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International Trade Administration
Washington, D.C. 20230

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Administrative Review
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Public Document
AD/CVD Office 1

August 7, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for Final Results of Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China

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I. BACKGROUND

The company respondents in this administrative review are Jiangsu Chengde and Wuxi.[1] The petitioner is United States Steel Corporation. On February 8, 2013, we published the *Preliminary Results*,[2] and on July 5, 2013, we issued the Post-Preliminary Analysis. Parties filed case and rebuttal briefs on July 15, and July 22, 2013, respectively.

The "Subsidies Valuation Information" and "Analysis of Programs" 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 parties in the case and rebuttal briefs in the "Analysis of Comments" section below. This section 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:

A. Application of the CVD Law

Comment 1 Application of CVDs to Imports from NME Countries
Comment 2 Simultaneous Application of CVD and AD NME Measures

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[1] For this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short cites as well as a guide to the acronyms.
[2] *See Preliminary Results*,78 FR at 9368, and accompanying PDM.

Comment 3 Countervailing Subsidies Provided Prior to the Cutoff Date

B. Electricity for LTAR

Comment 4 Whether the Provision of Electricity for LTAR is Countervailable

C. Steel Rounds for LTAR

Comment 5 Whether Steel Round Producers are "Authorities"
Comment 6 Whether the Provision of Steel Rounds for LTAR is Specific
Comment 7 Benchmark Issues

D. Policy Lending

Comment 8 Whether Wuxi's Loans are Specific
Comment 9 Whether a Financial Contribution Exists and SOCBs are Authorities
Comment 10 Use of an In-Country Benchmark or "Secured" Loan Benchmark

E. Export Restrictions on Coke

Comment 11 SCM Agreement, Financial Contribution, and Application AFA Regarding Export Restraints on Coke
Comment 12 Specificity of Export Restraints to the OCTG Industry
Comment 13 Cancellation of Export Tariffs and Quotas on Coke

F. Other Issues

Comment 14 Wuxi's Sales Denominator
Comment 15 Specificity of the ESA and TPA

II. SCOPE OF THE ORDER

The merchandise covered by the order consists of OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to API or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the order is currently classified in the HTSUS under item numbers:

7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050,

7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers:

7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, and 7304.59.8080.

The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.

III. SUBSIDIES VALUATION INFORMATION

A. Period of Review

The period for which we are measuring subsidies, *i.e.*, the POR, is January 1, 2011, through December 31, 2011.

B. Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[3] No party in this proceeding has disputed this allocation period.

Consistent with other PRC CVD determinations, we continue to use a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date. This issue is further addressed in Comment 3, below.

C. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of the recipient and other

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

companies if: (1) cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

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

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[4]

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

The 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.[5]

Jiangsu Chengde

Jiangsu Chengde was founded in 1998 as a joint stock limited company. In 2005, it was converted into a privately-owned company whose ownership was divided among a number of individuals.[6] The company reported several affiliates during the POR, but none was cross-owned within the meaning of 19 CFR 351.525(b)(6).[7] Thus, Jiangsu Chengde responded on behalf of itself in this proceeding. We have attributed subsidies to Jiangsu Chengde solely to Jiangsu Chengde's sales.

[4] *See CVD Preamble*, at 65348, 65401.
[5] *See Fabrique*, 166 F. Supp. 2d 593, 600-604.
[6] *See* CQR, at III-5.
[7] *See* CQR, at III-2 through III-4.

Wuxi

Wuxi was established on November 17, 1999, in Jiangsu Province, PRC, as a "productive" FIE.[8] Wuxi's ownership has transferred multiple times since its establishment, most recently in 2006, when it became wholly-owned by the British Virgin Islands incorporated First Space which, in turn, is wholly-owned by the Cayman Islands incorporated WSP Holdings.[9] WSP Holdings is publicly-traded on the New York Stock Exchange under the ticker symbol "WH."[10]

Wuxi filed a response on behalf of itself, as well as four separate responses on behalf of its affiliated companies: Liaoyang, a producer of subject merchandise; Songyuan, a producer of subject merchandise; Mengfeng, an input supplier; and Chaoyang, an input supplier.[11] Wuxi subsequently identified a fifth affiliate, Bazhou, as a producer of subject merchandise, and filed a response on its behalf.[12]

Wuxi wholly-owns Songyuan, Bazhou, and Mengfeng, and owns a 51 percent stake in Chaoyang.[13] Wuxi's direct parent company, First Space, owns 70 percent of Liaoyang.[14]

We find that these companies (hereinafter, "the Wuxi Companies") are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership.[15] Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Wuxi, Liaoyang, Songyuan, and Bazhou, to the combined sales of Wuxi, Liaoyang, Songyuan, and Bazhou (exclusive of inter-company sales). Furthermore, since Mengfeng and Chaoyang supply inputs to cross-owned affiliates that are primarily dedicated to the downstream product,[16] pursuant to 19 CFR 351.525(6)(iv), we have attributed subsidies received by Mengfeng to the combined sales of Wuxi, Liaoyang, Songyuan, Mengfeng, and Bazhou (exclusive of inter-company sales). Similarly, for Chaoyang, we have attributed subsidies received by Chaoyang to the combined sales of Wuxi, Liaoyang, Songyuan, Chaoyang, and Bazhou (exclusive of inter-company sales).[17]

D. Loan Benchmarks and Discount Rates

The Department has examined loans received by the Wuxi Companies and Jiangsu Chengde from Chinese policy banks and SOCBs, as well as non-recurring, allocable subsidies.[18] The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

[8] *See* WQR, at 4-5.
[9] *Id.*, at 5.
[10] *Id.*
[11] *Id.*, at 1-3.
[12] *See* W1SR.
[13] *See* WQR, at Exhibit 1.
[14] *Id.*
[15] *Id.*
[16] *Id.*, at 3 and W1SR at 1.
[17] *See* Wuxi Prelim Calc Memo for further explanation.
[18] *See* 19 CFR 351.524(b)(1).

1. Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[19] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."[20] As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from the PRC*,[21] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate.[22] There is no new information on the record of this review that would lead us to deviate from our prior determinations regarding government intervention in the PRC's banking sector.

We first developed in *CFS from the PRC*,[23] and more recently updated in *Thermal Paper from the PRC*,[24] the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.[25] Beginning with 2010, however, the PRC is in the upper-middle income category.[26] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 – 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 and 2011. As explained in *CFS from the PRC*, by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built

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[19] *See* 19 CFR 351.505(a)(3)(i).
[20] *See* 19 CFR 351.505(a)(3)(ii).
[21] *See CFS from the PRC*, and accompanying IDM at Comment 10; *see also* Additional Documents Memo, at Attachment I.
[22] *See, e.g., Softwood Lumber Investigation*, and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[23] *See CFS from the PRC*, and accompanying IDM at Comment 10.
[24] *See Thermal Paper from the PRC*, and accompanying IDM at 8-10.
[25] *See* World Bank Country Classification, http://econ.worldbank.org/.
[26] *Id.*

into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each year from 2001-2009, and 2011, the results of the regression-based analysis[27] reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's IFS. With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010 and 2011, and "lower middle income" for 2001-2009. First, we did not include those economies that the Department considered to be NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.[28] Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.[29]

Because these rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to Wuxi and Jiangsu Chengde by SOCBs.[30]

2. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[31]

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[27] *See* Interest Rate Benchmark Memorandum.
[28] For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.
[29] For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. *See* Interest Rate Benchmark Memorandum.
[30] *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.
[31] *See, e.g., LWRP from the PRC*, and accompanying IDM at 8.

In *Citric Acid Investigation*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where 'n' equals or approximates the number of years of the term of the loan in question.[32] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[33]

3. Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC investigations. For U.S. dollar short-term loans, the Department used as a benchmark the one-year dollar LIBOR, plus the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.[34]

4. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy. These benchmarks are provided in the Interest Rate Benchmark Memorandum.

5. Creditworthiness

In the *Preliminary Results*, we preliminarily found Wuxi to be uncreditworthy during the POR.[35] No parties to this proceeding raised our findings as an issue in their case briefs.[36] Accordingly, we affirm our conclusions as stated in Wuxi's Preliminary Creditworthiness Analysis and find that Wuxi was uncreditworthy during the POR. As a result, we have continued to use an uncreditworthy benchmark, calculated in accordance with 19 CFR 351.505(a)(3)(iii), and described in the Interest Rate Benchmark Memorandum, for long-term loans taken out by Wuxi in the POR.

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[32] *See Citric Acid Investigation*, and accompanying IDM at Comment 14.
[33] *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.
[34] *Id*.
[35] *See Preliminary Results*, and accompanying PDM at 11-12.
[36] *See* CCB, GCB, PCB, and WCB.

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[37] 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."[38]

GOC – Whether Certain Steel Round Producers Are "Authorities"

As discussed below under the section "Programs Found to be Countervailable," the Department is investigating whether the GOC provided steel rounds for LTAR. We asked the GOC to provide information regarding the specific companies that produced the steel rounds that the mandatory respondents purchased during the POR. Specifically, we sought information from the GOC that would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.

For each producer that the GOC claimed was privately owned by individuals during the POR, we requested the following:

- Translated copies of source documents that demonstrate the producer's ownership during the POR, such as capital verification reports, articles of association, share transfer agreements, or financial statements.

- Identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials or representatives during the POR.

[37] *See SRAMS From Taiwan*, 63 FR at 8909, 8932.
[38] *See* SAA, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

- A statement regarding whether the producer had ever been a SOE, and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.

- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

For producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POR, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. Specifically, we requested the following information:

- Translated copies of source documents identifying the company's owners during the entire POR, such as capital verification reports, articles of association, share transfer agreements or financial statements, along with a chart detailing the name and respective ownership level of each owner of the input producer, up to the ultimate individual or state owners during the entire POR.

- The nature of all outstanding shares of the companies, *e.g.*, voting, non-voting, controlling, shares with special rights ("golden" shares), *etc.* and a breakdown of these different types of shares by owner.

- The identification of any state ownership of the producer's shares; and the nature and level of these government entities (*e.g.*, central government ministry, national or sub-central SASAC, provincial SOE, municipality, township enterprise, *et cetera.*).

- For each level of ownership, a translated copy of the section(s) of the articles of association showing the rights and responsibilities of the shareholders and, where appropriate, the board of directors, including all decision making (voting) rules for operation of the company.

- For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POR.

- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

- A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders' interests in the company (*e.g.*, operational, strategic, or investment-related).

We gave the GOC at least two opportunities to provide this information for each producer, yet the GOC did not provide a complete response to these questions for any producer. We described

in detail the information that was missing from each questionnaire response in the *Preliminary Results*. We also described the missing information for each company evaluated in the Post-Preliminary Analysis. Broadly speaking, the producers of the steel rounds used by the respondents can be classified into three categories: 1) companies that the GOC confirmed it owns or controls directly or indirectly, 2) companies the GOC identified as being owned by a combination of companies, government entities and/or individuals but argued are not majority state-owned or controlled, and 3) companies the GOC identified as being directly or indirectly owned by individuals.

With respect to the first category, we find that these enterprises are "authorities" within the meaning of section 771(5)(B) of the Act, as they are majority-owned by the government. For the second category, we cannot begin to evaluate the GOC's claim that these companies are not majority-owned by the government because the GOC did not identify the eventual owners of most of the producers in this category. In some instances, the GOC identified the immediate owners of the producers, but did not identify the 'owners of the owners' or identify which owners are state entities. We need this information because it is the eventual owners and not the immediate owners that ultimately control the steel round producers. In the few instances that the GOC did identify the eventual owners of the producers in this category, it failed to answer whether the individual owners, members of the boards of directors or senior managers of the producers were CCP officials during the POR.

Finally, for the third category, although the GOC identified the ultimate individual owners of these producers, it failed to answer whether the individual owners, members of the boards of directors or senior managers of the producers were CCP officials during the POR. The GOC has repeatedly argued that our questions regarding the role of CCP officials in the management and operations of the steel rounds producers are not relevant, but it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and administrative reviews.[39] Moreover, we consider information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC. The CCP's role is described in more detail in a separate memorandum.[40] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[41] Similarly, the GOC's argument that CCP officials also cannot serve as employees in enterprises is contradicted by the Department's discovery in a past proceeding that company officials were simultaneously acting as "members of the Communist Party and National Party Conference as well as members of certain town,

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[39] *See Essar Steel*, at 1285, 1298-99 (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK I* at 442, 447 ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *Ansaldo* at 198, 205 (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

[40] *See* CCP Memorandum.

