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March 19, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

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

I. Summary

On September 6, 2011, the Department published the Preliminary Determination in this investigation.[1] The Department conducted verification of the questionnaire responses submitted by the Bao Zhang Companies[2] from October 31 through November 4, 2011,[3] and of the questionnaire responses submitted by the GOC on November 7 and 8, 2011.[4] As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section below, the Department is continuing to apply AFA to Hualing, a mandatory respondent who decided not to participate in the investigation, and is also applying AFA to the Huayuan Companies[5] and M&M, both of which declined to permit verification of their questionnaire responses.

On January 17, 2012, the Department issued a Post-Preliminary Analysis Memorandum, which addressed: (1) the Zhabei District "Save Energy Reduce Emission Team" Award; (2) the Exemption from City Construction Tax and Education Fee for FIEs program; and, (3) Policy Loans to the Galvanized Wire Industry.[6]

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[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. See Appendix.
[2] The Bao Zhang Companies are collectively comprised of the mandatory respondent SBZ, and cross-owned affiliated companies ABZ and Li Chao.
[3] See Bao Zhang Verification Report.
[4] See GOC Verification Report.
[5] The Huayuan Companies are collectively comprised of the mandatory respondent HYW, and cross-owned affiliated companies Tianxin and MJH
[6] See Post-Preliminary Analysis Memorandum.

The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under investigation. Additionally, we have 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. Based on the comments received and our verification findings, we have made certain modifications to the Preliminary Determination which are discussed below under each program. We recommend that you approve the positions described in this memorandum.

II. Subsidy Valuation Information

A. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

B. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a cross-owned firm supplies the subject company with an input that is produced primarily for the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to the cross-owned subject corporation.

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.[7]

As discussed in the Preliminary Determination, the Bao Zhang Companies are SBZ, ABZ, and Li Chao. During the POI, SBZ and ABZ both produced and exported subject merchandise to the United States. Li Chao supplied wire rod inputs to SBZ and ABZ. In the Preliminary Determination, we found the Bao Zhang Companies to be cross-owned with each other via common ownership within the meaning of 19 CFR 351.525(b)(6)(vi).[8] Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by SBZ and ABZ to the products produced by the two firms. Furthermore, as Li Chao was an input supplier to both SBZ and ABZ during the POI, in the Preliminary Determination the Department attributed subsidies received by Li Chao to the combined sales of Li Chao and subject merchandise producers SBZ

[7] See Fabrique, 166 F. Supp. 2d at 600-604.
[8] See Preliminary Determination, 76 FR at 55036-55037.

and ABZ, excluding the sales between the corporations in accordance with 19 CFR 351.525(b)(6)(iv). We have continued this approach in the final determination.

C. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. No interested party has challenged the use of a 12-year AUL.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

D. Discount Rates for Allocating Non-Recurring Subsidies

In the Preliminary Determination, the Department used, as the discount rate, the long-term interest rate which it calculated in accordance with the methodology applied in previous PRC investigations.[9] No parties commented on the selection or calculation of the discount rate; therefore, we are continuing to use in this final determination the discount rates used in the Preliminary Determination.

III. Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, 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.

Non-Cooperative Companies

On May 18, 2011, the Department selected HYW, M&M and Hualing as mandatory respondents[10] and sent an initial questionnaire on May 19, 2011.[11] The Department received responses to the initial questionnaire from the Huayuan Companies and M&M; however, Hualing did not submit a response. The GOC confirmed that Hualing would not be providing a

[9] See, e.g., CFS from the PRC; see also LWTP from the PRC.
[10] See Respondent Selection Memorandum.
[11] See Initial Questionnaire.

response.[12] On May 3, 2011, the Bao Zhang Companies had requested that the Department select it as a mandatory or voluntary respondent, and on June 27, 2011, the Bao Zhang Companies timely submitted a questionnaire response. As a result of the failure of Hualing to submit a response and the timely submission of a questionnaire response from the Bao Zhang Companies, the Department determined it was appropriate to select the Bao Zhang Companies as an additional mandatory respondent.[13]

On October 27, 2011, the Department issued verification outlines to both the Huayuan Companies and M&M, notifying them that we would conduct verification of these companies' questionnaire responses.[14] On November 3, 2011, the Huayuan Companies and M&M notified the Department that they were withdrawing from verification and, on November 9, 2011, submitted a letter to the Department outlining their reasons for withdrawing.[15]

We find that, by not responding to the Department's initial questionnaire, Hualing withheld requested information and significantly impeded this proceeding. Additionally, because the Huayuan Companies and M&M withdrew from verification, the Department was unable to verify the information provided by these companies and, consequently, their withdrawal significantly impeded this proceeding. Thus, pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act, we have based the CVD rate for Hualing, the Huayuan Companies and M&M on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By deciding not to submit a response to the Department's initial questionnaire, Hualing failed to cooperate by not acting to the best of its ability in this investigation. As such, our decision to use an adverse inference in applying the facts otherwise available to Hualing is unchanged from the Preliminary Determination.[16] Furthermore, while the Huayuan Companies and M&M did provide questionnaire responses to the Department, they did not allow the Department to verify their responses. Section 782(i)(1) of the Act stipulates that the Department shall verify all information relied upon in a final determination. As such, the Huayuan Companies and M&M failed to cooperate and did not act to the best of their ability in this investigation when they decided to not participate in verification. Accordingly, we find that an adverse inference is warranted to ensure that the Huayuan Companies and M&M will not obtain a more favorable result than had they allowed the Department to verify their questionnaire responses. Comment 12 in the "Analysis of Comments" section, infra, addresses this determination in more detail.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse

[12] See GOC Initial QR at 1.
[13] See Selection of Additional Mandatory Respondent Memorandum.
[14] See HYW Verification Outline; see also M&M Verification Outline.
[15] See Verification Withdrawal Letter.
[16] See Preliminary Determination, 76 FR at 55033-55034.

"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."[17] 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."[18]

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment of the proceeding.[19] In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in another PRC CVD proceeding.[20] Thus, under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, the Department uses the highest non-de minimis rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-de minimis subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.[21]

As explained in Lawn Groomers from the PRC – Initiation [22] where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperating companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for the non-cooperating companies.[23] In this investigation, the GOC has not provided any information which would permit us to conclude that non-cooperating companies (including all their affiliates and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated. Therefore, we are making the adverse inference that the non-cooperating companies had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs the Department investigated in this case, including self-reported programs.

Consistent with this approach, we have determined the non-cooperating companies' countervailable subsidy rate to be 223.27 percent ad valorem.[24]

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[17] See, e.g., Semiconductors from Taiwan – AD, 63 FR at 8932.
[18] See SAA at 870.
[19] See, e.g., LWS from the PRC IDM at "Selection of the Adverse Facts Available."
[20] See id.; see also Lawn Groomers from the PRC – Preliminary Determination (unchanged in the Lawn Groomers from the PRC IDM at "Application of Facts Available, Including the Application of Adverse Inferences").
[21] See, e.g., LWTP from the PRC IDM at "Selection of the Adverse Facts Available Rate."
[22] See Lawn Groomers from the PRC – Initiation and accompanying Initiation Checklist at 8.
[23] See, e.g., KASR from the PRC IDM at 2.
[24] For a detailed description of how the non-cooperating companies' countervailable subsidy rate was determined, see the Final AFA Memorandum.

Input Producers - Government Authorities under Provision of Wire Rod and Zinc for Less Than Adequate Remuneration

The Department is investigating the alleged provision of wire rod and zinc for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced the wire rod and zinc inputs that the respondents purchased during the POI.

With respect to the specific companies that produced the input products purchased by the respondents, we were seeking information that would allow us to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. In our original and supplemental questionnaires, we requested detailed information from the GOC that would be needed for this analysis. We informed the GOC that, if it disputed that producers that are majority-owned by the government are "authorities," the GOC needed to provide the requested information on those disputed producers as well. Thus, for any producers of wire rod or zinc 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 of these 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 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 July 7, 2011 questionnaire response, the GOC provided some ownership information but reported that it was unable to obtain the complete ownership information for all of the companies that produced wire rod and zinc purchased by the respondents. The GOC further stated that it expected to provide such information to the Department as soon as it received it from the local industry and commerce administration bureaus.[25] On July 19, 2011, the GOC submitted additional ownership information pertaining to certain wire rod producers, but reported that it was still not able to complete the ownership information for all wire rod and zinc producers named by respondents.

On July 28, 2011, we issued a supplemental questionnaire to the GOC requesting that it complete the remaining ownership information for the wire rod and zinc producers, as well as respond to questions regarding the role of GOC and CCP officials in the ownership, management, and board of directors of the input producers and in their owners, including any corporate owners.[26] In response to the GOC's request for an extension, the Department allowed the GOC to file part of its response on August 11, 2011, and the remainder on August 22, 2011.

In its August 11, 2011 response, the GOC provided some additional ownership information. In response to two questions regarding the corporate owners of two wire rod producers, the GOC stated that it searched information on record with the SAIC for certain companies that own some portion of the producers that produced the wire rod purchased by the Bao Zhang Companies and found they did not have any GOC or CCP officials or representatives involved in their ownership, boards of directors or management.[27] The GOC also explained that it was unable to obtain some of the company-specific ownership information for zinc producers and that it was not able to collect information on whether companies holding some share of zinc producers have any GOC or CCP officials involved in their ownership, boards of directors or management.[28] In addition to not providing the requested information regarding whether GOC and CCP officials were owners, members of the boards of directors, or managers of the input producers who produced the wire rod and zinc purchased by the respondents during the POI, the GOC also declined to answer questions about the CCP's structure and functions that are relevant to our determination of whether the producers of wire rod and zinc are government authorities within the meaning of section 771(5)(B) of the Act.

On August 22, 2011, the GOC filed the remainder of its supplemental questionnaire response but it did not include any additional information regarding whether there were GOC or CCP officials

[25] See GOC Initial QR at 16.
[26] See GOC Supplemental Questionnaire.
[27] See GOC SQR – Part 1 at I-13-14, I-16.
[28] Id. at I-23.

involved in the management, board of directors or ownership of the wire rod or zinc input producers. Rather, the GOC stated that the "questions in this respect are not relevant to the investigation on the LTAR programs for materials, and the GOC requests that the Department terminate further investigation in this request."[29]

Notwithstanding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the wire rod and zinc input producers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in past proceedings as well as in this investigation.[30] The Department 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.[31] This is supported by a publicly-available background report from the U.S. Department of State.[32] 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.[33]

We continue to find that the information on the role of CCP officials in the management and operations of the wire rod and zinc 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, as is evidenced by the GOC's August 11, 2011, supplemental questionnaire responses to certain CCP-related questions, the GOC was able to access and review the requested information and provided the Department with statements to this effect even though, on August 22, 2011, the GOC stated it was unable to obtain this same information. Additionally, as required by section 782(c) of the Act, if the GOC could not provide any information, it was required to explain to the Department what attempts it undertook to obtain this information and to propose alternative forms of providing the information;[34] the GOC did not comply with this requirement.[35]

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[29] See GOC SQR – Part 2 at I-7.

[30] See Preliminary Determination, 76 FR at 55035; see also, e.g., Seamless Pipe from the PRC – Preliminary Determination at "Use of Adverse Facts Available," unchanged in Seamless Pipe from the PRC; see also Citric Acid from the PRC – Administrative Review IDM at 15.

[31] See Preliminary Determination, 76 FR at 55035.

[32] See Additional Documents for Preliminary Determination at Attachment 2; see also Seamless Pipe from the PRC IDM at Comment 7.

[33] See Seamless Pipe from the PRC IDM at 16.

[34] 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.

[35] As discussed below in Comment 6 of the "Analysis of Comments" section, the Department rejected subsequent attempts by the GOC and the respondent companies after the Preliminary Determination to provide information regarding this issue that was due to the Department prior to the Preliminary Determination.

Based on the above, we continue to find that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our final determination.[36] Moreover, we continue to find 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.[37] Therefore, based on AFA, we are finding that all of the input producers of the wire rod and zinc purchased by the respondents during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.

GOC - Provision of Electricity for Less than Adequate Remuneration

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific with the meaning of section 771(5A) of the Act. The Department asked the GOC to provide a detailed explanation for each province in which a respondent was located regarding: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals for increases in electricity rates; and (3) 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. In response, the GOC provided only a general overview of how the NDRC works to determine the electricity rates rather than the detailed, provincial-specific explanations requested.[38]

Consequently, we continue to find, as we did in the Preliminary Determination, that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our final determination.[39] Moreover, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.[40] In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[41] The benchmark rates we have selected are derived from information from the record of the instant investigation and are the highest, non-seasonal electricity rates on this record for the applicable

[36] See sections 776(a)(1) and (a)(2)(A) of the Act.
[37] See section 776(b) of the Act.
[38] See GOC Initial QR; see also GOC SQR – Part 1.
[39] See sections 776(a)(1)-(a)(2)(A) of the Act.
[40] See section 776(b) of the Act.
[41] Id. at 776(b)(4).

rate and user categories.[42] The Department, however, in calculating a benefit for this program, is continuing to rely on information provided by the Bao Zhang Companies to determine the companies' usage and prices paid during the POI.

GOC – Specificity of Zhabei District "Save Energy Reduce Emission Team" Award Program

The GOC reported that this program, which was established in 2009, is administered by the Zhabei District Energy-Saving and Emission-Reducing Administration Office and is focused on reducing emissions, increasing energy savings and implementing cleaner production on the part of companies.[43] The GOC provided the Department with the notice which announced the program for grants and explained the criteria for application and selection of awards.[44] With regard to specificity, the Department twice requested that the GOC provide information regarding: (1) the total amount of assistance approved for all companies; (2) the total number of companies that were approved for assistance; (3) the amount of assistance provided to the galvanized wire industry; (4) the amount of assistance provided to all other industries; and (5) the number of companies that applied for, but were denied, assistance under this program.[45] These questions requested information to determine whether the provision of the Zhabei District's "Save Energy Reduce Emission Team" Award was specific with the meaning of section 771(5A) of the Act. In its response, the GOC did not provide this information, stating that it could not obtain the requested information[46] and, as such, the Department was not able to analyze whether the program is limited to a specific enterprise or industry or group thereof. As a result of this missing information, the Department must rely on "facts available" to establish the specificity of this program in our final determination.

Although the GOC stated in its questionnaire response that it could not obtain the requested information, section 782(c) of the Act requires parties to notify the administering authority promptly after receiving a request if they are unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which the party is able to submit the information. The GOC did not notify the Department that it was having difficulty collecting such information from the local government, nor did it explain what steps it had taken to obtain the information. Furthermore, governments, when awarding grants to companies for specific accomplishments, can reasonably be expected to have information regarding recipients. Because the GOC did not provide the requested information or notify the Department of any difficulty in obtaining the information, or explain why the information was unavailable, there is no information on the record which the Department can use to evaluate specificity. Therefore, in accordance with sections 776 (a) and (b) of the Act, the Department must apply facts available with an adverse inference and find the Zhabei District's "Save Energy Reduce Emission Team" Award Program to be specific.

[42] See Comments 9-11 in the "Analysis of Comments" section which discuss parties' comments received regarding the electricity benefit and benchmark.
[43] See GOC 2SQR at Exhibit 43.
[44] Id.
[45] See GOC Second Supplemental Questionnaire; see also GOC Third Supplemental Questionnaire.
[46] See, e.g., GOC 3SQR at 2-3.

IV. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Provision of Wire Rod for Less than Adequate Remuneration

The Department is investigating whether input producers, acting as Chinese government authorities, sold wire rod to the Bao Zhang Companies for LTAR. The Bao Zhang Companies reported purchasing wire rod from trading companies during the POI.[47] In all instances, the Bao Zhang Companies were able to identify the firms that produced the wire rod that they purchased during the POI.

As discussed above in the section on "Use of Facts Otherwise Available and Adverse Inferences," we continue to find, as we did in the Preliminary Determination, that the producers of the wire rod inputs purchased by the Bao Zhang Companies during the POI are government authorities based on AFA. As a result, we determine that the wire rod sold by these input producers constitutes a financial contribution in the form of a governmental provision of a good.[48]

Regarding specificity, one of the three required subsidy elements under the Act,[49] in our initial questionnaire, we asked the GOC to provide a list of industries in the PRC that purchase wire rod directly, using a consistent level of industrial classification.[50] In response, the GOC simply stated that wire rod is used by a wide variety of steel-consuming industries.[51] In our supplemental questionnaire, we again asked the GOC to provide the information in the form requested, and the GOC provided the same response.[52] Although the GOC did not provide the information in the form requested, we have considered the GOC's response in light of the statutory standard for de facto specificity and, based on our review, we find the information is sufficient to reach a finding of specificity pursuant to section 771(5A)(D)(iii)(I) of the Act. This determination is consistent with Wire Decking from the PRC and PC Strand from the PRC in which the Department found the provision of wire rod to be specific, based on virtually the same facts.[53]

With regard to benefit, the third required subsidy element, we determine that the Bao Zhang Companies received a benefit to the extent that the purchased wire rod was provided for LTAR.[54] The criteria for identifying appropriate market-determined benchmarks for measuring whether the government-provided goods were provided for LTAR are set forth at 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or

[47] See BZ Initial QR at III-14.
[48] See section 771(5)(D)(iii)of the Act.
[49] See section 771(5A) of the Act.
[50] See Initial Questionnaire at II-7.
[51] See GOC Initial QR at 34.
[52] See GOC SQR – Part 2 at I-14.
[53] See Wire Decking from the PRC IDM at "Provision of Wire Rod for LTAR"; see also PC Strand from the PRC IDM at Comment 12.
[54] See section 771(5)(E)(iv) of the Act.

competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As the Department has previously explained, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[55]

In evaluating whether there are market prices for actual transactions within the country under investigation (i.e., tier one prices), we must first determine whether the prices from actual sales transactions involving PRC buyers and sellers are significantly distorted. As explained in the preamble to the regulations:

> 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.[56]

The preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[57]

In the original questionnaire, we asked the GOC to provide production figures of wire rod by SOEs during 2008, 2009 and 2010. The GOC provided information regarding government ownership of wire rod producers during 2008 only. The GOC stated that gathering such information for 2009 and 2010 would "take months to achieve" and, thus, it did not provide these figures.[58] We note that the only information relevant to the POI that the GOC provided were statements to the effect that certain pre-existing export restraints (i.e., export licenses and export taxes) for wire rod were not present during the POI. The GOC has not provided the requested information, which is necessary for the Department to undertake a complete analysis regarding the government's role in the market for wire rod during the POI. Therefore, it is necessary to resort to the facts otherwise available pursuant to section 776(a) of the Act. As facts available, we find that PRC prices of wire rod are significantly distorted as a result of the GOC's involvement in the market.[59]

Consequently, we determine that there are no appropriate tier one benchmark prices available for wire rod. Because we determine that there are no available tier one benchmark prices, we have turned to tier two (i.e., world market prices) available to purchasers in the PRC. In the Preliminary Determination, the Department used Japanese and Black Sea wire rod prices from

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[55] See Softwood Lumber from Canada IDM at "Market-Based Benchmark."
[56] See CVD Preamble, 63 FR at 65377.
[57] Id.
[58] See GOC Initial QR at 29.
[59] See KASR from the PRC IDM at "Provision of Wire Rod for Less than Adequate Remuneration"; see also Wire Decking from the PRC at "Provision of Wire Rod for LTAR." The POI for Wire Decking from the PRC was 2008. The ownership/production for wire rod which the GOC submitted in the instant case is consistent with what it submitted in Wire Decking from the PRC. Because the GOC submitted ownership/production information from 2008 in this investigation and statements about wire rod exports during 2010, the Department was prevented from being able to conduct a full analysis.

the World Bank and SBB, respectively. On October 21, 2011, the Bao Zhang Companies placed onto the record SBB wire rod prices for Turkey and Latin America and have argued that they should be included in the Department's analysis for this final determination. As we discuss in Comment 8 in the "Analysis of Comments" section below, in greater detail, the Department has determined that all four sets of wire rod prices should be used to calculate the benchmark in this final determination. Just as in the Preliminary Determination, we continue to adjust these FOB export prices to reflect, as closely as possible, the price that the respondent firm would pay if it imported the product, including import duties and VAT, ocean freight and domestic inland freight as stipulated in 19 CFR 351.511(a)(2)(iv). Where necessary, we converted the variables in the benchmark calculation to the same currency and unit of measure as reported by the Bao Zhang Companies for their purchases of wire rod.[60]

The Bao Zhang Companies reported purchasing all of their wire rod during the POI from trading companies or non-producing suppliers with which they were not cross-owned. In 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, but the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act, we must evaluate whether the input has been provided for LTAR by comparing the price paid by the respondent to the trading company to the benchmark price.[61] Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to the respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities, and the Bao Zhang Companies identified the producers of their wire rod inputs. As stated previously, the Department has determined all input producers of wire rod purchased by the respondents during the POI are government authorities.

