, we are preliminarily making the adverse inference that all of NKS's suppliers of steel strip and wire rod are "authorities" within the meaning of section 771(5)(B) of the Act. For details on the calculation of the subsidy rates for NKS, see the "Analysis of Programs" section below.

2. Various Grants

Based on our review of the financial statements submitted by NKS in this review, we sought information about various "subsidies" and other income shown for the POR. We would normally rely on information from the government to determine whether the programs under which these grants were given are specific within the meaning of section 771(5A) of the Act.[13] Because the GOC is not cooperating in this review, however, we did not seek this specificity information from the GOC. Due to the GOC's failure to respond in this review, we are finding as adverse facts available that benefits from these subsidies are specific.[14] These subsidies are addressed under the "Tax Rebates for Electromechanical High-Tech Products" and "Green Manufacturer/Products" programs in the "Analysis of Programs" section below.

Further, because information concerning the year in which certain disbursements under various grant programs were approved is not available on the record, we are finding as facts available that the year of approval is the same as the year of receipt for certain subsidies.[15] These subsidies are addressed under the "Guangdong Supporting Fund," "Zhuhai Export Trade Grant," "Tax Rebates for Electromechanical High-Tech Products," and "Green Manufacturer/Products" programs in the "Analysis of Programs" section below.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that

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finding. *See, e.g., Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408, 52420 (October 7, 1996) ("*Live Swine from Canada*") ("{I}t is the Department's policy not to reexamine the issue of that program's countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration.").

[12] *See* the Department's February 3, 2012 questionnaire at Section II.

[13] *See, e.g., Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 6.

[14] *See* sections 771(5A), 776(a)(1) and (2)(A), and (B) of the Act.

[15] *See* section 776(a)(1) of the Act.

gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."[16]

The facts available decisions described above do not rely on secondary information. Our determinations that the producers supplying steel strip and wire to NKS are authorities and that the programs under which NKS received the subsidies shown in its financial statements are specific are based on the unwillingness of the GOC to provide necessary information and constitute an adverse inference pursuant to section 776(b) of the Act. The corroboration requirement of section 776(c) of the Act is, therefore, not applicable to the use of facts available in this review.

Subsidies Valuation Information

Allocation Period

The average useful life period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[17] No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

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

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

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy

[16] *See* SAA at 870.
[17] *See* U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods

> benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[18]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade ("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.[19]

NKS stated that it is wholly owned by entities located outside of the PRC. NKS identified several affiliated companies and reported that none of them are located in the PRC.[20] Therefore, we are limiting our analysis to NKS.

Analysis of Programs

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

I. Programs Preliminarily Determined To Be Countervailable

A. Two Free, Three Half Program

Under Article 8 of the "Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises" ("FIE Tax Law"), a foreign invested enterprise ("FIE") that is "productive" and scheduled to operate more than ten years is exempt from income tax in the first two years of profitability and pays income taxes at half the standard rate for the next three years.[21]

In the first administrative review, the Department determined that this program conferred a countervailable subsidy.[22] No interested party provided new evidence that would lead us to reconsider our earlier finding. As stated in *Live Swine from Canada,* "it is the Department's policy not to reexamine the issue of {a} program's countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration."[23] Therefore, we continue to find that these tax benefits confer a

[18] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).
[19] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[20] *See* NQR at 1-2.
[21] *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying Issues and Decision Memorandum ("Kitchen Racks Administrative Review Decision Memorandum") at 10.
[22] *Id.*
[23] *See Live Swine from Canada*, 61 FR at 52420.

countervailable subsidy.

NKS reported paying a reduced tax rate during the POR under this program.[24]

To calculate the benefit, we treated the income tax savings received by NKS as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax that NKS would have paid in the absence of the program with the income tax that NKS actually paid during 2010.

We divided the benefits received in 2010 by NKS's 2010 total sales, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we preliminarily determine that NKS received a countervailable subsidy of 1.15 percent *ad valorem* under this program. [25]

B. Income Tax Reduction for FIEs Based on Geographic Location

To promote economic development and attract foreign investment, "productive" FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC were subject to preferential tax rates of 15 percent or 24 percent, depending on the zone.[26] This program was created on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone issued by the Ministry of Finance, and continued under Article 7 of the FIE Tax Law on July 1, 1991.[27]

As a result of the transition provisions of the new Enterprise Income Tax Law, which came into force on January 1, 2008, enterprises that were eligible for the reduced rates of 15 percent or 24 percent are to be gradually transitioned to the uniform rate of 25 percent over a five-year period.[28]

In the underlying investigation, we determined that this program conferred a countervailable subsidy.[29] No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these tax benefits confer a countervailable subsidy.