[41] *See* Additional Documents Memo, at Attachment II, page 16.

municipal, and provincial level legislative bodies."[42] We have further addressed the GOC's comments regarding the relevance of the CCP and whether CCP officials can simultaneously serve as employees in enterprises at Comment 5, below.

The information we requested regarding the ultimate owners of these producers and the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. If, as the GOC claims, it was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.[43] We also asked the GOC what efforts it took to obtain the information we requested. It replied that it "…relied upon capital verification reports, articles of association and business registrations to determine whether or not company owners, members of the board of directors or senior managers were or were not members of any of the above eight entities."[44] However, these documents customarily do not contain information regarding the CCP affiliations of owners, members of the board of directors or senior managers. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.[45]

We find that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available."[46] Moreover, we find that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available.[47] As AFA, we are treating all of the steel round producers not already identified as being majority state-owned by the GOC as "authorities" for these final results.

According to the GOC, the Department found one shareholder of a producer was not an "authority" in *PC Strand from the PRC*.[48] We have included this producer in our application of AFA and treated it as an "authority." Our rationale, the GOC's objections, and our response are below at Comment 5. Also, Jiangsu Chengde argues that its affiliate Yangzhou Chengde should not be treated as an authority. We also address these arguments at Comment 5.

For details on the calculation of the subsidy rate for the respondents, *see* below at section I.C., "Provision of Steel Rounds for LTAR."

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[42] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.
[43] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[44] *See, e.g.*, G2SR, at 25.
[45] *See, e.g.*, *Steel Cylinders from the PRC*, and accompanying IDM at 13.
[46] *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.
[47] *See* section 776(b) of the Act.
[48] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.

GOC – Export Restraints on Coke

As discussed below under the section "Programs Found to be Countervailable," the Department is re-investigating the GOC's regime of export restraints on coke. The Department found this program to be not countervailable in the investigation,[49] but Petitioner provided additional information in this administrative review that warranted re-investigating.[50]

In the *Preliminary Results*,[51] we stated that the GOC did not reply to our request for information that would allow us to analyze whether this program is countervailable, arguing instead that "the alleged export restrictions on coke do not constitute a subsidy within the meaning of the SCM and the WTO framework."[52] Specifically, we requested the following information:

- Descriptions of the measures, such as export quotas, export taxes, licensing requirements, *et cetera*, undertaken by the GOC regarding coke exports and copies of legislation, regulations, or administrative decisions imposing the export restraints;

- The purpose of the export restraint measures and the rate for each measure (*e.g.*, export tax was five percent from January 1, 2009, to October 1, 2009; ten percent from October 1, 2009, to December 31, 2010) since the GOC put the restriction into place;

- The domestic prices for coke during the POR;

- The name and address of each government agency, authority and industry organization that is responsible for, or otherwise involved in, approving and administering the export restriction;

- Copies of government or independent studies or analyses on which the GOC has relied to analyze the effectiveness of the export restriction in meeting the GOC's objectives;

- The reasons why the GOC selected the particular measures it chose to accomplish its goals;

- Descriptions of formal or informal meetings or other consultations or ongoing interaction with the coke-producing or coke-consuming industries or relevant producer or trade associations that the GOC has undertaken with respect to the imposition or adjustment of the export restrictions;

- Descriptions of the factors (*i.e.*, economic, commercial, social, *et cetera*) the GOC considers when determining the export restrictions and how these factors further the GOC's objectives;

- A copy of any study or analysis on which the GOC relied to determine the appropriate level of the export restriction, including any analysis that quantifies the impact of the export restriction on prices, production, and the production of downstream products;

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[49] *See OCTG Investigation*, and accompanying IDM at 27 and Comment 32.
[50] *See* NSA Initiation Memorandum, at 7-10.
[51] *See Preliminary Results*, and accompanying PDM at 23.
[52] *See* GNSAR, at 16.

- Whether the GOC sets a minimum acceptable price for export quota allocation bids;

- A description of the process through which a company applies and is approved for an export quota;

- A description of any exceptions to the export restrictions;

- For the POR and each of the preceding three years, the annual volume and value of coke that was produced and sold domestically in the PRC, the annual volume and value of exports of domestically-produced coke; and the annual volume and value of coke imported into the PRC;

- For the POR and each of the preceding three years, the total quantity of the coke export quota, the total number of companies that the GOC approved for allocations under the quota, and information regarding any industry-specific quantity allocations for industries that received allocations under the quota;

- The total number of companies that were denied export quota allocations; and

- Supporting documentation showing the import duties and related fees/tariffs for coke that were in effect during the POR.

Subsequently, we sought further information from the GOC after the *Preliminary Results*. The GOC provided some responsive information in the G3SR. For instance, the GOC provided information showing that over 99 percent of domestically-produced coke was also consumed domestically in 2009, 2010, and 2011.[53] It informed us that the export tariff rate on coke was 40 percent during the POR, and that there was also an export licensing scheme in effect.[54] The GOC also provided the articles of association for the CCIA, whose members "{obey} national constituency, law, regulation and policy" and "{accept} the guidance, supervision and administration of registration management authority Ministry of Civil Affairs of P.R.C. and {SASAC} within their authority respectively."[55] However, the GOC still did not respond to the majority of our questions regarding this program.[56]

As such, we preliminarily found the GOC's regime of export restraints on coke to be countervailable in the Post-Preliminary Analysis.[57]

During the course of this proceeding, we gave the GOC at least two opportunities to provide the above-referenced information, yet the GOC did not provide a complete response to the questions in our export restrictions appendix in any of its responses.[58] Instead of complying with our request for information, the GOC initially argued that export restrictions on coke do not

[53] *See* G3SR, at 6.
[54] *Id.*, at 7-8.
[55] *See* G3SR, at 6-9.
[56] *Id.*
[57] *See* Post-Preliminary Analysis, at 13-15.
[58] *See* GNSAR, at 14-16; G3SR, at 4-9; and G4SR, at 12-16.

constitute a subsidy according to the SCM Agreement.[59] The GOC then answered parts of some questions, while stating for others that "this question has no bearing on determining whether the nature of the measure on coke confers a financial contribution or is a subsidy."[60] The GOC ultimately did answer the one question we asked in our fourth supplemental questionnaire, but still submitted that:

> Before answering the following questions, {the} GOC would like to reiterate its statement that the alleged export restrictions on coke do not constitute a subsidy within definition of Article 1.1(a)(1) of the {SCM Agreement}. Petitioner has failed to provide adequate and sufficient evidence indicating that alleged export restraints on coke confer a financial contribution to the producers of OCTG, a necessary prerequisite in accordance with {the SCM Agreement}. Furthermore, as in the original investigation in this proceeding, the record fails to contain any evidence that suppliers of coke have been 'entrusted or directed' by the GOC to make a financial contribution to the OCTG industry, nor is there any evidence that suppliers of coke are motivated by reasons other than commercial considerations … the alleged export restrictions on coke do not constitute a subsidy within the meaning of the SCM {Agreement} and the WTO framework. The GOC requests that the Department terminate its investigation of this alleged 'program,' consistent with its determination in the original investigation in this proceeding.[61]

The *CVD Preamble* for the Department's regulations explains that:

> With regard to export restraints, while they may be imposed to limit parties' ability to export, they can also, in certain circumstances, lead those parties to provide the restrained good to domestic purchasers for less than adequate remuneration. This was recognized by the Department in *Certain Softwood Lumber Products from Canada*, 57 FR 22570 (May 28, 1992)… and *Leather from Argentina*, 55 FR 40212 (October 2, 1990)…[62]

However, without the information the GOC failed to provide, we are unable to evaluate whether these export restraints were structured by the GOC to provide a financial contribution to PRC producers of downstream goods that purchase coke, which includes producers of OCTG.[63]

Because the GOC failed to provide the information we requested, we have continued to rely on "facts otherwise available" for these final results.[64] Furthermore, since the GOC has failed to

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[59] *See* GNSAR, at 14-16.
[60] *See*, *e.g.*, G3SR, at 8.
[61] *See* G4SR, at 13.
[62] *See CVD Preamble*, at 65351.
[63] The Department faced a similar situation in in *Bricks from the PRC*. In that case, we explained that "…the GOC did not provide information necessary to analyze the impact of export restraints on the magnesia industry in the PRC. In particular, the GOC did not identify or submit any reports, statistical data, or compliance data that parties involved in the magnesia export restraint process provide to the GOC with respect to export restraints on magnesia. This missing information is a crucial factor in determining whether the export restraints at issue were structured to provide a financial contribution to domestic downstream industries." *Bricks from the PRC* and accompanying IDM at Comment 5.
[64] *See* sections 776(a)(1) and (a)(2)(A) of the Act.

cooperate by not acting to the best of its ability to comply with our request for information, we find that an adverse inference is appropriate under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's export restraints on coke constitute entrustment or direction of coke producers, within the meaning of section 771(5)(B)(iii) of the Act, to provide a financial contribution (*i.e.*, the provision of goods within the meaning of section 771(5)(D)(iii) of the Act) to PRC producers of downstream goods that purchase coke.

Our rationale, the GOC's objections, and our response are explained below at Comment 11. For details on the calculation of the subsidy rate for the Wuxi Companies, *see* below at section I. D., "Export Restraints on Coke."

GOC – Energy Savings Award and Technology Project Award

As explained in the Post-Preliminary Analysis, we asked the GOC to coordinate with Wuxi and respond to the Department's questionnaire for any new programs Wuxi reported in the W3SR. While the W3SR included information about numerous previously unreported grant programs,[65] the G2SR claimed that "{n}either Wuxi nor Chengde report any new programs."[66] The GOC did not provide the requested questionnaire appendices for the newly reported grants.

Of the new grant programs Wuxi reported, two resulted in a benefit during the POR: the Energy Savings Award and the Technology Project Award.[67] In our third supplemental questionnaire, we specifically asked the GOC to respond to the Department's Standard Questions Appendix and Grant Appendix for these two programs. The GOC failed to respond to a number of questions. For instance, we requested the following information:

> Is eligibility for the subsidy limited to enterprises or industries located within designated geographical regions within the jurisdiction that authorized the program? If so, please provide the criteria for eligibility and you need not respond to the remaining questions under section G.

The GOC replied that "{t}he two programs could be applied by enterprise (*sic*) in Jiangsu province."[68] However, the GOC did not explain whether eligibility is open to all companies throughout Jiangsu Province, or whether eligibility is limited to only certain regions of Jiangsu Province.[69] The GOC also did not respond to the remaining questions in that section of the questionnaire, which included questions regarding program usage that are necessary for our analysis, should a program not be limited to designated geographical regions. For instance, we requested information regarding "the number of recipient companies and industries and the amount of assistance approved under this program for the year in which any mandatory respondent company was approved for assistance, as well as each of the preceding three years."[70]

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[65] *See* W3SR, at 3-11, 13-15, and 17-24.
[66] *See* G2SR, at 6.
[67] *See* Wuxi Final Calc Memo.
[68] *See* G3SR, at 18.
[69] According to the GOC, the Jiangsu Economic and Information Committee and Jiangsu Finance Department administer the Energy Saving Award, and the Jiangsu Science and Technology Department and Jiangsu Finance Department administer the Technology Project Award. *See* G3SR, at 14.
[70] *See* InitQ at Section II, Standard Questions Appendix, Question G(2).

In our fourth supplemental questionnaire to the GOC, we asked the GOC to clarify whether benefits under these programs are limited to companies in certain parts of Jiangsu Province, or are available to all companies located in Jiangsu Province. Finally, the GOC clarified that "{a}ll the enterprises located in Jiangsu Province are eligible to apply for benefits under the program."[71] However, in response to our request for information about program usage, the GOC informed us that "{w}ith regard to the questions of this part, GOC is of the opinion that the 'necessary information' for the current investigation is being conducted on the basis of mandatory respondents which are Wuxi Seamless and Jiangsu Chengde."[72] The GOC did not provide the information we requested.