To determine whether the Bao Zhang Companies purchased wire rod for LTAR, we compared the unit prices paid for their wire rod to our wire rod benchmark price. Where the purchase was made from a non-producing cross-owned supplier, we used the price paid by the cross-owned supplier for comparison purposes. We conducted our comparison on a monthly basis. Based on this comparison, we determine that wire rod was provided for LTAR and that a benefit exists in the total amount of the difference between the benchmark and the price paid.[62]

To calculate the subsidy rate, we divided the total benefit by the appropriate sales denominator. A detailed discussion of the sales denominators used in this final determination can be found in the Final Calculation Memorandum. On this basis, we calculated a subsidy of 16.11 percent ad valorem for the Bao Zhang Companies.

[60] For a more detailed explanation of the benchmark calculations, see the Final Benchmark Memorandum.
[61] See KASR from the PRC IDM at "Provision of Wire Rod for Less than Adequate Remuneration" section; see also CWASPP from the PRC at "Provision of SSC for LTAR."
[62] See section 771(5)(E)(iv) of the Act; see also 19 CFR 351.511(a).

2. Provision of Zinc for Less Than Adequate Remuneration

The Department is investigating whether input producers, acting as Chinese government authorities, sold zinc to the Bao Zhang Companies for LTAR. The Bao Zhang Companies reported purchasing zinc during the POI.[63] In all instances, the Bao Zhang Companies were able to identify the firm that produced all the zinc they purchased during the POI.

As discussed above in "Use of Facts Otherwise Available and Adverse Inferences" section, we continue to find, as we did in the Preliminary Determination, that the producers of the zinc inputs purchased by the Bao Zhang Companies during the POI are government authorities based on AFA. As a result, we determine that the zinc sold by these input producers constitutes a financial contribution in the form of a governmental provision of a good.[64]

Regarding specificity, one of the three required subsidy elements under the Act,[65] in our initial questionnaire, we asked the GOC to provide a list of industries in the PRC that purchase zinc directly, using a consistent level of industrial classification.[66] In response, the GOC stated that zinc had a wide range of uses (e.g., galvanized steel products, alkaline batteries, various metal alloys, etc.) and that "a comprehensive list of industries that purchase zinc directly is not available to be provided."[67] While the GOC did not provide the information in the form requested, we have considered the GOC's response in light of the statutory standard for de facto specificity and, based on our review, we find the information is sufficient to reach a finding of specificity pursuant to section 771(5A)(D)(iii)(I) of the Act. This determination is consistent with Wire Decking from the PRC, in which the Department found the provision of zinc to be specific, based on virtually the same facts.[68]

With regard to benefit, the third required subsidy element, we determine that the Bao Zhang Companies received a benefit to the extent that the zinc purchased was provided for LTAR.[69] The criteria for identifying appropriate market-determined benchmarks for measuring whether the government-provided goods were provided for LTAR are set forth at 19 CFR 351.511(a)(2) and discussed above in the "Provision of Wire Rod for LTAR" section.

In the original questionnaire, we asked the GOC to provide information regarding government ownership of the Chinese zinc industry. Specifically, we requested production figures of zinc by SOEs during 2008, 2009 and 2010. The GOC provided information regarding government ownership of zinc producers during 2008 only. The GOC stated that gathering such information for 2009 and 2010 would "take months to achieve" and, thus, it did not provide these figures. We note that the only information relevant to the POI that the GOC provided were statements to the effect that exports of zinc were subject to export licenses and that there is no "quantitative restriction."[70] The GOC has not provided the requested information, which is necessary for the

[63] See BZ Initial QR at III-15.
[64] See section 771(5)(D)(iii)of the Act.
[65] See section 771(5A) of the Act.
[66] See Initial Questionnaire at II-7.
[67] See GOC Initial QR at 43.
[68] See Wire Decking from the PRC IDM at "Provision of Zinc for LTAR."
[69] See section 771(5)(E)(iv) of the Act.
[70] See GOC Initial QR at 41.

Department to undertake a complete analysis regarding the government's role in the market for zinc during the POI. Therefore, it is necessary to resort to the facts otherwise available pursuant to section 776(a) of the Act. As facts available, we find that the zinc industry is significantly distorted as a result of the GOC's involvement in the market.[71] Consequently, we determine that there are no appropriate tier one benchmark prices available for zinc.

Because we determine that there are no available tier one benchmark prices, we have turned to tier two (i.e., world market prices) available to purchasers in the PRC. For purposes of the final determination, we continue to find that the data from the World Bank, the IMF and SBB should be used to derive a tier two world market price for zinc that would be available to purchasers of zinc in the PRC as all three sources report London Metal Exchange world market zinc prices. We also continue to find that prices from the World Bank, IMF and SBB to be sufficiently reliable and representative and that such prices would be available to purchasers in the PRC. As in the Preliminary Determination, we continue to adjust these prices to reflect, as closely as possible, the price that the respondent firm would pay if it imported the product, including import duties and VAT, ocean freight and domestic inland freight as stipulated in 19 CFR 351.511(a)(2)(iv). Where necessary, we converted the variables in the benchmark calculation to the same currency and unit of measure as reported by the mandatory respondents for their purchases of zinc.

The Bao Zhang Companies reported purchasing all of their zinc during the POI from trading companies or non-producing suppliers with which they were not cross-owned. In 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, but the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act, we must evaluate whether the input has been provided for LTAR by comparing the price paid by the respondent to the trading company to the benchmark price.[72] Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the zinc that was subsequently sold to the respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. The Bao Zhang Companies identified a single company as the producer of their zinc inputs. As stated previously, the Department has determined this zinc producer to be a government authority.

To determine whether the Bao Zhang Companies purchased zinc for LTAR, we compared the unit prices the Bao Zhang Companies paid for their zinc to our zinc benchmark price. We conducted our comparison on a monthly basis. Based on this comparison, we determine that zinc was provided for LTAR and that a benefit exists in the total amount of the difference between the benchmark and the price paid.[73]

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[71] See Wire Decking from the PRC IDM at "Provision of Zinc for LTAR." The POI for Wire Decking from the PRC was 2008. The ownership/production for zinc which the GOC submitted in the instant case is consistent with what it submitted in Wire Decking from the PRC. The Department is unable to undertake a complete analysis based on ownership/production information from 2008 and the GOC's statements about zinc exports during 2010.

[72] See KASR from the PRC IDM at "Provision of Wire Rod for LTAR" section; see also CWASPP from the PRC IDM at "Provision of SSC for LTAR."

[73] See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

To calculate the subsidy rate, we divided the total benefit by the appropriate sales denominator.[74] On this basis, we calculated a subsidy of 0.07 percent ad valorem for the Bao Zhang Companies.

3. Provision of Electricity for Less Than Adequate Remuneration

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of electricity, in part, on AFA. In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will 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. The Bao Zhang Companies provided data on the electricity the companies consumed and the electricity rates paid during the POI.[75]

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We find that, in deciding not to provide the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act.[76] To determine the existence and amount of any benefit from this program, we relied on the electricity information provided to the Department by the Bao Zhang Companies. We compared the rates paid by the Bao Zhang Companies for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest non-seasonal rates in the PRC, as provided by the GOC, [77] for each electricity category (e.g., "Large Industry," "Non-Residential Lighting," "Base Charge/Maximum Demand") used by the Bao Zhang Companies. Additionally, where applicable, we have identified and applied the specific peak, normal, and valley rates within a category. These benchmarks reflect an adverse inference, which we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.[78]

As in the Preliminary Determination, to determine whether the Bao Zhang Companies received electricity for LTAR, we compared what the Bao Zhang Companies paid for electricity to our benchmark prices. Based on this comparison, we determine that electricity was provided for

[74] See Final Calculation Memorandum.
[75] See BZ SQR – Part 1 at Exhibit 14.
[76] See "Use of Facts Otherwise Available and Adverse Inferences" section above.
[77] See GOC Initial QR at Exhibit 17.
[78] For a more complete discussion regarding the application of AFA to the electricity benchmark, see Comment 9 in the "Analysis of Comments" section, infra. A detailed discussion of the benchmarks rates used in this final determination can be found in the Final Benchmark Memorandum.

LTAR and that a benefit exists in the total amount of the difference between the benchmark and the price paid.[79]

To calculate the subsidy rate pertaining to the provision of electricity for LTAR, we divided the benefit amount by the appropriate sales denominator.[80] On this basis, we determine a countervailable subsidy of 2.64 percent ad valorem for the Bao Zhang Companies.

4. Export Grants from Local Governments

We initiated on a program entitled "Export Assistance Grants."[81] In their questionnaire responses, the Bao Zhang Companies reported receiving grants provided by local governments to assist in the development of export markets or to recognize export performance. Specifically, the Bao Zhang Companies reported that ABZ received: (1) an "Export Award;" (2) a "Foreign Trade Promotion Award;" and (3) financial assistance for an overseas market survey visit, all from the local Commerce Bureau.[82] In the Preliminary Determination, we found these export grants from local governments to confer a countervailable benefit.[83] Then, at verification, company officials noted in minor corrections that ABZ had also received two export grants in 2009 that had not previously been reported to the Department.[84]

All of ABZ's grants were reported to have been received for activities related to exporting. Based on information on the record, we continue to find that the grants included in the Preliminary Determination and also find that the export grants from 2009 constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grants, in accordance with 19 CFR 351.504(a). Because the grants were provided for promoting exports or were contingent on export performance, we determine that the grants are specific as export subsidies within the meaning of section 771(5A)(B) of the Act.

In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), the Department performs the "0.5 percent test," for each year in which a grant was provided to a respondent. As the Department noted during verification, we did not take any sales information from the Bao Zhang Companies to calculate the "0.5 percent test" on the grants ABZ received in 2009 because the grants were only reported during verification.[85] Therefore, the Department, instead automatically allocated the grants over time. To allocate the grants over time, we applied the calculation methodology set forth in 19 CFR 351.524(d), and used the AUL and the discount rates described above in the "Subsidies Valuation Information" section to obtain the benefit amount attributable to the POI. Then, to determine the Bao Zhang Companies' total benefit, we summed the amount of the benefits from each of these grants attributable to the POI.

[79] See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).
[80] See Final Calculation Memorandum.
[81] See Initiation.
[82] See BZ SQR – Part 2 at I-7.
[83] See Preliminary Determination, 76 FR at 55041-55042.
[84] See Bao Zhang Verification Report at 3.
[85] Id. at 30.

To calculate the subsidy rate pertaining to these export grants, we divided the total benefit amount by the appropriate sales denominator.[86] On this basis, we determine a countervailable subsidy of 0.21 percent ad valorem for the Bao Zhang Companies.

5. Zhabei District "Save Energy Reduce Emission Team" Award Program

In response to the Department's questions concerning certain accounts in SBZ's financial statements, the Bao Zhang Companies reported in a supplemental questionnaire response that SBZ received the Zhabei District's "Save Energy Reduce Emission Team" award during the POI. The Bao Zhang Companies stated the award was received based on SBZ's successful renovation of its coal-burning furnace to a vacant oven which saves energy and reduces emissions.[87] In their September 29, 2011 supplemental questionnaire response, the Bao Zhang Companies reported that, to obtain this award, SBZ prepared and submitted an application.[88] Additionally, the Bao Zhang Companies reported that to qualify for this award, a company must be registered in the Zhabei District and must have completed a renovation project that saves energy and reduces emissions.[89] Finally, SBZ stated that the award was a one-time grant and that, other than the one award reported, it had never benefitted from this program prior to or during the POI. This information was subsequently verified by the Department.[90]

The GOC reported that this program, which was established in 2009, is administered by the Zhabei District Energy-Saving and Emission-Reducing Administration Office and is focused on reducing emissions, increasing energy savings and implementing cleaner production on the part of companies.[91] The GOC provided the Department with the notice which announced the program for grants and explained the criteria for application and selection of awards.[92] We determine that the grant which SBZ received from the Zhabei District government authorities is countervailable. The grant constitutes a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and 19 CFR 351.504(a).

As explained above in the "Use of Facts Otherwise Available and Adverse Inferences" section, the GOC did not provide information regarding specificity. Therefore, in accordance with sections 776 (a) and (b) of the Act, the Department has applied facts available with an adverse inference and finds the Zhabei District's "Save Energy Reduce Emission Team" Award Program to be specific.

Because this is a grant that is approved and awarded to individual companies, we are treating it as "non-recurring," consistent with 19 CFR 351.524(c)(1). As was done in the Post-Preliminary Analysis Memorandum, we continue to measure the benefit from the grant received in 2010 by first conducting the "0.5 percent test."[93] Dividing the total grant amount received by the

[86] See Final Calculation Memorandum.
[87] See BZ SQR – Part 2 at I-10.
[88] See BZ 2SQR at 8.
[89] Id.
[90] See Bao Zhang Verification Report at 34.
[91] See BZ 2SQR at Exhibit 43.
[92] Id.
[93] See Post-Preliminary Analysis Memorandum at 4.

appropriate sales denominator,[94] the grant is less than 0.5 percent of sales. As such, for this final determination, we continue to expense the grant to the POI and find that the subsidy from the Zhabei District's "Save Energy Reduce Emission Team" Award Program to be 0.03 percent ad valorem for the Bao Zhang Companies.[95]

B. Program Determined Not to Confer a Benefit During the POI

Export Subsidies Characterized as "VAT Rebates"

The Department's regulations state that, in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption."[96] To determine whether the GOC provided a benefit under this program, we compared the VAT rebate upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that, during the POI, the VAT levied on both wire rod and zinc sales in the domestic market was 17 percent and that the VAT exemption upon the export of galvanized wire was nine percent.[97] In the Preliminary Determination, we found that the VAT exempted upon the export of galvanized wire did not confer a countervailable benefit during the POI because the amount of the VAT rebated on export is lower than the amount paid in the domestic market.[98] At verification, we reviewed the Bao Zhang Companies' records and documentation and confirmed that, in fact, a countervailable benefit under this alleged program was not conferred.[99] As such, for this final determination, we continue to find that the Bao Zhang Companies did not receive a countervailable benefit from export subsidies in the form of VAT rebates.

C. Program For Which the Benefit Has No Impact on the Subsidy Rate

Exemption from City Construction Tax and Education Tax for Foreign Invested Enterprises

The Bao Zhang Companies reported that ABZ received benefits under the "Exemption from City Construction Tax and Education Tax for Foreign Invested Enterprises" program. According to the Bao Zhang Companies, ABZ received an exemption from paying the Urban Maintenance and Construction Tax and Additional Education Fees which are based on the VAT payable by a company every month. The Bao Zhang Companies stated that ABZ qualified for this benefit because it is an FIE. The GOC explained that the February 25, 1994 Circular on Temporarily Not Collecting City Maintenance and Construction and Education Fee Surcharge for FIEs and Foreign Enterprises exempted all FIEs and foreign enterprises from paying the city construction

[94] See Final Calculation Memorandum.
[95] See Final Calculation Memorandum.
[96] See 19 CFR 351.517(a); see also 19 CFR 351.102(a)(28).
[97] See, e.g., GOC SQR – Part 2 at I-22.
[98] See Preliminary Determination, 76 FR at 55042.
[99] See Bao Zhang Verification Report at 27-30.

tax and education fee.[100] Both the GOC and the Bao Zhang Companies, in their initial questionnaire responses, reported that ABZ, as an FIE, used this program during the POI.[101]

These tax exemptions are financial contributions in the form of revenue forgone by the government and, in accordance with section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1), provide a benefit to the recipient in the amount of the tax savings. We also determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises (i.e., FIEs) and, hence, are specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated ABZ's tax exemptions as recurring benefits, consistent with 19 CFR 351.524(c)(1), as the exemptions are based on the VAT payable by companies every year.

