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

C-570-942
Administrative Review
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DATE: April 4, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

THROUGH: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

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Background

The Department initiated an administrative review with respect to the CVD order on certain kitchen appliance shelving and racks ("kitchen racks" or "subject merchandise") from the PRC on October 28, 2010.[1] The POR is January 7, 2009, through December 31, 2009.[2] The Department published the *Preliminary Results* on October 7, 2011, and issued a Post-Preliminary Analysis on March 2, 2012.

Petitioners, respondent Wireking, respondent NKS, and the GOC each filed timely case briefs pursuant to 19 CFR 351.309(c). Petitioners, NKS, and the GOC each filed timely rebuttal briefs pursuant to 19 CFR 351.309(d).

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

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[1] *See Initiation Notice*. 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.

[2] *See Preliminary Results*,76 FR at 62365 (explaining the POR).

General Issues

Comment 1 Whether the Department has the Legal Authority to Apply the CVD Law to the PRC
Comment 2 Whether the Final Results Must Account for the Imposition of Double Remedies
Comment 3 Whether the Department's Investigation of the Provision of Wire Rod and Steel Strip for LTAR Met the Initiation Standard
Comment 4 Whether Application of AFA for the Wire Rod and Steel Strip LTAR Programs Is Supported by the Record and Consistent with U.S. International Obligations
Comment 5 Benchmark Used for Wire Rod

Company-Specific Issues

Comment 6 Whether CVDs Should Apply to Wireking's Purchases of Steel Strip, Which is Not Consumed in the Production of the Subject Merchandise
Comment 7 Whether Cash Deposit and Liquidation Instructions Should Reflect Names and Translations of Names Used by NKS for Exportation of Goods to the United States
Comment 8 Whether the Department Should Have Found That NKS Received a Subsidy from City Maintenance and Construction Taxes and Education Fee Surcharges

Use of Facts Otherwise Available and Adverse Inferences

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

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

A. *Non-Cooperative Companies*

Consistent with the *Preliminary Results*, we are applying facts available in calculating the CVD rates for Asia Pacific CIS and Jiangsu Weixi, as neither company provided a response to the Department's Q&V questionnaire issued during the respondent selection process.[3] Accordingly, we determine that these non-cooperating companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the Q&V of their sales, the companies impeded the Department's ability to select the most appropriate respondents in this review. Thus, we are basing the CVD rate for

[3] *See Preliminary Results*, 76 FR at 62365-66.

these non-cooperating companies on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act.

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

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[4] 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."[5]

In applying AFA for these non-cooperative companies, we are guided by the Department's approach in recent CVD investigations and reviews. Under this practice, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant review or prior reviews of instant case, or calculated in prior CVD cases involving the country under review (in the instant case, the PRC).[6]

In these final results, for the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperating companies paid no income taxes during 2009. For programs other than those involving income tax rate reductions or exemptions, we have first sought to apply, where available, the highest, above *de minimis* subsidy rate calculated for an *identical* program from any segment of this proceeding. Absent such a rate, we have applied, where available, the highest, above *de minimis* subsidy rate calculated for a *similar* program from any segment of this proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in this proceeding, we have applied 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 in any PRC CVD proceeding, we applied the highest calculated subsidy rate for any

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[4] *See, e.g., Semiconductors from Taiwan*, 63 FR at 8932.

[5] *See* SAA at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

[6] *See, e.g., Aluminum Extrusions from the PRC* IDM at "Application of Adverse Inferences: Non-Cooperative Companies" section. In the underlying investigation, the Department excluded from its AFA calculation for non-cooperative Q&V companies sub-national programs alleged after respondent selection. *See KASR from the PRC* IDM at 5. Consistent with *Aluminum Extrusions from the PRC*, we determine it appropriate to now include newly alleged and self-reported programs in the AFA calculation for non-cooperative respondents, including non-cooperative Q&V companies. *See Aluminum Extrusions from the PRC* IDM at Comment 8. We find that this approach prevents non-cooperative respondents from successfully avoiding being associated with newly alleged subsidy programs and subsidies discovered during the course of the investigation or review.

program otherwise listed from any prior PRC CVD cases, so long as the non-cooperating companies conceivably could have used the program for which the rate was calculated.[7] On this basis, we determine the AFA subsidy rate for Asia Pacific CIS and Jiangsu Weixi to be 264.09 percent *ad valorem*.[8]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[9] The Department considers information to be corroborated if it has probative value.[10] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[11]

With regard to the reliability aspect of corroboration, we note that the rates were calculated in this review or in recent final CVD determinations. Further, the calculated rates were based upon information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[12]

In the absence of record evidence concerning these programs due to the non-cooperative Q&V companies' decision not to participate in the review, we have reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program from which the non-cooperative Q&V companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative Q&V companies could actually receive a benefit. Further, these rates were calculated for periods close to the POR in the instant case. Moreover, the failure of these

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[7] *See Aluminum Extrusions from the PRC* IDM at "Application of Adverse Inferences: Non-Cooperative Companies" section; *see also LWTP from the PRC* IDM at "Selection of the Adverse Facts Available Rate" section.
[8] *See* AFA Memorandum at Attachment 1.
[9] *See* SAA at 870.
[10] *Id.*
[11] *Id.* at 869.
[12] *See Fresh Cut Flowers from Mexico,* 61 FR at 6814.

companies to respond to requests for information has "resulted in an egregious lack of evidence on the record to suggest an alternative rate."[13] Due to the lack of participation by the non-cooperative Q&V companies and the resulting lack of record information concerning their use of programs under review, the Department has corroborated the rates it selected to the extent practicable.

For a detailed discussion of the AFA rates selected for each program under review, *see* AFA Memorandum.

B. *GOC – Wire Rod for LTAR*

Consistent with the *Preliminary Results* and the Post-Preliminary Analysis, we are applying facts available for the "Wire Rod for LTAR" program in these final results.

The Department sought information from the GOC about the producers of the wire rod purchased by Wireking and NKS. In particular, for any of the wire rod producers that are not majority-owned by the GOC, the GOC was asked, *inter alia*, to trace back the ownership to the ultimate individual or state owners.[14] The GOC provided information indicating that several wire rod producers were owned in whole or in part by other companies, but failed to provide the ownership of those other companies. For one wire rod producer, the GOC failed to provide any ownership information.[15]

We determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department may rely on "facts available" in making our final determination.[16] Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.[17] We are applying the adverse inference that the producers of wire rod used by Wireking and NKS are government authorities that provided a financial contribution as described under section 771(5)(D)(iv) of the Act.

At the *Preliminary Results*, we found the ownership information submitted by the GOC regarding one wire rod producer was incomplete. We subsequently asked the GOC to provide further information regarding whether the individuals that owned that wire rod producer were government officials or officials of the CCP. The GOC provided additional translations of the website printouts already submitted along with additional new lists from other websites to expand, supplement and correct the previously submitted website printouts.[18] In response to our questions, the GOC stated these sources were authoritative, but the GOC provided no information to support its claim.[19] In response to questions whether and where on the submitted member lists of website printouts it specifies the dates of the listed CCP committee, the GOC cited to other various documents including the Constitution of the PRC and the Constitution of

[13] *Shanghai Taoen*, 360 F. Supp. 2d at 1348.
[14] *See* the Department's Original Questionnaire (January 28, 2011) at Section II/Appendix 3.
[15] *See* Post-Preliminary Analysis at 6.
[16] *See* sections 776(a)(1) and (a)(2)(A) of the Act.
[17] *See* section 776(b) of the Act.
[18] *See* GSQR4 at Exhibits 1-6.
[19] *Id.* at 13 and 20.

the CCP.[20] The GOC did not, however, provide full excerpts of these cited statutes and regulations. Lastly, the GOC noted that it once again did not attempt to contact any of the CCP or other government entities to get the requested information.[21]

Despite the GOC's claim that the organizations listed in the Department's questionnaire are not government bodies, information that the Department has previously relied upon (and placed the record of this review) indicates otherwise.[22] Specifically, 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.[23] As such, the requested information about the individual owners' status as CCP officials is relevant to whether the wire rod supplier is an "authority" under section 771(5)(B) of the Act. Further, we find that this is information that could be obtained by the GOC and that the GOC has not adequately explained why it was not able to do so. We further determine that, even if we were to consider the publicly available information that was submitted by the GOC as an alternative method of providing the requested information, the information was incomplete. For example, the GOC additionally failed to provide membership lists for 12 of the organizations it has acknowledged to exist.[24] In addition, the GOC provided no information to demonstrate that the sources provided were authoritative or complete.[25]

Based on the above, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available," pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. The requested information is necessary to determine whether one of the respondents' suppliers is a government authority. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information by not seeking information directly from the organizations as requested. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. Consistent with our Post-Preliminary Analysis, we are applying the adverse inference that this wire rod supplier is also a government authority that provided a financial contribution as described under section 771(5)(D)(iv) of the Act.

For details on the calculation of the subsidy rate for the respondents, *see* "Analysis of Programs" section below at section K, "Provision of Wire Rod for LTAR." For further discussion of the Department's basis for this AFA finding, *see* Comment 4 below.

C. *GOC – Steel Strip for LTAR*

Consistent with the Post-Preliminary Analysis, we are applying facts available for the "Steel Strip for LTAR" program in these final results.[26]

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[20] *Id.* at 12-25.
[22] *See* CCP Memorandum.
[22] *See* CCP Memorandum.
[23] *Id.* at Attachment 1. This attachment contains a background note of the PRC taken from the U.S. Department of State's website, which includes a discussion of the relationship between the GOC and the seven entities.
[24] The GOC did not provide 12 membership lists from committees it stated existed. For ten of these missing lists, the GOC stated that it was unable to locate the list at this time. *See* GSQR4.
[25] *See* Post-Preliminary Analysis at 7-8.
[26] *See* Post-Preliminary Analysis at 2-4.