As we observed in the Post-Preliminary Analysis, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and administrative reviews.[73] Moreover, the GOC's repeated failure to provide program usage information has left us unable to determine the extent to which the benefits are specific within the meaning of section 771(5A)(D)(iii) of the Act. The program usage information the GOC refused to provide is integral to our analysis of whether "{t}he actual recipients of the subsidy…are limited in number,"[74] whether "{a}n enterprise or industry is a predominant user of the subsidy,"[75] whether "{a}n enterprise or industry receives a disproportionately large amount of the subsidy,"[76] and whether "an enterprise or industry is favored over others."[77]

Accordingly, as preliminarily found in the Post-Preliminary Analysis, because the GOC withheld necessary information that was requested of it, the Department continues to rely on "facts available" for these final results.[78] The GOC should have been able to obtain the requested information, but it failed to provide it. As a result, we also find that an adverse inference is appropriate under section 776(b) of the Act because the GOC has failed to act to the best of its ability to comply with our repeated requests for information. Therefore, as AFA, we find that both the EPA and TPA are specific within the meaning of section 771(5A) of the Act.

Our rationale, the GOC's objections, and our response are explained below at Comment 15. For details on the calculation of the subsidy rate for Wuxi, *see* below at section I. E., "Energy Savings Award" and section I. F., "Technology Project Award."

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[71] *See* G4SR, at 7.
[72] *Id.*, at 5-6 and 9-10.
[73] *See Essar Steel*, at 1285, 1298-99 ("{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK I* at 447 ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *Ansaldo* at 198, 205 ("{i}t is Commerce, not the respondent, that determines what information is to be provided").
[74] *See* section 771(5A)(D)(iii)(I) of the Act.
[75] *See* section 771(5A)(D)(iii)(II) of the Act.
[76] *See* section 771(5A)(D)(iii)(III) of the Act.
[77] *See* section 771(5A)(D)(iii)(IV) of the Act.
[78] *See* sections 776(a)(1) and (a)(2)(A) of the Act.

V. ANALYSIS OF PROGRAMS

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

I. Programs Found To Be Countervailable

A. Policy Loans

In the *OCTG Investigation*,[79] the Department determined that the GOC had a policy in place to encourage the development of OCTG production through policy lending. Because no information has been provided on the record of the instant review that would cause us to reach a different determination from the *OCTG Investigation*, we find that the GOC's policy lending program continues. We address comments from parties regarding this finding below at Comment 8.

As such, the loans to OCTG producers from Policy Banks and SOCBs in the PRC constitute financial contributions from "authorities," pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. Furthermore, the loans are *de jur*e specific under section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in government plans and directives, to encourage and support the growth and development of the OCTG industry.

Wuxi and its cross-owned affiliates Liaoyang, Songyuan, Chaoyang and Bazhou each reported receiving loans from SOCBs that were outstanding during the POR.[80] After the *Preliminary Results*, we sought clarification from Songyuan and Wuxi regarding interest payments made on loans from SOCBs that were outstanding during the POR. Based on Songyuan and Wuxi's responses,[81] we have amended our preliminary calculations for the Wuxi Companies.[82]

Jiangsu Chengde also reported loans from SOCBs that were outstanding during the POR.[83]

To calculate the benefit under this program, we compared the amount of interest each company paid on the outstanding loans to the amount of interest it would have paid on comparable commercial loans. We used the benchmarks described above under "Loan Benchmarks and Discount Rates" to calculate each company's subsidy rate.

On this basis, we now find that the Wuxi Companies received a countervailable subsidy of 2.65 percent *ad valorem*, and continue to find that Jiangsu Chengde received a countervailable subsidy of 1.00 percent *ad valorem* under this program.[84]

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[79] *See OCTG Investigation*, and accompanying IDM at 12 and Comments 20-21.
[80] *See* W1SR, at 13-15 and Exhibits S1-67, S1-70, S1-71, S1-72, and B10.
[81] *See* W5SR, at Exhibits S5-1 through S5-3.
[82] *See* Wuxi Final Calc Memo.
[83] *See* C2SR, at Exhibit 29.
[84] *See* Wuxi Final Calc Memo; *see also* Jiangsu Chengde Final Calc Memo.

B. Provision of Electricity for LTAR

In the *OCTG Investigation*, we determined that this program conferred a countervailable subsidy.[85] Because no information has been provided on the record of the instant review that would cause us to reach a different determination from the *OCTG Investigation*, we find that the GOC's provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific. We address comments from parties regarding these findings below at Comment 4.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the companies' reported consumption volumes and rates paid.[86] As explained under the "Use of Facts Otherwise Available and Adverse Inferences: Wuxi Companies – Voltage Class" in the *Preliminary Results* we did not have accurate information for certain members of the Wuxi Companies.[87] Accordingly, we sought clarification from the Wuxi Companies after the *Preliminary Results*. Based on the Wuxi Companies' responses,[88] we have amended our preliminary calculations for these final results with respect to the Wuxi Companies.[89] Also, Wuxi submitted that we used an incorrect benchmark for Bazhou in the *Preliminary Results*, comparing Bazhou's consumption volumes and rates paid to an incorrect voltage class.[90] We have updated the benchmark with respect to Bazhou for these final results.[91] We followed the same methodology as in the *Preliminary Results* to determine the amount of the benefit.[92]

On this basis, we now find that the Wuxi Companies received a countervailable subsidy of 5.34 percent *ad valorem,* and continue to find that Jiangsu Chengde received a countervailable subsidy of 0.42 percent *ad valorem* under this program.[93]

C. Provision of Steel Rounds for LTAR

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences," we are relying on AFA to find that all producers of steel rounds not otherwise identified by the GOC as majority state-owned enterprises are "authorities." (We address comments from parties regarding this finding below at Comment 5.) Because these producers are authorities, we find that Wuxi and Jiangsu Chengde received a financial contribution in the form of the provision of a good, within the meaning of section 771(5)(D)(iii) of the Act. Likewise, consistent with the *OCTG Investigation*,[94] the *Preliminary Results*, and the Post-Preliminary Analysis, we find that the GOC's provision of steel rounds is specific under section 771(5A)(D)(iii)(I) of the Act. We

[85] *See OCTG Investigation*, and accompanying IDM at 5-6 and 22-23.
[86] For the Wuxi Companies, s*ee* WQR, at Exhibits 11, 14, C6, C7, L7, L8, M6, M7, S7, S8; W1SR at B7; and, W4SR at Exhibit S4-2. For Jiangsu Chengde, *see* CQR at III-15 and Exhibit 8.
[87] *See Preliminary Results*, and accompanying PDM at 12-13 and 18-19.
[88] *See* W5SR, at Exhibits S5-4-1 through S5-7.
[89] *See* Wuxi Final Calc Memo.
[90] *See* WCB, at 16.
[91] *See* Wuxi Final Calc Memo.
[92] *See Preliminary Results*, and accompanying PDM at 20.
[93] *See* Wuxi Final Calc Memo; *see also* Jiangsu Chengde Final Calc Memo.
[94] *See OCTG Investigation*, and accompanying IDM at 15.

followed the same methodology as in the *Preliminary Results* to determine the amount of the benefit.[95]

On this basis, we continue to find that Wuxi received a total countervailable subsidy of 0.60 percent *ad valorem,* and that Jiangsu Chengde received a total countervailable subsidy of 0.53 percent *ad valorem* under this program.[96]

D. Export Restraints on Coke

Mengfeng, one of Wuxi's cross-owned affiliates, reported purchasing coke during the POR. For the reasons explained under "Use of Facts Otherwise Available and Adverse Inferences" above and in the Post-Preliminary Analysis,[97] we are partially basing our findings regarding export restraints on coke on AFA. In drawing an adverse inference, we determine that the GOC's export restraints on coke constitute entrustment or direction of coke producers, within the meaning of section 771(5)(B)(iii) of the Act, to provide a financial contribution (*i.e.*, the provision of goods within the meaning of section 771(5)(D)(iii) of the Act) to PRC producers of downstream goods that purchase coke. With regard to benefit, we find that coke is being provided for LTAR within the meaning of section 771(5)(E)(iv) of the Act, based on our comparison of the benchmark described below with the prices Mengfeng paid for its coke purchases during the POR.

We also determine that coke is being provided to a specific industry within the meaning of section 771(5A)(D)(iii) of the Act, the steel industry. For this latter finding, we are relying not on facts available, but on information provided by the GOC in the G4SR.[98]

The criteria for identifying appropriate market-determined benchmarks for measuring a benefit are codified at 19 CFR 351.511(a)(2). Potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As the Department has previously explained, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[99]

In evaluating whether there are market prices for actual transactions within the country under investigation (*i.e.*, tier one prices), we consider whether the prices from actual sales transactions involving PRC buyers and sellers are significantly distorted. As described in the *CVD Preamble*:

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[95] *See Preliminary Results*, and accompanying PDM at 20-23.
[96] *See* Wuxi Final Calc Memo; *see also* Jiangsu Chengde Final Calc Memo.
[97] *See* Post-Preliminary Analysis, at 8-12.
[98] *See* G4SR, at 14.
[99] *See Softwood Lumber Investigation*, and accompanying IDM at "Market-Based Benchmark."

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.[100]

Information on the record suggests that the GOC's involvement in the PRC coke market has significantly distorted 'tier one' domestic prices to the point that they cannot be relied upon as benchmarks. For example, the GOC informed us that over 99 percent of coke produced in the PRC between 2009 and 2011 was consumed domestically.[101] This suggests that the export restraints have had the effect that might intuitively be expected, *i.e.*, to limit coke suppliers' access to buyers outside of the domestic market. By limiting demand, the export restraints may have forced coke suppliers to sell to domestic customers at prices lower than those that they might have otherwise obtained in the absence of the export restraints. According to an independent study, the Thomas Study (a researcher at the University of Duisburg-Essen), this is precisely what happened. The Thomas Study observes:

> …but the whole extent of trade constraints suggests that there are other goals {of the GOC's export restraints} involved as well, notably the creation of a significant price differential for domestic and international consumers of coke and other materials. Bottling up vital inputs for steelmaking inside the Chinese market works to increase domestic supply and depress input prices for Chinese steel producers. At the same time, cutting down the export volume reduces the supply of these resources on international markets and thus functions to keep world market prices (and costs of international steel producers) artificially high – in comparison to a free trade, open markets scenario.[102]

It continues:

> Price and Nance (2010), comparing the development of coke prices for domestic consumption and export, find that a large gap had formed between during 2007 and 2008. While there was no price difference to speak {of} in January 2007 with one ton of coke for both domestic consumption and exports costing about US $150, until December 2008 coke prices for domestic consumption had risen to about US $200 while export quotations exceeded that by US $241. The resulting price difference conferred a discount of more than 50 percent upon domestic coke users. Assuming an average input ratio of 0.6 tons of coke per ton of crude steel (World Coal Institute 2007), the benefit in input costs per ton of crude steel that could be claimed by Chinese steelmakers was US $400.[103]

However, the record is incomplete in this regard because, as described above under "Use of Facts Otherwise Available and Adverse Inferences," the GOC did not respond to a number of our questions for this program. In light of the above, we have resorted to 'tier two' world market prices as benchmarks under 19 CFR 351.511(a)(2)(ii) to calculate the benefit.

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[100] *See CVD Preamble*, at 65377.
[101] *See* G3SR, at 6.
[102] *See* Thomas Study, at page 11.
[103] *Id.*, at page 15.

Currently, the only coke prices for the POR on the record are in the *Coke Market Reports* submitted by Petitioner in the NSA Letter.[104] The *Coke Market Reports* include the following prices for each month of the POR: China free-on-board, India c.f.r., and northern Europe c.f.r. We are not using domestic (*i.e.*, Chinese) prices for the reasons described above. Therefore, we have relied on these c.f.r. prices for these final results.

In order to determine the monthly benchmark, we used the monthly price range from each month's report.[105] For example, the report for February lists a price range of $500-510 per metric ton for 10.5 / 11.5 percent ash coke delivered to northern Europe, and a price range of $500-520 for 10.5 / 12.5 percent ash coke delivered to India. We took the average of each monthly range (*i.e.*, $505 and $510), and took the average of the result (*i.e.*, $507.50). To this, we added import duty, VAT, and Chinese inland freight to yield a monthly benchmark price.[106] We did not add ocean freight, since this is already included in the northern European and Indian prices. To calculate the benefit, we calculated the difference between the benchmark price for each month and the price paid by Mengfeng for its coke purchases in that month.