NKS reported paying a reduced income tax rate during the POR under the program.[30]

To calculate the benefit, we treated the income tax savings received by NKS as a recurring

[24] *See* NSQR2-A at 2-3.

[25] *See* Memorandum to the File from Jennifer Meek, regarding "Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results, Calculation Memorandum for New King Shan," (October 1, 2012) ("NKS Prelim Calc Memo") at 2 and Attachment 3.

[26] *See* NQR at 9; NSQR1 Exhibit 2; and NSQR2-A at 2-3

[27] *See* Kitchen Racks Administrative Review Decision Memorandum at 10

[28] *Id. See also* NQR at Exhibits 9 and 10.

[29] *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum ("Kitchen Racks Investigation Decision Memorandum") at 11-12.

[30] *See* NQR at 9 and Exhibits 8 and 9; NSQR1 at Exhibit 2; and NSQR2-A at 2-3.

benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax NKS would have paid in the absence of the program (*i.e.*, at the 25 percent rate) with the income tax that NKS actually paid during the 2010 (*i.e.*, at the reduced rate).

We divided the benefits received by NKS in 2010 by its 2010 total sales, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.58 percent *ad valorem* under this program.[31]

C. Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for FIEs in Guangdong Province

Pursuant to the *Circular on Temporarily Not Collecting City Maintenance and Construction Tax and Education Fee Surcharge for FIEs and Foreign Enterprises* (GUOSHUIFA {1994} No.38), the local tax authorities exempt all FIEs and foreign enterprises from the city maintenance and construction tax and the education fee surcharge.[32]

In the underlying investigation, we determined that this program conferred a countervailable subsidy.[33] No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these tax exemptions confer a countervailable subsidy.

NKS reported that it was exempted from these taxes and fees from January through November 2010, but that due to a change in the law, it began paying them in December 2010.[34]

To calculate the benefit, we treated NKS' tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's savings received during 2010 by the company's total 2010 sales. To compute the amount of the city maintenance and construction tax savings, we compared what NKS would have paid in the absence of the program (seven percent of the total of VAT, business tax, and consumption tax paid during January through November 2010) with what it paid (zero). To calculate the amount of the savings from the educational fee surcharge exemption, we compared what NKS would have paid in the absence of the program (three percent of total of VAT, business tax, and consumption tax paid during January through November 2010) with what it paid (zero).[35]

We divided the benefits received by NKS in 2010 by its 2010 total sales, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.44 percent *ad valorem* under this program.[36]

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[31] *See* NKS Prelim Calc Memo at 2 and Attachment 3.
[32] *See* Kitchen Racks Administrative Review Decision Memorandum at 11 and 32. *See also* Kitchen Racks Investigation Decision Memorandum at 7.
[33] *See* Kitchen Racks Investigation Decision Memorandum at 13.
[34] *See* NQR at 9-10 and Exhibit 11; NSQR1 at 4; NSQR2A at 3; and NSQR2-B at 3-5 and Exhibits 4 and 5.
[35] *Id.*
[36] *See* NKS Prelim Calc Memo at 2-3 and Attachment 3.

D. Provision of Wire Rod for Less Than Adequate Remuneration ("LTAR")

In the underlying investigation, we determined that this program conferred a countervailable subsidy.[37] No interested party provided new evidence that would lead us to reconsider our earlier findings that the GOC's predominant role in the PRC's wire rod market renders domestic prices unusable as benchmarks or that the subsidy conferred is specific.[38]

NKS reported purchasing wire rod during the POR and provided information regarding its purchases.[39]

As discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section, above, we preliminarily determine that the wire rod producers reported by NKS are authorities. Consequently, we preliminarily determine that the GOC is providing a good and, hence, a financial contribution under section 771(5)(D)(iii) of the Act.