To compute the amount of the benefit under these exemptions, we first determined the rate ABZ would have paid in the absence of the program. Based on verification, the Department confirmed that, had ABZ not been an FIE, it would have been required to pay five percent of its annual VAT payable for the Urban Maintenance and Construction Tax and three percent of its annual VAT payable for Additional Education Fees.[102] Therefore, we determine that, absent these exemptions, ABZ should have paid eight percent of its VAT payable for these taxes. The subsidy rate was then calculated by dividing the sum of all tax savings, during the POI, by the appropriate sales denominator.[103]

However, the calculation of the subsidy from these exemptions results in a rate that is significantly less than 0.005 percent,[104] and as such, this rate does not have an impact on the overall subsidy rate. Consistent with our past practice,[105] we therefore have not included this program in our net subsidy rate calculations.[106]

Additionally, in their initial questionnaire responses, both the GOC and ABZ stated that the exemption under this program was terminated effective December 1, 2010.[107] While the Department did not have time by the Preliminary Determination to evaluate these statements, we stated we would seek additional information on this from the GOC for the final determination.[108] The Department requested additional information from the GOC and the Bao Zhang Companies in supplemental questionnaires subsequent to the Preliminary Determination. Furthermore, during verification, the Department discussed the program with both the GOC and the Bao Zhang Companies, and examined various electronic notifications by the GOC that established that the exemptions granted to FIEs from the city construction tax and education fee had been terminated and could no longer be claimed effective December 1, 2010.[109] Additionally, the

[100] See GOC Initial QR at 69-70.
[101] Id. at 69; see also BZ Initial QR at III-33-36.
[102] See Bao Zhang Verification Report at 32.
[103] See Final Calculation Memorandum.
[104] Id.
[105] See, e.g., Hot-Rolled Steel from India IDM at "Exemption from the CST."
[106] See, e.g., CFS from the PRC IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE."
[107] See BZ Initial QR at III-33-36; see also GOC Initial QR at 74.
[108] See Preliminary Determination, 76 FR at 55042.
[109] See GOC Verification Report at 9-12; see also Bao Zhang Verification Report at 31-33.

Department confirmed that ABZ is now subject to both the city construction tax and education fee, and that SBZ and Li Chao paid said tax and fee on VAT payable during the POI.[110]

In the Post-Preliminary Memorandum, the Department determined that, pursuant to 19 CFR 351.526, there was sufficient evidence to find this program was terminated as of December 1, 2010.[111] However, as noted in the Post-Preliminary Memorandum, because this program benefit is significantly less than 0.005 percent and, as such, does not impact the overall subsidy rate, the issue of whether the termination of this program constitutes a program-wide change under 19 CFR 351.526 is moot.[112]

In addition to record evidence demonstrating the program's termination, the Department notes that, as confirmed at verification, companies are subject to different city construction tax rates based on their location. Specifically, a seven percent tax is levied on those companies located in urban areas, five percent on those companies in counties/townships, and one percent on those companies located in other areas.[113] Consequently, these differentials could give rise to financial contributions and benefits that are regionally specific. Therefore, the Department will continue to examine the city construction tax in future administrative reviews if a CVD order is issued in this investigation.

D. Programs Determined To Be Not Used

We verified that the Bao Zhang Companies did not apply for or receive any benefits during the POI under the following programs:

1. Policy Loans to the Galvanized Wire Industry

In their initial questionnaire responses, the Bao Zhang Companies reported that SBZ had outstanding loans during the POI.[114] The Bao Zhang Companies argued that the banks are not state-owned commercial banks but, rather, are both joint equity commercial banks.[115] In the Preliminary Determination, the Department concluded that it required additional information to properly analyze this program. The GOC provided a number of relevant plans and policies, both prior to and subsequent to the Preliminary Determination, which were included in the subsequent analysis.[116] During verification, the Department discussed these plans and policies with the GOC as part of the Department's review of policy lending for this investigation[117] and, as a result of the further analysis and verification, the Department found in its post-preliminary analysis that policy lending to the galvanized wire industry was not used by SBZ during the

[110] See Bao Zhang Verification Report at 33-35.
[111] See Post-Preliminary Analysis Memorandum at 5.
[112] Id.
[113] See GOC Verification Report at 9.
[114] We verified that neither of the other cross-owned Bao Zhang Companies had any loans outstanding during the POI. See Bao Zhang Verification Report at 37.
[115] Id.
[116] See GOC Initial QR at Exhibit 3; see also GOC 2SQR at Exhibit 42; see also GOC 3SQR at Exhibits 47-50.
[117] See GOC Verification Report at 2-9.

POI.[118] For the purposes of this final determination, the Department continues to find that the Bao Zhang Companies did not use the policy loan program in question during the POI.

2. Preferential Loans for Key Projects and Technologies
3. Preferential Loans and Directed Credit
4. Preferential Lending to Galvanized Wire Producers and Exporters Classified as "Honorable Enterprises"
5. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
6. Provision of Land Use Rights for LTAR within the Jinzhou District within the City of Dalian
7. Provision of Land Use Rights for LTAR to Enterprises within the Zhaoqing High-Tech Industry Development Zone in Guangdong Province
8. Provision of Land Use Rights for LTAR to Enterprises within the South Sanshui Science and Technology Industrial Park of Foshan City
9. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
10. Income Tax Exemption for Investment in Domestic Technological Renovation
11. Accelerated Depreciation for Enterprises Located in the Northeast Region
12. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
13. Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning Province
14. VAT Deduction on Fixed Assets
15. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
16. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
17. "Five Points, One Line" Program of Liaoning Province
18. Provincial Export Interest Subsidies
19. State Key Technology Project Fund
20. Subsidies for Development of Famous Export Brands and China World Top Brands
21. Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands
22. Zhejiang Province Program to Rebate Antidumping Legal Fees
23. Technology to Improve Trade Research and Development Fund of Jiangsu Province
24. Outstanding Growth Private Enterprise and Small and Medium-Sized Enterprises Development in Jiangyin Fund of Jiangyin City
25. Grants for Programs Under the 2007 Science and Technology Development Plan in Shandong Province
26. Special Funds for Encouraging Foreign Economic and Trade Development and for Drawing Significant Foreign Investment Projects in Shandong Province
27. "Two Free, Three Half" Tax Exemptions for "Productive" FIEs
28. Income Tax Exemption Program for Export-Oriented FIEs
29. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
30. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
31. Income Tax Subsidies for FIEs Based on Geographic Location

[118] See Post-Preliminary Analysis Memorandum at 6-7. The Department also verified that ABZ and Li Chao had no bank loans outstanding during the POI. See Bao Zhang Verification Report at 34-37.

32. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment
33. Income Tax Credits for FIEs Purchasing Domestically-Produced Equipment

V. Analysis of Comments

General Issues

Comment 1: Whether the Investigation Should Be Terminated Based on the GPX III Ruling

GOC's Arguments

- In light of the decision by the CAFC in GPX III, which holds that CVD duties may not be imposed on imports of merchandise from countries designated as NMEs, the Department should terminate this investigation.
- The CAFC decision holds that the CVD statute does not permit the imposition of CVD duties on NME imports under any circumstances. As such, the Department should immediately terminate this investigation and instruct CBP to terminate the suspension of liquidation and release all cash deposits of estimated CVD duties on imports of galvanized wire from the PRC.

The Bao Zhang Companies' Arguments

- In GPX III, the CAFC found that the Department's implementation of CVD proceedings against the PRC, an NME, violates the intent of the Act.
- The CAFC rejected the Department's argument that it retained the discretionary authority to apply the U.S. CVD law to products from an NME country, such as the PRC, holding that "government payments cannot be characterized as 'subsidies' in a non-market economy context, and thus that countervailing duty law does not apply to NME countries."[119]
- The CAFC found that "in amending and reenacting the trade laws in 1988 and 1994, Congress adopted the position that countervailing duty law does not apply to NME countries. Although Commerce has wide discretion in administering countervailing duty and antidumping law, it cannot exercise this discretion contrary to congressional intent."[120] Because the CAFC has decided that the Department is not authorized to pursue this CVD investigation against the PRC while investigating the PRC as an NME under AD laws, the Department should terminate this investigation and not issue a CVD order.

The Huayuan Companies' and M&M's Arguments

- The CAFC, in GPX III, has ruled that the Act prohibits the Department from initiating CVD investigations and imposing CVD duties against NMEs, holding that "government payments cannot be characterized as 'subsidies' in a non-market economy context, and thus that countervailing duty law does not apply to NME countries."[121]

Honbase's Arguments

- Pursuant to the CAFC's decision in GPX III, holding that CVD law does not apply to countries designated as NMEs, the Department should terminate this CVD investigation.

[119] See GPX III at 4.
[120] See GPX III at 26.
[121] See GPX III at 4.

Petitioners' Rebuttal Arguments

- The Department should reject the arguments to terminate the investigation as premature, since the appellate process involving GPX III has not yet been completed. Until all judicial and other avenues of review are exhausted, the Department should not terminate this investigation.

Department's Position

The Federal Circuit's GPX III 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. Moreover, the President on March 13, 2012, signed into law H.R. 4105, "To apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries, and for other purposes." H.R. 4105 amended the Act, among other purposes, to confirm that, barring an exception not applicable here, the Department must apply the CVD law to subsidized imports from countries designated as NMEs for AD purposes.[122] The effective date provision of the amendment to section 701 of Act in the enacted legislation makes clear that new section 701(f) of the Act applies to this proceeding.[123] Accordingly, the Department continues to apply the CVD law to the PRC.

Comment 2: Application of CVD Law to the PRC

The Bao Zhang Companies' Arguments

- The language of the Act, combined with the CAFC's concurrence with Georgetown Steel, Congress's decision to not amend the Act to cover NMEs, and the Department's practice through 2002 in Sulfanilic Acid from Hungary demonstrates that the Department does not have statutory authority to initiate a CVD investigation against NMEs.
- The Act demonstrates CVD duties are not applicable to NMEs:
  - Congressional intent in the Act is clear that U.S. CVD law does not apply to NME countries. The Department had no authority to initiate any CVD investigations covering products from China, and therefore should revoke its initiation of this investigation and every other CVD investigation thus far initiated. Specific legislation has now been proposed to authorize use of CVD measures against NME countries, thus clearly indicating an understanding that present law does not allow such action.
  - Application of the CVD law to imports from China in this investigation is based on CFS from the PRC and the Georgetown Steel Memorandum, which concluded that section 771(5) and (5A) of the Act provide the Department with the discretion to apply CVD law to NME countries. When the entirety of the statute is analyzed, it is clear Congress does not provide the Department with the authority to apply CVD law to NMEs.
  - As promulgated in Chevron[124] and Bell Atlantic[125], the Department must examine the statute's text, legislative history, and structure to ascertain whether Congress intended to prevent the application of CVD law to the PRC. If Congress' intent is unclear, the

[122] See section 701(f)(1) of the Act; H.R. 4105, 112th Cong. § 1(a) (2012) (enacted).
[123] See H.R. 4105, 112th Cong. § 1(b) (2012) (enacted).
[124] "{T}he 'traditional tools of statutory construction' must be used." See Chevron, 467 U.S. at 843.
[125] "{A}n examination of the statute's text, legislative history, and structure." See Bell Atlantic, 131 F.3d at 1047.

Department may use its discretion to determine whether the CVD law should be applied to NMEs. If, however, Congressional intent is clear, that intention is the law.

- Analysis of sections 701, 731, 751 and 771 of the Act involves more than simply the meaning of the specific language (or lack thereof),[126] but also the structure in which the language is found and the design of the statute as a whole. Specifically, the Department should recognize that "the plain meaning of statutory language is often illuminated by considering not only the particular statutory language at issue, but also the structure of the section in which the key language is found, the design of the statute as a whole and its object." The use of different words or terms within a statute demonstrates that Congress intended to convey different meanings.[127]
- The CVD law and AD law were implemented jointly in the Department's regulations and, therefore, the meaning of a provision cannot be viewed in the vacuum of only the AD or CVD discipline.
- The consideration of only section 701 of the Act illustrates how focusing on certain sections of the Act warps the true intent of the statute. In CFS from the PRC, the Department stated that section 701 of the Act does not contain a reference to NMEs but rather is a general grant of authority to conduct CVD investigations, thus demonstrating that the Department is free to apply CVD law to NMEs. However, the same section for AD proceedings (section 731 of the Act) contains no references to NMEs and, yet, the Department must apply the AD law to NMEs. Thus, Department's support of its discretion claim by citing to section 701 of the Act is not appropriate
- Since this mandate does not stem from section 701 of the Act, the only possible support for the Department's new practice is from section 771 of the Act. Sections 771(5) and (5A) do not reference NMEs, however, the term is used notably in section 771(18) of the Act which describes the criteria for determining whether a country is an NME. This provision establishes that only ADs were to apply to NMEs. Additionally, Congress limited any judicial review of a country's NME status to AD investigations, because the statute makes no mention of judicial review of NME status in CVD investigations. It is unreasonable to believe that Congress would have limited judicial review of NME designation in one type of investigation, but not the very same designation in another.
- The absence of any references to NMEs in the subsections of section 771 dealing with CVDs and the inclusion of such references in subsections regarding AD make clear that only ADs were to apply to NMEs.
- Contrary to the Department's statements in CFS from the PRC, the CIT in GOC v. U.S. did not affirm the Department's proposed procedure of applying CVD law to NME countries nor did it agree with the Department's reasoning in CFS from the PRC. Instead, the court ruled that it did not have jurisdiction to decide the merits of the case, and any statements regarding the substantive merits of the case were pure *dicta*.[128] Therefore, the Department cannot legitimately rely on GOC v. U.S. for any purpose other than its jurisdictional finding.

[126] See section 771(5) or (5A) of the Act.

[127] "Indeed, the use of different language by Congress creates a presumption that it intended the terms to have different meanings." See Legacy Emanuel v. Shalala; see also SEC v. McCarthy.

[128] "Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." See Steel Co.

- Georgetown Steel and legislative history confirm CVD law does apply to NMEs:
  - In Georgetown Steel, the CAFC addressed whether section 303 of the Act (which is nearly identical to the current Act) allowed the application of CVDs to NME countries. The court's findings demonstrate that Congress did not intend CVD laws to apply to NMEs.
  - For two decades following Georgetown Steel, the Department dismissed CVD petitions involving NME countries based on the CAFC's statutory interpretation[129] on the basis that Congress could not have intended to apply the CVD law to NMEs.[130]
  - The Department cannot reverse this conclusion without any explanation of how the Department's new practice of recognizing inherent differences between NMEs satisfies the mandate that CVD law does not apply to any NMEs.
  - Congress, in adopting the URAA, has accepted this long-standing interpretation. The Supreme Court has held that Congress is presumed to be aware of an administrative interpretation of a statute and is deemed to have adopted that interpretation when it reenacts a statute without modification.[131] Therefore, by not modifying the CVD law to include application to NMEs, Congress reaffirmed this interpretation.
  - Prior to the enactment of the URAA, Congress enacted the OTCA of 1988. This was the first opportunity for Congress to alter the finding in Georgetown Steel. Additionally, Congress did not amend the CVD law when it the rejected a provision that would have given the Department the discretion to apply the CVD law to NMEs.[132] The refusal to include this provision in the law is evidence that Congress intended that CVD law not apply to NMEs as found by the CAFC in Georgetown Steel.
  - The rejection of this provision does not merely represent Congressional inaction, as the Department stated in CFS from the PRC[133] but rather, constitutes legislative history of the OTCA of 1988 and Congressional reaction to Georgetown Steel.
  - In 1994, when Congress was provided another opportunity to amend the CVD laws when enacting the URAA, it declined to do so.
- Sulfanilic Acid from Hungary demonstrates that CVD law does not apply to NMEs:
  - In 2002, four years prior to CFS from the PRC, the Department determined that it could not apply CVD law to Hungary, then designated as a NME. The decision was made without analyzing any differences between Hungary and the "Soviet-style NMEs of the 1980s." In the year prior to "graduating" to ME status, Hungary was certainly at the same economic level as the PRC is currently.
  - In Sulfanilic Acid from Hungary, the Department agreed that the CVD law cannot be applied to NMEs, whatever their individual differences, but in CFS from the PRC, the Department interpreted the statute to conclude that CVD law can apply to some NMEs.

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[129] See Chrome Plated Lug Nuts from the PRC; see also Oscillating and Ceiling Fans from the PRC; see also Sulfanilic Acid from Hungary.

[130] "Congress could not have intended to apply the CVD law to NME economies." See Oscillating and Ceiling Fans from the PRC at Comment 1.

[131] See Merrill Lynch v. Curran, 456 U.S. at 383.

[132] Section 157 of H.R. 3 stated "the application of the countervailing duty law to non-market economies to the extent that a subsidy can be reasonably identified and measured by the administering authority. The provision is intended to allow the administering authority discretion in determining, on a case-by-case basis, whether a particular subsidy can, as a practical matter, be identified and measured in a particular non-market economy country."

[133] See CFS from the PRC IDM at Comment 1.

- The application to China is contradicted by the Department's continued failure to accord even one Chinese industry involved in an AD investigation "market oriented industry" status, or to accord any individual Chinese respondent "market economy status." The Department's use of a countrywide rate in AD investigations involving China for companies not accorded separate rate status, instead of using the "all others" rate methodology for non-sampled respondents, is clear proof that the Department continues to believe that China is an NME country in all respects that are relevant to calculation of subsidization in CVD investigations.
- Unless the Department recognizes that the PRC should not be treated as an NME for AD proceedings, the application of CVD measures to the PRC will constitute double-penalization.

The Huayuan Companies' and M&M's Arguments

- Sections 701, 731, 751 and 771 of the Act demonstrate that Congress limited any judicial review of NME status determinations to AD investigations. Although Congress addressed judicial review of NME status determinations in AD investigations in section 771(18)(D) of the Act, Congress did not refer to judicial review of NME status determinations in CVD investigations because CVD duties do not apply to NMEs. Had Congress intended for CVD law to be applied to NME countries, it would have created special provisions for calculating subsidies in NME countries, as it did for AD investigations.
- The CAFC directly addressed the issue of whether CVD law applies to a country the Department has designated as NME in Georgetown Steel in which it upheld the Department's finding that the statute could not be reasonably applied to NMEs. The relevant provisions governing CVD investigations have not changed materially since Georgetown Steel.
- Congress was aware of the finding in Georgetown Steel, that CVD law is not applicable to NMEs, and did not alter the law when it had the opportunity to.[134] Additionally, the Department continued to not to apply CVD law to NMEs after the enactment of the new iterations of the CVD law.[135]
- The Department cannot change its long-standing statutory interpretation of the CVD law without explicit direction from Congress. Since Congress has not acted, and because the CVD law was not applicable at the time of the initiation, the Department must render a negative determination in this investigation.

Department's Position

We disagree that the Department lacks authority to apply the CVD law to the PRC. See the Department's position on Comment 1. The Department's positions on the issues raised are fully explained in multiple cases.[136] Congress granted the Department the general authority to conduct CVD investigations.[137] In none of these provisions is the granting of this authority limited only to MEs. For example, the Department is given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy . . . ."[138] Similarly, the term "country," defined in section 771(3) of the

[134] See OTCA of 1988.
[135] See e.g., Sulfanilic Acid from Hungary.
[136] See, e.g., Drill Pipe from the PRC IDM at Comment 1; see also Coated Paper from the PRC IDM at Comment 1.
[137] See, e.g., sections 701, 771(5), and 771(5A) of the Act.
[138] See section 701(a) of the Act.