On this basis, we find that the Wuxi Companies received a countervailable subsidy of 4.91 percent *ad valorem* for this program.[107]

E. Energy Savings Award

As explained above under "Use of Facts Otherwise Available and Adverse Inferences" and in the Post-Preliminary Analysis,[108] the GOC failed to provide necessary information regarding program usage which would have allowed us to analyze whether the Energy Savings Award is specific within the meaning of section 771(5A)(D)(iii) of the Act. Since the GOC did not provide this information, the Department is relying on "facts otherwise available." Furthermore, since the GOC failed to act to the best of its ability to comply with our repeated requests for information, we are also applying an adverse inference in our choice of facts otherwise available, pursuant to section 776(b) of the Act. Accordingly, as AFA, we find that the Energy Savings Award is specific within the meaning of section 771(5A) of the Act. We also find that this program results in a financial contribution within the meaning of section 771(5)(D) of the Act, because awards under this program are a direct transfer of funds from the GOC to the respondent.

According to the Wuxi Companies, assistance under this program is exceptional and companies cannot expect to receive additional subsidies on an ongoing basis from year to year without filing additional applications.[109] The GOC confirmed this, and informed us that specific government approval is required each time benefits are received.[110] Therefore, we have treated this program as a non-recurring grant as described by 19 CFR 351.524(b). However, according to 19 CFR 351.524(b)(2), grants of less than 0.5 percent of relevant sales in the year of approval will be

[104] *See* NSA Letter, at Exhibits 22-35.
[105] *See* Wuxi Final Calc Memo.
[106] *See* 19 CFR 351.511(a)(2)(iv).
[107] *See* Wuxi Final Calc Memo.
[108] *See* Post-Preliminary Analysis, at 10-12.
[109] *See* W3SR, at 5-6.
[110] *See* G3SR, at 21-22.

expensed to the year of receipt. Wuxi's benefit under this program was less than 0.5 percent of relevant sales in the year of approval. Therefore, we have expensed the benefit resulting from this program to the year of receipt which, in this instance, is the POR. To calculate the benefit, we divided the amount of the funding Wuxi received in the POR by Wuxi's total sales in the POR.

On this basis, we find that the Wuxi Companies received a countervailable subsidy of 0.01 percent *ad valorem*.[111]

F. Technology Project Award

As explained above under "Use of Facts Otherwise Available and Adverse Inferences" and in the Post-Preliminary Analysis,[112] the GOC failed to provide necessary information regarding program usage which would have allowed us to analyze whether the Technology Project Award is specific within the meaning of section 771(5A)(D)(iii) of the Act. Since the GOC did not provide this information, the Department is relying on "facts otherwise available." Furthermore, since the GOC failed to act to the best of its ability to comply with our repeated requests for information, we are applying an adverse inference in our choice of facts otherwise available, pursuant to section 776(b) of the Act. Accordingly, as AFA, we find that the Technology Project Award is specific within the meaning of section 771(5A) of the Act. We also find that this program results in a financial contribution within the meaning of section 771(5)(D) of the Act, because awards under this program are a direct transfer of funds from the GOC to the respondent.

According to the Wuxi Companies, assistance under this program is exceptional and companies cannot expect to receive additional subsidies on an ongoing basis from year to year without filing additional applications.[113] The GOC confirmed this, and informed us that specific government approval is required each time benefits are received.[114] Therefore, we have treated this program as a non-recurring grant as described by 19 CFR 351.524(b). However, according to 19 CFR 351.524(b)(2), grants of less than 0.5 percent of relevant sales in the year of approval will be expensed to the year of receipt. Wuxi's benefit under this program was less than 0.5 percent of relevant sales in the year of approval. Therefore, we have expensed the benefit resulting from this program to the year of receipt which, in this instance, is the POR. To calculate the benefit, we divided the amount of the funding Wuxi received in the POR by Wuxi's total sales in the POR.

On this basis, we find that the Wuxi Companies received a countervailable subsidy of 0.02 percent *ad valorem*.[115]

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[111] *See* Wuxi Final Calc Memo.
[112] *See* Post-Preliminary Analysis, at 10-12.
[113] *See* W3SR, at 8.
[114] *See* G3SR, at 21-22.
[115] *See* Wuxi Final Calc Memo.

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

A. Land for LTAR in Kazuo County

In 2009, Wuxi and other shareholders founded Wuxi's cross-owned affiliate, Chaoyang, as a vehicle by which to purchase the assets, including the land-use rights, buildings, and equipment, of another company in Kazuo County.[116]

We determined to investigate this program based on information from Petitioner that "the Kazuo County Committee … has stated industrial projects that are in line with national industrial policies are entitled to receive land at special prices if the investments are sufficiently large."[117] We reviewed the asset transfer agreement for Wuxi's purchase of assets and the business license of the company Wuxi acquired.[118] We did not observe any evidence that the Kazuo County Committee or the Government of Kazuo County was involved in the transfer of land-use rights to Chaoyang, or otherwise provided land for LTAR to Wuxi or Chaoyang. The information we evaluated is proprietary, but is described in the Post-Preliminary Analysis.[119]

Based on our review of the asset transfer agreement and business license of the company Wuxi acquired, we find that the Kazuo County government did not provide land for LTAR to the Wuxi Companies. As a result, we find that the Wuxi Companies did not use this program.

B. "Bail-Out" Loans from SOCBs[120]
C. Export Incentive Payments Characterized as "VAT Rebates"[121]
D. Preferential Tax Program for FIEs Recognized as High or New Technology Enterprises[122]
E. Jiangsu Province Famous Brands[123]
F. Subsidies in the WND[124]
G. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
H. "Two Free/Three Half" Program
I. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
J. State Key Technology Project Fund
K. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area – *Science and Technology Fund*
L. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area – *Accelerated Depreciation Program*
M. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area – *Land*
N. Export Loans from the Export-Import Bank of China

[116] *See* WNSAR, at 4 and W5SR, at 6-11.
[117] *See* NSA Initiation Memorandum at 5.
[118] *See* W5SR, at Exhibit S5-10-1.
[119] *See* Post-Preliminary Analysis at 18.
[120] *See Preliminary Results*, and accompanying PDM at 24.
[121] *Id.*
[122] *Id*., at 24-25.
[123] *Id*., at 25.
[124] *See* Post-Preliminary Analysis, at 17.

O. Loan and Interest Forgiveness for SOEs
P. Sub-central Government Programs to Promote Famous Export Brands and China World Top Brands
Q. Treasury Bond Loans to Northeast
R. Preferential Loans for SOEs
S. Preferential Loans for Key Projects and Technologies
T. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
U. Debt-to-Equity Swap for Pangang
V. Equity Infusions
W. Exemptions for SOEs From Distributing Dividends to the State
X. Preferential Income Tax Policy for Enterprises in the Northeast Region
Y. Forgiveness of Tax Arrears For Enterprises in the Old Industrial Bases of Northeast PRC
Z. Stamp Exemption on Share Transfers Under Non-Tradable Share Reform
AA. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund
BB. Provision of Land Use Rights for LTAR to Huludao
CC. Provision of Land to SOEs for LTAR
DD. Provision of Hot-Rolled Steel (flat products) for LTAR
EE. Provision of Coking Coal for LTAR
FF. Foreign Trade Development Fund (Northeast Revitalization Program)
GG. Export Assistance Grants
HH. Program to Rebate Antidumping Fees
II. Subsidies for Development of Famous Export Brands and China World Top Brands
JJ. Grants to Loss-Making SOEs
KK. Export Interest Subsidies
LL. Five Points, One Line Program
MM. High-Tech Industrial Development Zones
NN. Reduced Income Tax Rates for Export-Oriented FIEs
OO. VAT Rebates from the GLC
PP. Western China Regional Subsidies
QQ. Land Fee Exemptions from the GLC

VI. ANALYSIS OF COMMENTS

A. Application of the CVD Law

Comment 1: Application of Countervailing Duties to Imports from NME Countries

GOC's Arguments[125]

- The WTO Appellate Body[126] and the CAFC[127] have found that that the Department cannot simultaneously apply the CVD law and the NME methodology for calculating AD duties.

[125] *See* GCB, at 4-14.
[126] *See* WTO AB Decision China CVD.
[127] *See GPX CAFC (2011).*

- P. L. 112-99, which authorizes simultaneous application of CVDs and the NME AD methodology violates the Constitution's Fifth Amendment guarantee of due process because it is arbitrary and irrational.[128] Specifically,
  - The Department's treatment of the PRC as an NME means that prices there are not meaningful measures of value, and without meaningful values, there is no rational way to determine whether a benefit exists or to accurately determine CVDs.
  - P.L. 112-99 applies the CVD law to the PRC five years prior to enactment, *i.e.*, five years before it was legal to apply the CVD law to the PRC.
  - This retroactive application is exacerbated by the Department's previous explicit and public commitment not to apply the CVD law to NMEs.[129]
- P.L. 112-99 violates the *Ex Post Facto* clause of the Constitution because it is penal.[130] Specifically,
  - The costs imposed are not related to the harm done by imports, but instead are the full amount of the CVD duties assessed on Chinese OCTG.
  - The CVDs are collected by the U.S. government rather than the harmed individual.
  - P.L. 112-99 is meant to address harm to the public rather than harm to individuals.
- P.L. 112-99 violates the Constitution's guarantee of equal protection of the laws under the Fifth Amendment's due process clause. Specifically,
  - P.L. 112-99 creates a distinct class of merchandise (imports for which no adjustment is made under section 777A(f) of the Act) and this results in imbalanced treatment of OCTG from the PRC relative to future CVD investigations and reviews.
- For these reasons, the Department should find that it cannot identify and measure subsidies in the PRC, and terminate this review, or find that the PRC no longer warrants treatment as an NME under for AD purposes.

Petitioner's Rebuttal[131]

- The GOC's arguments are a rehash of the identical arguments that it raised in recent proceedings before the Department and the CIT. Both the Court, in *GPX CIT (2013)*,[132] and the Department have rejected them resoundingly.

Department's Position:

P.L.112-99 clarifies that the Department has the authority to apply the CVD law to imports from NME countries, such as China. Reliance upon *GPX CAFC (2011)* to contend that the Department lacks such authority is misplaced because that decision never became final and was in fact replaced by a subsequent decision, *GPX CAFC (2012)*.

We disagree that P.L. 112-99 violates the Fifth Amendment's due process clause. Section 1 of P.L. 112-99 is not retroactive. Rather it clarifies existing law by ensuring that the Department will continue to apply the CVD law to NME countries. Congress enacted the legislation to

[128] In support, the GOC cites *Gray*, at 733.
[129] *See CVD Preamble*, at 65361.
[130] In support, the GOC cites *Huaiyin*, at 1380.
[131] *See* PRB, at 1-3.
[132] *See GPX CIT (2013)*, at 1334.

prevent the Federal Circuit's decision in *GPX CAFC (2011)* – a decision that would have changed existing law – from becoming final and taking effect.[133] In any event, even if section 1 of P.L. 112-99 were considered retroactive, it does not violate the due process clause. This is because the law has a rational basis, which is to correct a mistake and confirm the law in light of *GPX CAFC (2011)*.[134]

We further disagree that P.L. 112-99 is a prohibited *ex post facto* law. The *ex post facto* clause of the Constitution bars retroactive application of penal legislation, but, as just described, section 1 of P.L. 112-99 is not retroactive. Even if that section were considered retroactive, it is not penal because it merely clarifies that the government can collect duties proportional to the harm caused by unfair foreign subsidization. In this regard, the CVD law is remedial in nature.[135]

Finally, we disagree the P.L. 112-99 violates equal protection of the law as guaranteed by the Fifth Amendment's due process clause. Section 1 of P.L. 112-99 imposes no new obligation on parties, but merely reaffirms the Department's authority to apply the CVD law to NME countries. Thus, section 1 does not single out one group of companies and deny them the "protections" of section 2. Rather, section 1 simply confirms that existing law, to which all companies were already subject, applies. Further, the distinction between section 1 and section 2 of the legislation serves a rational purpose. As evidenced by the legislative history, section 2 of P.L. 112-99 was adopted, in part, to bring the United States into compliance with its WTO obligations.[136] Given the statutory scheme for prospective implementation of adverse WTO decisions,[137] it was entirely rational for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Comment 2: Simultaneous Application of CVD and AD NME Measures

GOC's Arguments[138]

- This proceeding is unlawful because simultaneous application of CVD and AD NME measures results in double counting. P.L. 112-99 requires an adjustment to address double counting and the Department has failed to do so.
- No adjustment was made in the AD administrative review that overlapped the first part of CVD POR[139] and the AD review overlapping the remainder of the CVD POR was rescinded.[140] Thus, to avoid double counting the *Preliminary Results* must be revised.