To determine whether this financial contribution results in a subsidy to NKS, we followed 19 CFR 351.511(a)(2) for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for the wire rod. As in the underlying investigation, we have relied upon tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, to determine the existence and extent of the benefit to NKS.[40] NKS submitted complete Steel Business Briefing export prices for wire rod from Turkey, the Black Sea, and Latin America, and Petitioners submitted Japanese wire rod export prices sourced from the World Bank.[41] The benchmark sources are consistent with the sources used in the previous review and are consistent with the Department's use of data from industry publications such as the Steel Business Briefing in other recent CVD proceedings involving the PRC.[42]

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included the freight charges that would be incurred to deliver wire rod to NKS' plant.[43] We have also added import duties, as reported by the GOC in similar cases, and VAT applicable to imports of wire rod into the PRC.[44] We have compared

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[37] *See* Kitchen Racks Investigation Decision Memorandum at 14-16.
[38] *Id* at 15-16.
[39] *See* NQR at 10-12 and Exhibits 12 and 13; NSQR1 at 4-5 and Exhibit 8(a), 8(b) and 8(c); NSQR2-A at 6 and Exhibit 1; and NSQR2-B at 6.
[40] *See* Kitchen Racks Investigation Decision Memorandum at 8.
[41] *See* NSQR1 at Exhibit 8(c); and Petitioners' Comments on NKS' Supplemental Questionnaire Response, (August 6, 2012) ("Petitioners' August 2012 Comments").
[42] *See* Kitchen Racks Administrative Review Decision Memorandum at Comment 5. *See also Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010), and accompanying Issues and Decision Memorandum at "Provision of HRS Steel for LTAR" section.
[43] *See* Prelim Benchmark Memo at 1 – 4 and Attachments 1, 2, and 3.
[44] Due to the non- response of GOC to our initial questionnaire, we have used tariff and VAT rates from the Memorandum to The File from David Lindgren regarding, "Preliminary Affirmative Countervailing Duty Determination: Galvanized Steel Wire from the People's Republic of China, Benchmark Memorandum,"(August 29, 2011), which is included as Attachment 1 of the Memorandum to the File from Jennifer Meek, regarding "Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: PRC Import Duty and VAT Rates for

these prices to NKS' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to its plants.[45]

Comparing the adjusted benchmark prices to the prices paid by NKS for the wire rod it purchased, we preliminarily determine that the GOC provided wire rod for LTAR, and that a benefit exists in the amount of the difference between the benchmark and what NKS paid.[46] We divided the difference between the amounts actually paid by NKS for wire rod and what it would have paid under the benchmark in 2010, by the company's total sales in 2010. On this basis, we preliminarily determine that NKS received a countervailable subsidy of 8.38 percent *ad valorem* under this program.[47]

E. Provision of Steel Strip for LTAR

In the first administrative review of this order, the Department determined that this program conferred a countervailable subsidy.[48] No interested party provided new evidence that would lead us to reconsider our earlier findings that the GOC's predominant role in the PRC's steel strip market renders domestic prices unusable as benchmarks or that the subsidy conferred is specific.[49]

NKS reported purchasing steel strip during the POR and provided information regarding its purchases.[50]

As discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section, above, we preliminarily determine that the steel strip producers reported by NKS are authorities. Consequently, we preliminarily determine that the GOC is providing a good and, hence, a financial contribution under section 771(5)(D)(iii)of the Act.

To determine whether this financial contribution results in a subsidy to NKS, we followed 19 CFR 351.511(a)(2) for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for the steel strip. As in the first administrative review, we have relied upon tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, to determine the existence and extent of the benefit to NKS.[51] Petitioners submitted Japanese hot- and cold-rolled steel coil sheets export prices sourced from the World Bank.[52] NKS did not submit any benchmark prices for steel strip. The benchmarks submitted by Petitioners are from the same source used in the previous review and we continue to find that they are sufficiently reliable and representative. The reported prices are export prices and are stated on a FOB basis. Such prices would be available to purchasers in the PRC.

2010," (October 1, 2012) ("PRC 2010 Import Duty and VAT Rates Memo").

[45] *See* NKS Prelim Calc Memo at 5 and Attachment 7.

[46] *See* 19 CFR 351.511(a).

[47] *See* NKS Prelim Calc Memo at 5 and Attachment 7.

[48] *See* Kitchen Racks Administrative Review Decision Memorandum at 6-7, 8, 18-20, 25-28, 30-31.

[49] *Id.*

[50] *See* NQR at 10-12 and Exhibits 12 and 13; NSQR1 at 4-5 and Exhibits 8(a), 8(b) and 8(c); NSQR2-A at 6 and Exhibit 1; and NSQR2-B at 6 and Exhibit 7.

[51] *See* Kitchen Racks Administrative Review Decision Memorandum at 18-20.

[52] *See* Petitioners' August 2012 Comments.