Act, is not limited only to MEs, but is defined broadly to apply to a foreign country, among other entities.[139]

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME."[140] The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."[141] Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government has eliminated price controls on most products . . . ."[142] Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the Wire Rod from Poland and Wire Rod from Czechoslovakia cases is not a significant factor with respect to the PRC's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. As explained in the Georgetown Steel Memorandum, Georgetown Steel does not rest on the absence of market-determined prices, and the decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC.[143] In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices.[144] As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC.[145]

As the Department further explains in the Georgetown Steel Memorandum, extensive PRC government controls and interventions in the economy, particularly with respect to the allocation of land, labor, and capital, undermine and distort the price formation process in the PRC and, therefore, make the measurement of subsidy benefits potentially problematic.[146] The problem is such that there is no basis for either outright rejection or acceptance of all the PRC's prices or costs as CVD benchmarks because the nature, scope, and extent of government controls and interventions in relevant markets can vary tremendously from market-to-market. Some of the PRC prices or costs will be useful for benchmarking purposes, i.e., are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of the

[139] See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").
[140] See Wire Rod from Poland ;see also Wire Rod from Czechoslovakia.
[141] See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373.
[142] See Georgetown Steel Memorandum.
[143] Id. at 4-5.
[144] Id. at 5.
[145] Id.
[146] Id.

PRC's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law cannot be applied to the PRC.

The CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel.[147] The issue in Georgetown Steel was whether the Department could apply CVD laws (irrespective of whether any AD duties were also imposed) to potash from the Soviet Union and the German Democratic Republic and carbon steel wire rod from Czechoslovakia and Poland. The Department determined that those economies, which operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to those exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them.[148] While the Department did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department's logic, agreeing that, "Even if one were to label these incentives as a 'subsidy,' in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves."[149] Noting the "broad discretion" due the Department in determining what constituted a subsidy, the Court then deferred to the Department's judgment on the question.[150] Thus, Georgetown Steel did not hold that the Department could choose not to apply the CVD law to exports from NME countries, where it was possible to do so. Instead, the CAFC simply deferred to the Department's determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to all NMEs for all time, but only that the Department's decision not to apply the law was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

> {T}he agency administering the countervailing duty law has broad discretion in determining the existence of a "bounty" or "grant" under that law. We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. Chevron at 842-845.[151]

The Georgetown Steel Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

[147] See Georgetown Steel, 801 F.2d at 1318.
[148] See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373.
[149] See Georgetown Steel, 801 F.2d at 1316.
[150] Id. at 1318.
[151] See Georgetown Steel, 801 F.2d at 1318 (emphasis added).

The CIT concurred, explaining that "the Georgetown Steel court only affirmed {the Department's decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs."[152]

The parties' arguments that the intent of Congress is that the CVD law does not apply to NMEs is also flawed. Since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the World Trade Organization (WTO), assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."[153] The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general and the PRC in particular. In that same trade law, Congress explained that "{o}n November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning the terms of the People's Republic of China's eventual accession to the World Trade Organization."[154] Congress then expressed its intent that the "United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO."[155] In these statutory provisions, Congress is referring, in part, to the PRC's commitment to be bound by the SCM Agreement as well as the specific concessions the PRC agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department.[156] In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must

[152] See GOC v. U.S., 483 F. Supp. 2d at 1282 (citing Georgetown Steel, 801 F.2d at 1318).
[153] See 22 U.S.C. § 6943(a)(1) (emphasis added).
[154] See 22 U.S.C. § 6901(8).
[155] See 22 U.S.C. § 6841(5).
[156] See CFS from the PRC IDM at Comment 1.

effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO," contemplates the application of the CVD law to the PRC.[157] Neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law. However, the Accession Protocol, to which the PRC agreed, is relevant to the PRC's and our international rights and obligations. Further, Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced, a direction codified in U.S. law.

In sum, the Department has authority to apply the CVD law to NMEs under U.S. law. Further, the Department's decision to apply CVD law to the PRC, as explained in the Georgetown Steel Memorandum, is within the Department's discretion and in accordance with law. Moreover, as noted in the Department's position in Comment 1, above, the recent enactment of H.R. 4105 confirms the Department's authority to apply the CVD law in this proceeding. Accordingly, the Department's application of the CVD law in this proceeding is appropriate.

Comment 3: Whether Application of the CVD Law to NMEs Violates the Administrative Procedures Act (APA)

The Bao Zhang Companies' Arguments

- The Department's application of CVD law to NME countries represents a sudden change in its long-standing approach which violates APA rulemaking procedures. When the Department makes a new rule or changes a previous rule, it must comply with the APA's notice-and-comment procedures, which it did not.[158]
- The APA requires that the agency issue a public notice in the FR of any proposed rule changes to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments," and, after the consideration of these comments, "incorporate in the rules adopted a concise general statement of their basis and purpose."[159]
- The Department is required to provide a notice and comment period, and publish a notice regarding its new policy, request comments, and then publish a final notice with detailed responses to all the comments received.[160]
- The initiation of a CVD case against the PRC, an NME, is a substantial revision of the Department's rule of not applying CVDs to NMEs. Doing so prior to the completion of the appropriate procedures constitutes a retroactive revision of a binding rule and hence violates the APA.
- The APA defines a rule as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy."[161] The Department's long-standing statutory interpretation that CVD law does not apply to NMEs satisfies this requirement as a rule rather than a policy or practice.

[157] See 22 U.S.C. § 6941(5).
[158] See Shinyei at 1309.
[159] See 5 U.S.C. § 553(c).
[160] See Impact Steel at 1305.
[161] See 5 U.S.C. § 551(4).

- The repeated interpretation of this position establishes that the Department has codified this approach. Alaska Hunters[162] and Shell Offshore[163] demonstrate that making a change to a long established practice cannot be made without notice and comments.
  - The Department has created a binding rule regarding the application of CVD law to NMEs, citing Textiles from the PRC, after a specific notice and comment period.[164] The Department did not issue a preliminary determination in this case because the petition was eventually withdrawn. However, the hearing and related briefs from the Textiles from the PRC case were considered in other pending CVD cases against NMEs in which the Department found that the CVD law did not apply.[165]
  - In 1993, the Department issued the "General Issues Appendix" in Certain Steel Products from Austria. The Department issued this appendix after a notice and comment period, as well as a hearing. In this appendix, the Department found that the CVD law was not applicable to NMEs. [166]; and
  - In 1998, the Department codified its position in adopting new CVD regulations which did not include the applicability of CVD law to NMEs.
- The Department's complete reversal of this codified interpretation constitutes a new rule that must follow APA procedures.
- In the CVD Preamble, the Department stated it will not apply the subsidy law to NME countries and will not examine subsidy allegations made against an NME country. The CVD Preamble was promulgated in accordance with APA requirements. This CVD Preamble, as well is the Department's definitive interpretation of the statute and its regulations. As such, any change in that interpretation requires that the Department engage in notice and comment rulemaking pursuant to the APA.
- The Department did not follow APA procedures in reversing its long-standing position concerning the application of CVDs to NME countries. While the Department issued a notice to the public nearly one month after the CFS petition was filed, the Department never addressed the comments made by the parties before making its preliminary and final decisions.

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[162] See Alaska Hunters, 177 F3d at 1034 ("'Rule making,' as defined in the APA, includes not only the agency's process of formulating a rule, but also the agency's process of modifying a rule. 5 U.S.C. § 551(5). See Paralyzed Veterans, 117 F.3d at 586. When an agency has given its regulation a definitive interpretation, and later significantly revises that interpretation, the agency has in effect amended its rule, something it may not accomplish without notice and comment. Syncor Int'l Corp. v. Shalala, 326 U.S. App. D.C. 422, 127 F.3d 90, 94-95 (D.C. Cir. 1997), is to the same effect: a modification of an interpretive rule construing an agency's substantive regulation will, we said, 'likely require a notice and comment procedure.'").

[163] Finding that a change in "long established and consistent practice that substantially affects the regulated industry" was subject to APA notice and comment requirements. See Shell Offshore, 238 F.3d at 630.

[164] "In view of the novelty of issues raised by the petition, we invite written comments and participation in a conference in which all persons interested in these issues are invited." See Textiles from the PRC at 46601.

[165] See Wire Rod from Poland Prelim; see also Potassium Chloride from the Soviet Union ("In light of our determination . . . that, as a matter of law, {subsidies} cannot be found in NMEs, it is apparent that the petition filed against imports of potassium chloride from the Soviet Union (an NME) does not allege elements necessary for the imposition of countervailing duties. The petition is, therefore, not a sufficient basis for an investigation.")

[166] "The CVD law is not applicable to non-market economies because the concept that the receipt of a subsidy constitutes a distortion in the normal allocation of resources has no meaning in such an economy . . . {I}n a non-market economy, it is impossible to say that a producer has received a subsidy in the first place." See Certain Steel Products from Austria at 37261.

- The Department did not provide parties an opportunity to participate, going against the APA's purpose of the APA's notice and comment regulations and the courts' interpretations of those regulations.
- Therefore, even if the Department were allowed to now apply CVD law to NMEs, this "significant revision" to the Department's definitive interpretation could only be accomplished through appropriate APA notice and comment procedures. Since the Department failed to follow the required procedures, its actions in initiating this review and various other CVD investigations on Chinese products are unlawful, and such initiations should be revoked.

Department's Position

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

The Department disagrees that our decision to apply the CVD law to NMEs is subject to the APA's notice-and-rulemaking procedures because those procedures do not apply to "interpretative rules, general statements of policy or procedure, or practice."[167] The Department's position on this issue is fully explained in CFS from the PRC.[168] The "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings, a principle equally applicable to CVD proceedings.[169]

The Bao Zhang Companies cite Alaska Hunters to support their claim that the APA's requirements apply if the Department decides to apply the CVD law to an NME. However, in that case, the FAA had published a notice of general application.[170] This is not analogous to the situation here, where the practice was developed on a case-specific basis – there was no broad notice of general application that the Department would never investigate future CVD complaints against NMEs.

The Bao Zhang Companies claim the Department's actions established a rule under the APA that the agency would not apply the CVD law to the PRC. As discussed above, the argument premised on these determinations is incorrect because the Department does not create binding rules under the APA through its administrative determinations. Instead, in these determinations the Department expounds on its practice in light of the facts before the Department in each proceeding. Furthermore, in the determinations to which the Bao Zhang Companies cite, the Department never found that Congress exempted the PRC from the CVD law.

[167] See CFS from the PRC IDM at Comment 2.
[168] Id.
[169] See GSA, 77 F. Supp. 2d 1349 at 1359 (citing SAA at 892) ("Antidumping and countervailing proceedings . . . are investigatory in nature.").
[170] Id. at 1033; see also Alaskan Guide Compliance.

The Department concluded that Congress had never clearly spoken to this issue.[171] In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME."[172] The Department based its decision upon the economic realities of these Soviet-bloc economies; it did not create a sweeping rule against ever applying the CVD law to NMEs. Indeed, the Department's subsequent actions demonstrate that it did not create a rule against the application of CVD law to NMEs. For example, in 1992, the Department initiated a CVD investigation against the PRC, notwithstanding its status as an NME, after determining that certain industry sectors were sufficiently outside of government control.[173]

The Bao Zhang Companies further cite to Certain Steel Products from Austria (General Issues Appendix) again claiming that a reference to the Department's practice elevated that practice to the level of a rule. However, the statement is simply an explanation that the CVD law is not concerned with the subsequent use or effect of a subsidy and that "Georgetown Steel cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient's production."[174] This reference to Georgetown Steel does not set forth a broad rule, but merely acknowledged the Department's practice regarding non-application of the CVD law to NMEs.

The Department has appropriately, and consistently, determined that formal rulemaking was not appropriate for this type of decision. Contrary to the Bao Zhang Companies' claims, instead of promulgating a rule when it drafted other CVD rules, the Department reiterated its position that the decision to not apply the CVD law in prior investigations involving NMEs was a practice.[175]

In a subsequent determination, the Department continued to explain that it has a practice of not applying the CVD law to NMEs, and did not refer to this practice as a rule. "The Preamble to the Department's regulations states that . . . it is important to note here our *practice* of not applying the CVD law to non-market economies. . . . We intend to continue to follow this *practice*."[176] The claim that the Department has somehow created a rule, when it has neither referred to its practice as such nor adopted notice-and-comment rulemaking for this practice, is erroneous. As such, we find that our practice is not in violation of the APA.

Comment 4: Double Remedies

The Bao Zhang Companies' Arguments

- The Department should terminate this investigation due to the double counting encountered when applying CVD to an NME designated country for which there is also an AD investigation, or should otherwise make an adjustment to account for this problem.

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[171] Id.
[172] Id.; see also Wire Rod from Czechoslovakia.
[173] See Lug Nuts from the PRC Initiation (where the Department ultimately rescinded the CVD investigation on the basis of the AD investigation, the litigation, and a subsequent remand determination, concluding that it was not an MOI).
[174] See Certain Steel Products from Austria (General Issues Appendix), 58 FR at 37261.
[175] See CVD Preamble, 63 FR at 65360 (emphasis added); see also Certain Steel Products from Austria (General Issues Appendix), 58 FR at 37261.
[176] See Sulfanilic Acid from Hungary IDM at Comment 1 (emphasis added).

- The Department and Congress have acknowledged that the simultaneous imposition of ADs and CVDs to the same product can result in the application of a dual remedy.[177]
- The Department's application of CVD law to NMEs, beginning in 2007 with CFS from the PRC without any explicit statutory or regulatory direction, has resulted in a variety of scenarios not present in ME CVD cases and for which no specific statutory or regulatory direction exists. In response to these scenarios, the Department has established several PRC-CVD specific methodologies.[178]
- The Department, however, has been unwilling to undertake statutory or regulatory measures to adjust for the double remedies it continues to impose on the PRC This approach does not reflect the kind of equilibrium essential to demonstrating good faith between the United States and the PRC.
- The NME AD methodology of using surrogate values that are not subsidized effectively removes the costs and financial experience of the respondent from the equation, leaving the company's factor usage rates as the only authentic data from the respondent company that are used in the normal value calculation. Therefore, regardless of whether a subsidy affects product prices, manufacturing costs, salaries, etc., these effects are all removed by the surrogate value methodology, rendering a CVD remedy duplicative.
- The Department must either revise its AD methodology by eliminating the NME methodology (and follow a ME methodology), or terminate this CVD investigation regarding the same imports of subject merchandise. The Department's current approach, as reflected in the preliminary determination, is contrary to U.S. law, will result in the double-counting of the same alleged subsidies under both CVD and AD determinations, and relies upon fundamentally inconsistent conclusions regarding market prices in China.
- The CIT has held that the inability to apply the CVD law to NME countries is remedied through the NME AD methodology[179] and that the dual imposition of CVD and AD law on NME countries creates issues not present in AD ME methodologies.[180] As a result, the court held that CVD law to should not apply to the PRC, or for the Department to make certain adjustments.[181]
- The SV methodology (in an AD case) disregards a respondent's costs and expenses in the NV calculation and thus has eliminated any effects of domestic subsidies. By removing whatever subsidy benefits the respondent may have enjoyed in the AD calculation and rendering its NV as if the company had received no subsidies at all, the Department must now adjust the AD rate to account for subsidies the respondent did receive, which is done in ME cases involving both AD and CVD investigations.

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[177] See, e.g., 19 U.S.C. § 1677a(c)(1)(C).

[178] See, e.g., the definition of "authority;" the valuation of subsidies prior to December 11, 2001; the valuation of land; the valuation of inputs; the treatment and valuation of loans; and the treatment of privatizations.

[179] "the NME AD statute was designed to remedy the inability to apply the CVD law to NME countries, so that subsidization of a foreign producer or exporter in an NME country was addressed through the NME AD methodology." See GPX, 645 F.2d at 1242.

[180] See GPX.

[181] "The unfair trade statutes, as Georgetown Steel recognized, give Commerce the discretion not to impose CVDs as long as it is using the NME AD methodology. Thus, Commerce reasonably can do all of its remedying through the NME AD statute, as it likely accounts for any competitive advantages the exporter received that are measurable. If Commerce now seeks to impose CVD remedies on the products of NME countries as well, Commerce must apply methodologies that make such parallel remedies reasonable, including methodologies that will make it unlikely that double counting will occur." See GPX, 645 F.2d at 1243.

- The Department has opposed offsetting the AD margin for a domestic subsidy on the premise this adjustment is "speculative"[182] This, however, ignores the fact that the SV methodology automatically presumes that domestic subsidies do affect price, resulting in the rejection of an NME company's home market prices.
- A domestic subsidy affects either the costs of the company or is reflected in the financial statements, affecting its overhead, SG&A and/or profit, items removed from the NV calculation in NME cases. While most domestic subsidies arc reflected in a company's costs and expenses, it is possible that a domestic subsidy could affect a company's factor usage rates and not be addressed by the surrogate value methodology. However, none of these subsidies are involved in the CVD case here. To reject an offset for all domestic subsidies based on the possible effect of an unknown subsidy program is unreasonable.[183]
- There is no basis to assess duties on any domestic subsidies that may potentially exist in this investigation, as the amount of any such subsidies are fully captured in the NME methodology in the companion AD investigation in this case. The CIT has stated if it is "too difficult for Commerce to determine whether, and to what degree double counting is occurring, Commerce should refrain from imposing CVDs on NME goods."[184]
- Alternatively, the Department can apply an offset to the AD margin in the full amount of the domestic subsidy rate. By applying this offset, the Department would not be concluding that domestic subsidies affect price but, rather, would be recognizing the competitive advantage remedied by the application of CVD duties.
- The easiest remedy to resolve this issue is to treat the PRC as an ME in the AD proceeding of this case. Affording ME status to the PRC will ensure that double counting is avoided if the Department does not terminate the CVD investigation.
- Should the Department continue to use the NME surrogate methodology in the AD investigation, the CVD proceeding should either be terminated immediately or an adjustment made to account for the double remedy. All of the subsidies in this case affect the costs and expenses of the company and none have any connection to factor usage rates. The effect of all subsidies countervailed in this case is removed by using the SV methodology in the calculation of NV. Those benefits should be added back to NV by offsetting the AD margin by the CVD rate for these subsidies.