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[133] *See, e.g.*, 158 Cong. Rec. at H1167-68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrbacher, and Boustany).
[134] *See, e.g.*, *General Motors* (upholding retroactive legislation that corrected unexpected results of judicial opinion).
[135] *See Chaparral* at 1103–04; *Peer Bearing* at 1310. The specific purpose of CVD law is to "offset" the harmful effects of foreign subsidies. *See* S. Rep. No. 1221, 92d Cong., 2d Sess. 8 (1972).
[136] *See, e.g.*, 158 Cong. Rec. at H1167-68, H1171 (daily ed. March 6, 2012) (Statements of Representatives Camp, Brady, and Jackson Lee).
[137] *See* 19 U.S.C. 3533, 3538.
[138] *See* GCB, at 15-17.
[139] *See OCTG - AD AR 2010-2011*.
[140] *See OCTG - AD AR 2011-2012*.

- Such a revision is also necessary to comply with WTO AB Decision China CVD. This CVD review was initiated on February 27, 2012, *i.e.*, after the agreed date for implementing WTO AB Decision China CVD.
- Although the effective date of the double-counting provision in P.L. 112-99 occurred slightly after the initiation of this CVD review, the Department should address double counting in this review because P.L. 112-99 was intended to bring the United States into compliance with WTO AB Decision China CVD.

Petitioner's Rebuttal[141]

- P.L. 112-99 is clear that any adjustment for an alleged "double remedy" must be made in the context of an AD proceeding, not a CVD proceeding.
- Such an adjustment is only permitted if the subsidy is demonstrated to have reduced the price of imports, and no such showing has been made in this review.
- WTO Appellate Body reports are without effect under U.S. law until they have been adopted under procedures described in the URAA. In any case WTO AB Decision China CVD was an "as applied" finding and, consequently, has no controlling force or effect even under WTO dispute settlement rules.

Department's Position:

We disagree with the GOC. The Department can apply CVD measures in these final results while at the same time treating the PRC as an NME in the overlapping AD administrative reviews. Section 1 of P.L. 112-99 makes clear that the CVD law applies to products from NME countries and, therefore, applies in this CVD administrative review. Further section 2 of P.L. 112-99, relating to an adjustment in certain instances of simultaneous application of CVD remedies and NME AD remedies, does not apply to this review because this review was initiated[142] prior to the effective date of P.L. 112-99 (March 13, 2012). Similarly, the AD administrative review of OCTG that overlapped the first portion of the CVD POR was also initiated[143] prior to the effective date of P.L. 112-99. The CAFC made clear that, for reviews prior to the effective date of section 2, no adjustment for overlapping remedies is required. It stated that the "clear implication of this new provision is that the pre-existing statute did not contain a prohibition against double-counting."[144] The CAFC concluded "that the statute prior to the enactment of the new legislation did not impose a restriction on Commerce's imposition of countervailing duties on goods imported by {sic} NME countries to account for double counting."[145]

Further, the adjustment described in P.L. 112-99 is to be made in the context of the AD calculation and not the CVD calculation. Thus, while the AD administrative review covering the remainder of the CVD POR was initiated[146] after the effective date of P.L. 122-99, that review

[141] *See* PRB, at 3-5.
[142] *See Initiation Notice*.
[143] *See Initiation of AD AR - 2011*.
[144] *See GPX CAFC (2012)*, at 1312.
[145] *Id*.
[146] *See Initiation of AD AR - 2012*.

was rescinded as the GOC has noted. Consequently no dumping margins were calculated and no adjustment could be made.

Moreover, the legislative history for P.L. 112-99 makes clear that Congress had a rational basis for confirming the Department's authority to apply the CVD law to products from NME countries while ensuring that, for WTO compliance purposes, the Department could, going forward, make adjustments to AD duties to account for any overlap in AD and CVD remedies demonstrated to exist.[147] As stated above, given the statutory scheme for prospective implementation of adverse WTO decision,[148] it was entirely reasonable for Congress to decline to upset the finality of already completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Regarding the reference to WTO AB Decision China CVD, that decision involved an "as applied" challenge to the eight AD and CVD determinations at issue in that case, and the Department's implementation applied only to those eight AD and CVD determinations.[149] Neither the WTO's decision nor the implementation applies to this review. The Federal Circuit 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.[150]

Comment 3: Countervailing Subsidies Provided Prior to the Cutoff Date

Petitioner's Arguments[151]

- Section 701 of the Act requires the CVD law to be applied to every country and, under *GPX CIT (2009)*, the Department may not decline to countervail a subsidy based on administrative concerns.
- Key reforms occurred in the PRC prior to the Department's cutoff date and nothing happened on December 11, 2001 (the date of the PRC's accession to the WTO) that made Chinese subsidies any more countervailable than they were the day before.
- In the *GPX Remand*,[152] the Department did not apply a uniform cutoff date, instead establishing different cut off dates based on the type of the subsidy. The Department should do the same here and countervail subsidies received prior to the cutoff date, including Wuxi's land purchases in the WND.

[147] *See*, *e.g.*, 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Representative Camp).
[148] *See* 19 U.S.C. 3533, 3538.
[149] *See Section 129 Implementation*.
[150] *See Corus I*, at 1347-49 and *NSK II*, at 1380.
[151] *See* PCB, at 7.
[152] *See GPX Remand*, at 25-26.

GOC's Rebuttal (Jiangsu Chengde supports this Rebuttal)[153]

- P.L. 112-99 precludes the Department from countervailing subsidies given prior to December 11, 2001. First, section (1) of P.L. 112-99 (codified as section 701(f)(2) of the Act) allows the Department not to apply CVDs when it cannot identify or measure subsidies. Second, it precludes the Department from simultaneously finding it cannot identify and measure subsidies while at the same time countervailing those subsidies. By the Department's own account, it could not identify and measure subsidies in China prior to December 11, 2001.[154]
- Reaching back as far as Petitioner requests would subject Chinese exports to CVDs prior to when China had a reasonable expectation that the CVD law would apply.[155]
- The Department has a longstanding practice of not countervailing alleged subsidies received prior to when the Department determines the CVD law applies to a particular country.[156]

Wuxi's Rebuttal (Jiangsu Chengde supports this Rebuttal)[157]

- The Department has rejected the arguments raised by Petitioner in several prior determinations, most fully in *Drill Pipe from the PRC*.[158]
- The Department's use of the December 11, 2001 cutoff date is well-settled practice and Petitioner raises no facts to warrant a change in that practice.

Department's Position:

GPX CIT (2009) is not final. For the reasons explained in *Drill Pipe from the PRC*,[159] and consistent with *CWP from the PRC*,[160] the Department continues to apply a uniform date from which we will identify and measure countervailable subsidies in the PRC. Moreover, Section 701(f)(2) of the Act allows an exception for the imposition of CVDs to NME countries in certain circumstances. In essence, section 701(f)(2) of the Act clarified the law to codify the "impossibility exception" to the mandatory application of the CVD law to all countries, an exception that was recognized in the Federal Circuit's decision in *Georgetown Steel*. As stated in *CWP from the PRC*, as of December 11, 2001, the Department could "identify and measure subsidies … based on the economic conditions in China."[161] As also described in *CWP from the PRC* and the numerous other China CVD proceedings in which this issue has arisen, at some point prior to December 11, 2001, the Chinese economy resembled the type of Soviet-style centrally planned economies at issue in *Georgetown Steel*.[162] Therefore, the impossibility

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[153] *See* GRB, at 2-4.
[154] *See CFS from the PRC*, and accompanying IDM at Comment 1; *see also Georgetown Steel*.
[155] *See CVD Preamble* at 65361 ("Where the Department determines that a change in status from non-market to market is warranted, *subsidies bestowed by that country after the change in status would become subject to the CVD law*.") (emphasis added).
[156] *See Sulfanilic Acid from Hungary*, and accompanying IDM at 8, 14.
[157] *See* WRB, at 4-6.
[158] *See Drill Pipe from the PRC*, and accompanying IDM at comment 4.
[159] *Id*.
[160] *See CWP from the PRC*, and accompanying IDM at Comment 2.
[161] *Id.*
[162] *See, e.g.*, *CWP from the PRC*, and accompanying IDM at Comment 2, *see also Drill Pipe from the PRC*, and accompanying IDM at Comment 4.

exception to the mandatory application of CVDs to imports from NME countries, as reflected in section 701(f)(2) of the Act, applied with respect to China for events prior to December 11, 2001. However, the nature of the Chinese economy after December 11, 2001, especially given the reforms that China undertook leading up to its accession to the WTO, has not presented the same obstacles to identification and measurement of subsidies as in *Georgetown Steel*.[163] Accordingly, the Department has consistently relied on this date, which is also the date of China's accession to the WTO, as the date on which it could begin to identify and measure subsidies in China.

B. Electricity for LTAR

Comment 4: Whether the Provision of Electricity for LTAR is Countervailable

GOC's Arguments[164]

- The provision of electricity is not countervailable because it constitutes general infrastructure, and is not a financial contribution pursuant to U.S. law[165] or the SCM Agreement.[166]
- Consistent with past cases such as *Wire Rod from Saudi Arabia*, the Department should reject Petitioner's attempts to claim "infrastructure subsidies."[167]
- The GOC's provision of electricity to OCTG producers is not specific to the OCTG industry.
- In *Wire Rod from Saudi Arabia*, the Department described a three-prong test for analyzing whether basic infrastructure provides a countervailable subsidy. In this case, the Department did not make determinations regarding these criteria.[168]

Wuxi's Arguments[169]

- The Department should not have applied AFA regarding the provision of electricity in the *Preliminary Results* because the GOC and Wuxi have provided all requested information.
- The provision of electricity has been found to be countervailable in virtually all CVD cases involving China for a wide range of industries. This wide distribution of benefits "is *prima facie* evidence that the program is not specific."[170]
- The electricity rates paid by Wuxi and its subsidiaries were consistent with the published applicable electricity rates for the provinces in which the facilities are located.
- The Department should not penalize Wuxi for the GOC's failure to cooperate, and should select a more reasonable benchmark than that of a province unrelated to Wuxi, since Wuxi cooperated fully.

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[163] *See, e.g.*, *CFS from the PRC*, and accompanying IDM at Comment 1, *see also CWP from the PRC*, and accompanying IDM at Comment 2, and *Drill Pipe from the PRC*, and accompanying IDM at Comment 4.
[164] *See* GCB, at 42.
[165] *See* section 771(5)(D)(iii) of the Act.
[166] *See* GCB, at 42.
[167] *See Wire Rod from Saudi Arabia*, *Phosphoric Acid from Israel*, and *Bethlehem Steel*.
[168] *See Wire Rod from Saudi Arabia*, at 4210.
[169] *See* WCB, at 15.
[170] *Id.*

- The Department incorrectly applied a benchmark for the 1-10kv voltage class for Bazhou, instead of a benchmark for the 110kv voltage class.

Petitioner's Rebuttal[171]

- The Department relied on AFA for the provision of electricity for LTAR in the *OCTG Investigation* because the GOC failed to act to the best of its ability to provide information requested by the Department. In this review, the GOC also had opportunities to provide the missing information, but did not do so.
- The Department rejected identical arguments regarding whether the provision of electricity is non-countervailable as "general infrastructure" in the *OCTG Investigation* and in *Hot-Rolled Steel from Thailand*.[172]
- The Department rejected identical arguments regarding whether it may apply AFA in *Sinks from the PRC*[173] and in *Wood Flooring from the PRC*.[174]
- Wuxi's arguments regarding whether this program is specific are baseless because there was substantial evidence in the *OCTG Investigation* to show that the provision of electricity for LTAR was made pursuant to policies to support the OCTG industry.
- The fact that the Department has countervailed the provision of electricity for LTAR in other CVD investigations simply shows that the GOC has provided electricity subsidies to certain favored industries.
- Wuxi's argument that its electricity rates were consistent with the published applicable rates for the provinces in which its facilities are located overlooks the fact that the Department lacks information regarding whether the published rates are market-determined prices as a result of the GOC's failure to cooperate.

Department's Position:

Wuxi claims that the Department applied AFA for this program in the *Preliminary Results*. However, Wuxi's characterization of the *Preliminary Results* is inaccurate. We did not apply AFA for the provision of electricity for LTAR in this administrative review. Rather, we relied on our findings in the *OCTG Investigation* that "the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) {of the Act}, and is specific, under section 771(5A) {of the Act}."[175] This determination in the *OCTG Investigation* was based on AFA as a result of the GOC's failure to provide certain "provincial electricity information" requested by the Department.[176] Here, however, we are only relying on our prior finding that the program was countervailable, and not applying any adverse inference in our calculations. Based on this prior finding of countervailability, we used electricity consumption information supplied by Wuxi and Jiangsu Chengde to calculate the benefit for these companies.