The Department sought information from the GOC about the producers of the steel strip purchased by Wireking and NKS. The information requested is needed to determine whether the steel strip suppliers are "authorities" within the meaning of section 771(5)(B) of the Act. Specifically, we stated in our July 1, 2011, questionnaire that the Department normally treats producers that are majority-owned by the government or a government entity as "authorities." Thus, for any producers of steel strip that were majority government-owned, the GOC needed to provide the requested information only if it wished to argue that those producers were not authorities. The GOC stated that the producer from which NKS sourced steel strip is majority-owned by the GOC. However, it refused to provide ownership information about the producers that supplied Wireking.

As documented in our Post-Preliminary Analysis, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these final results.[27] Despite repeated requests, the GOC never provided information about steel strip producers that was solicited by the Department.[28] Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC is well aware of the Department's reporting requirements, yet, despite being given multiple opportunities, declined to provide the requested ownership information for Wireking's suppliers.[29] Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act.

For details on the calculation of the subsidy rate for the respondents, *see* "Analysis of Programs" section below at section L, "Provision of Steel Strip for LTAR." For further discussion of the Department's basis for this AFA finding, *see* Comment 4 below.

D. *GOC – Zhuhai Farmer Training Subsidy Program*

Consistent with the Post-Preliminary Analysis, we are applying facts available for the "Zhuhai Farmer Training Subsidy Program" program in these final results.[30]

The GOC provided a partial response to the questions regarding this program, which was discovered in the course of this administrative review. Specifically, the GOC did not respond to the usage questions included in the questionnaire (questions G.1.(d) through G.2.(d) in Section II of Appendix 1 of the Original Questionnaire).[31]

We determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these final results pursuant to section 776(a)(2)(A) of the Act.

We further determine that an adverse inference is warranted pursuant to section 776(b) of the Act. By failing to submit usage information, the GOC did not cooperate to the best of its ability

[27] *See* sections 776(a)(1) and (a)(2)(A) of the Act.
[28] *See* Post-Preliminary Analysis at 3-4.
[29] *Id.*
[30] *See* Post-Preliminary Analysis at 8.
[31] *See* the Department's Supplemental Questionnaire (December 28, 2011) at 3.

in this review. We are applying the adverse inference that the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

For details on the calculation of the subsidy rate for the respondents, *see* "Analysis of Programs" section below at section G, "Zhuhai Farmer Training Subsidy Program."

Changes Since the Preliminary Results

1. In the Post-Preliminary Analysis, we found the Zhuhai Farmer Training Subsidy Program to be countervailable.[32] This program was used by NKS, and we added the amount we calculated for this program to NKS's overall subsidy rate. We have continued this treatment in these final results. *See* "Analysis of Programs" section below at section G, "Zhuhai Farmer Training Subsidy Program."

2. In the Post-Preliminary Analysis, we found an additional supplier of wire rod to Wireking to be an authority.[33] Thus, we have recalculated Wireking's rates under the GOC's provision of wire rod for LTAR. *See* "Analysis of Programs" section below at section K, "Provision of Wire Rod for LTAR."

3. In the Post-Preliminary Analysis, we found the GOC's provision of steel strip for LTAR to be countervailable.[34] This program was used by NKS and Wireking, and we added the amounts we calculated for this program to NKS's and Wireking's respective overall subsidy rates. We have continued this treatment in these final results. *See* "Analysis of Programs" section below at section L, "Provision of Steel Strip for LTAR."

4. We have added Japan wire rod export prices sourced from the World Bank to the calculated average of the wire rod prices used as the wire rod benchmark price in the *Preliminary Results* calculations. *See* "Analysis of- Programs" section below at section L, "Provision of Steel Strip for LTAR" and Comment 5 below.

5. We recalculated the AFA rate for the non-cooperative Q&V respondents to include the steel strip for LTAR program and the Zhuhai Farmer Training Subsidy Program. In addition, we adjusted the rate for the wire rod for LTAR program, to take into account the changes made to the wire rod for LTAR calculations in these final results.

[32] *See* Post-Preliminary Analysis at 12-13.
[33] *Id.* at 12.
[34] *Id.* at 9-11.

Subsidies Valuation Information

I. Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[35]

II. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[36]

Wireking stated that it is a wholly foreign-owned company, with its parent companies located outside of the PRC. Wireking also responded that it has no affiliates that are cross-owned within the meaning of 19 CFR 351.525(b)(6).[37] Therefore, we are limiting our analysis to Wireking.

NKS also stated that it is wholly owned by entities located outside of the PRC. NKS identified several affiliated companies and reported that none of them are located in the PRC.[38] Therefore, we are limiting our analysis to NKS.

[35] *See* U.S. Internal Revenue Service Publication 946 (2008), How to Depreciate Property, at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.
[36] *See Fabrique*, 166 F. Supp. 2d at 600-04.
[37] *See* WQR at 4-5.
[38] *See* NQR at 3-5.

Analysis of Programs

I. Programs Determined To Be Countervailable

A. Two Free, Three Half Program

Under Article 8 of the *FIE Tax Law*, an FIE that is "productive" and is scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the subsequent three years.[39] The GOC claims that this program was terminated effective January 1, 2008, by the Enterprise Income Tax Law but companies already enjoying the preference were permitted to continue.[40] The Department has previously found this program countervailable.[41]

Consistent with the *Preliminary Results*, we find that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[42] We also determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act. NKS reported paying a reduced income tax rate during 2009 under the program.[43]

To calculate the benefit, we treated the income tax savings received by NKS as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax that NKS would have paid in the absence of the program with the income tax that NKS actually paid during 2009. We divided the benefits received in 2009 by NKS's 2009 total sales, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we determine that NKS received a countervailable subsidy of 1.00 percent *ad valorem* under this program.

B. Income Tax Reduction for FIEs Based on Geographic Location

To promote economic development and attract foreign investment, "productive" FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC were subject to preferential tax rates of 15 percent or 24 percent, depending on the zone.[44] This program was created on June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance, and continued under Article 7 of the *FIE Tax Law* on July 1, 1991.[45] As a result of the transition provisions of the new Enterprise Income Tax Law, which came into force on January 1, 2008, enterprises that were eligible for

[39] *See* GQR at 23.
[40] *See* GQR at 23-24 and Exhibits 1, 3 and 4.
[41] *See, e.g., CFS from the PRC* IDM at 11–12, and *Seamless Pipe from the PRC* IDM at 25.
[42] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[43] *See* NQR at 12.
[44] *See* GQR at 5.
[45] *See* GQR at Exhibit 3.

the reduced rates of 15 percent or 24 percent are to be gradually transitioned to the uniform rate of 25 percent over a five-year period.[46]

In the underlying investigation, we determined that this program conferred a countervailable benefit.[47] No interested party provided new evidence that would lead us to reconsider our earlier finding.[48] Therefore, consistent with the *Preliminary Results*, we continue to find that these tax benefits confer a countervailable subsidy. NKS reported paying a reduced income tax rate during the POR under the program.[49]

To calculate the benefit, we treated the income tax savings received by NKS as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax NKS would have paid in the absence of the program (*i.e.*, at the 25 percent rate) with the income tax that NKS actually paid during the 2009 (*i.e.*, at the reduced rate). We divided the benefits received by NKS in 2009 by its 2009 total sales, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we determine that NKS received a countervailable subsidy of 0.77 percent *ad valorem* under this program.

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

Pursuant to the *Circular on Temporarily Not Collecting City Maintenance and Construction Tax and Education Fee Surcharge for FIEs and Foreign Enterprises* (GUOSHUIFA {1994} No.38), the local tax authorities exempt all FIEs and foreign enterprises from the city maintenance and construction tax, and the education fee surcharge.[50]

The Department found this program countervailable in the underlying investigation.[51] No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, consistent with the *Preliminary Results*, we continue to find that these tax exemptions confer a countervailable subsidy.

These taxes are calculated as a percentage of the VAT and business and consumption taxes paid by enterprises. While both respondents were exempted from these taxes and surcharges, NKS stated it did not pay any VAT, business or consumption tax and, therefore, would not have paid this tax even if it had not been exempted under this program.[52] Wireking reported the amount it would have paid during the POR in the absence of the program.[53] *See* Comment 8 below for further discussion of this program.

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[46] *See* GQR at 6 and Exhibit 2.
[47] *See KASR from the PRC* IDM at 11-12.
[48] *See, e.g., Live Swine from Canada*, 61 FR at 52420 ("{I}t is the Department's policy not to re-examine the issue of that program's countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration.").
[49] *See* NQR at 11-12.
[50] *See* GQR at 10 at Exhibit 6 and *KASR from the PRC* IDM at 7.
[51] *See KASR from the PRC* IDM at 13.
[52] *See* NSQR3 at 1.
[53] *See* WSQR1 at 5.

To calculate the benefit, we treated Wireking's tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's savings received during 2009 by the company's total 2009 sales. To compute the amount of the city maintenance and construction tax savings, we compared what Wireking would have paid in the absence of the program (seven percent of the total of VAT, business tax, and consumption tax paid during 2009) with what it paid (zero). To calculate the amount of the savings from the educational fee surcharge exemption, we compared what Wireking would have paid in the absence of the program (three percent of total of VAT, business tax, and consumption tax paid during 2009) with what it paid (zero). On this basis, we determine the countervailable subsidy to be 0.54 percent *ad valorem* for Wireking.