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. Because the World Bank data does not include ocean freight, we added ocean freight to each of the monthly steel strip prices.[53]

Regarding delivery charges, we have also included the inland freight charges that would be incurred to deliver steel strip to NKS's plants. We have also added import duties, as reported by the GOC in similar cases, and VAT applicable to imports of steel strip into the PRC.[54] We have compared these prices to the respondent's actual purchase prices, including any taxes and delivery charges incurred to deliver the product to their plants.[55]

Comparing the adjusted benchmark prices to the prices paid by NKS for the steel strip it purchased, we preliminarily determine that the GOC provided steel strip for LTAR, and that a benefit exists in the amount of the difference between the benchmark and what NKS paid.[56] We divided the difference between the amounts actually paid by NKS for steel strip and what it would have paid under the benchmark in 2010, by the company's total sales in 2010. On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.05 percent *ad valorem* under this program.[57]

F. Provision of Electricity for LTAR

In the underlying investigation, we determined that this program conferred a countervailable subsidy.[58] No interested party provided new evidence that would lead us to reconsider our earlier finding that there is a financial contribution that is specific.

NKS purchased electricity and provided monthly usage and payment data.[59]

In *Wind Towers from the PRC*,[60] the Department found that the provincial electricity rates schedules did not change between November 2009 and December 2011.[61] Thus, we are using the electricity rates put in place in November 2009, which were also used in the first

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[53] *See* Prelim Benchmark Memo at 1 – 4 and Attachments 1, 2, and 3.
[54] Due to the non- response of GOC to our initial questionnaire, we have used tariff and VAT rates from the "Preliminary Affirmative Determination of the Countervailing Duty Investigation on Certain Steel Wheels from the People's Republic of China: Preliminary Calculations for the Zhejiang Jingu Companies" calculation of the Provision of Hot-Rolled Steel for LTAR for the calculation of the Provision of Steel Strip for LTAR, which is included as Attachment 2 of the PRC 2012 Import Duty and VAT Rates Memo.
[55] *See* NKS Prelim Calc Memo at 5-6 and Attachment 6.
[56] *See* 19 CFR 351.511(a).
[57] *See* NKS Prelim Calc Memo at 5-6 and Attachment 6.
[58] *See* Kitchen Racks Investigation Decision Memorandum at 5-6 and 13.
[59] *See* NQR at 12-13 and Exhibits 15(a) and 15(b); and NSQR1 at 6-9 and Exhibits 11(a) and 11(b).
[60] *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422, 33435-36 (June 6, 2012) ("*Wind Towers from the PRC*").
[61] *See* Memorandum to the File from Jennifer Meek, regarding "Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: PRC Electricity Benchmark Rates for 2010," (October 1, 2012) ("PRC Electricity 2010 Benchmark Rates Memo").

administrative review, to derive the benchmark.[62]

Consistent with our approach in *Drill Pipe from the PRC,* we first calculated the variable electricity costs of NKS by multiplying the monthly kilowatt hours ("KWH") consumed at each price category (peak, normal, and valley) by the corresponding electricity rates it paid.[63] Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH consumed at each price category (peak, normal, and valley) by the highest electricity rate charged for each price category.[64] To calculate the benefit for each month, we subtracted the variable electricity charge paid by NKS during the POR from the monthly benchmark variable electricity cost.

To measure whether NKS received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first divided the monthly transmitter capacity charged to NKS by the corresponding consumption quantity to determine the monthly base rate. Next, we calculated the benchmark transmitter capacity cost by multiplying NKS's consumption quantities by the highest transmitter capacity rate reflected in the electricity rate benchmark chart. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by NKS during the POR from the benchmark costs.[65]

We then calculated the total benefit received during the POR under this program by summing the benefits stemming from NKS' variable electricity payments and transmitter capacity payments.

We divided the benefit by the NKS' total sales in POR. On this basis, we preliminarily determine that NKS received a countervailable subsidy of 1.01 percent *ad valorem* under this program.[66]

G. Guangdong Supporting Fund

NKS reported receiving assistance under Yuelaoshefa (2009) No. 6.[67] In the first administrative review, the Department found that grants under this program, identified as the "Guangdong Supporting Fund" program, conferred a countervailable subsidy.[68] No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these grants confer a countervailable subsidy.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring

[62] *Id. See also* Kitchen Racks Administrative Review Decision Memorandum at 16.
[63] *See Drill Pipe From the People's Republic of China; Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at "Provision of Electricity for LTAR" section.
[64] For specific electricity benchmark rate details, *see* PRC Electricity 2010 Benchmark Rates Memo.
[65] We note that the electricity amounts NKS provided were from [three locations, with one location having a different monthly KWH rate and paid amount]. We therefore separated the [locations], and calculated the base charge to reflect the [different monthly KWH rate and paid amount per location].
[66] *See* NKS Prelim Calc Memo at 4 and Attachment 4.
[67] *See* NSQR2-B at Exhibit 6(a)(1), 6(a)(2), and 6(a)(3); and NSQR3 at 1.
[68] *See* Kitchen Racks Administrative Review Decision Memorandum at 14-15

grants.[69] As the approval date is unknown, we are treating the year of receipt, 2010, as the year of approval as facts available under section 776(a)(1) of the Act. We applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The grant amount was less than 0.5 percent of NKS' 2010 total sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2010 and attributed the benefit to NKS' 2010 total sales. On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.27 percent *ad valorem* under this program.[70]

H. Zhuhai Export Trade Grant

NKS reported receiving assistance under ZWJM (2009) No. 28.[71] In the first administrative review, the Department found that grants under this program, identified as the "Zhuhai Export Trade Grant" program, conferred a countervailable subsidy.[72] No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these grants confer a countervailable subsidy.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[73] As the approval date is unknown, we are treating the year of receipt, 2010, as the year of approval as facts available under section 776(a)(1) of the Act. We applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The grant amount was less than 0.5 percent of NKS' 2010 export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2010 and attributed the benefit to NKS' 2010 export sales. On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.01 percent *ad valorem* under this program.[74]

I. Tax Rebates for Electromechanical High-Tech Products

NKS reported receiving a tax rebate based on its exports of electromechanical high-tech products.[75] NKS also states that the local government administered the tax rebate.[76]

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[69] *See* 19 CFR 351.524(b).
[70] *See* NKS Prelim Calc Memo at 3-4 and Attachment 3.
[71] *See* NSQR2-B at Exhibit 6(B)(1); and NSQR3 at 1.
[72] *See* Kitchen Racks Administrative Review Decision Memorandum at 14.
[73] *See* 19 CFR 351.524(b).
[74] *See* NKS Prelim Calc Memo at 4 and Attachment 3.
[75] *See* NQR1 at 3 and Exhibit 6; NQR2-B at Exhibit 6(c)(1) and 6(c)(2); and NSQR3 at 1.
[76] *Id.*

We preliminarily find that the tax rebate received by NKS under this program conferred a countervailable subsidy. The tax rebate is revenue forgone by the GOC and, consequently, a financial contribution that provides a benefit in the amount of the tax savings to NKS. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a) (direct taxes) and 351.510(a) (indirect taxes).[77] Further, as explained above under "Use of Facts Otherwise Available and Adverse Inferences," we preliminarily find this program specific. This finding of specificity is supported by NKS's characterization of the tax rebate as related to its exports.[78]

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[79] As the approval date is unknown, we are treating the year of receipt, 2010, as the year of approval as facts available under section 776(a)(1) of the Act. We applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The grant amount was less than 0.5 percent of NKS' 2010 export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2010 and attributed the benefit to NKS' 2010 export sales. On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.08 percent *ad valorem* under this program.[80]

J. Green Manufacturer/Product Program

NKS reported receiving grants to support green production/products.[81] NKS also states that the local government administered one of the grants.[82] No further information was provided.

We preliminarily find that the grants received by NKS under this program conferred a countervailable subsidy. The grants are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[83] Further, as explained above under "Use of Facts Otherwise Available and Adverse Inferences," we preliminarily find this program specific.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[84] As the approval date is unknown, we are treating the year of receipt, 2010, as the year of approval as facts available under section 776(a)(1) of the Act. We applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The aggregated grants were less than 0.5 percent of NKS' 2010 sales.[85] Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount received in 2010 and attributed the benefit to NKS' 2010 sales. On this basis, we preliminarily determine that NKS received a countervailable subsidy of 0.09 percent *ad valorem* under this program.[86]

[77] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a) (direct taxes) and 351.510(a) (indirect taxes).
[78] *See* NQR1 at 3 and Exhibit 6; NQR2-B at Exhibit 6(c)(1) and 6(c)(2); and NSQR3 at 1.
[79] *See* 19 CFR 351.524(b).
[80] *See* NKS Prelim Calc Memo at 6 and Attachment 3.
[81] *See* NQR1 at 3 and Exhibit 6; NQR2-B at 2 and 7, and Exhibits 3, 6(d)(1), and 6(d(2); and NSQR3 at 1.
[82] *See* NQR2-B at 7 and Exhibits 6(d)(1), and 6(d(2).
[83] *See* 19 CFR 351.504(a).
[84] *See* 19 CFR 351.524(b).
[85] Our choice of the denominator (total sales vs. export sales) relies on proprietary information and is discussed in NKS Prelim Calc Memo.
[86] *See* NKS Prelim Calc Memo at 6 and Attachment 3.