The Huayuan Companies' and M&M's Arguments

- The Department should refrain from imposing both AD and CVD duties in this investigation as long as it insists on employing the NME AD methodology. Both the CIT[185] and WTO have found that imposing CVD duties while simultaneously employing the NME antidumping methodology results in a double remedy that is contrary to US law and to the U.S. obligations under the SCM Agreement.
- In the current AD case, the export price is being compared to the presumptively subsidy-free constructed NV based on FOP in a surrogate country. As such, any subsidy received by

[182] See KASR from the PRC - AD IDM at Comment 1.
[183] See GPX ("While subsidies may affect allocation of resources in some instances, there is no reason to presume that price effects are therefore unlikely in most cases").
[184] See GPX at 1243.
[185] "the NME AD statute was designed to remedy the inability to apply the CVD law to NME countries, so that subsidization of a foreign producer or exporter in an NME country was addressed through the NME AD methodology." See GPX, 645 F.2d at 1241.

producers in the PRC has already been eliminated in the AD investigation, and is reflected in the AD margin.

- The concurrent imposition of CVD duties and AD duties calculated using the NME AD methodology leads to a double remedy. As a result, the CIT found it unreasonable to apply CVD law to a country while also employing an NME AD methodology.[186] The WTO Appellate Body reached the same conclusion as the CIT when it found that the offsetting of the same unfair practice twice by the concurrent imposition of AD duties using NME methodology CVD duties is inconsistent the SCM Agreement.[187]
- Should the Department continue to apply CVD laws to an NME country, it must exercise its discretion and refrain from imposing CVD duties in this investigation unless it can provide an explanation as to how it can apply a CVD remedy without double counting.

Petitioners' Rebuttal Arguments

- The Department has considered these identical arguments in previous investigations where subject merchandise from the PRC was found to be both dumped and subsidized.[188]
- In Wood Flooring from the PRC, the Department concluded that the concurrent application of its CVD and AD methodology with respect to NME countries does not result in a double remedy.[189]

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 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.[190] 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 position is consistent with the Department's decisions in recent PRC CVD cases.[191]

Regarding the arguments concerning the WTO AB Decision, we note that the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been

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[186] See GPX II.

[187] "The amount of a countervailing duty cannot be 'appropriate' in situations where that duty represents the full amount of the subsidy and where anti-dumping duties, calculated at least to some extent on the basis of the same subsidization, are imposed concurrently to remove the same injury to the domestic industry. Dumping margins calculated based on an NME methodology are, for the reasons explained above, likely to include some component that is attributable to subsidization." See WTO AB Decision at 216.

[188] See, e.g., Aluminum Extrusions from the PRC IDM at Comment 3; see also Drill Pipe from the PRC IDM at Comment 3; and see also Certain Coated Paper Suitable from the PRC IDM at Comment 3.

[189] See Wood Flooring from the PRC IDM at 30 to 35.

[190] See GPX, 645 F.2d at 1234.

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

adopted pursuant to the specified statutory scheme" established in the URAA.[192] 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.[193] 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.[194] 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.

Case-Specific Issues

Comment 5: Whether There is a Basis for Countervailing Inputs Purchased from Input Suppliers

GOC's Arguments

- There is no record evidence to support the Department's treatment of private input suppliers as government authorities and, in doing so the Department has deviated from prior practice.
- The GOC has provided a wealth of information regarding ownership of the respondents' input suppliers which overwhelmingly supports the conclusion that the input suppliers are private and therefore not government authorities. The Department has previously accepted such information as sufficient to determine that input suppliers are not government authorities.[195]
- The GOC and respondents have submitted substantial evidence, including the Company Law, that established the legal basis for companies operating in the PRC and there is nothing which indicates that the involvement of a CCP official in a private company would cause the company to become a government authority as the cost of deviating from market principles.
- The Department has not demonstrated on this record that the CCP information is relevant to the issue of whether private input suppliers can be treated as government authorities.
- The U.S. State Department report cited by the Department in the Preliminary Determination does not mention or suggest that the CCP has control over private suppliers or that private suppliers have the authority to act as government authorities but, instead, speaks only generally about the role of the CCP in China. The Department incorrectly interprets the U.S. Department of State report cited in the Preliminary Determination to suggest that a CCP official as owner, manager or board member of a company would cause a company to deviate from market principles to act as an authority or public body; there is no evidence on the record to support this conclusion.
- The GOC holds that the requested CCP information continues to be irrelevant. To the extent that the Department continues to find that the CCP information is relevant, the Department's reliance on the U.S. Department of State report while disregarding other record evidence, including the PRC's Company Law, is wrong. There is no evidence on the record of this investigation which demonstrates that the input suppliers in question acted as government authorities and, in fact, significant record evidence demonstrates that the input suppliers in question do not act as government authorities.

[192] See Corus I at 1347-49; accord Corus II at 1375; and NSK at 1375.
[193] See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).
[194] See 19 U.S.C. § 3533(g).
[195] See Wire Decking from the PRC IDM at Comments 2-4.

The Bao Zhang Companies' Arguments

- Provision of wire rod from privately-held trading companies should not be countervailed.
- The statute and court precedent require the Department to find both financial contribution and benefit when determining whether a subsidy was received.[196]
- The Department must demonstrate how the trading companies that supplied the Bao Zhang Companies' wire rod inputs during the POI provided a financial contribution and benefit to Bao Zhang through the sale of wire rod.
- To determine whether the trading companies in question provided a financial contribution and benefit to the Bao Zhang Companies, the Department must find the trading companies to be authorities within the meaning of the statute or that they were otherwise entrusted or directed by the government to provide a financial contribution.[197]
- Absent a finding that the trading companies in question received both a financial contribution and benefit from their purchases of wire rod, the Department cannot conduct an analysis of upstream subsidies.
- The Department has made no findings that the trading companies from which the Bao Zhang Companies purchased wire rod received financial contributions or benefits by virtue of their purchases of wire rod from state-owned producers.
    - If no financial contribution is established, it does not matter whether the wire rod prices paid by the Bao Zhang Companies are less than the benchmark prices.
    - As no financial contribution has been established by the Department, there is no basis for which to countervail the Bao Zhang Companies' wire rod purchases.

Petitioners' Rebuttal Arguments

- The Bao Zhang Companies' argument that the Department should not impose a countervailable remedy on wire rod purchases made from private trading companies is without merit.
- The Department asked the GOC and respondents to work together to identify the producers that supplied the trading companies with wire rod that was then sold to the Bao Zhang Companies. The GOC's failure to provide the wire rod suppliers' ownership information, as requested by the Department, resulted in the Department's proper application of AFA and subsequent finding that all Chinese wire rod producers supplying the Bao Zhang Companies were government authorities.

Department's Position

The Department has continued to countervail the Bao Zhang Companies' purchases of wire rod and zinc for this final determination. As an initial matter, the Department must make its determinations on a case-by-case basis, based on the facts and evidence on the record. While the GOC provided certain information regarding ownership of the input producers, it did not provide CCP-related information relevant to these companies. In the case of Wire Decking from the PRC, cited to by the GOC, the Department, based on the information of that case record, was unable to determine whether certain input producers operated as GOC authorities during the POI. This was based, in part, on the GOC's explanation that these entities have no affiliation with or relationship to the GOC or the Chinese local government.[198] In that case, while there was

[196] See 19 U.S.C. 1677(5), see also Delverde at 1365.
[197] See 19 U.S.C. 1677(5)
[198] See Wire Decking from the PRC IDM at Comment 2.

evidence of individual owners or managers of a company being CCP members, the record in that investigation lacked the information necessary that would allow the Department to conclude that the relationships between individual owners and the GOC or CCP evinced government control.[199] However, we stated in that case that we would continue to examine this issue in future CVD proceedings.[200] Therefore, in subsequent CVD investigations, including the instant case, the Department has requested information regarding this issue. Thus, the Department has requested the GOC information about the general role of the CCP, as well as information concerning the role of the CCP and its officials in the ownership and management of the relevant input producers.

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, the GOC refused to provide this necessary information. We note that the Department has requested this CCP-related information from the GOC in this and many other proceedings.[201] 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,[202] 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 on the record of this investigation.[203] By not providing any timely responses, and providing no reasonable alternatives, the GOC has impeded the Department's ability to fully examine and evaluate the role of the CCP in the economy, as well as its role in the ownership and management of the relevant input producers.

In addition, we disagree with the GOC and the Bao Zhang Companies that the Department is required to establish that the trading company itself provides a financial contribution in this situation. Under section 771(5)(B) of the Act, a subsidy is deemed to exist when there is a financial contribution "to a person" and a "benefit is thereby conferred."
." Consistent with case precedent,[204] we find that the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase wire rod, while all or some portion of the benefit is conferred on the respondent galvanized wire producers through their

[199] "{W}hether the fact that certain individual owners or managers of a company are officials of the GOC or CPC, CPPCC, or are part of various legislative/consultative bodies is relevant to an analysis of government control over the company. On this matter, we disagree with Petitioners that there is sufficient evidence on the record of this investigation to reach such a conclusion with respect to Producer A. We find that the record lacks the necessary broader information regarding, e.g., the role that these organizations play in the PRC in forming and implementing such things as government industrial policies, or Chinese Communist Party (CCP) initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that this record information provides an insufficient basis on which to conclude that the relationships between individual owners and the GOC or CCP evince government control over Producer A." Id.
[200] Id.
[201] Id.; see also Certain Coated Paper from the PRC.
[202] See Seamless Pipe from the PRC; see also Certain Coated Paper from the PRC.
[203] See Additional Documents for Preliminary Determination at Attachment 2; see also Seamless Pipe from the PRC IDM at Comment 7.
[204] See Citric Acid from the PRC – Administrative Review IDM at Comment 3; see also KASR from the PRC IDM at Comment 6; see also CWP from the PRC IDM at 10 and Comment 7; LWRP from the PRC IDM at 8; and see also OTR Tires from the PRC IDM at 10 and Comment D.4.

purchases of wire rod from the trading company suppliers. Under these facts, the Department is not required to make separate finding that the trading companies provided a financial contribution to the galvanized wire producers.

With regard to the GOC's argument that the Department has not demonstrated on this record that the CCP information is relevant to the issue of whether private input suppliers can be treated as government authorities, the Department finds that this argument is misplaced. The fact that the input was produced and provided by an "authority" results in a government financial contribution from the transaction. That element of government involvement cannot be cleansed by the intermediate supplier, regardless of the public or private status of the supplier. Generally, the Department notes that, assuming the record establishes that the GOC does not control the input market in question, input purchases that were produced by a private producer would not be countervailed, regardless of whether the intermediate supplier was a public or private producer.

Comment 6: Whether the Department Improperly Rejected the GOC's September 15, 2011, Submission and Whether the Application of AFA is Warranted

GOC's Arguments

- It was unreasonable and unlawful for the Department to reject the GOC's September 15, 2011, submission as untimely new factual information as it was properly filed in accordance with 19 CFR 351.301(b)(1) and (c)(1), and imposed no undue burden on the Department.
- There is no law or regulation that prohibits an interested party from submitting a letter objecting to a decision made by the Department. The first part included "entirely appropriate" legal arguments opposing the Department's application of AFA in the Preliminary Determination. Attachment 1 of the GOC's September 15, 2011, submission consisted of information intended to rebut, correct and clarify new factual information submitted by the Department and Petitioners at or around the time of the Preliminary Determination.
- The September 15, 2011, submission was not submitted on the August 22, 2011, deadline, but was still submitted in plenty of time for it to be considered in the final determination.
- The September 15, 2011, submission was improperly rejected as untimely because the Department made no any effort to determine whether it was submitted within a reasonable period. The submission was submitted within a reasonable period of time and did not impose any undue burden on the Department.
- The GOC has made its best effort to comply with the Department's information requests even though it continues to believe that the Department has not shown this information to be relevant to the question of whether wire rod and zinc input producers are government authorities.
- The U.S. Court of Appeals for the Federal Circuit has made clear that, to apply adverse inferences under 19 U.S.C. 1677e(b), the Department "must examine respondent's actions and assess the extent of respondent's abilities, efforts and cooperation in responding to Commerce's requests for information."[205] In this case, the Department violated this

[205] See Nippon Steel, 337 F.3d at 1382.

requirement by failing to meaningfully examine the GOC's ability to produce the requested information or the efforts it has made to cooperate.

- The Department applied a *per se* rule in rejecting the GOC's September 15, 2011, submission. This rejection is inconsistent with U.S. obligations under article 12.7 of the WTO Agreement on Subsidies and Countervailing Measures and Annex II of the Antidumping Agreement.
- The factual information on the record supports the conclusion that the input producers are not government authorities and therefore the Department should not be relying solely on the GOC's alleged "failure" to supply input producer information as the basis for an AFA determination. Instead, the Department should consider whether the absence of such information really calls into question the data showing that the suppliers are private.
- The Department does not have *carte blanche* to punish the GOC and respondents by applying AFA when the GOC has made its best effort to comply with the Department's information and is unable to obtain the requested information.

The Bao Zhang Companies' Arguments

- The Department applied AFA to input suppliers in the Preliminary Determination based on responses from the GOC. The Department has a long-standing practice of permitting parties (generally) an opportunity to cure deficiencies following a preliminary determination and was obligated to allow the GOC an additional opportunity after the Preliminary Determination to cure the deficiencies in their submissions.[206]
- The Department's improper rejection of the GOC's September 15, 2011, submission unnecessarily penalized the GOC and the Bao Zhang Companies by denying the GOC an opportunity to cure deficiencies regarding the Bao Zhang Companies' input suppliers. This rejection disregards concerns of comity, equity and fairness and is contrary to section 782(d) of the Act and prior practice.[207]
- The Department allowed the record to stay open after the Preliminary Determination and issued supplemental questionnaires that included questions concerning the provision of wire rod for LTAR. Despite accepting responses to these questions, the Department specifically stated that the GOC could not submit relevant information related to submissions made prior to the Preliminary Determination.
- The CIT has found in various cases that the probative value of making an accurate final determination outweighs the prejudicial effect of not providing the information to the Department in a timely manner.[208]
- In Antidumping Measures on Certain Hot-Rolled Steel Products from Japan, the WTO found that the Department's rejection of untimely factual information and application of facts available was inconsistent with the United States' obligations under Article 6.8 of the Antidumping Agreement because the Department made no effort to determine whether the information was nevertheless submitted within a reasonable period of time.
- The Department's refusal to allow the GOC to cure the perceived defects of their earlier submissions that resulted in the application of adverse facts available is impermissible and not in accordance with law.

[206] See, e.g., OCTG from the PRC.
[207] See Malleable Pipe from the PRC, 71 FR at 30753; see also Agro Dutch, 31(CIT) at 2055.
[208] See, e.g., Grobest; see also China Kingdom, 31 C.I.T. at 1350.

- The Department should re-analyze the government authority determination with regard to the Bao Zhang Companies' suppliers, taking into consideration the GOC's September 15, 2011, submission.

Petitioners' Rebuttal Arguments

- The Department previously requested this information and the GOC refused to provide it. As the GOC sought to submit the information after the established deadline, the Department acted properly and within its discretion in declining to request any additional information from the GOC after the deadline for submitting such information passed and rejecting the untimely new factual information submission.

Department's Position

The Department has carefully considered the evidence on the record, as well as the arguments related to the rejection of the GOC's September 15, 2011, submission and finds that the Department acted within its authority in rejecting the submission. Moreover, the Department has determined not to take into consideration the GOC's September 15, 2011, submission in this final determination.

The GOC argues that the rejection was unreasonable and unlawful because the submission was properly filed in accordance with 19 CFR 351.301(b)(1) and (c)(1).[209] As the Department explained in its September 19, 2011, rejection letter, the GOC's September 15, 2011, submission was filed with the Department in accordance with 19 CFR 351.301(c)(1), and, as such, the Department evaluated the GOC's submission based on the criteria established in this regulation. Specifically, this regulation provides that an interested party may submit factual information to rebut, clarify or correct factual information submitted by any other interested party no later than 10 days after the date such factual information is served on the interested party.

In analyzing the GOC's September 15, 2011, submission, the GOC specifically stated that the submission was intended to rebut, correct or clarify information placed on the record by the Department and Petitioners. Even assuming this was the GOC's intention, the U.S. Department of State report that the GOC argues its September 15, 2011, submission was intended to rebut, clarify or correct was released to parties on September 1, 2011; the 10-day rebuttal period for that release ended on September 12, 2011 (the first business day after the expiration of the 10-day period). Therefore, even if the Department had found the information to, in fact, rebut, clarify or correct, it would have been untimely filed in accordance with 19 CFR 351.301(c)(1).

Furthermore, analysis of the submission led the Department to determine that the submission, instead of timely rebutting, clarifying or correcting information on the record, was an attempt on behalf of the GOC to provide information the Department requested prior to the Preliminary Determination that the GOC did not provide. Specifically, the information contained in the September 15, 2011, submission related to information requested by the Department in its

[209] 19 CFR 351.301(b)(1) states that, for a final determination in a CVD investigation, factual information is due no later than "seven days before the date on which the verification of any person is scheduled to commence. . ." while 19 CFR 351.301(c)(1) establishes that any interested party may submit factual information to rebut, clarify or correct factual information submitted by any other interested party at any time up to 10 days after such factual information is served on the interested party.

July 28, 2011, supplemental questionnaire concerning the role of GOC and CCP officials in the ownership and management of the wire rod and zinc input producers as well as the role of GOC and CCP officials in the ownership, management or board of directors of any companies owning the input producers. The Department has previously determined that this information is relevant to our analysis of whether input producers are government authorities and has included requests for this information in recent CVD investigations for products from the PRC. Based on a request by the GOC for an extension to the supplemental questionnaire response, the Department required part of the response to be filed by August 11, 2011 and the remainder by August 22, 2011; both filings included requests for this CCP information and were due prior to the Preliminary Determination. Therefore, the GOC's argument that the September 15, 2011, submission should have been accepted and was timely filed pursuant to 19 CFR 351.301(b)(1) is incorrect. Having clearly stated in our September 19, 2011, rejection letter, the GOC's September 15, 2011, submission was an attempt on the part of the GOC to provide questionnaire responses; any attempt to submit this information under 19 CFR 351.301(b)(1) would also have warranted our rejection of the submission.