D. Shunde Famous Brands

According to the GOC, this program was established in June 2003 and was terminated in December 2008. The purpose of this program was to increase the popularity and competitiveness of product brands and, to be eligible for awards, an enterprise must have been designated as a "Famous Trademark of China," "Chinese Famous Product," "Famous Trademark of Guangdong province," or "Guangdong Famous Product." The GOC stated that the government authority responsible for administering this program was the Shunde Economic and Trade Bureau (currently known as Shunde Economic Promotion Bureau).[54]

Consistent with the *Preliminary Results,* we continue to find that these benefits confer a countervailable subsidy. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[55] Based on information provided on the record, we further determine that grants under this program are *de facto* specific based on the limited number of users.[56] Wireking was approved for a grant under this program in 2008 and received these funds in 2009.[57]

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[58] As Wireking was approved for the funds in 2008 and received payment in 2009, we first applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2) using Wireking's 2008 total sales. The grant amount was less than 0.5 percent of Wireking's 2008 total sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant and attributed the benefit to Wireking's total sales in the year of receipt (*i.e.*, 2009). On this basis, we find a countervailable subsidy of 0.10 percent *ad valorem* for Wireking.

E. International Market Exploration Fund

The GOC confirmed that the International Market Exploration Fund program under which Wireking received assistance in 2009 is the same program as the "International Market Development Fund Grants for Small and Medium Sized Enterprises" program (also known as

[54] *See* GSQR1 at 12-13 and GSQR2 at Exhibit 1.
[55] *See* 19 CFR 351.504(a).
[56] *See* section 771(5A)(D)(iii)(I) of the Act.
[57] *See* GSQR2 at Exhibit 1 and WQR at 13.
[58] *See* 19 CFR 351.524(b).

"SME Fund," "Medium & Small Size Enterprise International Market Expansion Assistance" program or "International Exhibition Show Assistance" program) previously investigated by the Department and found countervailable.[59]

Consistent with the *Preliminary Results*, we continue to find that these benefits confer a countervailable subsidy. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[60] Further, we find the grant to be specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon export performance. Wireking reported receiving funds under this program in 2009.[61]

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). Treating the year of receipt as the year of approval, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The 2009 grant amount was less than 0.5 percent of Wireking's 2009 export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009 and attributed the benefit to Wireking's 2009 export sales. On this basis, we find a countervailable subsidy of 0.02 percent *ad valorem* for Wireking.

F. Foshan Shunde Export Rebate

Wireking reported that it received a grant but was unable to identify the program under which it was given. Wireking claims the only information it has regarding this grant is what is listed on the receipt from a local finance bureau.[62] Both Wireking and the GOC state they have been unable to gather more information from the local finance bureau that distributed the funds.[63] Based on the information it has, Wireking believes the grant was related to exports.

Consistent with the *Preliminary Results*, we continue to find that available record evidence indicates that these benefits confer a countervailable subsidy. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[64] Further, we find the grant to be specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon export performance.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[65] As the approval date is unknown, we are treating the year of receipt, 2009, as the year of approval as facts available under section 776(a)(1) of the Act. We applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). The grant amount was less than 0.5 percent of Wireking's 2009 export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009 and attributed the benefit to Wireking's 2009 export sales. On

[59] *See Aluminum Extrusions from the PRC* IDM at "International Market Exploration Fund (SME Fund)" section.
[60] *See* 19 CFR 351.504(a).
[61] *See* WQR at 13.
[62] *See* WSQR2 at 2-4.
[63] *See* WSQR2 at 1-3; GSQR4 at 1.
[64] *See* 19 CFR 351.504(a).
[65] *See* 19 CFR 351.524(b).

this basis, we determine the countervailable subsidy attributable to Wireking to be 0.06 percent *ad valorem* under this program.

G. Zhuhai Export Trade Grant

Pursuant to ZWJM (2009) No. 28, the Zhuhai Export Trade Grant program came into effect in November 2008 with the purpose of maintaining the stable development of international trade. The GOC stated that the government authorities responsible for approving and administering the program are the Zhuhai Foreign Economic and Trade Corporation Bureau and the Zhuhai Finance Department. To be eligible for assistance under this program, a company must be registered with the Department of Industry and Commerce of Zhuhai City, must not have committed a significant unlawful act or behaved illegally in the last two years, must have exported at least USD 1 million in 2008 and 2009, and must have increased its exports in 2009 over 2008.[66]

Consistent with the *Preliminary Results*, we continue to find that these benefits confer a countervailable subsidy. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[67] Further, we find the grant to be specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon export performance. NKS reported that it received a grant under this program in 2009.[68]

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[69] As NKS was approved for the funds in 2009, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2) using NKS's 2009 total export sales. The 2009 grant amount was less than 0.5 percent of NKS's 2009 total export sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009. In accordance with 19 CFR 351.525(b)(2), we attributed the benefit to NKS's 2009 total export sales. On this basis, we find a countervailable subsidy of 0.02 percent *ad valorem* for NKS.

H. Guangdong Supporting Fund

According to the GOC, the Guangdong Supporting Fund program was established in 2009 with the purpose of helping enterprises affected by the economic crisis and maintaining employment. The GOC stated that the government authorities responsible for administering the program are the Guangdong Labor and Social Security Department, the Guangdong Financial Department and the local tax bureau. The Zhuhai Human Resource and Social Security Bureau is responsible for disbursing payments from the fund. To be eligible, a company should be among the industries affected heavily by the financial crisis or the company must be in difficult position. The GOC provided Yuelaoshefa (2009) No. 6, which defines "enterprises in difficulty" as enterprises in the "Clothing, textile, toys, printing, packing, electronics, house appliance,

[66] *See* GSQR1 at 39-44.
[67] *See* 19 CFR 351.504(a).
[68] *See* NSQR1a at 3.
[69] *See* 19 CFR 351.524(b).

hardware and plastics, and furniture business which have been significantly influenced by the international financial crisis … and have passed the identification of enterprises in difficulty."[70]

NKS reported that it received a benefit during 2009 and, according to the GOC, NKS received funding from the "enterprise in a difficult position fund."[71]

Consistent with the *Preliminary Results*, we continue to find that these benefits confer a countervailable subsidy. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[72] We further determine that grants under this program are limited to specific industries (*i.e.*, enterprises in difficulty such as clothing, textile, toys, printing, packing, electronics, house appliance, hardware and plastics, and furniture business). Hence, the grants are *de jure* specific under section 771(5A)(D)(i) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[73] We applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2), using NKS's 2009 total sales. The 2009 grant amount was less than 0.5 percent of NKS's 2009 total sales. Thus, in accordance with 19 CFR 351.524(b)(2), we expensed the entire amount of the grant to 2009 and attributed the benefit to NKS's 2009 total sales. On this basis, we find a countervailable subsidy of 0.06 percent *ad valorem* for NKS.

I. Zhuhai Farmer Training Subsidy Program

According to the GOC, the Zhuhai Farmer Training Subsidy program was established in 2007 to promote the hiring and training of migrant rural workers. The criteria for receiving assistance under the program are that the enterprise employs more than 50 migrant rural workers from other provinces, there are no arrears in payment of wages, the enterprise signs employment contracts with migrant rural workers for more than one year, and the enterprise has the necessary training place and equipment. The GOC further stated that the program is administered by the Zhuhai Labor and Social Security Bureau and that enterprises throughout the Zhuhai district are eligible to apply.[74] NKS reported that it received a benefit during the POR.[75] The GOC confirmed this and stated that NKS was approved for funds in December 2008.[76]

Consistent with the Post-Preliminary Analysis, we continue to find that these benefits confer a countervailable subsidy. We find the grant to be a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant pursuant to 19 CFR 351.504(a). As explained above under "Use of Facts Otherwise Available and Adverse Inferences," we determine that the GOC has failed to act to the best of its ability in providing the Department with information concerning the distribution of assistance under this program which

[70] *See* GSQR1 at 45-47 and Exhibit 11.
[71] *See* NSQR1a at 3 and GSQR2 at 3.
[72] *See* 19 CFR 351.504(a).
[73] *See* 19 CFR 351.524(b).
[74] *See* GSQR5 at 1.
[75] *See* NQR at 19.
[76] *See* GSQR1 at 36.

is necessary for a specificity determination. Thus, as AFA, we find that this program is *de facto* specific.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. Because NKS was approved for the funds in 2008 and received payment in 2009, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2), using NKS's 2008 total sales. The approved amount was less than 0.5 percent of NKS's 2008 total sales and, consequently, the entire amount of the grant was expensed in 2009 (the year of receipt).

In accordance with 19 CFR 351.525(b)(2), we attributed the benefit to NKS's 2009 total sales. On this basis, we find a countervailable subsidy of 0.01 percent *ad valorem* for NKS.

J. Provision of Electricity for LTAR

In the underlying investigation, we determined that this program conferred a countervailable benefit.[77] No interested party provided new evidence that would lead us to reconsider our earlier finding that there is a financial contribution that is specific. Consistent with the *Preliminary Results*, we continue to find that these benefits confer a countervailable subsidy. Both Wireking and NKS purchased electricity and provided monthly usage and payment data.[78]

To determine the existence and amount of any benefit from this program, we selected the highest electricity rates that were in effect during the POR, consistent with our approach in the investigation. The GOC provided electricity rate schedules for 2009, including the new rates based on the price adjustment that occurred in November 2009.[79] Based on these rate schedules, we have constructed benchmark peak, normal, and valley rates for the "large industrial" user category, including the highest provincial rate for the base rate. Consistent with our approach in *Drill Pipe from the PRC*, we first calculated the variable electricity costs of NKS and Wireking by multiplying the monthly KWH consumed at each price category (peak, normal, and valley) by the corresponding electricity rates they paid.[80] Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH consumed at each price category (peak, normal, and valley) by the highest electricity rate charged for each price category. To calculate the benefit for each month, we subtracted the variable electricity charge paid by each respondent during the POR from the monthly benchmark variable electricity cost.