In its most recent supplemental questionnaire response, NKS has indicated that one of the grants included in the calculation above had previously been reported.[87] However, information currently on the record of this review does not support that claim. Therefore, we have included all of the "Green Manufacturer/Product" grants for these preliminary results, but intend to seek further clarifying information from NKS.

II. Programs Found to Be Not Used or that Provided No Benefit During the POR

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

1. Provision of Nickel for LTAR by the GOC

NKS reported non-use of this program.[88] After analyzing the information on the record, we preliminarily determine that there was no financial contribution by the GOC.[89]

2. Income Tax Refund for Reinvestment of Profits in Export-Oriented Enterprises
3. Income Tax Reduction for Export-Oriented FIEs
4. Local Income Tax Exemption or Reduction Program for "Productive" FIEs
5. Preferential Tax Subsidies for Research and Development by FIEs
6. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
7. Income Tax Credits for Purchases of Domestically-Produced Equipment by Domestically-Owned Companies
8. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
9. VAT Rebates for FIEs Purchasing Domestically-Produced Equipment
10. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
11. Import Tariff Exemptions for the "Encouragement of Investment by Taiwanese Compatriots"
12. Government Provision of Water at LTAR to Companies Located in Development Zones in Guangdong Province
13. Exemption from Land Development Fees for Enterprises Located in Industrial Cluster Zones
14. Reduction in Farmland Development Fees for Enterprises Located in Industrial Zones
15. Special Subsidy from the Technology Development Fund to Encourage Technology Development
16. Exemption from District and Township Level Highway Construction Fees for Enterprises Located in Industrial Cluster Zones
17. Exemptions from or Reductions in Educational Supplementary Fees and Embankment Defense Fees for Enterprises Located in Industrial Cluster Zones

[87] *See* NSQR2-B at 2.
[88] *See* NSQR1 at 10; NSQR2-A at 7 and Exhibit 2; and NSQR2-B at 6-7 and Exhibit 8.
[89] *See* NKS Prelim Calc Memo for specific details.

18. Exemption from Real Estate Tax and Dyke Maintaining Fee for FIEs in Guangdong Province
19. Import Tariff Refunds and Exemptions for FIEs in Guangdong Province
20. Preferential Loans and Interest Rate Subsidies in Guangdong Province
21. Direct Grants in Guangdong Province
22. Funds for "Outward Expansion" of Industries in Guangdong Province
23. Land-related Subsidies to Companies Located in Specific Regions of Guangdong Province
24. Import Tariff and VAT Refunds and Exemptions for FIEs in Zhejiang
25. Grants to Promote Exports from Zhejiang Province
26. Land-related Subsidies to Companies Located in Specific Regions of Zhejiang
27. Special Subsidy from the Technology Development Fund to Encourage Technology Innovation
28. Subsidies to Encourage Enterprises in Industrial Cluster Zones to Hire Post-Doctoral Workers
29. Land Purchase Grant Subsidy to Enterprises Located in Industrial Cluster Zones and Encouraged Enterprises
30. Exemption from Accommodating Facilities Fees for High-Tech and Large-Scale FIEs
31. Income Tax Deduction for Technology Development Expenses of FIEs
32. Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
33. Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
34. Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones
35. Income Tax Rebate for "Superior Industrial Enterprises" in Zhongshan
36. Accelerated Depreciation for New Technological Transformation Projects "Superior Industrial Enterprises" in Zhongshan
37. Exemption from the Tax on Investments in Fixed Assets for "Superior Industrial Enterprises" in Zhongshan
38. Shunde Famous Brands Program
39. International Market Exploration Fund Program also known as: "International Market Development Fund Grants for Small and Medium Sized Enterprises" program, "SME Fund", "Medium & Small Size Enterprise International Market Expansion Assistance" program or "International Exhibition Show Assistance" program
40. Foshan Shunde Export Rebate
41. Zhuhai Farmer Training Subsidy

Conclusion

We recommend applying the above methodology for these preliminary results.

✓ Agree

_________ Disagree

Paul Piquado
Assistant Secretary
for Import Administration

1 October 2012
(Date)