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[171] *See* PRB, at 29-32.
[172] *See Hot-Rolled Steel from Thailand*, and accompanying IDM at Comment 10.
[173] *See Sinks from the PRC*, and accompanying IDM at Comment 13
[174] *See Wood Flooring from the PRC*, and accompanying IDM at Comment 4.
[175] *See OCTG Investigation*, at 23.
[176] *Id.*, at 5.

In this proceeding, we notified the GOC that "{w}e do not intend to reevaluate the countervailability of this program. However, if there were any changes to the operation of the program during the POR, please explain the changes and answer all relevant questions in the Electricity Appendix."[177] In an administrative review, we do not revisit prior countervailability findings in the proceeding absent new evidence that would cause the Department to revisit its prior findings. In this administrative review, the GOC could have provided the provincial electricity information it failed to provide in the *OCTG Investigation*, but it elected not to. Therefore, we have continued to use the highest electricity rates in each respective tariff category as our benchmark.

Wuxi claims that because the Department has countervailed the provision of electricity for LTAR in cases involving "a wide range of industries," these collective determinations are "*prima facie* evidence that the program is not specific."[178] However, Wuxi neglects to mention that we countervailed the provision of electricity for LTAR in these cases based on AFA because the GOC failed to provide the same provincial electricity information that it failed to provide in the *OCTG Investigation*. Without the information the GOC failed to provide in these proceedings, we cannot fully analyze whether the provision of electricity in China is specific. If anything, our collective determinations regarding the provision of electricity are "*prima facie* evidence" of a broad, consistent pattern of non-cooperation by the GOC.

Regarding the GOC's claim that the provision of electricity is non-countervailable as general infrastructure, we disagree. The GOC cites to the Department's analysis in *Wire Rod from Saudi Arabia* of certain benefits such as roads and ports as potential general infrastructure benefits, and argues that the Department should apply the same analysis to the provision of electricity in this case. We note that the *Wire Rod from Saudi Arabia* decision was issued in 1986, and the Department has since revised its approach to assessing whether a particular benefit constitutes general infrastructure. Moreover, the Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.[179] Also, the Department's regulations explicitly categorize electricity within the provision of goods and services.[180]

We disagree that we have "penalized" Wuxi for the GOC's failure to cooperate in *OCTG Investigation*. As we have explained elsewhere, there are certain types of information that can only be provided by a government, and when the government does not provide that information, the Department necessarily draws an adverse inference.[181] Although we recognize that such a finding may affect the respondent, such an effect does not render the application of adverse facts available unlawful.

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[177] *See* InitQ, at II-5 (emphasis in original).
[178] *See* WCB, at 15.
[179] *See, e.g., Hot-Rolled Steel from Thailand*, and accompanying IDM At Comment 10 ("Furthermore, the electricity at issue here is not general infrastructure, but a good that is bought and sold in the marketplace. In the Department's view, the term infrastructure refers to the types of goods and services described in the Preamble to the regulations, including schools, interstate highways, health care facilities and police protection. According to our regulations, if we find that these types of infrastructure were provided for the broad societal welfare, they would be considered general infrastructure.")
[180] *See CVD Preamble*, at 65377.
[181] *See Wood Flooring from the PRC*, and accompanying IDM at Comment 4.

Finally, we have corrected our calculations to reflect the appropriate voltage class for Bazhou.

C. Steel Rounds for LTAR

Comment 5: Whether Steel Round Producers are "Authorities"

Majority State-Owned Enterprises

GOC's Arguments[182]

- SOEs are required by Chinese law to maximize returns for their owners[183] and appoint company personnel who will maximize profits and act in the best interests of the company.[184]
- The Department did not explain its decision to treat SOEs as authorities, beyond describing these companies as majority-owned by the government. In this respect, the Department has not complied with WTO AB Decision China CVD which requires the Department to examine factors beyond majority ownership.
- For these reasons, the Department's treatment of SOEs as "authorities" is contrary to record evidence and in violation of the United States' WTO obligations.

Wuxi's Arguments[185]

- The Department must examine factors beyond majority ownership in order to maintain compliance with WTO AB Decision China CVD and its own past practice.
- The Department applies a five-factor test (government ownership, government presence on the board of directors, government control over activities, the entity's pursuit of government policies, and whether the entity is created by statute) in evaluating whether an entity is an authority, and there is no evidence that the GOC exercises control over any of these factors.[186]
- Record evidence indicates that the respondents' purchases of steel rounds were based on commercial considerations. Therefore, there is no financial contribution and no subsidy.

Petitioner's Rebuttal[187]

- The Department has considered and rejected the above arguments in prior proceedings such as *Wind Towers from the PRC*.
- An "as applied" challenge, WTO AB Decision China CVD was limited in its scope to the specific CVD proceedings involved. The instant review and the investigation were not among these proceedings.

[182] *See* GCB, at 18-19.
[183] *See* GQR, at Exhibit 11, Article 6.
[184] *Id.*, at Exhibit 11, Article 8.
[185] *See* WCB, at 9-11.
[186] *See KASR from the PRC*, and accompanying IDM at Comment 4.
[187] *See* PRB, at 7-8.

Department's Position:

The GOC and Wuxi argue that the Department's finding that majority state-owned steel round producers are "authorities" is not adequately explained, is contradicted by evidence on the record and plainly violates U.S. WTO obligations. However, the Department addressed these arguments in *Sinks from the PRC*.[188] We explained that WTO AB Decision China CVD involved an "as applied" challenge to the eight AD and CVD determinations at issue in that case, and the Department's recent implementation applied only to those eight AD and CVD determinations.[189] Neither the decision nor the implementation applies to this administrative review. In any event, 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.[190]

Regarding Wuxi's "five factors" argument, we do not examine each of these five factors for every firm in every case. Usually, majority government ownership alone indicates that a firm is an "authority." In this case, we have placed considerable emphasis on majority state ownership because of the cascading effect majority ownership has on the other factors. No party has presented producer-specific evidence that warrants looking beyond majority ownership for any of the state-owned producers at issue here, so we have continued to treat majority state-owned producers as "authorities" for these final results.

Finally, the alleged pricing behavior of an input producer, by itself, is not dispositive of whether that input producer is an authority capable of providing a financial contribution. The Department explained in *Wind Towers from the PRC*:

> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the "financial contribution" being provided by an authority and "benefit." If firms with majority government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loan or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.[191]

[188] *See Sinks from the PRC*, and accompanying IDM at Comment 10.
[189] *See* Section 129 Implementation; *see also Sinks from the PRC*, and accompanying IDM at Comment 10 .
[190] *See Corus I*, at 1347-49; *Corus II*, at 1375; and *NSK II*, at 1380.
[191] *See Wind Towers from the PRC*, and accompanying IDM at Comment 12

CCP Influence Over Companies

GOC Arguments[192]

- The CCP is a political party, and members of the CCP do not have the legal authority to direct business operations.
- The various CCP bodies are not part of the GOC. Chinese law prohibits GOC officials from being the owners, members of the boards of directors or managers of steel round producers.
- Furthermore, the CCP has modeled its personnel management system after the Civil Servant Law; therefore, CCP officials may not also serve as owners, members of the boards of directors or managers of steel round producers.
- The Department's *Preliminary Results* relied on *PC Strand from the PRC* to show that CCP officials can serve as owners, board members or senior managers of companies, but *PC Strand from the PRC* only addresses individuals with membership in the CCP, not CCP officials.
- The Chinese Company Law and other business documents provide that Chinese companies are ultimately responsible to their shareholders, not the CCP. The Department has previously found that this law and these documents demonstrate the absence of legal state control over privately-owned Chinese companies.
- The GOC responded to the best of its ability to the Department's questions. Determining whether owners, board members and managers of the steel round producers (and their respective owners) are CCP officials is "tremendously burdensome."
- The information requested by the Department regarding CCP affiliations and activities is not relevant to whether the steel round producers at issue here are "authorities."
- The Public Bodies Memorandum "does not support the Department's assertion that, in making a determination of whether a private company is a government 'authority' under U.S. law (or 'public body' under applicable WTO agreements), it must determine whether private enterprises have CCP committees in them or whether the owners, members of the board of directors and managers are CCP officials."
- The State Department Background Note is not designed to determine the extent of the CCP's role in the economic affairs of China, and does not support the Department's conclusions regarding the CCP's role.

Wuxi's Arguments[193]

- The GOC provided "an unequivocal response" that CCP officials cannot be members of enterprises. The Department did not find evidence controverting this; therefore, the use of AFA is unjustified.

[192] *See* GCB, at 19-31.
[193] *See* WCB, at 9.

Petitioner's Rebuttal[194]

- Regarding the GOC's claim that information about the CCP is irrelevant, the Department has previously affirmed that it is the Department, and not the GOC that decides what information is relevant to its analysis.
- The application of AFA was justified, in that only the GOC possesses crucial information pertaining to the CCP's structure and functions, and the GOC failed to act to the best of its ability to respond to the Department's questions on this topic.
- The Department has previously considered and rejected the GOC's arguments that CCP officials are legally prohibited from serving in leadership roles in private companies.

Department's Position:

The GOC (and to some extent, Wuxi) have made three main arguments regarding the CCP in their briefs and throughout this proceeding. First, they argue that CCP officials are prohibited from serving as owners, members of the boards of directors, and managers of companies. Second, they argue that it would be "tremendously burdensome" to supply the Department with information regarding the CCP affiliations of "hundreds, perhaps thousands, of natural persons owning suppliers or persons serving as owners, members of the board of directors and managers of suppliers."[195] Third, they argue that "the CCP affiliations or activities of suppliers are not relevant to the statutory analysis of government 'authorities.'"[196]

With respect to the first argument, the GOC argues in its case brief that CCP officials are restricted from being owners, members of the boards of directors and managers of companies, by the Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs (ZHONG FA (1993) No. 8), which reflects the CCP's intent to model its personnel management system after the Civil Servant Law, including restrictions on enterprise employment.[197] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[198] Thus, the rule only applies to a subset of party and government officials. The GOC has not defined the "specified officials" it applies to nor the officials to which it does not apply. Moreover, Article 63 of the 2006 Civil Servant Law states that:

> {t}he State applies an exchange system among public servants. Public servants may be exchanged within the contingent of public servants, and may also be exchanged with persons engaged in official duties from State-owned enterprises and public institutions, people's organizations and non-government organizations. The forms of exchange include assignment to another post, transfer and secondment for getting experience… (emphasis added).

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[194] *See* PRB, at 8-11.
[195] *See* GCB at 23.
[196] *Id.*, at 25.
[197] *Id.*, at 20.
[198] *See* GQR, at 23.

This exchange system works in the other direction as well. Article 64 of the same law states that:

> {p}ersons engaged in official duties from State-owned enterprises and public institutions, people's organizations and non-government organizations may be transferred to government departments to take leading posts or non-leading posts at or above the position of associate analyst and other positions at corresponding as well.

These citations illustrate that the civil servant system, which is the model the GOC states the CCP emulates, legally permits appointments to and from state-owned enterprises and "non-government organizations," a term which does not appear to be defined.

Therefore, we disagree with the GOC's and Wuxi's statements that the GOC's "unequivocal response" in this regard renders the Department's reliance on AFA unjustified because the Department has not cited evidence controverting the GOC's response.

In the *Preliminary Results* and the Post-Preliminary Analysis, the Department highlighted *PC Strand from the PRC* as a case in which we discovered CCP officials simultaneously serving as company officials, contrary to the GOC's claim that this is prohibited.[199] The GOC objects and claims that the Department's findings in *PC Strand from the PRC* concerned only CCP members, not CCP officials.[200] However, a plain reading of our determination indicates otherwise. In *PC Strand from the PRC*, the Department determined that "{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies."[201] We understand "National Party Conference" to be a reference to the "National Party Congress," which is described in the Public Bodies Memorandum as "the highest leading body of the Party."[202] The Department considers representatives of the National Party Congress to be relevant government officials for purposes of the CVD law and an "authorities" analysis. Thus, the GOC is incorrect that the Department's finding in *PC Strand from the PRC* was limited to a finding of membership in the CCP.