To measure whether the respondents received a benefit with regard to their transmitter capacity charge (a.k.a., base charge), we first multiplied the monthly transmitter capacity charged to the companies by the corresponding consumption quantity, where appropriate. Next, we calculated the benchmark transmitter capacity cost by multiplying companies' consumption quantities by the highest transmitter capacity rate reflected in the electricity rate benchmark chart. To calculate the benefit, we subtracted the transmitter costs paid by the companies during the POR from the benchmark transmitter costs.

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[77] *See KASR from the PRC* IDM at 5-6 and 13.
[78] *See Preliminary Results*, 76 FR at 62371.
[79] *See* GQR at 23 and Exhibit GQ8-9.
[80] *See Drill Pipe From the PRC* IDM at "Provision of Electricity for LTAR" section.

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

We divided the benefit by the respondents' total sales in POR. On this basis, we determine net countervailable subsidy rates of 0.62 percent *ad valorem* for Wireking and 0.58 percent *ad valorem* for NKS.

K. Provision of Wire Rod for LTAR

In the underlying investigation, we determined that this program conferred a countervailable subsidy. No interested party provided new evidence that would lead us to reconsider our earlier findings that the GOC's predominant role in the PRC's wire rod market renders domestic prices unusable as benchmarks or that the subsidy conferred is specific. Therefore, our analysis focused on whether the producers of the wire rod used by Wireking and NKS during the POR were authorities within the meaning of section 771(5)(B) of the Act and the extent of the benefit provided. Consistent with the *Preliminary Results* and the Post-Preliminary Analysis, we continue to find that these benefits confer a countervailable subsidy as both Wireking and NKS purchased wire rod.[81]

As discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section, above, we determine that the GOC did not provide complete ownership information for any of the wire rod producers that supplied the respondents, including the one producer the GOC indicated was privately owned. Thus, as AFA, we determine the wire rod suppliers are authorities. Based on our findings that certain wire rod producers are authorities, we determine that the GOC is providing a good and, hence, a financial contribution under section 771(5)(D)(iii)of the Act.

As explained above, no new information has been provided about the GOC's predominance in the domestic Chinese market for wire rod. Therefore, we have relied upon tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, to determine the existence and extent of the benefit to Wireking and NKS. Petitioners submitted U.S. domestic prices for wire rod, but we have not included these in our benchmark. Instead, we have used the Steel Business Briefing export prices for wire rod from Turkey, Black Sea, and Latin America which were submitted by Wireking.[82] This is consistent with the Department's use of data from industry publications such as the Steel Business Briefing in other recent CVD proceedings involving the PRC.[83] For these final results, we have added Japan wire rod export prices as reported by the World Bank to the calculated average of the wire rod prices used as the wire rod benchmark price in the *Preliminary Results* calculations.[84] For further discussion of the revised benchmark, *see* Comment 5 below.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm

[81] *See Preliminary Results*, 76 FR at 62371, and Post-Preliminary Analysis at 4-8 and 12.
[82] *See* Wire Rod Memorandum.
[83] *See, e.g., Wire Decking from the PRC* IDM at "Provision of HRS Steel for LTAR" section.
[84] *See* Post-Preliminary Benchmark Memorandum.

actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included the freight charges that would be incurred to deliver wire rod to the respondents' plants. We have also added import duties, as reported by the GOC, and VAT applicable to imports of wire rod into the PRC. We have compared these prices to the respondents' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to their plants.

Comparing the adjusted benchmark prices to the prices paid by the respondents for the wire rod they purchased, we determine that the GOC provided wire rod for LTAR, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid.[85] We divided the difference between the amounts actually paid by Wireking and NKS for wire rod and what they would have paid under the benchmark in 2009, by the two companies' respective total sales in 2009. On this basis, we determine the countervailable subsidy to be 14.68 percent and 5.38 percent *ad valorem* for Wireking and NKS, respectively.

L. Provision of Steel Strip for LTAR

On June 28, 2011, the Department initiated an investigation into a new subsidy allegation regarding the provision of steel strip for LTAR.[86] Information from questionnaire responses shows that NKS uses steel strip, both hot-rolled and cold-rolled, as an input in its production of subject merchandise and Wireking purchases steel strip, although it claims the strip is not used to produce subject merchandise.[87] Consistent with the Post-Preliminary Analysis, we continue to find that the GOC's provision of steel strip for LTAR confers a countervailable subsidy.

The Department normally treats producers that are majority-owned by the government or a government entity as "authorities" within the meaning of section 771(5)(B) of the Act.[88] The GOC reported that the supplier of steel strip to NKS is state-owned and, hence, an authority.[89] As explained above under "Use of Facts Otherwise Available and Adverse Inferences," the GOC did not provide requested information on the owners of the steel strip purchased by Wireking. Therefore, as AFA, we determine that all steel strip producers that supplied Wireking are majority-owned by the government and, thus, are "authorities" under section 771(5) of the Act. As a result, we determine that the steel strip purchased by NKS and Wireking is a financial contribution in the form of a government provision of a good and that the respondents received a benefit to the extent that the price they paid for steel strip produced by these suppliers was for LTAR.[90]

To determine whether this financial contribution results in a subsidy to the respondents, we followed 19 CFR 351.511(a)(2) in identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for the steel strip.[91]

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[85] *See* 19 CFR 351.511(a).
[86] *See* NSA Memorandum.
[87] *See* NQR at Exhibit 2 and WNSAQR at 1.
[88] *See OTR Tires from the PRC* IDM at "Government Provision of Rubber for Less Than Adequate Remuneration" section.
[89] *See* GSQR2 at 8-9.
[90] *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.
[91] *See* Post-Preliminary Analysis at 9.

The GOC provided aggregated information on the amount of both hot-rolled and cold-rolled steel strip produced by majority-government-owned producers in the PRC.[92] This data shows that government-owned producers accounted for 59.19 percent of steel strip production in the PRC during the POR. Consequently, because of the government's predominant involvement in the steel strip market, the use of private producer prices in the PRC would be akin to comparing the benchmark itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[93] As we explained in *Softwood Lumber from Canada*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[94]

For these reasons, we find that prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Turning to tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, we have placed on the record benchmark price information from the World Bank.[95] The benchmark prices that we used are export prices from the World Bank for hot- and cold-rolled steel coil sheets from Japan. We find that, for purposes of these final results, prices from the World Bank are sufficiently reliable and representative. The reported prices are export prices and are stated on a FOB basis. Such prices would be available to purchasers in the PRC.

The prices for hot- and cold-rolled coil sheet in the World Bank listing are expressed in USD per MT. We converted both Wireking's and NKS's average monthly unit prices from RMB to USD using RMB to USD exchange rates, as reported by the Federal Reserve Statistical Release.[96] Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Because the World Bank data does not include ocean freight, we added ocean freight to each of the monthly steel strip prices.[97] Regarding delivery charges, we have also included the inland freight charges that would be incurred to deliver steel strip to the respondents' plants.[98] We have also added import duties, as reported by the GOC, and VAT applicable to imports of

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[92] *See* GSQR4 at 3.
[93] *See Softwood Lumber from Canada* IDM at "There are no market-based internal Canadian benchmarks" section.
[94] *Id.* at 38-39.
[95] *See* Post-Preliminary Benchmark Memorandum.
[96] *Id.* at Attachment 4.
[97] *Id.* at Attachment 3.
[98] We also converted both Wireking's and NKS's reported inland freight from kilograms to MT and from RMB to USD.

steel strip into the PRC.[99] We have compared these prices to the respondents' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to the respondents' plants. For specific details, *see* Preliminary Benchmark Memorandum, Post-Preliminary Benchmark Memorandum, NKS Final Calculation Memorandum, and Wireking Final Calculation Memorandum.

Comparing the adjusted benchmark prices to the prices paid by the respondents for their steel strip shows that a benefit exists in the amount of the difference between the benchmark and what the respondents paid pursuant to 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC stated that the consumption of steel strip occurs across a wide variety of steel consuming industries. While numerous companies may comprise steel consuming industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on the industry or enterprise basis. Therefore, we determine that "steel consuming industries" are limited in number and, hence, the subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.[100]

As noted above, Wireking claims that although it purchases steel strip, the strip is not used to produce subject merchandise. The Department does not agree with Wireking, and as such we have divided the difference between the amounts actually paid by Wireking and NKS for steel strip and what they would have paid under the benchmark in 2009, by the two companies' respective total sales in 2009.[101] For further discussion of attribution, *see* Comment 6 below. On this basis, we determine the countervailable subsidy to be 5.46 percent and 0.03 percent *ad valorem* for Wireking and NKS, respectively.

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

A. Shunde Patent Application

According to the GOC, this program was established in January 2001, and is intended to encourage investors in the Shunde district and to promote the development of the economy and technology. The GOC has reported that any enterprise or public institution, government organ, public organization, or individual, that resides in this district and applies for a domestic patent for an invention, utility model patent, or invention authorization, can receive this reward. Shunde Science and Technology Bureau (currently the Shunde Economic Promotion Bureau) administers the program.[102]

Wireking applied for and received a grant under this program in 2009.[103]

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[99] *See* GSQR4 at 8-9. An import duty rate for hot- and cold-rolled was calculated by sorting the reported tariff rates by hot- and cold-rolled, and then the average of the categorized rates as hot- or cold- rolled an import duty rate. The two rates that were unable to be classified as solely hot- or cold- rolled were left out of the averages.

[100] *See LWRP from the PRC* IDM at Comment 7, and *KASR from the PRC* IDM at "Provision of Wire Rod for Less Than Adequate Remuneration" section.

[101] *See LWRP from the PRC* IDM at Comment 8.

[102] *See* GSQR1 at 25-26 and Exhibit 7.

[103] *See* WQR at 11.