On August 11, 2011, the GOC filed its partial response, which included answers to three CCP-related questions asking the GOC to identify whether any GOC or CCP officials were involved in the ownership or management of the companies which produced the wire rod and zinc inputs purchased by the respondent companies during the POI. In two of those questions, which related to specific wire rod input producers, the GOC stated "{t}he GOC has checked the documents concerning this company that were filed with the SAIC, and none of them show the owners, executive director or managers to be GOC officials or CCP officials during the POI."[210] The response to these questions is a clear indication that the GOC was able to identify a data source that had information regarding whether owners, managers, or board of directors were GOC or CCP officials. In response to another question regarding zinc input producers' owners, board of directors and managers, the GOC stated "{t}he GOC has not been able to collect such requested information concerning the owner companies of the producers." Subsequently, on August 22, 2011, the GOC filed its response to the remaining supplemental questions. But, instead of actually responding to the questions regarding GOC and CCP officials' involvement in the input suppliers, the GOC stated its view that the information requested by the Department is irrelevant and, even if it were relevant, the CCP is not the government, and as such, the GOC does not have access to the requested information. Furthermore, the GOC requested that "the Department terminate further investigation in this request."[211] Thus, while the August 11, 2011, supplemental questionnaire response indicates that the GOC could obtain responsive information, the GOC decided by the time of the August 22, 2011, supplemental response that it could not obtain the information and also decided that the requested information was irrelevant to the investigation on the provision of input materials for LTAR.

Based on the fact that the GOC did not provide the information necessary to complete our analysis of whether the input producers were government authorities, the Department, in the Preliminary Determination, found that the GOC had impeded the investigation and had not cooperated to the best of its ability. As a result, we determined, based on AFA, that the producers of wire rod purchased by the respondent companies during the POI were government

[210] See, e.g., GOC SQR – Part 1 at I-13.
[211] See GOC SQR – Part 2 at I-7.

authorities, and thus there was a financial contribution on the part of the GOC. However, the lack of the GOC's cooperation did not result in total AFA for this program; indeed, we relied on the regulations for selecting an appropriate benchmark and we used the respondent companies' own purchase information to calculate the benefit.

In a number of completed CVD investigations, the GOC has not provided the requested CCP-related information on the ownership and management of input producers, and the Department applied AFA in finding that the input producers in those investigations were government authorities.[212] As discussed above, the GOC was able to provide some of the information necessary to respond to our questions. However, the GOC subsequently declined to provide additional information and informed the Department that it viewed such information to be irrelevant and stated that the Department "terminate further investigation in this request." The cover letter of GOC Supplemental Questionnaire stated

> "{i}f the Department does not receive either the requested information or a written extension request before the established deadline, we may conclude that the government has decided not to cooperate in this proceeding. The Department will not accept any requested information submitted after the deadline. As required by section 351.302(d) of our regulations, we will reject such submissions as untimely. Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act."[213]

The Department interpreted the GOC's failure to provide all the information required and its statement that the information requested by the Department was irrelevant to mean that the GOC would not provide or attempt to provide the information in this investigation and, as stated in the questionnaire, determined it was appropriate to apply AFA.

Once the AFA decision had been reached in the Preliminary Determination, it was appropriate to reject the GOC's and other parties' submissions attempting provide information which had already been requested. This conclusion stems from evaluating the GOC's August 11 and August 22, 2011, questionnaire responses in light of section 782(c) of the Act. Section 782(c)(1) of the Act states the Department will consider the ability of an interested party to submit requested information if the party promptly notifies the Department that it is unable to provide certain information.[214] As noted above, the cover letter to the questionnaire explicitly instructed the GOC to inform the Department if it was unable to respond to any questions and also advised the GOC on the consequences of not responding or informing the Department that it could not respond. At no time did the GOC ever notify the Department, as required by section 782(c) of

[212] See Seamless Pipe from the PRC; see also Certain Coated Paper from the PRC.
[213] See GOC Supplemental Questionnaire at 2.
[214] Notification by interested party. 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 or 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.

the Act, that it was having difficulty providing the requested information. Even putting aside that the GOC should have promptly notified us that it was having difficulty, the GOC, in its August 11, 2011, response did not explicitly state it was having problems collecting the information; the GOC only stated that it had not been able to collect it. In its August 22, 2011, response, the GOC informed the Department it could not obtain the information. At no time prior to or on August 22, 2011, did the GOC notify the Department that it was experiencing difficulties in providing the requested information, nor did it attempt to explain or suggest alternate forms of providing the information, as required by section 782(c) of the Act. The GOC made no statements to the Department prior to the Preliminary Determination that, in lieu of obtaining the specific information we requested, it was attempting to obtain information through other sources. Instead, in its August 22, 2011, response, the GOC only stated it was unable to obtain this information and that it was not relevant to the investigation. While the GOC responded in its August 22, 2011 submission that the information was irrelevant and unobtainable, the GOC's responses to certain CCP-related questions on August 11, 2011, indicate that the GOC was able to obtain this type of information, and the GOC provided it to the Department without protest. As such, the GOC's August 22, 2011, decision to regard the information as irrelevant and not make any attempt to provide it demonstrates that the GOC did not cooperate to the best of its ability.

The AD/CVD Preamble establishes that, with regard to section 782(d) of the Act, the Department will not necessarily repeat a precise or direct question that the respondent has not answered and will determine, on a case-by-case basis, if it should inform a party of a deficiency based on the Department's request and the party's response.[215] An analysis of the GOC's responses in its August 11 and August 22, 2011 submissions, when viewed in conjunction with the requirements of section 782(c) of the Act and the instructions clearly articulated in the Department's questionnaire, show that the GOC was afforded sufficient opportunities to provide the requested CCP-related information, and, therefore, the Department was under no obligation to provide additional opportunities for the GOC to provide this information after the Preliminary Determination. This situation contrasts with the Department's questions regarding electricity and the Zhabei district energy saving grant. In those cases, while the GOC did not provide all the information the first time it was requested, also did not inform the Department that the requested information was irrelevant or ask that the Department terminate further requests for that information. As such, the fact pattern in those situations within this investigation led the Department to conclude that it was appropriate to repeat the questions a second time. Moreover, the GOC has not described what, how, or why its efforts to obtain this information were successful such that it was able to submit the information in its September 15, 2011 submission, but was unable to provide the information or even advise the Department of its existence, prior to the Preliminary Determination. We therefore continue to find that, in the case of establishing financial contribution, the GOC did not act to the best of its ability and, as such, no statements

[215] "The Department's practice is to send a respondent a supplemental questionnaire where the Department needs clarification of a response or the Department seeks additional information to address questions arising out of reported information. The Department, however, will not necessarily repeat a precise or direct question that the respondent has not answered. The decision to specifically inform a party that information it submitted is deficient is a decision that can only be made on a case-by-case basis taking into consideration the Department's initial information request and the party's response to that request." See AD/CVD Preamble, 62 FR at 27333.

made by the GOC have made us reconsider our decision to apply AFA in the determination of which input producers are government authorities.

The GOC is correct in arguing that the CAFC, in Nippon Steel,[216] found that the Department "must examine the respondent's actions and assess the extent of respondent's abilities, efforts and cooperation in responding to Commerce's requests for information." As the CAFC stated in the same case, "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made; i.e., under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."[217] As the Department has detailed above, the fact that the GOC provided responses to three questions in its August 11, 2011, submission indicates that it is reasonable for the Department to find that more forthcoming responses should have been made. Moreover, the cover letter included in the Department's July 28, 2011, supplemental questionnaire clearly stated the possibility of application of AFA for failing to provide the requested information, providing more than sufficient incentive to cooperate.[218] Not only did the GOC refuse to respond, but it also made no efforts to comply with its responsibilities as established under 782(c). Taken together, the GOC's actions clearly indicate in this investigation that the GOC did not act to the best of its ability in responding to the Department's requests for information. Therefore, the Department is operating within its statutory authority by continuing to impose AFA for the purposes of this final determination.

Regarding arguments that there is no law or regulation that prohibits an interested party from submitting a letter stating its objection to an action taken by the Department, we concur. As noted above, the GOC's September 15, 2011, submission was filed under 19 CFR 351.301(c)(1) and was intended to rebut, clarify or correct information placed on the record by the Department and petitioners. While the GOC may have stated in the submission that it objected to the Department's application of AFA in the Preliminary Determination, the Department determined that the GOC's September 15, 2011, submission, including information in the cover letter, was intended to provide information which the GOC told the Department was irrelevant, and which it did not provided prior to the Preliminary Determination.[219] Based on this analysis, the Department rejected the submission as untimely.[220] The Department does note that, after the September 15, 2011, submission was rejected, the GOC filed a response to the rejection on September 26, 2011.[221] The GOC clearly explained in its September 26, 2011, letter that the purpose of the letter was to present its objections to the Department's September 19, 2011, decision to reject the September 15, 2011, submission and, as such, the Department allowed the letter to remain on the record of this investigation. Likewise, the GOC could have filed a letter objecting to the Department's use of AFA in the Preliminary Determination just as it filed its September 26, 2011, submission, so long as the letter did not also contain untimely questionnaire responses or untimely new factual information intended for rebuttal, clarification or correction,

[216] See Nippon Steel, 337 F.3d at 1382.
[217] Id.
[218] See GOC Supplemental Questionnaire at 2.
[219] See GOC Rejection Letter.
[220] Id.
[221] See GOC Response to Rejection Letter.

as was the case in the September 15, 2011, submission. Therefore, while there are no restrictions on filing letters that raise objections to a decision made by the Department, as noted in the Department's September 19, 2011, rejection letter, the GOC's September 15, 2011, submission was an attempt to provide previously-requested information rather than an attempt to file an objection, and, as such, we correctly removed it in its entirety from the record.

While the GOC has provided some information for the record of this proceeding regarding ownership of input producers, the presence of this limited information in no way excuses the GOC from fully cooperating in this proceeding. As an initial matter, the Department clearly explained that it considered this type of information to be relevant to its analysis of whether input producers are government authorities. As noted in Nippon Steel, Nippon Steel Company did not provide information requested by the Department, initially arguing that the Department did not need it and that it could not be obtained. As a result, the Department applied AFA to Nippon Steel Company, a decision that the CAFC ultimately upheld. As in Nippon Steel, it was not the GOC's role to determine what information was or was not relevant to this investigation.[222] Moreover, the fact that the GOC provided other limited information about input producers on the record cannot be viewed as somehow imposing a requirement on the Department to accept belatedly filed information simply because such information also pertained to input producers. In its responses prior to the Preliminary Determination, the GOC provided the Department with limited information regarding the ownership of the input producers. For its own reasons, the GOC subsequently declined to timely provide complete responses to the CCP-related questions. Notwithstanding the GOC's position, the limited information that the GOC decided to place on the record was not sufficient to complete a full analysis of whether the input producers at issue were government authorities.

The Department also disagrees with the Bao Zhang Companies' apparent position that the CIT rulings in Grobest and China Kingdom make clear that that the probative value of making an accurate final determination always outweighs any prejudicial effect of not providing the information in a timely manner. The Department notes that the circumstances surrounding these two cases are factually different from this investigation. In Grobest, the respondent untimely filed a separate rate certification on the record which the Department rejected.[223] The CIT noted that although the company inadvertently failed to file necessary information when it was due, the company submitted it nearly seven months prior to the preliminary results, and therefore, the Department had sufficient time to analyze the certification. In China Kingdom, the respondent discovered, almost two months prior to the preliminary results that it had inadvertently filed incorrect data and, when it attempted to remedy this mistake, the Department rejected the corrected data as untimely.[224] In that case, the CIT ruled that the Department erred in rejecting the respondent's corrected data and applying AFA because the Department did not show how a company withheld information from the Department. To the contrary, the CIT found that the respondent, upon realizing its initial mistake, attempted to remedy the record and that the company, based on its situation, should have been given the opportunity to remedy or explain its deficiency.[225]

[222] See Nippon Steel, 337 F.3d at 1377-1378.
[223] See Grobest at 44.
[224] See China Kingdom, 31 C.I.T. at 29.
[225] Id. at 34.

As an initial matter, the record of this investigation shows that the GOC did not inadvertently miss the deadline for submitting the CCP-related information. Moreover, the record also shows that the GOC did not submit incorrect CCP-related information. Rather, the GOC clearly stated that the CCP-related information was irrelevant and the Department should terminate further requests for this information and, as such, the GOC was aware that its August 22, 2011, submission was deficient. Therefore, notwithstanding the Bao Zhang Companies' arguments, the GOC's September 15, 2011, submission of this information cannot be characterized as being either an attempt to submit inadvertently omitted information prior to the preliminary determination (as was the case in Grobest) or as having been undertaken immediately after the GOC discovered it had previously provided incorrect information prior to the preliminary results (as was the case with China Kingdom). Rather, the GOC did not attempt to provide the requested information until after the Department issued a preliminary determination based on AFA. Further, this was an attempt to submit information which the GOC had deemed irrelevant and instructed that the Department should cease requesting.

Finally, notwithstanding the CIT"s decisions in Grobest and China Kingdom that there are circumstances in which the Department should accept previously omitted or incorrect information submitted prior to the preliminary results, the Department properly rejected the GOC's September 15, 2011, submission based on the time restraints in this CVD investigation. The GOC decided not to provide this necessary information until nearly four weeks after its original due date (August 22, 2011). Had this response been filed in a timely manner, it would have served as a starting point for the Department's analysis of this issue, and most likely would have resulted in the Department issuing additional supplemental requests for information to further that analysis. The GOC's decision to not submit this information prior to the Preliminary Determination hampered the Department's ability to gather and analyze all necessary information prior to verification, which began at the end of October 2011.[226] Thus, the Department properly rejected this untimely submission due to the time constraints in this CVD investigation.

Comment 7: Whether the Department Improperly Rejected the Bao Zhang Companies' September 26, 2011 Submission

The Bao Zhang Companies' Arguments

- On October 27, 2011, the Department rejected the Bao Zhang Companies' September 26 new factual information submission, stating that the submission was an attempt to provide information that the Department had previously requested of the GOC.
- The Department erred in rejecting Bao Zhang Companies' September 26 new factual information submission because: (1) the submission, in fact, contained new factual information that had not previously been entered onto the record of the investigation; (2) the Department never requested this specific information from the Bao Zhang Companies and

[226] The Department notes that the CCP-related information requested in the GOC Supplemental Questionnaire (issued by the Department on July 28, 2011) was originally due August 8, 2011 (the deadline for these CCP-related questions was eventually extended to August 22, 2011). Thus, if the GOC provided the information by the original due date, the Department would have had time to analyze this information and gather additional information as needed before verification.

therefore it was not untimely; (3) the information was publicly available; and (4) was submitted well before the deadline for submitting new factual information.

- Nowhere in the statute, regulations or prior practice is there any prohibition that disallows one party from providing information that was requested of other parties. Such a rule would lead to rampant uncertainty about what constitutes new information.
- In comparison, on October 31, 2011, Petitioners submitted new factual information containing CCP and the "seven entity" membership, along with supporting documentation. While the Bao Zhang Companies' September 26, 2011 new factual information submission was rejected, Petitioners' October 31, 2011 new factual information submission was accepted – this position cannot be reconciled. SKF states that "it is well established that an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently."
- Denying the Bao Zhang Companies the right to submit timely factual information in support of the companies' claims that their wire rod purchases are not countervailable is completely contrary to the intent and purpose of the countervailing duty law and patently unfair.
- The Department has a mandate to make a final determination based on the most complete and best information available.[227]
- The Bao Zhang Companies cannot stand by while the Department imposes penalties on Bao Zhang for the GOC's refusal or perceived refusal, to provide information that Bao Zhang readily has access to. Lifestyle explains that parties must receive a full and fair opportunity to respond.[228]
- The Department should consider the information submitted by the Bao Zhang Companies on September 26, 2011 and find that at least one of the companies that produced the wire rod the Bao Zhang Companies purchased to be a private entity rather than a government authority.

Petitioners' Rebuttal Arguments

- The Department acted within its discretion and consistent with its practice in rejecting the Bao Zhang Companies' untimely submission of information that the Department had previously requested from the GOC and which the GOC failed to provide.

Department's Position

We continue to find that the Department properly rejected Bao Zhang Companies' untimely submission of information. In conducting a CVD investigation, the Department must require foreign governments to provide certain information distinct from what respondents are required to provide; for example, it is only the government that can provide complete information regarding a program and whether it is specific in accordance with section 771(5A) of the Act. This is evidenced by the fact that the initial questionnaire issued was divided into two sections: one for the GOC; and one for the respondent companies.[229] Moreover, as part of the initial questionnaire in this investigation, we instructed the GOC and respondents to coordinate to ensure that all information was provided on a timely basis.[230]

[227] See Grobest at 59-60.
[228] See Lifestyle at 1302.
[229] See Initial Questionnaire.
[230] Id.

Based on the responses provided in its July 7, 2011, questionnaire response, the Department issued a supplemental questionnaire to the GOC on July 28, 2011, which included a request for information regarding the CCP. On August 22, 2011, the GOC stated that such information was irrelevant and added that it was unable to provide such information. As noted in recent CVD investigations[231] and the Preliminary Determination of the instant investigation, the Department considers "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."[232] As such, information regarding the CCP was relevant to an analysis of whether the input producers were government authorities; and therefore, necessary to evaluating whether a financial contribution existed. As noted above, the GOC and respondent companies were instructed to coordinate to ensure that all information was provided on a timely basis. The Bao Zhang Companies received copies of the GOC's July 28, 2011, supplemental questionnaire and August 22, 2011, questionnaire response. Therefore, the Bao Zhang Companies were aware that the Department had requested certain CCP-related information from the GOC and that the GOC had not provided responses to those CCP-related questions. As such, the Bao Zhang Companies could have provided whatever CCP-related information it had to the GOC, or it could have ensured that the GOC was aware of this information.

As discussed in Comment 6, above, the GOC stated in its August 22, 2011, supplemental questionnaire response that it could not obtain the requested CCP-related information. However, by accessing and providing certain limited CCP-related information in its August 11, 2011, submission, it is apparent that the GOC had access to the type of information the Department was requesting, but subsequently decided not to provide it, thereby not cooperating to the best of its ability in providing this information. Additionally, the GOC did not meet the requirements of section 782(c) of the Act, nor the explicit instructions in the questionnaire. As such, in the Preliminary Determination, the Department applied AFA and found all wire rod and zinc producers to be government authorities, thus establishing financial contribution. In response to the Department's application of AFA in the Preliminary Determination, the GOC, on September 15, 2011 attempted to file untimely responses to the questions it stated on August 22, 2011 were unobtainable. As described above, the Department rejected the GOC's September 15, 2011, submission.

As explained in the October 27, 2011, rejection letter to the Bao Zhang Companies, the Department continues to find information in the Bao Zhang Companies' September 26, 2011, submission to be an attempt to provide information the Department requested the GOC provide in its August 22, 2011, questionnaire response. While nothing prohibits a party from providing information requested of another, this does not mean that the Department must accept another party's untimely submission of information (i.e., the Bao Zhang Companies' submission) when it is an obvious attempt to circumvent the rejection of a previous untimely submission (i.e., the GOC's submission). In such instances, the Department considers this second submission to be the same as the first, and has the obligation to rejection it again.