The GOC argues that the Department has previously found that the *Company Law* of China as well as capital verification reports, articles of association and business registrations -- all of which were examined in this proceeding -- demonstrate the absence of legal state control over privately owned Chinese companies. However, this argument relies exclusively on examples involving the Department's findings with respect to separate rate applications in AD proceedings,[203] which involve a different test, standard and focus with regard to "control." In the context of a separate rate analysis, the Department's sole focus is on the government's control over export activities. For example, the Department has repeatedly noted that a state-owned enterprise may receive a separate rate given that the focus of the separate rates test is limited to

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[199] *See Preliminary Results*, and accompanying IDM at 17; *see also* Post-Preliminary Analysis at 6.
[200] *See* GCB, at 20-21.
[201] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.
[202] *See* Public Bodies Memorandum, at 13.
[203] *See, e.g., Steel Plate from the PRC*, and accompanying IDM at 11 and Comment 2 .

control over export activities and not other aspects of the enterprise's operations.[204] By contrast, the Department is concerned here with whether the key positions within a company are filled by personnel who are also CCP or GOC officials, and may exert control over the company's activities more broadly.

The GOC also argues that the burden of providing the requested information is unreasonable and unnecessary, stating that it would be "tremendously burdensome" to supply the Department with information regarding the CCP affiliations of "hundreds, perhaps thousands, of natural persons owning suppliers or persons serving as owners, members of the board of directors and managers of suppliers."[205] It is important to note that the Department has not requested information regarding all possible CCP affiliations, but rather only whether owners, members of the board of directors and managers are also CCP or government officials. Assuming the GOC is not misconstruing the Department's request for information, the Department fails to see how the GOC can assert that there may be "hundreds perhaps thousands" of CCP officials potentially acting as company owners, board members or managers, and yet also assert that all CCP officials are prohibited from simultaneous involvement in the commercial sphere.

If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources.[206] Instead, the GOC chose not to respond to our questions regarding CCP officials for any input producer. Over the course of five questionnaires, it repeatedly insisted that "all the questions in Section IV {regarding CCP officials and committees} are neither applicable nor relevant to this investigation and the Department has no basis for requesting this information."[207] The GOC's responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.[208] Therefore, we do not consider the GOC to have cooperated to the best of its ability.

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[204] *See, e.g., Wind Towers From the PRC*, and accompanying IDM at Comment 6; *see also Pencils from the PRC*, at 55627-29.
[205] *See* GCB, at 23.
[206] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[207] *See, e.g.*, G3SR, at 4.
[208] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.

Courts have upheld the proposition that the Department, and not the respondents, determines what information is relevant and necessary, and must be provided.[209] Thus, regardless of whether the GOC agrees with the Department's determinations of relevancy, by failing to respond to our questions, the GOC withheld information requested of it. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, impermissibly attempting to place the Department in the position of reaching a conclusion based on the statements of the GOC alone, without any of the information that the Department considers necessary and relevant for a complete analysis.

The GOC avers that the Department has not provided sufficient explanation or evidence of the relevancy of its inquiries with respect to CCP officials and organizations. Specifically, the GOC argues that "the *Public Bodies Memorandum* provides little analysis or explanation as to the basis for the Department's conclusion that CCP officials or committees influence non-state-owned entities." This argument ignores a significant body of past findings, record evidence and expert third-party sources relied upon in the Public Bodies Memorandum and the attached CCP Memorandum. The full analysis in the context of China is presented in the Public Bodies Memorandum and its attached CCP Memorandum, and is summarized here.[210] The Department notes that means of government control or influence as it relates to the standard of an "authority" in the context of countervailing duty proceedings may extend beyond ownership – and therefore may extend to private enterprises. Therefore, the Department first considered what entities comprised the "government" (for purposes of this analysis) in China in order to assess the various means of control that it may – or may not – exercise over enterprises. In this regard, the Department considers information regarding the CCP's involvement in China's economic and political structure to be relevant because public information demonstrates that the CCP exerts significant control over activities in China such that the CCP can properly be considered part of

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[209] See *Ansaldo*, 628 F. Supp. at 205 (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided"). The court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company." *Id.*; *see also Essar*, 721 F. Supp. 2d at 1298-99 (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK*, 919 F. Supp. 442 at 447 ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *Nachi*, 890 F. Supp. at 1111 ("Respondents have the burden of creating an adequate record to assist Commerce's determinations.").

[210] We note that the Public Bodies Memorandum and the CCP Memorandum were issued in connection with our determination in a proceeding conducted pursuant to section 129 of the Uruguay Round Agreements Act. That proceeding brought certain Department findings regarding "authorities" into compliance with WTO AB Decision China CVD. In the Public Bodies Memorandum, to determine whether entities were "authorities" ("public bodies" under the SCM Agreement), we analyzed whether they possessed, exercised or were vested with governmental authority. In describing the Public Bodies Memorandum and CCP Memorandum in this review, we do not mean to suggest that we are applying the same standard in this review as we did in the section 129 determination. As described above, in this review, we find that an entity is an "authority" if it is controlled by the government. The Public Bodies Memorandum and CCP Memorandum are relevant, however, because they contain certain findings relevant to the CCP. Specifically, they find that, for the purposes of the CVD law, in China, the CCP is properly considered part of the "government," and therefore that control of an entity by the CCP is the same as control of that entity by the government. In this respect, they are relevant to our findings in this review.

the government structure in China for purposes of this analysis.[211] The GOC's arguments do not rebut this finding nor the definition of "government" relied upon in the CCP Memorandum, other than to assert its view that that the CCP is not part of the government in China. The Department disagrees.

The Department explained in the Public Bodies Memorandum that it found that the government in China includes both the CCP and the state apparatus. The Department then explored the variety of means by which the GOC and CCP may exercise control over enterprises. The Department has noted that publicly available information indicates that Chinese law requires the establishment of CCP organizations, *i.e*., primary organizations of party, in all companies, whether state, private, domestic, or foreign-invested that have three or more party members and that such organizations may wield a controlling influence in the company's affairs.[212] The GOC argues that Department mischaracterized Chinese law as requiring such CCP organizations in *all* enterprises, rather than only those with three party members or more. While the Department notes that the qualifications to this requirement were not spelled out in the summary of the Public Bodies Memorandum or the CCP Memorandum, the section addressing this topic begins with the sentence:

> In accordance with the *CPP Constitution*, all organizations, including private commercial enterprises, are required to establish "primary organizations of the party" (or "Party committees") if the firm employs at least three party members.[213]

Further this section of the report cites to expert, third-party sources, noting that:

> The party has cells in most big companies—in the private as well as the state-owned sector -- complete with their own offices and files on employees. It controls the appointment of captains of industry and, in the SOEs, even corporate dogsbodies. It holds meetings that shadow formal board meetings and often trump their decisions, particularly on staff appointments. It often gets involved in business planning and works with management to control pay.[214]

Further the Public Bodies Memorandum notes that {a}ccording to the Xinhua News Agency, there were a total of "178,000 party organs in private firms in 2006, a rise of 79.8 percent over 2002."[215] While focusing on the instances in which the Department did not note that these CCP organizations are only required by the CCP Constitutions in enterprises with three or more party members, the GOC fails to acknowledge or address that Primary Party Organizations are present in private enterprises in growing numbers and may be imbued with significant power according to expert, third-party sources. Even if the Department had failed to understand this qualification – which it did not – the GOC's argument misses the point that it was reasonable for the

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[211] *See* CCP Memorandum, at 33, stating that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."
[212] *See* Public Bodies Memorandum, at 35-36, and sources cited therein
[213] *Id.*, at 35.
[214] *Id.*, at 36, citing to "A Choice of Models," The Economist (January 2012).
[215] *Id.*, citing to Brief Introduction of the Communist Party of China," ChinaToday.com, current as of April 2012 at http://www.chinatoday.com/org/cpc/.

Department to inquire about the presence of such committees in the input suppliers at issue, regardless of whether there is such a committee in every single enterprise in the PRC.

The GOC notes further that the Department concluded in the Public Bodies Memorandum that "it did not know the role of CCP committees in the affairs of non-state-owned enterprises." Specifically, the Department stated that "{t}he role of this party presence is unclear: it may exert varying degrees of control in different circumstances." The GOC, however, wrongly extrapolates from the opaque nature of these CCP organizations to argue that "the Department has no basis on which to assert that CCP affiliations and activities are relevant." Notably, the GOC has simply failed to respond to the Department's questions and explain the purpose of these committees, which might shed light on the purpose, meaning and role of these committees in private enterprises as well as state-invested enterprises. Importantly, neither has the GOC addressed the substantive concerns raised by third-party experts cited in the Public Bodies Memorandum and the CCP Memorandum with anything other than unsupported assertions.[216]

In the same vein, the GOC also argues that the State Department Background Note relied upon by the Department in the Preliminary Determination fails to establish the relevance of CCP affiliations or activities in private enterprises. Although the GOC cites to several reforms presented therein, the GOC fails to rebut the statements in the Background Note that "(t)he Chinese Government has always been subordinate to the CCP; its role is to implement party policies,"[217] and "{t}he estimated 78 million-member CCP, authoritarian in structure and ideology, continues to dominate government."[218] The Background Note does support the premise that the CCP is part, indeed the pinnacle, of the power structure of the government of China, and as such, is relevant to the inquiry of "government control" involved in this proceeding.

In sum, because the GOC did not provide the information we requested regarding this issue, we are relying upon the facts available, with an adverse inference. Due to the GOC's non-cooperation, we infer that CCP officials were present as owners, managers and directors in the relevant companies, and that control by the CCP is control by the government for purposes of the CVD law. Consequently, we continue to find that all producers of steel rounds purchased by the respondents for which the GOC failed to provide information about the CCP are authorities within the meaning of section 771(5)(B) of the Act.

Sufficiency of Record Information

GOC's Arguments[219]

- The information on the record does not warrant finding that all steel rounds producers are government "authorities."

[216] *See, e.g.*, GCB, at 26 ("The Public Bodies Memo provides little analysis or explanation as to the basis for the Department's conclusion that CCP officials or committees influence non-state-owned entities.")
[217] *See* Background Note, at 7.
[218] *Id.*
[219] *See* GCB, at 23-24 and 30-31.

- The GOC provided a list of the owners of steel round producers, including the levels of state ownership in the producers.
- The GOC also provided information showing ownership down to the individual level for certain producers and provided supporting documents like articles of association, business registrations, business licenses and capital verification reports. This information clearly shows that some of the producers are not SOEs.
- In the Post-Preliminary Analysis, the Department also relied on a business license to establish a lack of government control over a company.
- A certain shareholder of a producer was found by the Department to not be a government "authority" in *PC Strand from the PRC*.

Petitioner's Rebuttal[220]

- In the *Preliminary Results*, the Department found that despite being granted multiple opportunities to respond, the GOC failed to trace the ownership of the steel rounds suppliers to their "eventual individual, corporate and state owners."

Department's Position:

Over the course of this proceeding, the Department maintained a careful accounting of the information provided (and not provided) for each steel round producer. Contrary to the GOC's allegation that our application of AFA was "sweeping and overly broad," we took pains to ensure that the GOC was offered at least two opportunities to provide information regarding ownership and the extent of the role played by CCP officials for every producer. The GOC's claim that it provided "a list of owners of steel rounds suppliers"[221] overlooks the fact that we requested ownership information for each level of ownership,[222] and the GOC only provided information regarding the immediate owners for the most of the producers. The GOC also failed to provide requested supporting documentation for a variety of producers. Without information about the ultimate owners of these producers, we cannot confirm the GOC's claim that they are not state-owned entities. The GOC's failure to cooperate combined with its insistence that the information it provided is sufficient amounts to a proposal that the Department rely on the GOC's statements alone, without the information we need to validate these statements. However, it is for the Department, and not the respondents, to determine what information is considered relevant and necessary, and must be provided.

Moreover, even if the GOC had identified the ultimate owners of all producers, and provided the supporting documentation we requested for each producer, it did not provide the information we requested regarding CCP officials and CCP committees for <u>any</u> producer. As noted above, the Department's questions in this review regarding the CCP seek to establish whether producers of

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[220] *See* PRB, at 8.
[221] *See* GCB, at 30.
[222] "For any input producer, or any owner company (at any level of ownership) of the input producer, with some direct corporate ownership or less-than-majority state ownership during the POR, it is necessary to <u>trace all ownership back to the ultimate individual or state owners</u>. For each level of ownership of these input producers…" (emphasis in original). *See* InitQ at Section II, "Information Regarding Input Producers in the PRC Appendix**"** at Section II.

steel rounds are subject to government control, and business licenses, articles of association, *etc*. customarily do not contain this information. Therefore, we disagree with the GOC's claim that the supporting documentation it provided was a sufficient basis for the Department to analyze whether the producers of the steel rounds used by Jiangsu Chengde and Wuxi are authorities.