Consistent with the *Preliminary Results*, we continue to find that any potential benefit to Wireking under this program is less than 0.005 percent *ad valorem*. To determine this, we divided the amount received by Wireking in 2009 by Wireking's total sales in 2009. Where the countervailable subsidy rate for a program is less than 0.005 percent, the Department's practice is to not include that program in the total CVD rate. Thus, without prejudice to the question of whether this program confers a countervailable subsidy, and consistent with our practice, we determine that any potential benefit under this program is not measurable.

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

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

1. Income Tax Refund for Reinvestment of Profits in Export-Oriented Enterprises
2. Income Tax Reduction for Export-Oriented FIEs
3. Local Income Tax Exemption or Reduction Program for "Productive" FIEs
4. Preferential Tax Subsidies for Research and Development by FIEs
5. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
6. Income Tax Credits for Purchases of Domestically-Produced Equipment by Domestically-Owned Companies
7. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
8. VAT Rebates for FIEs Purchasing Domestically-Produced Equipment
9. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
10. Import Tariff Exemptions for the "Encouragement of Investment by Taiwanese Compatriots"
11. Provision of Nickel for LTAR by the GOC
12. Government Provision of Water at LTAR to Companies Located in Development Zones in Guangdong Province
13. Exemption from Land Development Fees for Enterprises Located in Industrial Cluster Zones
14. Reduction in Farmland Development Fees for Enterprises Located in Industrial Zones
15. Special Subsidy from the Technology Development Fund to Encourage Technology Development
16. Exemption from District and Township Level Highway Construction Fees for Enterprises Located in Industrial Cluster Zones
17. Exemptions from or Reductions in Educational Supplementary Fees and Embankment Defense Fees for Enterprises Located in Industrial Cluster Zones
18. Exemption from Real Estate Tax and Dyke Maintaining Fee for FIEs in Guangdong Province
19. Import Tariff Refunds and Exemptions for FIEs in Guangdong Province
20. Preferential Loans and Interest Rate Subsidies in Guangdong Province
21. Direct Grants in Guangdong Province
22. Funds for "Outward Expansion" of Industries in Guangdong Province
23. Land-related Subsidies to Companies Located in Specific Regions of Guangdong

Province
24. Import Tariff and VAT Refunds and Exemptions for FIEs in Zhejiang
25. Grants to Promote Exports from Zhejiang Province
26. Land-related Subsidies to Companies Located in Specific Regions of Zhejiang
27. Special Subsidy from the Technology Development Fund to Encourage Technology Innovation
28. Subsidies to Encourage Enterprises in Industrial Cluster Zones to Hire Post-Doctoral Workers
29. Land Purchase Grant Subsidy to Enterprises Located in Industrial Cluster Zones and Encouraged Enterprises
30. Exemption from Accommodating Facilities Fees for High-Tech and Large-Scale FIEs
31. Income Tax Deduction for Technology Development Expenses of FIEs
32. Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
33. Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
34. Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones
35. Income Tax Rebate for "Superior Industrial Enterprises" in Zhongshan
36. Accelerated Depreciation for New Technological Transformation Projects "Superior Industrial Enterprises" in Zhongshan
37. Exemption from the Tax on Investments in Fixed Assets for "Superior Industrial Enterprises" in Zhongshan

Analysis of Comments

General Issues

Comment 1 Whether the Department has the Legal Authority to Apply the CVD Law to the PRC

The GOC, NKS, and Wireking allege that, as the CAFC found in *GPX II*, the Department does not have the legal authority to apply the CVD laws to NME countries such as the PRC. Therefore, the respondents claim that the Department should terminate this proceeding and this order.

In addition, NKS contends that, while the determination in *GPX II* is presently the subject of a pending motion for reconsideration before the Federal Circuit, the Federal Circuit's decision is binding on the Department. NKS refers to the Federal Circuit ruling in *Banker's Trust New York*, in which the Court concluded that the court's interpretation of a statutory provision trumps a subsequent agency interpretation that is inconsistent with the court's precedent. NKS claims that based on the unequivocal language of the Federal Circuit in *GPX II*, the Department had no legal authority to conduct a CVD investigation of exports from the PRC, and any order issued was an *ultra vires* act and any review conducted pursuant to the *ultra vires* order is itself *ultra vires.*

Lastly, NKS asserts that, while the U.S. Congress has passed legislation (H.R. 4105) which purports to "authorize" the application of CVD laws to NMEs with effective date prior to the issuance of the CVD order, Congress cannot authorize retroactive action, even if such legislation becomes law. NKS asserts that CVDs, unlike normal taxes, are imposed after the completion of a complex investigation and are not applied at a uniform amount or rate. NKS concludes that as the investigation which underlies these CVDs was *ultra vires*, any order was also *ultra vires* and cannot be "revitalized" by a subsequently enacted law.

Petitioners assert that the respondents' reliance on *GPX II* is misplaced. Petitioners claim that the respondents, with the exception of NKS, fail to acknowledge that the new legislation, H.R. 4105, passed by Congress and signed by President Obama, explicitly grants the Department the right to apply the CVD law to NME countries. Moreover, according to Petitioners, this legislation provides that the Department had this authority since November 20, 2006. Therefore, Petitioners contend that this legislation retroactively approves both the imposition of the CVD order and the conduct of this administrative review. Petitioners claim that this new legislation unequivocally overturned the Federal Circuit's opinion in *GPX II,* and they assert that the respondents' demands for termination of this CVD order should be rejected. Petitioners state that while NKS asserts that the new legislation cannot be applied retroactively, this assertion is unsupported by any law or case precedent. Petitioners contend that the courts have recognized that Congress has the right to make economic legislation retroactive, particularly where retroactive legislation is needed to cure defects in a statutory scheme.[104]

Department's Position

The Department continues to apply the CVD law to subsidized imports of kitchen racks in this administrative review. The Federal Circuit's *GPX II* decision cited by the respondents and the GOC 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, President Obama 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.[105] New section 701(f) of the Act supersedes the non-final decision in *GPX II* holding that Commerce cannot apply the CVD law to NMEs, such as the PRC. Because the new law unambiguously requires the Department to apply the CVD law to NME countries, NKS's reliance upon *Banker's Trust New York* and its focus on an agency's interpretation of an ambiguous statute is misplaced.

Contrary to NKS's assertions, the effective date provision of H.R. 4105 makes clear that new section 701(f) of the Act applies to this proceeding. The petition giving rise to the CVD investigation of kitchen racks was filed on July 31, 2008, and a notice of initiation of the investigation was published in the *Federal Register* on August 26, 2008.[106] Under the enacted

[104] *See Carlton*, 512 U.S. at 31; *Paramino Lumber*, 308 U.S. at 378; *Baker*, 110 F.3d. at 30.
[105] *See* section 701(f)(1) of the Act; H.R. 4105, 112th Cong. § 1(a) (2012) (enacted).
[106] *See Initiation Notice-Investigation*.

legislation, new section 701(f) of the Act applies to "all proceedings initiated under subtitle A of title VII of {the Act} on or after November 20, 2006."[107] Whereas NKS cites no legal authority to support its claim that H.R. 4105 cannot be given retroactive effect, the United States Supreme Court has repeatedly held that statutes can be applied retroactively so long as Congress clearly indicates as such, which is the case here.[108] Accordingly, the Department continues to apply the CVD law in this administrative review.

Comment 2 Whether the Final Results Must Account for the Imposition of Double Remedies

The GOC, NKS, and Wireking argue that, even if the Department concludes that it may lawfully apply the CVD law to NMEs, it must account for the imposition of double remedies. The respondents cite to *GPX I,* and the GOC states that the Department must modify its CVD and/or its NME AD methodologies to account for a likely double remedy and, thereby, avoid an unreasonable result.[109] Wireking asserts that if the Department determines to apply CVDs in this case, then the Department must make adjustments to its AD methodology. NKS alleges that the Court in *GPX I* found that if the Department cannot adjust the CVD rate to avoid double remedies, it must forego CVDs altogether.

NKS claims that, in this review, it is clear that double remedies are being applied. NKS alleges that the Department has calculated benefits for the provision of certain raw materials at LTAR. NKS contends that these raw materials were also valued in the AD review and were used in the calculation of AD duties. Lastly, NKS asserts that, while the U.S. Congress has passed legislation (H.R. 4105) which purports to "require" the offset of CVDs in parallel AD investigations, such requirement does not apply retrospectively, but rather only prospectively to future investigations and reviews. NKS asserts that even if the legislation properly applied CVD retrospectively to NMEs, it failed to address the double application of remedies.

Petitioners argue that the respondents' requests for double-counting adjustments in the subsidy calculations in this review are misplaced. They claim that any offset for double-counting under the statute must be applied in the AD, not CVD review.[110] Petitioners state that the respondents' claim of double counting has not been established on the record. Petitioners allege that even though NKS references the provision of raw materials LTAR, it provides no factual evidence that double counting occurred in these reviews. Finally, Petitioners assert that the new legislation, H.R. 4105, indicates that the respondents must demonstrate that the double counting of remedies occurred based on the actual calculation in the investigation.