The Bao Zhang Companies contend that they have the right to "submit timely factual information in support of the company's claims that their wire rod producers are not

[231] See, e.g., Seamless Pipe from the PRC; see also Certain Coated Paper from the PRC.
[232] See Preliminary Determination, 76 FR at 55035.

countervailable" and the denial of that right runs counter to CVD law. Even if the September 26, 2011, submission was not an attempt to submit the information the GOC attempted to place on the record on September 15, 2011, 19 CFR 351.301(c) clearly limits the time in which a company can provide factual information for the purposes of rebuttal, clarification or correction. Regardless of whether this submission was an attempt to clarify the GOC's submission or an attempt to provide new factual information rebutting the Preliminary Determination, this submission was filed more than the allotted 10 days pursuant to 19 CFR 351.301(c)(1) (10 days would have been September 12, 2011, which was 14 days before their September 26 submission) and was therefore untimely.[233] As such, the Bao Zhang Companies' contention that their submission contained timely filed new factual information is inaccurate. Therefore, it was appropriate for the Department to reject the submission and we have not taken it into consideration in this final determination.

In arguing that their September 26, 2011, submission should be considered in this final determination, the Bao Zhang Companies contend that Lifestyle found that "parties must receive a full and fair opportunity to respond." However, the Department finds that the CIT's determination in Lifestyle[234] is not applicable to this investigation. In Lifestyle, the CIT stated a party may seek judicial review if an issue had not been addressed by the Department until the final decision, since the party would not have had a fair opportunity to raise the issue. In this case, the Bao Zhang Companies have been able to submit a case brief presenting their arguments and, as such, have received a full and fair opportunity to raise their concerns about the Department's rejection of their September 26, 2011, submission.

Further, the Bao Zhang Companies argue that the Department unfairly accepted Petitioners' October 31, 2011, factual submission while rejecting theirs. The Department notes that Petitioners made two factual information submissions, on September 14 and October 14, 2011. On October 27, 2011, the Department issued a letter to Petitioners rejecting these two submissions, as portions of these submissions contained untimely information. On October 31, 2011, the Petitioners filed a new submission containing information from these previous submissions the Department had not deemed untimely. As such, the Bao Zhang Companies' implication that the Department decided to simply reject their submission while accepting the Petitioners submission is inaccurate. The Department used the same criteria in evaluating the Petitioners' submissions as it did in evaluating the Bao Zhang Companies' submission. Based on this analysis, the Department determined whether the information contained in these submissions was timely filed. Finally, we note that the Department did accept a timely filed submission of factual information from the Bao Zhang Companies regarding the benchmark to use in calculated the benefit from the provision of wire rod for LTAR. Because we had not previously requested the information, and because it otherwise met the timeliness requirements in the regulations, we have accepted it and have considered it in our analysis of the

[233] 10 days after the publication of the Preliminary Determination was September 16, 2011.

[234] "To exhaust administrative remedies, normally a party usually must submit a case brief presenting all arguments that continue in its view to be relevant to the U.S. Department of Commerce's final determination or final results. 19 C.F.R. § 351.309(c)(2); 28 U.S.C.S. § 2637(d). A party, however, may seek judicial review of an issue that it did not brief at the administrative level if Commerce did not address the issue until its final decision, because in such a circumstance the party would not have had a full and fair opportunity to raise the issue at the administrative level." See Lifestyle, 768 F. Supp. 2d at 1302.

appropriate benchmark to apply to the Bao Zhang Companies wire rod purchases. See the next comment for a further discussion of the wire rod benchmark.

Comment 8: Whether the Department Should Revise Its Benchmark for Wire Rod

The Bao Zhang Companies' Arguments

- In accordance with 19 CFR 351.511(a)(2)(ii), the Department's primary goal in determining an appropriate benchmark price is to identify a benchmark that would actually be available to purchasers in the PRC and that, secondarily, the Department may average multiple benchmark prices but only if averaging makes sense and is "practicable."
- The goal is not to find a world average price, but rather to seek a wire rod price from a specific market that would have been available to the Bao Zhang Companies during the POI.
- In the Preliminary Determination, the Department averaged the two available wire rod world market prices to obtain the monthly wire rod benchmark price but the Department's regulations do not require the Department to average world market prices to obtain a benchmark price.
- There are currently four world market wire rod prices on the record of the proceeding: Japan, Latin America, the Black Sea and Turkey.
- All sources on the record represent world market prices and there is no evidence that prices from one region or country are more reliable or specific than the others.
- The four world market wire rod prices are average monthly prices from a specific country or region that the Bao Zhang Companies could have actually obtained in the POI.
- Because the average of the four world market prices does not result in a price that would have been obtained by the companies, they are a constructed price that, by its very nature, is not obtainable from any single source.
- The average world market price calculated by the Department in the Preliminary Determination is not a commercially available price and is, therefore, in violation of the express regulatory requirement that any world benchmark price selected ". . . be available to the purchaser in the country in question."
- The Department should, instead of calculating a monthly average of the four world market prices on the record for wire rod, select the lowest monthly price among the four world market prices on the record.
- Selecting the lowest price on record for each month is the only way to determine whether the Bao Zhang Companies did purchase wire rod for less than adequate remuneration.
- Were the Department to select only a single country or region from the set of four world market prices on the record, the Department would be unreasonably inflating the Bao Zhang Companies' benefit.
- Alternatively, if the Department were to continue its practice of averaging world market prices, it should average the monthly prices for all four of the countries/regions currently on the record of this investigation.

Petitioners' Rebuttal Arguments

- The GOC failed to submit information regarding the Chinese wire rod industry and, as a result, the Department found that Chinese wire rod prices are distorted by the GOC's involvement in the market. As such, the Department was required to use world market prices to derive an appropriate benchmark.

- The Department properly selected "reliable and representative" pricing data in the Preliminary Determination and it is therefore not appropriate for the Department to select the lowest available prices.

Department's Position
As the benchmark, the Department is using a simple-average of the four world market prices on record to determine the monthly wire rod benchmark prices. As discussed in the Preliminary Determination, there are no usable Chinese wire rod market prices available and therefore, pursuant to our regulations, the Department moves to the next tier of the regulations, which are world market prices.[235]

The Bao Zhang Companies' arguments that the regulations do not require the Department to average multiple world market prices, and that the Department should instead select the lowest single monthly price from across all of the sources are incorrect. The Department's regulation, 19 CFR 351.511(a)(2)(ii), states the following:

> 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. (emphasis added)

The regulation is clear that the Department will average world market prices when multiple prices are available and they are comparable. Regarding the four world market prices, the Department has evaluated the Turkey and Latin America SBB prices that the Bao Zhang Companies placed on the record on October 21, 2011. In addition, we have reexamined the World Bank Japan prices and the SBB Black Sea prices used in the Preliminary Determination. The Japan and Black Sea prices are FOB, export prices and the Department continues to find them to be sufficiently reliable and representative. Furthermore, we find that both the SBB Turkey and Latin America prices are both FOB export prices and therefore are also sufficiently reliable and representative. Furthermore, there is no evidence on the record of this investigation that these four world market prices are not comparable to the wire rod purchased by the Bao Zhang Companies. Finally, there is no impediment to calculating an average of these four prices.

Accordingly, because all four 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 the Bao Zhang Companies, the Department, as required by the regulations, has averaged the prices from all four 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 the Bao Zhang Companies advocate.

[235] See Preliminary Determination, 76 FR at 55039.

Comment 9: Whether the Department Should Apply AFA in Selecting the Electricity Benchmark

The Bao Zhang Companies' Arguments

- In the Preliminary Determination, the Department stated that the GOC did not provide information related to the financial contribution, specificity and benefit of electricity at LTAR. Because of this missing information, the Department applied an adverse inference to the selection of an electricity benchmark in determining a benefit.
- The Department can only apply adverse inferences to information missing from the record[236] and none of the missing information is related to the possible electricity benchmark.
- The Department never requested benchmark information from the parties and therefore has no basis in which to apply an adverse inference or, for that matter, to apply the highest electricity rates in the PRC.
- The missing information only goes to the financial contribution and specificity portion of the Department's analysis, not to the benefit or the benchmark.
- The Department has made it clear in previous cases that the identification of the appropriate benchmark is never susceptible to an AFA finding, nor are benchmarks even expressly requested by the Department.
- Because the Department never sought information on electricity benchmarks, it can only apply AFA to financial contribution and specificity.
- The Department is "empowered to use adverse inferences only in 'selecting from among the facts otherwise available,' it may not do so in disregard of information of record that is not missing or otherwise deficient."[237]
- The Department should determine a facts available, not AFA, electricity benchmark. This benchmark should be an average of the peak, normal and valley rates from each province.

Petitioners' Rebuttal Arguments

- The GOC failed to provide the Department with information regarding electricity and the untimely submission of information by respondents cannot cure this deficiency.
- The Department properly applied AFA and selected the highest applicable rate as the benchmark for electricity.
- The Department's reliance on the timely submitted information from respondents to calculate a subsidy rate on the provision of electricity at LTAR was consistent with the Department's practice and conforms with the law.

Department's Position

The Department has continued to apply AFA with respect to its selected electricity benchmark for this final determination. The Bao Zhang Companies' arguments are incorrect; the information that the GOC failed to provide pertains directly to evaluating whether a benefit has been conferred. We note that 19 CFR 351.511(a)(2)(i) 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

[236] See Zhejiang.
[237] See Gerber.

adjustment in China is decided by the government."[238] Thus, the GOC's role in the electricity market rules out the use of a benchmark under 19 CFR 351.511(a)(2)(i).

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."[239] 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.[240] Moreover, while there may be certain cases where a Chinese electric provider is able to purchase electricity from another country, the Electric Power Law of China indicates that prices are uniform[241] so even if electricity is available from outside the PRC, it is not reasonable to expect that imported electricity could be priced differently than those rates established by the GOC. Therefore, 19 CFR 351.511(a)(2)(ii) is also not an option in the determination of the benefit under this program.

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 or not 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 the Bao Zhang Companies 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 of the provision of electricity for LTAR. By refusing 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 Preliminary Determination.

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

[238] See GOC Initial QR at 45.
[239] See CVD Preamble, 63 FR at 65377.
[240] Id.
[241] See GOC Initial QR at Exhibit 16.

Department requested the GOC provide the provincial electricity rate schedules, 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 this specific regulation would likely not be reasonable but, evidence the GOC placed on the record regarding electricity pricing reinforces the Department's conclusion that there are no Chinese market prices are available and 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 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, we note that 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.[242] 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 proper accordance with section 776(a) and (b) of the Act.

Although the Bao Zhang Companies contend that the Department has, in previous cases, made it clear that the identification of benchmarks is not susceptible to AFA, they have not cited to any specific Department determinations or results and, therefore, we have no basis on which to evaluate the merits of their argument. While they do cite to a CIT case which they argue requires the Department to resort to AFA only when it cannot use record evidence to, in some way, arrive at the missing information,[243] 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

[242] See, e.g., Drill Pipe from the PRC IDM at 10-12.
[243] See Zhejiang.

applying AFA. Finally, because the Department appropriately applied AFA to the selection of the electricity benchmark, it will not consider the Bao Zhang Companies' argument that the Department should calculate an averaged electricity benchmark based on facts available

Comment 10: Whether the Bao Zhang Companies' Additional Electricity Charges Should Be Included in the Final Determination

The Bao Zhang Companies' Arguments

- The Department should accept the updated electricity information included in the detailed worksheets presented at verification.
- At verification the Department stated, "{t}he chart presented by ABZ also included greater detail on electricity usage not previously provided to the Department. This information included electricity usage under the categories of "Base Charges," "Efficiency Adjustments," and "Light". As noted above, the Department stated that it would not verify the newly reported electrical usage categories but would take the information and consider whether it was appropriate to take it into consideration for the final determination."[244]
- The Department only requested peak, normal and valley consumption during the POI and did not request information on any other electricity fees or charges paid even though the translations of the electricity bills demonstrate that additional fees and charges were included in each monthly electrical statement.
- The Department has a responsibility to let the respondent know what information it needs for its analysis.[245]
- The Department did, in fact, verify these charges and fees during the process of reconciling the monthly electricity bills with the amounts the Bao Zhang Companies paid the electricity providers and what was booked into the companies' accounting records.
- Because the Bao Zhang Companies made it clear that they incurred these charges and fees but the Department made no request for additional information on the charges and fees, the Department should accept the detailed information provided at verification and include it to the calculation of the provision of electricity at LTAR.

Department's Position

The Department noted in the verification report that it would evaluate whether the additional electricity information could be used at the final determination; we have decided to include the Bao Zhang Companies' additional electricity charges. While the Department did not examine or request information concerning the nature of these charges at verification, the amounts of these charges necessarily had to be included in the worksheets needed to tie the reported electricity amounts and rates into the Bao Zhang Companies' accounting records. Thus, by tying the worksheets containing these additional charges, as well as the previously-reported charges into the Bao Zhang Companies' books and records, these minor additional charges were effectively verified.

As such, for this final determination, the Department has included these charges as part of our benefit calculations for the provision of electricity for LTAR. For a more detailed explanation of

[244] See Bao Zhang Verification Report at 24-25.
[245] See Ta Chen.

what these additional charges were and how they have been incorporated into the benefit calculations for this program, see the Final Calculation Memorandum.[246]

Comment 11: Whether the Department Should Apply the Same Electricity Benchmark to both ABZ and SBZ

The Bao Zhang Companies' Arguments

- If the Department continues to use the highest electricity rate in the PRC as the benchmark, then it should apply the same benchmark rate to both ABZ and SBZ.
- The Department did not explain in the Preliminary Determination why it applied different benchmarks to ABZ's and SBZ's benefit calculations.
- For SBZ's benefit calculation, the Department applied the rate for the subcategory "manufacture of chlor-alkali by ion exchange membrane cell electrolysis process" within the large industry category. SBZ does not produce within this category and therefore the Department's use of this rate is arbitrary and inappropriate.

Department's Position

The Department has continued to apply the same benchmarks used in the Preliminary Determination to ABZ and SBZ's benefit calculations in the final determination. Prior to the Preliminary Determination, the Bao Zhang Companies, based on the Department's requests, provided charts that reflected ABZ's and SBZ's monthly electricity charges during the POI.[247] These charts identified the electricity category under which each company was billed; the electricity category is necessary to establish the per unit electricity consumption rate that the company is charged. The Bao Zhang Companies reported that ABZ was charged for electricity as a "Big Industry" enterprise, while SBZ was considered "Industry, Commerce, Other." As a result, in the Preliminary Determination, the Department explained it was selecting the highest rates in the PRC for the type of user (e.g., "Big Industry" for ABZ and "Industry, Commerce, Other" for SBZ) for the appropriate range (i.e., peak, normal, valley), as provided by the GOC. This practice is consistent with other PRC CVD investigations.[248]

After the Preliminary Determination, no party placed any factual information on the record that demonstrated that different benchmarks should have been used in ABZ and SBZ's benefit calculations. Additionally, the Bao Zhang Companies did not provide corrections to the electricity information they provided on August 9, 2011 which would indicate they mistakenly reported either of the electricity categories to which ABZ and SBZ were subject. Finally, in the process of reviewing the record information as well as conducting verification of the reported electricity charges, the Department found no reason to question the reported categories. As such, for the purposes of this final determination, the Department finds that we will continue to apply different electricity benchmarks to ABZ and SBZ in the provision of electricity for LTAR benefit calculation.

The Department disagrees with the Bao Zhang Companies' statement that the Department selected and applied the electricity subcategory "manufacture of chlor-alkali by ion exchange

[246] See Final Calculation Memorandum.
[247] See BZ SQR – Part 1 at Exhibit CVD1-14.
[248] See, e.g., Drill Pipe From the PRC IDM at 10-12.

membrane cell electrolysis process" to SBZ's electricity benefit calculation. The Department, in selecting the benchmarks, selected only general industrial categories in order to avoid the application in the benefit calculations of industry-specific subcategories that may not provide a fair analysis. Upon review of the calculations issued with the Preliminary Determination, the Department finds that it selected, as the SBZ benchmark, the general rates under the category "Normal Industry and Commerce." The Bao Zhang Companies' argument that the Department selected a subcategory for the production of chlor-alkali appears to be based on the fact that, in the formatting of the GOC's English translation of that subcategory title, the "Large Scale Industry" line item spills over into the "Normal Industry and Commerce" section.[249] This can be confirmed when comparing the English and Chinese versions of the Zhejiang electricity rate schedule. Therefore, for the purposes of this final determination, the Department has continued to apply the Zhejiang "Normal Industry and Commerce" rates, as selected in the Preliminary Determination in the applicable benefit calculations for SBZ.

Comment 12: Application of AFA to the Huayuan Companies and M&M

Petitioners' Arguments

- If an interested party withholds information, provides information which cannot be verified, or significantly impedes the proceeding, the Department shall use facts otherwise available in reaching a determination. If a respondent has failed to cooperate by not acting to the best of its ability to provide requested information, the Department may use AFA.
- Both M&M and the Huayuan Companies refused verification, thus failing to cooperate to the best of their ability. Therefore, the Department should use AFA to assign a final CVD rate to these non-cooperating respondents.
- In other investigations in which a respondent has refused to participate in verification or otherwise refused to participate in the proceedings, the Department has applied AFA to select an appropriate CVD rate, including LWTP from the PRC[250], and Raw Flexible Magnets from the PRC.[251]

GOC's Rebuttal Arguments

- The Department should reject Petitioners' argument calling for the application of total AFA to the respondents and should reconsider its decision to reject the factual information submitted by the GOC and respondents regarding the input suppliers.
- The Department should calculate a non-AFA CVD margin based on that information and the other information on the record in this proceeding.

The Huayuan Companies' and M&M's rebuttal Arguments

- The GPX III ruling makes the current investigation unlawful. Punitive measures against a company can only be taken if the regulatory proceeding is lawful.
- While the decision to withdraw from the verifications was not made lightly, the companies refused to participate in verification because the decisions on the critical facts of the case already were decided (by the Department's refusal to accept factual information after the

[249] See GOC Initial QR at Exhibit 17.
[250] See LWTP from the PRC IDM at Comment 3.
[251] See Raw Flexible Magnets from the PRC IDM at 3-5.

Preliminary Determination). The Department's refusal to accept such information meant that it had already reached its conclusion in this case and rendered verification meaningless.

- Furthermore, the Department's refusal to accept information in this case in conformance with its regulations came during a time when the Department also called off the verification in the parallel antidumping case, in violation of its legal obligations.
- The Huayuan companies and M&M are under no obligation to participate in the verification in an investigation with irregularities in procedures. Such irregularities made any facts verified meaningless because the most fundamental facts already had been banned from the record although they had been timely filed.