Department's Position

As with the Federal Circuit decision in *GPX II,* reliance on the *GPX I* decision is inappropriate because that decision is not final. Parties have sought rehearing of that decision and still have an

[107] *See* H.R. 4105, 112th Cong. § 1(b) (2012) (enacted).
[108] *See, e.g.*, ***Error! Main Document Only.****Bowen,* 488 U.S. at 208 ("{C}ongressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.").
[109] *See GPX I,* 645 F. Supp. 2d at 1243.
[110] *See* section 777A(f)(1)(C) of the Act. *See also KASR from the PRC* IDM at Comment 2.

opportunity to exercise additional appeal rights. Additionally, the Federal Circuit has yet to issue its mandate. In any event, the *GPX I* court only held that the "potential" for double remedy may exist.[111]

Thus, because the litigation giving rise to *GPX I* and *GPX II* is not yet final, the Department has continued to apply its interpretation that applying the CVD law to countries designated as NMEs does not result in double remedies. Moreover, 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.[112] Finally, if any adjustment to avoid a double remedy is possible, it would only be in the context of the AD review. We note that this position is consistent with the Department's decisions in recent PRC CVD cases.[113]

Comment 3 Whether the Department's Investigation of the Provision of Wire Rod and Steel Strip for LTAR Met the Initiation Standard

The GOC argues that the investigations of the wire rod and steel strip for LTAR programs should be terminated because the initiation standard was not met for either of these programs. The GOC argues that when Petitioners made their allegations on these programs (for wire rod in the original investigation and for steel strip in the instant review), they sought to support their allegations by citing to investigations with specific findings of financial contribution that have since been repudiated by the WTO Appellate Body.[114] Specifically, the GOC notes that Petitioners cited to *LWRP from the PRC* and/or *CWP from the PRC* to support their claims of financial contribution for these programs.[115] The GOC claims that in those cases, the Department applied a rule of "majority ownership" to determine whether a government-owned supplier is an authority, and the Department refused to consider other factors. The GOC asserts that the WTO Appellate Body rejected these findings, repudiating the Department's interpretation of what constitutes a public body for purposes of financial contribution.[116] The GOC asserts the public body determination cannot rest only on degree of government ownership, as the WTO Appellate Body found that a public body within the meaning of Article 1.1(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority. In the instant case, Petitioners have not claimed, and there is no evidence that any wire rod or steel strip producers "possess, exercise, or are vested with government authority." The GOC concludes that Petitioners only relied on prior Department determinations, which have been found to be insufficient.

NKS states its agreement with the GOC's arguments and asserts that the Department's initiations of these programs must be rescinded.

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[111] *See GPX I*, 645 F. Supp. 2d at 1240-43.

[112] As acknowledged by NKS, the provision of recently enacted H.R. 4105 addressing the so-called "double remedy" issue has prospective effect only and therefore is not applicable in this administrative review. *See* H.R. 4105, 112th Cong. § 2(b) (2012) (enacted).

[113] *See, e.g., Drill Pipe from the PRC* IDM at Comment 3.

[114] *See WTO AB Decision* at para. 317.

[115] *See LWRP from the PRC* IDM at 29 and *CWP from the PRC* at 63.

[116] *See WTO AB Decision.*

Petitioners dispute these arguments. Petitioners assert that in this comment and the next comment, the GOC appears to concede the appropriateness of the Department's use of AFA due to the GOC's failure to provide the requested information, as the GOC makes no refutations of the facts used by the Department to reach the AFA decision. Petitioners also argue that the GOC's failure to submit requested information for numerous input suppliers is strong justification for the Department's decision irrespective of the WTO decision. Further, Petitioners assert that reliance on the WTO Appellate Body findings is misplaced as *WTO AB Decision* is not applicable to this case. Referring to section 771(5)(B) of the Act, Petitioners note that the term "authority" means a government of a country or any public entity within the territory of the country. Petitioners assert that the Department has authority and discretion to interpret and apply the statute. Petitioners also note that the Department has found many different public entities, including input suppliers, to provide subsidies in other cases involving products from various countries.

Department's Position

We disagree with the GOC that the investigations into wire rod and steel strip for LTAR should be terminated and that the initiation standard was not met for either program. Regarding the GOC's arguments concerning *WTO AB Decision*, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a report has been adopted pursuant to the specified statutory scheme" established in the URAA.[117] With respect to *WTO AB Decision*, the United States has not yet employed the statutory procedures set forth at 19 U.S.C. § 3533(g) or 19 U.S.C. § 3538(b) to implement the WTO Appellate Body's finding.

Moreover, with regard to the initiation in the original investigation with respect to the provision of wire rod for LTAR and the initiation of an investigation of the new subsidy allegation of the provision of steel strip for LTAR, we do not agree that the initiation standard was not met. Section 702(b)(1) of the Act states that petitioners must allege the elements necessary for the imposition of the duty imposed by section 701(a) of the Act (*i.e.*, financial contribution, specificity, and benefit) accompanied by information "reasonably available" to petitioners in support of those allegations. Consistent with that standard, the Department determined that Petitioners alleged the elements necessary for the imposition of CVD duties and that the allegations were supported by information reasonably available to Petitioners.[118] Specifically, section 771(5)(B) of the Act states that a subsidy shall be deemed to exist if: (1) there is a financial contribution by an "authority" (defined as a government or any public entity) or an "authority" entrusts or directs a private party to make a financial contribution to a person; and (2) a benefit is thereby conferred. Further, that subsidy must be specific.[119] Petitioners provided information on each of these elements, including references to multiple other cases, a list of Chinese wire rod suppliers, articles regarding the Chinese steel industry, wire rod market comparison analyses and references to two determinations in which the Department previously found the input of steel strip countervailable in support of its steel strip allegation.[120] As such,

[117] *See Corus I*, 395 F.3d at 1347-49; *accord Corus II*, 502 F.3d at 1375, and *NSK*, 510 F.3d at 1380.
[118] *See* NSA Memorandum.
[119] *Id.*
[120] *See Initiation Notice—Investigation*.

Petitioners' allegation was supported by "reasonably available" information and was sufficient under section 702(b)(1) of the Act to initiate an investigation into these subsidy allegations.

Comment 4 Whether Application of AFA for the Wire Rod and Steel Strip LTAR Programs Is Supported by the Record and Consistent with U.S. International Obligations

The GOC argues that the Department applied AFA to the wire rod and steel strip LTARs despite the lack of any evidence on the record that any input suppliers exercise a government function related to the provision of inputs for LTAR. The GOC notes that the Department's selected AFA for these programs was that all of the respondents' suppliers are government-owned, but the GOC asserts ownership is irrelevant. The GOC argues that ownership by the government or presence of CCP members within input suppliers does not answer the question of whether the entity possesses, exercises or is vested with governmental authority in relation to the provision of steel strip or wire rod for LTAR. The GOC notes that the Department finds the requested information about the individual owners' status as CCP members is relevant to whether the wire rod supplier is authority.[121] The GOC argues that this conclusion implies the percentage of ownership by CCP members is probative in identifying whether an enterprise constitutes an authority. In doing so, the GOC argues that the Department has failed to articulate how this conclusion can justify a finding of financial contribution with the meaning of the statute and U.S. international obligations.

As noted above, Petitioners assert that by not refuting the facts used by the Department in reaching its decision, the GOC essentially concedes the appropriateness of the Department's use of AFA due to the Chinese government's failure to provide the requested information.

Department's Position

As the Department explained in *OTR Tires from the PRC*, the Department normally looks to majority government ownership of an input producer to determine whether it as an "authority" within the meaning of section 771(5)(B) of the Act.[122] In this review, the GOC responded that the suppliers of wire rod and steel strip were majority-owned by the GOC or the GOC did not provide ownership information. In the latter situation, we are applying an adverse inference to determine that the suppliers were majority-owned by the GOC and, thus, constituted "authorities" under section 771(5)(B) of the Act.

As indicated above, the Department has not yet implemented *WTO AB Decision.* The Department continues to consider government ownership in determining whether input producers qualify as "authorities" under section 771(5)(A) of the Act. Regarding our treatment of the "privately" owned suppliers as an authority, our decision was based on the GOC's failure to provide adequate information as to whether the owners were CCP officials. Notwithstanding the GOC's objections to the Department's questions about the role of CCP officials in the management and operations of the wire rod and steel strip input producers, we have explained

[121] *See* Post-Preliminary Analysis at 7-8.

[122] *See OTR Tires from the PRC* IDM at "Government Provision of Rubber for Less Than Adequate Remuneration" section.

our understanding of the CCP's involvement in the PRC's economic and political structure in past proceedings as well as in this administrative review.[123] 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 the activities in the PRC.[124] Because of the GOC's failure to cooperate in this investigation, the Department was justified in applying the adverse inference that the suppliers at issues were government authorities, as explained above in the AFA section.

Comment 5 Benchmark Used for Wire Rod

Petitioners argue that the Department should adjust the wire rod benchmark used in the *Preliminary Results*. Petitioners assert that the Department failed to calculate the true benefit of this program because it selected a different benchmark than that used in the underlying investigation. Petitioners explain that in the investigation the Department averaged monthly prices from SBB for North America and Europe with monthly prices from SBB and MEPS for Asia and the world price, noting that where there is more than one commercially available world market price, the Department will average prices to the extent possible. Petitioners note that, in the *Preliminary Results*, the Department used export prices from Turkey, the Black Sea, and Latin America, but failed to include Europe, North America, and Japan domestic prices and European import prices. Petitioners assert that in the investigation, the Department rejected the respondents' argument that prices from North America and Europe should be excluded from the benchmark, noting there is no record information to suggest wire rod is not traded between Europe, North America, and Asia. According to Petitioners, wire rod is a commodity product freely exchanged between borders.

Petitioners acknowledge that the Department has shown a recent preference for using export prices to calculate benchmarks.[125] Petitioners assert, however, that commodity products are freely traded across borders, and products available in a domestic market would be available for export. Petitioners assert that if the Department plans to use only export prices, it must obtain such export prices from the largest production markets. Petitioners argue that the Department ignored the major world markets and escalated the significance of the wire rod markets of Turkey and the Black Sea countries, which are unrepresentative "niche" segments. They point to the fact that the export prices reported for most months of the POR for these markets were lower than those reported for Latin America. Petitioners deem it illogical and inappropriate to ignore pricing trends in major steel wire rod markets in North America, Europe, and Asia when determining a world market price benchmark.

Petitioners argue that if the agency excludes the pricing data from these countries currently on the record, Department should use Japanese wire rod export prices sourced from the World

[123] *See* Post-Preliminary Analysis at 7-8; *see also Galvanized Steel Wire from the PRC* IDM at "Use of Adverse Facts Available" section, and *Seamless Pipe from the PRC* IDM at "Use of Facts Otherwise Available and Adverse Facts Available" section.
[124] *See* Post-Preliminary Analysis at 7-8.
[125] *See Galvanized Steel Wire from the PRC Prelim*, *Cylinders from the PRC Prelim*, and *Citric Acid from the PRC* IDM at 17.

Bank. Petitioners note that this data was placed on the record with the Post-Preliminary Analysis and has been used to calculate a wire rod benchmark price in other cases.[126]

The GOC disputes Petitioners' arguments, noting that Petitioners do not point to any record evidence to support their assertions regarding what a "niche" or "major" market is, or why domestic (non-export) wire rod prices are rationally related to market conditions. The GOC also argues that whether the Department used certain data in a different case is not, on its own, evidence that the Department should use that data in this case.

NKS also disputes Petitioners' arguments, stating that the Department properly determined that the domestic (non-export) wire rod prices on the record at the time of the *Preliminary Results* were not prices that were available to purchasers in the PRC, but instead represented prices only available within certain markets. NKS highlights Petitioners' acknowledgement that the Department has expressed a preference for export prices based on the reasonable conclusion that export prices reflect the prices that would be available to purchasers in other countries. NKS asserts the benchmark in this case follows Department practice and should not be changed.

Department Position

We have not included domestic or import prices in calculating the wire rod benchmark. The Department's preference is to use prices that are available to purchasers in the PRC, consistent with 19 CFR 351.511(b)(ii). With regard to the domestic and import prices, Petitioners provide no evidence to support their claim that these prices are representative of the prices that would be available to purchasers in the PRC. Indeed, Petitioners claim on the one hand that wire rod is a freely traded commodity product and, on the other hand, that there are niche markets where different prices exist. Further, because it is not clear whether the import prices on the record are available to producers located in the PRC, we find that export prices are more representative of prices available to the producers at issue.[127]

In addition, we disagree that the prices included in the benchmark that was constructed for the underlying investigation dictate what prices should be used here. The record in each segment of a proceeding stands on its own and, therefore, information must be evaluated in comparison to the other information on that same record.[128] The Department is to use the best available information on the record when considering the appropriate benchmark.

Based on the above, we continue to use the export prices available on our record to construct the benchmark for these final results. As Petitioners have pointed out, however, export prices of wire rod from Japan are on the record.[129] Accordingly, we have included them in our benchmark calculations for these final results.

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[126] *See Galvanized Steel Wire from the PRC Prelim*, 76 FR at 55039.
[127] *See, e.g., Seamless Pipe from the PRC* IDM at Comment 9.A.
[128] *See, e.g., Folding Metal Tables from the PRC* IDM at Comment 2.
[129] *See* Post-Preliminary Benchmark Memorandum.

Company-Specific Issues

Comment 6 Whether CVDs Should Apply to Wireking's Purchases of Steel Strip, Which is Not Consumed in the Production of the Subject Merchandise

Wireking argues that its steel strip purchases should not be countervailed because Wireking did not use steel strip in its production of subject merchandise. Wireking contends that while the Department referenced *LWRP from the PRC* in is Post-Preliminary Analysis, the issue in that case is fundamentally different from Wireking's circumstances. Wireking asserts that, in *LWRP from the PRC*, the Department declined to accept the burden of showing or tracing that an LTAR input was in fact consumed in the subject merchandise sold in the United States, as opposed to being consumed in the production of subject merchandise sold to other markets. Wireking asserts that its case is different because it does not consume steel strip at all in the production of any subject merchandise and, thus, its kitchen racks could not have benefited from a steel strip for LTAR program.

Petitioners dispute Wireking's argument, contending that the Wireking fails to understand the Department's analysis. Petitioners assert that the government provision of inputs is an untied domestic subsidy that is attributed to the company's total sales and, thus, the question of whether steel strip is used in kitchen racks production becomes moot.[130] Petitioners assert that in the underlying investigation they argued that the provision of wire rod for LTAR was a "tied" subsidy, for which the benefit should only be attributed to goods produced with the subsidized input. Petitioners note that, in the investigation, the Department found that the GOC could not have intended to benefit specific Wireking products at the time of bestowal of the wire rod subsidy and, thus, calculated the benefit received by Wireking as applied to the company's total sales.[131] Petitioners conclude that the same holds true here: the GOC could not have intended to benefit specific products produced by Wireking at the time of bestowal of the steel strip LTAR and, thus, the Department properly attributed the benefit to Wireking's total production.

Department's Position

The Department has examined in many cases the question of whether subsidies associated with particular inputs are tied to the merchandise made from those inputs.[132] As the preamble to the Department's regulations makes clear, our analysis of whether a subsidy is tied to particular products focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[133] As part of that analysis, the Department has considered

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[130] Petitioners cite to the Post-Preliminary Analysis at 11, where the Department stated "consistent with Department practice to attribute subsidies arising from the government's provision of an input for LTAR to the sales of the company that purchased the input."

[131] *See KASR from the PRC* IDM at Comment 10.

[132] *See, e.g., Phosphoric Acid from Israel*, 63 FR at 13628-29; *CFS from the PRC* IDM at Comment 18; *LWRP from the PRC* IDM at Comment 8; *PC Strand from the PRC* IDM at Comment 17; and *KASR from the PRC* at Comment 10. The Department also addressed product tying in *OCTG from the PRC*, but the focus there was on the interplay of potential product tying and our attribution rules for cross-owned companies. *See OCTG from the PRC* IDM at Comment 39. Hence, *OCTG from the PRC* is not directly instructive here.

[133] *CVD Preamble*, 63 FR at 65403.

whether the input could or could not have been used to produce the products in question.[134] Applying that analysis here, we find no evidence that steel strip could not be used to produce subject merchandise and, indeed, NKS's experience shows that steel strip is used to produce subject merchandise.[135] Therefore, we do not find the benefits conferred by the steel strip LTAR are tied to non-subject merchandise. We have accordingly countervailed Wireking's purchases of steel strip for LTAR and have attributed that subsidy to Wireking's total sales.

Comment 7 Whether Cash Deposit and Liquidation Instructions Should Reflect Names and Translations of Names Used by NKS for Exportation of Goods to the United States

NKS states that the Department should ensure that the cash deposit and liquidation instructions, issued as a result of this administrative review, reflect the names and name translations used by NKS for the exportation of goods to the United States. NKS states that CBP instructions should reflect the "facts as developed" during this administrative review. NKS states that exports from the PRC by NKS may be shown on U.S. entry documents to have been exported by companies affiliated with NKS, and asks the Department to ensure all these entries are subject to NKS's deposit and assessment rate.[136]

Department's Position

Pursuant to the Department's standard CVD instructions to CBP, the rate calculated for NKS will apply to subject merchandise produced by NKS. Thus, in the case that NKS is identified as the producer on the customs documents of subject merchandise, NKS's rate would apply.

Comment 8 Whether the Department Should Have Found That NKS Received a Subsidy from City Maintenance and Construction Taxes and Education Fee Surcharges

Petitioners argue that NKS did benefit from its exemption from the city maintenance and construction taxes and the educational fee surcharge and, therefore, its benefit for this program should be calculated and included in its total benefit calculation. Pointing to NKS's financial statement, Petitioners argue that NKS's assertion that it does not pay VAT and, therefore, would not pay these taxes even without the exemption, is belied by record evidence.[137] Petitioners assert that NKS's 2009 financial statement shows VAT paid. Petitioners state that even if the total amount of VAT paid by NKS was refunded because all of NKS's sales were for export, this is a subsequent event and does not change the fact the company does pay VAT.[138] Petitioners assert that the GOC conceded that both NKS and Wireking were exempt from these taxes.[139] Petitioners note that the GOC reported that the education fee is to be paid simultaneously with the VAT taxes, sales taxes and consumption taxes.[140] Thus, Petitioners assert that NKS would be

[134] *See, e.g.*, *Phosphoric Acid from Israel*, 63 FR at 13628-29, and *CFS from the PRC* IDM at Comment 18.
[135] *See* NQR at Exhibit 2.
[136] NKS does not specify in its case brief the names of the affiliated companies to which it is referring.
[137] *See* NSQR1b at Exhibit 2 at 9.
[138] *See* NSQR1a at 9.
[139] *See* GQR at 9.
[140] *See* GQR at Exhibit CQ-05.

required to pay the relevant taxes at the point of payment of its VAT taxes, even if such VAT taxes may ultimately be refunded under another program. Furthermore, Petitioners argue that the Department calculated Wireking's benefit from this subsidy using the full amount of VAT paid by the company, even though a portion of this payment subsequently was rebated to Wireking.[141]

NKS disputes that the Department erred in its preliminary finding regarding this program. NKS asserts that the Department correctly found that NKS did not pay VAT, business or consumption taxes and, thus, would not have been required to pay the city maintenance and construction taxes and education fee surcharges even without exemption.

Department Position

NKS made the claim that no VAT was payable for NKS because all its sales were for export, whereas Wireking has not made the same claim.[142] Thus, in the *Preliminary Results*, we calculated a benefit for this program for Wireking and not NKS.[143] The line to which Petitioners refer in the 2009 financial statements is on a "Statement of Supplemental Data of Financial Indexes," but it is unclear from record evidence what this line actually represents.[144] Furthermore, while Petitioners allege that the Department calculated Wireking's benefit from this subsidy using the total amount of VAT paid by the company, including the rebated amount, it is unclear that the total taxable basis provided by Wireking and relied upon by the Department for Wireking's calculation includes total VAT.[145] Finally, regarding Petitioners' arguments that the education fee is to be paid simultaneously with the VAT taxes, sales taxes and consumption taxes, and that companies would be required to pay the relevant taxes at the point of payment of their VAT taxes even if such VAT taxes may ultimately be refunded under another program, the Department does not have enough evidence on the record to investigate these arguments for the final results of this review. Accordingly we will address this issue in a future review.