Department's Position

The Department disagrees with the GOC's, the Huayuan Companies' and M&M's arguments that AFA should not be applied to these non-cooperative companies. The Department has determined that it is appropriate to apply total AFA to both the Huayuan Companies and M&M in this final determination. The record of this investigation shows that the Huayuan Companies and M&M had every opportunity to fully participate in this investigation and that each declined to participate in verification. In refusing verification, each company failed to cooperate to the best of its ability in this investigation. Section 782(i) of the Act requires the Department to verify the information relied upon in making a final determination in an investigation. The Department was prepared to verify the questionnaire responses of the Huayuan Companies and M&M, and had even issued verification outlines to both companies. Thus, because these companies decided not to allow the Department to conduct verification, we are prohibited from relying on their questionnaire responses to calculate any subsidy rates. Furthermore, when a party refuses to permit verification, the application of total AFA is not only warranted, but required, under section 776(b) of the Act.

The Department finds the argument that the rejection of the new factual submission demonstrates "pre-ordained results" is unsupported. The Department's decision to reject the Huayuan Companies' untimely submission of information previously requested of the GOC does not demonstrate that the Department had made "final" conclusions for the final determination of this case prior to verification. We also note that the Huayuan Companies and M&M never clearly state what they believe the Department's "pre-ordained results" to be.

Additionally, even though the GOC's failure to provide the Department with information prior to the Preliminary Determination resulted in an AFA determination that the wire rod and zinc input producers were government authorities providing a financial contribution, and that the provision of wire rod was specific, the only impact it had on the benefit calculation was with regard to finding that it was not possible to use the first tier of the benchmark hierarchy. Specifically, the GOC's failure necessitated moving to the second tier of the hierarchy in selecting a benchmark. Thus, as evidenced in the Preliminary Determination, the Department still relied on the input purchase information provided by both the Bao Zhang and Huayuan Companies for the zinc and wire rod LTAR programs. Perhaps, more importantly, the Department relied on the information provided by these respondents for all other programs under investigation. Because the Department was able to verify the information regarding the programs under investigation submitted by the Bao Zhang Companies, we continue to rely on the verified questionnaire responses of the Bao Zhang Companies to calculate the benefits under all of the programs and to

find numerous programs under investigation to be not used. The Huayuan Companies' and M&M's decision to not permit verification of their questionnaire responses coupled with the statutory requirement that the Department must verify the information relied upon in a final CVD investigation leaves the Department with no choice but to apply total AFA to these two companies.

Furthermore, the fact that the Department rejected the Huayuan Companies' October 21, 2011 submission in no way reflects "pre-ordained results" for the final determination. Had the Huayuan Companies and M&M continued to participate in the proceedings, the Department would have conducted verification of their questionnaire responses and, assuming that the information submitted in their questionnaire responses could be verified, the Department would have based a final determination for each company based on the entire record of the investigation. By refusing verification, both companies failed to cooperate to the best of their ability in this investigation. Section 776(b) of the Act stipulates that the Department may use AFA if it finds that an interested party has failed to cooperate to the best of its ability. Moreover, because the Department was unable to verify any of the information submitted in the Huayuan Companies and M&M responses, the Department cannot accurately determine whether the companies benefitted from the programs included in this investigation. In this case, as is the long-standing practice of the Department, the Department has determined the total AFA rate by identifying a rate for each of the programs included in the investigation.[252]

VI. Recommendation

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

_____ _____

Agree Disagree

_____

Paul Piquado
Assistant Secretary
for Import Administration

_____

Date

[252] For further details, see Final AFA Memorandum.

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Complete Title
Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AHM	Qingdao Ant Hardware Manufacturing Company Ltd.
AUL	Average Useful Life
ABZ	Bao Zhang Metal Products Co., Ltd.
Bao Zhang Companies	SBZ, ABZ and Li Chao
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
FOP	Factors of Production
galvanized wire	Galvanized Steel Wire
GOC	Government of the People's Republic of China
Hualing	Shandong Hualing Hardware and Tool Co., Ltd.
Huayuan Companies	HYW, Tianxin and MJH
HYW	Tianjin Huayuan Metal Wire Products Co., Ltd.
IDM	Issues and Decision Memorandum
IFS	International Financial Statistics
IMF	International Monetary Fund
IRS Tables	U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System
kg	kilogram
Li Chao	Shanghai Li Chao Industry Co., Ltd.
LTAR	Less Than Adequate Remuneration
M&M	M&M Industries Co. Ltd.
NME	Non-Market Economy
ME	Market Economy
MOI	Market Oriented Industry
MJH	Tianjin Mei Jia Hua Trade Co., Ltd.
NDRC	National Development and Reform Commission

Acronym/Abbreviation	Complete Title
NV	Normal Value
Petitioners	Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC, and Oklahoma Steel & Wire Company, Inc.
POI	Period of Investigation
PRC	People's Republic of China
SBB	Steel Business Briefing
SAIC	State Administration of Industry and Commerce
SBZ	Shanghai Bao Zhang Industry Co., Ltd.
SOE	State Owned Enterprise
Tianxin	Tianjin Tianxin Metal Products Co., Ltd.
VAT	Value Added Tax
WTO	World Trade Organization

II. LITIGATION TABLE

Short Citation	Complete Court Case Title
Agro Dutch	Agro Dutch Indus. v. United States, 31 CIT 2047 (2007)
Alaska Hunters	Alaska Professional Hunters Ass'n v. FAA, 177 F.3d 1030 (D.C. Cir. 1999)
Bell Atlantic	Bell Atlantic Telephone v. FCC, 131 F.3d 1044 (D.C. Cir. 1997)
Chevron	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
China Kingdom	China Kingdom Import & Export Co., Ltd. v. United States, 31 C.I.T. 1329 (CIT 2007)
Corus I	Corus Staal BV v. Dep't of Commerce, 395 F.3d 1343 (Fed. Cir. 2005)
Corus II	Corus Staal BV v. United States, 502 F.3d 1370 (Fed. Cir. 2007)
Delverde SRL	Delverde SRL v. United States, 202 F.3d 1360 (Fed. Cir. 2000)
Diversified Products	Diversified Products Corporation v. United States, 6 CIT 155, 162, 572 F. Supp. 883 (1983)
F.lli De Cecco di Filippo Fara S. Martino	F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027 (Fed. Cir. 2000)
Fabrique	Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593 (CIT 2001).
Georgetown Steel	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)

Short Citation	Complete Court Case Title
Gerber	Gerber Good (Yunnan) Co. v. United States, 387 F. Supp. 2d 1270 (CIT 2005).
GOC v. U.S.	Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d 1274 (CIT 2007)
GPX	GPX International Tire Corp., 645 F.2d 1231 (CIT 2009)
GPX II	GPX Int'l Tire Corp. v. United States, 715 F. Supp. 2d 1337 (CIT 2010)
GPX III	GPX Int'l Tires Corp. v. United States, 666 F.3d 732 (Fed. Cir. 2011).
Grobest	Grobest & I-Mei Industrial (Vietnam) Co., Ltd., et al. v. United States, Slip Op. 2012-9 (January 18, 2012) at 59-60.
GSA	GSA, S.R.L. v. United States, 77 F. Supp. 2d 1349 (CIT 1999)
Impact Steel	Impact Steel Canada Corp v. U.S., 533 F. Supp. 2d 1298 (CIT 2007).
Leedom v. Kyne	Leedom v. Kyne, 358 U.S. 184 (1958)
Legacy Emanuel	Legacy Emanuel v. Shalala, 97 F.3d 1261 (9th Cir. 1996)
Lifestyle	Lifestyle Enter. v. United States, 768 F. Supp. 2d 1286 (CIT 2011)
Mitsubishi	Mitsubishi Elec. Corp. v. United States, 16 CIT 730, 802 F. Supp. 455 (1992)
Merrill Lynch v. Curran	Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353 (1982)
Minebea	Minebea Co., Ltd. v. United States, 16 CIT 20, 782 F. Supp. 117 (1992)
Nippon Steel	Nippon Steel v. United States, 337 F.3d 1373 (Fed. Cir. 2003)
NSK	NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007)
Paralyzed Veterans	Paralyzed Veterans of America v. D.C. Arena L.P., 117 F.3d 579, 586 (D.C. Cir. 1997).
SEC v. McCarthy	SEC v. McCarthy, 322 F.3d 650 (9th Cir. 2003)
Shanghai Taoen	Shanghai Taoen Int'l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339 (CIT 2005)
Shell Offshore	Shell Offshore Inc. v. Babbitt, 238 F.3d 622 (5th Cir. 2001)
Shinyei	Shinyei Corp. of Am. v. United States, 355 F.3d 1297 (Fed. Cir. 2004)
SKF	SKF USA Inc. et al v. United States, 33 CIT, 18-19 Slip Op. 09-148 (December 21, 2009)
Steel Co.	Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998)
Ta Chen	Ta Chen Stainless Steel Pipe v. United States, 23 CIT 804 (1999)
Zhejiang	Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp v. United States, 637 F. Supp. 2d 1260 (CIT 2009)

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
Aluminum Extrusions from the PRC	Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) and accompanying Issues and Decision Memorandum
Certain Coated Paper from the PRC	Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) and accompanying Issues and Decision Memorandum
CFS from the PRC	Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) and accompanying Issues and Decision Memorandum.
Citric Acid from the PRC	Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision Memorandum
Citric Acid from the PRC – Administrative Review	Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011) and accompanying Issues and Decision Memorandum
Certain Steel Products from Austria (General Issues Appendix)	General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria (General Issues Appendix), 58 FR 37217 (July 9, 1993)
CWASPP from the PRC	Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009) and accompanying Issues and Decision Memorandum
CWP from the PRC	Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum
Drill Pipe from the PRC	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

Short Citation	Administrative Case Determinations
Hot-Rolled Steel from India	Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) and accompanying Issues and Decision Memorandum
KASR from the PRC	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
KASR from the PRC - AD	Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009).
Lawn Groomers from the PRC	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum
Lawn Groomers from the PRC – Initiation	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation, 73 FR 42315 (July 21, 2008) and accompanying Initiation Checklist
Lawn Groomers from the PRC – Preliminary Determination	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971 (November 24, 2008)
Lug Nuts from the PRC Initiation	Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People's Republic of China, 57 FR 877 (January 9, 1992)
LWRP from the PRC	Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)
LWS from the PRC	Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum
LWTP from the PRC	Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
Malleable Pipe from the PRC	Malleable Iron Pipe Fittings from the People's Republic of China. Final Results of Antidumping Duty Administrative Review, 71 FR 37051 (June 29, 2006)
OCTG from the PRC	Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009) and accompanying Issues and Decision Memorandum
Oscillating and Ceiling Fans from the PRC	Preliminary Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans From the People's Republic of China, 57 FR 10011 (March 23, 1992).
Raw Flexible Magnets from the PRC	Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination 73 FR 39667 (July 10, 2008)
Seamless Pipe from the PRC	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010)
Seamless Pipe from the PRC – Preliminary Determination	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, 75 FR 9163 (March 1, 2010)
Semiconductors from Taiwan – AD	Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998) and accompanying Issues and Decision Memorandum
Softwood Lumber from Canada	Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) and accompanying Issues and Decision Memorandum
Sulfanilic Acid from Hungary	Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002) and accompanying Issues and Decision Memorandum
Textiles from the PRC	Initiation of Countervailing Duty Investigations; Textiles, Apparel, and Related Products From the People's Republic of China, 48 FR 46600 (October 13, 1983)
Wire Decking from the PRC	Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32902 (June 10, 2010) and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
Wire Rod from Czechoslovakia	Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984)
Wire Rod from Poland	Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984)
Wood Flooring from the PRC	Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 64313 (October 18, 2011) and accompanying Issues and Decision Memorandum

IV. CASE-RELATED DOCUMENTS

Short Citation	Complete Document Title
Petition	Letter to the Department "Petitions for the Imposition of Antidumping Duties on Galvanized Steel Wire from Mexico and Antidumping and Countervailing Duties on Galvanized Steel Wire from the People's Republic of China," dated March 31, 2011
Initiation	Galvanized Steel Wire From the People's Republic of China: Initiation of Countervailing Duty Investigation, 76 FR 23564 (April 27, 2011), and accompanying Initiation Checklist.
Respondent Selection Memorandum	Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Mark Hoadley, Program Manager, Office 6, ''Galvanized Steel Wire from the People's Republic of China Countervailing Duty Investigation: Respondent Selection,'' dated May 18, 2011
Petitioners' Scope Comments	Letter to the Department from Petitioners "Galvanized Steel Wire from Mexico and China - Petitioners' Comments on Respondents' Scope Requests" dated June 22, 2011.
Selection of Additional Mandatory Respondent Memorandum	Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Barbara E. Tillman, Director, Antidumping and Countervailing Duty Operations, Office 6, ''Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Selection of an Additional Mandatory Respondent,'' dated July 22, 2011.
Initial Questionnaire	Letter from the Department to the GOC "Galvanized Steel Wire from the People's Republic of China Initial Questionnaire," dated May 19, 2011
GOC Initial QR	Letter from the GOC to the Department "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C-570-976; Questionnaire Response," dated July 7, 2011

Short Citation	Complete Document Title
GOC Supplemental Questionnaire	Letter from the Department to the GOC "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Supplemental Questionnaire," dated July 28, 2011
GOC SQR – Part 1	Letter from the GOC to the Department "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C-570-976; Supplemental Questionnaire Response," dated August 11, 2011
GOC SQR – Part 2	Letter from the GOC to the Department "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C-570-976; Supplemental Questionnaire Response," dated August 22, 2011
GOC Second Supplemental Questionnaire	Letter from the Department to the GOC "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Supplemental Questionnaire," dated September 19, 2011
GOC 2SQR	Letter from the GOC to the Department "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C-570-976; Supplemental Questionnaire Response," dated September 28, 2011
GOC Third Supplemental Questionnaire	Letter from the Department to the GOC "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Supplemental Questionnaire," dated October 7, 2011
GOC 3SQR	Letter from the GOC to the Department "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C-570-976; Third Supplemental Questionnaire Response," dated October 17, 2011.
BZ Initial QR	Letter to the Department from the Bao Zhang Companies "Bao Zhang Group Initial CVD Questionnaire Response (Voluntary) Countervailing Duty Investigation of Galvanized Wire from the People's Republic of China," dated June 27, 2011
BZ SQR – Part 1	Letter to the Department from the Bao Zhang Companies "Bao Zhang Group First Supplemental Questionnaire Response (Part 1) - Countervailing Duty Investigation of Galvanized Wire from the People's Republic of China," dated August 9, 2011
BZ SQR – Part 2	Letter to the Department from the Bao Zhang Companies "Bao Zhang Group First Supplemental Questionnaire Response (Part 2) - Final Version Countervailing Duty Investigation of Galvanized Wire from the People's Republic of China," dated August 19, 2011

Short Citation	Complete Document Title
BZ 2SQR	Letter to the Department from the Bao Zhang Companies "Bao Zhang Group Third Supplemental Questionnaire Response – Countervailing Duty Investigation of Galvanized Wire from the People's Republic of China," dated September 29, 2011
Preliminary Determination	Preliminary Determination Galvanized Steel Wire From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 76 FR 55031 (September 6, 2011)
Additional Documents for Preliminary Determination	Memorandum to the File "Countervailing Duty Investigation of Galvanized Wire from the People's Republic of China: Additional Documents for Preliminary Determination," dated August 29, 2011
GOC Rejection Letter	Letter to the GOC from the Department "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Supplemental Questionnaire: Rejection of the Government of China's Comments on the Preliminary Determination," dated September 19, 2011
GOC Response to Rejection Letter	Letter to the Department from the GOC "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C-570-976; Response to Rejection of GOC's 9/15/11 Submission," dated September 26, 2011
SBZ Verification Outline	Letter to SBZ from the Department "Verification of Shanghai Bao Zhang Industry Co., Ltd. and its reported affiliated companies in the Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China," dated October 21, 2011
HYW Verification Outline	Letter to HYW from the Department "Verification of Tianjin Huayuan Metal Wire Products Co., Ltd. and its reported cross-owned companies in the Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China," dated October 27, 2011
M&M Verification Outline	Letter to M&M from the Department "Verification of M&M Industries Co. Ltd. in the Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China," dated October 27, 2011
Verification Withdrawal Letter	Letter from the Huayuan Companies and M&M "Galvanized Steel Wire from the People's Republic of China: Letter Regarding Withdrawal from Verification," dated November 9, 2011
Bao Zhang Verification Report	Memorandum to the File "Verification of the Questionnaire Responses Submitted by Shanghai Bao Zhang Industry Co., Ltd., Anhui Bao Zhang Metal Products Co., Ltd, and Shanghai Li Chao Industry Co., Ltd. (collectively, Bao Zhang Companies)," dated December 22, 2011

Short Citation	Complete Document Title
GOC Verification Report	Memorandum to the File "Verification of the Questionnaire Responses Submitted by the Government of China," dated December 22, 2011
Post-Preliminary Analysis Memorandum	Memorandum to Paul Piquado, Assistant Secretary for Import Administration from Barbara E. Tillman, Director, AD/CVD Operations, Office 6 "Countervailing Duty Investigation on Galvanized Steel Wire from the People's Republic of China: Post-Preliminary Analysis Memorandum," dated January 17, 2012
AHM Case Brief	Letter to the Department from AHM "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Case Brief of Qingdao Ant Hardware Manufacturing Co., Ltd." dated January 31, 2012
Final AFA Memorandum	Memorandum to the File "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Application of Adverse Facts Available in Final Determination," dated March 19, 2012
Final Calculation Memorandum	Memorandum to the File "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Bao Zhang Companies Final Calculation Memorandum," dated March 19, 2012
Final Benchmark Memorandum	Memorandum to the File "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Final Benchmark Memorandum," dated March 19, 2012

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

Short Cite	Complete Title
Antidumping Measures on Certain Hot-Rolled Steel Products from Japan	United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS 184/AB/R (24 July 2001
Accession Protocol	Protocol on the Accession of the People's Republic of China to the World Trade Organization, WT/L/432, art. 15(b) (November 23, 2001)
Alaskan Guide Compliance	Compliance With Parts 119, 121, and 135 by Alaskan Hunt and Fish Guides Who Transport Persons by Air for Compensation or Hire, 63 FR 4 (January 2, 1998) (notice to operators)
APA	Administrative Procedures Act, 5 USC section 500 et seq.
AD/CVD Preamble	Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296 (May 19, 1997)
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)

Short Cite	Complete Title
Georgetown Steel Memorandum	Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
SCM Agreement	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
URAA	Uruguay Round Agreements Act, Pub L. No. 103-465, 108 Stat. 4809 (1994)
WTO AB Decision	United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011)
WTO Working Party Report – 10/1/2001	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), available at http://www.wto.org