[141] Petitioners cite to WSQR1 at 5, in which Wireking acknowledges that the taxable basis for these taxes was the amount of VAT paid, plus the amount to VAT deducted, plus business tax. *See also* Wireking Preliminary Results Calculation Memorandum at Attachment 6.
[142] *See* NQR at 11 and WQR at 10 and Exhibit 7.
[143] *See Preliminary Results*, 76 FR at 62368-69.
[144] *See* NSQR1b at Exhibit SCVS-2 at 9. NKS subsequently submitted revised financial statements that did not provide additional clarification. *See* NSQR1a at Exhibit 2 and NSQR2 at Exhibit 4
[145] *See* WSQR1 at 5. Wireking did not provide documentary support for the amounts reported in its description of VAT payable, and we did not make inquiries for such support. Accordingly, the record is unclear whether Petitioners' allegations regarding those amounts are correct.

Recommendation

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

AGREE ✓ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

4 April 2012
(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
Asia Pacific CIS	Asia Pacific CIS (Wuxi) Co., Ltd.
AUL	Average useful life
CAFC	U.S. Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CCP	Chinese Communist Party
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
CVD	Countervailing Duty
Department	Department of Commerce
FIE	Foreign-Invested Enterprise
FOB	Freight on board
GOC	Government of the People's Republic of China
IDM	Issues and Decision Memorandum
Jiangsu Weixi	Jiangsu Weixi Group Co.
KWH	Kilowatt hours
LTAR	Less than adequate remuneration
MEPS	MEPS International Ltd.
MT	Metric ton
NKS	New King Shan (Zhu Hai) Co., Ltd.
NME	Non-market economy
Petitioners	Nashville Wire Products Inc. and SSW Holding Company, Inc.
POR	Period of Review
PRC	People's Republic of China
Q&V	Quantity and value
RMB	Renminbi
SBB	Steel Business Briefing
U.S.C.	United States Code
USD	United States Dollar
VAT	Value Added Tax
Wireking	Guangdong Wireking Housewares & Hardware Co., Ltd.
WTO	World Trade Organization

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GQR	GOC's Initial CVD Questionnaire Response: (March 22, 2011)
GSQR1	GOC's Supplemental Questionnaire Response (July 14, 2011)
GSQR2	GOC's Supplemental Questionnaire Response (August 19, 2011)
GSQR4	GOC's Supplemental Questionnaire Response (November 29, 2011)
GSQR5	GOC's Supplemental Questionnaire Response January 4, 2012
	Wireking
WQR	Wireking's Initial Questionnaire Response (March 22, 2011).
WSQR1	Wireking's Supplemental Questionnaire Response (July 13, 2011).
WSQR2	Wireking's Supplemental Questionnaire Response (August 26, 2011)
	NKS
NQR	NKS's Initial Questionnaire Response (March 14, 2011)
NSQR1a	NKS's Supplemental Questionnaire Response (June 29, 2011)
NSQR1b	NKS's Supplemental Questionnaire Response (July 13, 2011)
NSQR2	NKS's Supplemental Questionnaire Response (August 22, 2011)
NSQR3	NKS's Supplemental Questionnaire Response (September 2, 2011)
	Department
AFA Memorandum	Memorandum to the File from Jennifer Meek, regarding "Application of Adverse Fact Available for Final Results," dated April 4, 2012.
CCP Memorandum	Memorandum to the File, regarding "Countervailing Duty Investigation of Certain Kitchen Appliance Shelving and Oven Racks from the People's Republic of China: Seamless Pipe Inv. Hengyang Post-Preliminary Analysis and Additional Documents," dated March 2, 2012.
NKS Final Calculation Memorandum	Memorandum to The File from Jennifer Meek regarding "Final Results of Countervailing Duty Administrative Review: KASR from the PRC: Calculations for the

	Final Results for NKS," dated April 4, 2012.
NSA Memorandum	Memorandum to Susan Kuhbach, Office Director, AD/CVD Operations, Office 1, from Jennifer Meek and Patricia Tran, International Trade Analysts, AD/CVD Operations, Office 1, regarding "Countervailing Duty Administrative Review of *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China:* Initiation of New Subsidy Allegation," dated June 28, 2011.
Post-Preliminary Analysis	Memorandum to the File from the Team to Paul Piquado, Assistant Secretary for Import Administration, titled, "Post-Preliminary Analysis Memorandum," dated March 2, 2012.
Post-Preliminary Benchmark Memorandum	Memorandum to The File from Jennifer Meek, regarding "Post-Preliminary Benchmark Memorandum of Countervailing Duty Administrative Review: KASR from the PRC: Post-Preliminary Memorandum," dated March 2, 2012.
Wireking Preliminary Results Calculation Memorandum	Memorandum to The File from Alexander Montoro and Jennifer Meek regarding "Preliminary Results of Countervailing Duty Administrative Review: KASR from the PRC: Calculations for the Preliminary Results for Wireking," dated September 30, 2011.
Wireking Final Calculation Memorandum	Memorandum to The File from Jennifer Meek regarding "Final Results of Countervailing Duty Administrative Review: KASR from the PRC: Calculations for the Final Results for Wireking," dated April 4, 2012.
Wire Rod Memorandum	Memorandum to the File, regarding "Wire Rod Benchmark Prices," dated September 30, 2011.

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

LITIGATION TABLE

Short Cite	**Cases**
Baker	*Baker v. GTE North Inc.*, 110 F.3d 28 (7th Cir. 1997)
Banker's Trust New York	*Banker's Trust New York v. United States*, 225 F.3d 1368 (Fed. Cir. 2000)
Bowen	*Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988)
Carlton	*United States v. Carlton*, 512 U.S. 26 (1994)
Corus I	*Corus Staal BV v. Dep't of Commerce*, 395 F.3d 1343 (Fed. Cir. 2005) *cert. denied* 126 S. Ct. 1023, 163 L. Ed. 2d 853 (2006)
Corus II	*Corus Staal BV v. United States*, 502 F.3d 1370 (Fed. Cir. 2007)
Fabrique	*Fabrique de Fer de Charleroi, S.A. v. United States,* 166 F. Supp. 2d 593 (Ct. Int'l Trade 2001)
GPX I	*GPX International Tire Corp. v. United States*, 645 F. Supp. 2d 1231 (Ct. Int'l Trade 2009)
GPX II	*GPX International Tire Corporation v. United States*, 666 F.3d 732 (Fed. Cir. 2011).
NSK	*NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007)
Paramino Lumber	*Paramino Lumber Company v. Marshal*, 308 U.S. 370 (1940)
Shanghai Taoen	*Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339 (Ct. Int'l Trade 2005).

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if "certain" is in the title of the case, it has been excluded from the title listing.

Short Cite	Administrative Case Determinations
	Aluminum Extrusions
Aluminum Extrusions from the PRC	*Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011).
	Circular Welded Carbon Quality Steel Pipe – PRC
CWP from the PRC	*Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008).
	Citric Acid and Certain Citrate Salts – PRC
Citric Acid from the PRC	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results*, 76 FR 77206 (December 12, 2011).
	Coated Paper from the PRC
CFS from the PRC	*Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007).
	Cylinders from the PRC
Cylinders from the PRC Prelim	*High Pressure Steel Cylinders From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 76 FR 64301 (October 18, 2011).
	CVD Preamble
CVD Preamble	*Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998).
	Drill Pipe from the PRC
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).
	Flowers from the Mexico
Fresh Cut Flowers from Mexico	*Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
	Folding Metal Tables from the PRC
Folding Metal Tables from the PRC	*Folding Metal Tables and Chairs From the People's Republic of China: Final Results of 2007-2008 Deferred Antidumping Duty Administrative Review and Final Results of 2008-2009*

	Antidumping Duty Administrative Review, 76 FR 2883 (January 18, 2011).
	Galvanized Steel Wire from the PRC
Galvanized Steel Wire from the PRC Prelim	*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)
Galvanized Steel Wire from the PRC	*Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012)
	Kitchen Appliance Shelving & Racks from the PRC
Initiation Notice	*Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 75 FR 66349, 66351 (October 28, 2010), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction*, 75 FR 69054 (November 10, 2010).
Initiation Notice - Investigation	*Notice of Initiation of Countervailing Duty Investigation: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, 73* FR 50304 (August 26, 2008).
Preliminary Results	*Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 76 FR 62364 (October 7, 2011).
KASR from the PRC	*Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009).
	Light-walled Rectangular Pipe and Tube from the PRC
LWRP from the PRC	*Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008).
	Lightweight Thermal Paper — PRC
LWTP From the PRC	*Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008).
	Live Swine from the Canada
Live Swine from Canada	*Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408 (October 7, 1996).
	Off-Road Tires from the PRC
OTR Tires from the PRC	*Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).
	Oil Country Tubular Goods from the PRC

OCTG from the PRC	*Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009).
	Phosphoric Acid from the Israel
Phosphoric Acid from Israel	*Industrial Phosphoric Acid from Israel: Final Countervailing Duty Determination,* 63 FR 13626 (March 20, 1998).
	Pre-Stressed Concrete Steel Wire Strand from the PRC
PC Strand from the PRC	*Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010).
	Seamless Pipe from the PRC
Seamless Pipe from the PRC	*Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010).
	Softwood Lumber Products from the Canada
Softwood Lumber from Canada	*Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002).
	Static Random Access Memory Semiconductors from the Taiwan
Semiconductors from Taiwan	*Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (February 23, 1998).
	Wire Decking from the PRC
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)

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

Short Cite	**Full Name**
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)