The GOC argues the Department relied on a business license to determine government control in the Post-Preliminary Analysis. In that instance, we were investigating the provision of land for LTAR by Kazuo County. Wuxi informed us that its cross-owned affiliate Chaoyang did not receive land from Kazuo County. Instead, it informed us that it purchased land, along with buildings, machinery and other assets, in a transaction with a private party.[223] Wuxi provided information including the seller's business license and the asset transfer agreement between the parties.[224] We evaluated these materials in an effort to determine whether Kazuo County (specifically, the Kazuo County Committee)[225] provided land for LTAR. Based on the information we reviewed, we determined that Kazuo County was not a party to the asset transfer and did not provide land for LTAR to Chaoyang. The Department's examination of this subsidy allegation was based solely on the nature of the allegation: whether land was provided for LTAR by Kazuo County. We have clarified our finding regarding Chaoyang's purchase of land for these final results.

The GOC also argues that the Department found a shareholder of a particular producer of steel rounds in this review to not be an "authority" in *PC Strand from the PRC*.[226] We have applied AFA and found this producer to be an "authority" here. The GOC mischaracterizes our findings in *PC Strand from the PRC*. Rather than finding that the shareholder in question is not an authority, we found that there was insufficient record evidence to reach a conclusion regarding the shareholder's status. We found that "certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies,"[227] but concluded that:

> …the record lacks the necessary broader information regarding, *e.g.*, the role that these organs play in China in forming and implementing such things as government industrial policies, or CCP initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that this record information provides an insufficient basis on which to conclude than the relationships between individual owners and the GOC or CCP evince government control over Producer B.[228]

We explained that we would "continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC."[229] We have done so in this proceeding by

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[223] *See* W5SR, at 5-11.
[224] *Id.*, at Exhibit S5-10-1 through S5-10-6.
[225] *See* NSA Initiation Memorandum, at 5.
[226] *See* GCB, at 30-31; *see also PC Strand from the PRC*, and accompanying IDM at Comment 8.
[227] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.
[228] *Id.*
[229] *Id.*

repeatedly requesting further information from the GOC. The GOC has continued to fail to provide information about the CCP in this and previous cases. Furthermore, even if the Department had found this company to not be an "authority," the period of investigation for *PC Strand from the PRC* was 2008, while the POR of the instant review is 2011. Whatever the ownership structure of this company was in 2008, it may have changed between 2008 and 2011. We cannot confirm that this company's ownership has not changed because the GOC did not identify this company's ultimate owners, as requested.

In light of the above, we continue to find, relying on AFA, that all producers of steel rounds purchased by the respondents for which the GOC failed to provide information about their eventual owners are authorities within the meaning of section 771(5)(B) of the Act.

Yangzhou Chengde

Jiangsu Chengde's Arguments[230]

- The Department had information on the record at the Post-Preliminary Analysis regarding Yangzhou Chengde's organizational and legal structure demonstrating that both owners (Zhang Huaide and Precision Castparts Company) must have the approval of the other owner before engaging in any significant undertaking.
- Neither joint venture partner can unilaterally control the company. The chairman of the board or his designate "shall at all times act in compliance with the resolutions of the Board,"[231] so there is no basis for the GOC to exert control over the company.
- Regardless of whether the GOC provided all of the information requested by the Department, the information on the record demonstrates that the GOC does not exert control over Yangzhou Chengde.
- The Department did not rely on ownership information provided by Jiangsu Chengde when making its authority determination, and failed to consider the factors at section 782(e) of the Act.
- The Department has found a producer to not be a government authority based on similar information provided in a previous proceeding.[232]
- The Department should not have applied AFA to find Yangzhou Chengde is an "authority," because Jiangsu Chengde cooperated fully and the Department may only apply adverse inferences against uncooperative parties.[233]

Petitioner's Rebuttal[234]

- The Department's application of AFA was warranted because the GOC failed to act to the best of its ability to respond to the Department's questions, notwithstanding information provided by Jiangsu Chengde.

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[230] *See* CCB, at 8-13.
[231] *See* C3SR, at Exhibit 30, Section 7.3.
[232] *See Wire Decking from the PRC*, and accompanying IDM at Comments 2-4.
[233] *See* Section 776(b) of the Act, *see also Zhejiang Dunan*, at 1346.
[234] *See* PRB at 10-11.

- Due to the GOC's failure to cooperate, the Department lacked necessary information regarding the role of the CCP in the decision-making process of Yangzhou Chengde.

Department's Position:

Although Jiangsu Chengde implies in its case brief that we ignored information regarding Yangzhou Chengde, we gave full consideration to all the information it submitted, such as Yangzhou Chengde's articles of association and a proprietary joint-venture contract. Having done so, we disagree with Jiangsu Chengde's claim that "there is no basis for the GOC to exert control over the company."[235] Our cross-ownership analysis (including our finding that "Precision Castparts Company and Mr. Zhang Huaide share equal control of the company") is separate from our analysis of whether Yangzou Chengde is an authority within the meaning of section 771(5)(B) of the Act. The purpose of each analysis is different.

The goal of our cross-ownership analysis was to determine whether Jiangsu Chengde could "use or direct the individual assets" of Yangzhou Chengde "in essentially the same ways it can use its own assets," which is the regulatory standard for cross-ownership.[236] We examined factors including, but not limited to, common owners, common membership on each company's board of directors, sales between the two companies, information in Jiangsu Chengde's financial statements, and so forth. In other words, we sought information regarding the relationship between Jiangsu Chengde and Yangzhou Chengde, without respect to the relationship between these companies and the GOC.

On the other hand, when analyzing whether a company is an authority, our goal is to determine whether (and to what extent) the GOC exerts control over the company. This control can take many forms and is not limited to equity holdings. In other words, while a company's organizational and legal structure may be a part of any analysis of GOC control, the organizational and legal structure is not the end of the inquiry. Rather, in this administrative review, we asked the GOC to provide information including, but not limited to, the extent of state ownership in producers of steel rounds, whether management decisions are subject to government review or approval, whether the government owns shares with special rights or privileges, whether there are restrictions on shares held by private shareholders, and so forth. We also asked the GOC to identify owners, directors, or senior managers of steel round producers, including Yangzhou Chengde, who were also government or CCP officials during the POR. All of this information is relevant to the Department's assessment of whether the GOC may exert control over an enterprise in ways that are not readily apparent from the company's organizational and legal structure.

In the recent Section 129 determinations regarding Circular Welded Carbon-Quality Steel Pipe, Light-Walled Rectangular Pipe and Tube, Laminated Woven Sacks, and Off-the-Road Tires, we discussed why the presence of CCP officials in leadership positions at a company is relevant to the determination of whether a company is properly considered to be a government "authority." We explained that:

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[235] *See* CCB, at 9.
[236] *See* 19 CFR 351.525(b)(6)(vi).

> …the CCP exercises authority over the state apparatus by leading small groups, party groups and committees, controlling appointments, supervising state activity, and requiring state entities to report to (and/or take direction from) at least one corresponding CCP entity. In instances where state entities may attempt to diverge from the CCP, the information on the record indicates that the CCP possesses the legal right to intervene (through appointments and disciplinarian measures) to prevent or correct any such divergence. The Department's assessment of the available evidence thus indicates that the CCP and China's state apparatus are essential components that together form China's "government" solely for purposes of the CVD law. For these reasons, the Department finds that an examination of the role and functions of CCP officials within Chinese enterprises is relevant to a public body analysis in China for the purposes of the CVD law, and, consequently, that it was appropriate for the Department to include a number of questions with respect to certain CCP and state entities in questionnaires that the Department issued to the GOC.[237]

Because public information on the record indicates that "the constitutional and *de facto* source of authority and legitimacy for governance in China lies with the CCP,"[238] we needed information about CCP officials in Yangzhou Chengde's leadership structure to fully analyze whether it is an authority. While Precision Castparts Company and Mr. Zhang Huaide may share equal legal control of Yangzhou Chengde, this tells us nothing about control the GOC and CCP may exert over the company. This *de facto* control would not be reflected in the documentation Yangzhou Chengde provided, and so it was necessary and appropriate for us to request this information from the GOC. The GOC failed to provide this information. As a result of the GOC's non-cooperation, we can infer that the directors and senior managers of Yangzhou Chengde are CCP officials. We note that Mr. Zhang received "an honorary accolade for distinguished service" from the State Council, but without further information about the CCP ties of Mr. Zhang and others with leadership positions at Yangzhou Chengde, we cannot evaluate the significance of this recognition.[239]

Jiangsu Chengde also argues that the Department "accepted similar information in previous investigations as sufficient to support treating a raw material supplier as "private" and not a government authority."[240] Having reviewed the determination cited by Jiangsu Chengde, we disagree. In *Wire Decking from the PRC*, the Department found there to be insufficient information on the record regarding whether three producers were authorities. For each of these three producers, we stated that

> …the record lacks the necessary broader information regarding, *e.g.*, the role that {GOC and CCP entities} play in the PRC in forming and implementing such things as government industrial policies, or CCP initiatives or priorities. The

[237] *See* CCP Memorandum, at 3. As described above, the Public Bodies Memorandum and CCP Memorandum are relevant here because they contain our findings and evidence that the CCP is part of the government, even though we are not adopting the ultimate test for determining whether an entity is an "authority" that we adopted in the those Memoranda.
[238] Id., at 33.
[239] *See* C2SR, at 1.
[240] *See* CCB, at 11.

> record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that such record information provides an insufficient basis on which to conclude that the relationships between individual owners and the GOC or CCP evince government control over {the producer}.[241]

Similar to *PC Strand from the PRC*,[242] we did not conclude based on record evidence that these producers were not authorities. Rather, we found that there was insufficient record evidence upon which to base such a finding. In this proceeding, the Department has attempted to gather this record evidence and has requested it repeatedly from the GOC, without success. Our statements in *Wire Decking from the PRC* highlight the importance of having complete information regarding the CCP on the record in order to determine whether a company is an "authority" – information the GOC did not provide in this administrative review.

Finally, in response to Jiangsu Chengde's arguments that the Department should not apply AFA because Jiangsu Chengde cooperated fully, we have not applied AFA to Jiangsu Chengde. The GOC is the party that failed to provide necessary information, and we have applied AFA as a result of the GOC's failure to cooperate to the best of its abilities. As explained in *Wood Flooring from the PRC*,[243] *Steel Cylinders from the PRC*[244] and other proceedings, we recognize that such a finding may affect Jiangsu Chengde, but such an effect does not render the application of AFA unlawful. If Jiangsu Chengde's arguments were followed to their logical conclusion, the Department would be prohibited from applying AFA in instances where the government of the country being investigated fails to reply to any of the Department's questionnaires, but the respondents have provided some information. Such an outcome would significantly impede the Department from obtaining the information regarding financial contribution and specificity that it needs for a complete analysis.

In light of the above, we have continued to apply AFA for the final results, and as AFA, we continue to find that Yangzhou Chengde is a government "authority" within the meaning of section 771(5)(B) of the Act.

Comment 6: Whether the Provision of Steel Rounds for LTAR is Specific

GOC's Arguments[245]

- The recipients of steel rounds are not specific "because they are used in rebar, plain bar, merchant bar, light sections, narrow strip, wire rod, and seamless tubes."
- The GOC does not restrict the prices charged to steel round consumers.

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[241] *See Wire Decking from the PRC*, and accompanying IDM at Comments 2-4.
[242] *See* above at "CCP Influence Over Companies."
[243] *See Wood Flooring from the PRC*, and accompanying IDM at Comment 4.
[244] *See Steel Cylinders from the PRC*, and accompanying IDM at Comment 10.
[245] *See* GCB, at 31.

Petitioner's Rebuttal[246]

- The enterprises and industries receiving benefits under this program are plainly limited in number, by virtue of the list of products incorporating steel rounds provided by the GOC.

Department's Position:

The GOC's list of seven products containing steel rounds is the same list of seven industries the GOC provided to the Department in the investigation. In the *OCTG Investigation*, we explained that "{c}onsistent with our past practice, the products listed by the GOC (rebar, plain bar, merchant bar, light sections, narrow strip, wire rod, and seamless tubes) are a limited group of industries under section 771(5A)(D)(iii)(I) {of the Act}."[247] The GOC has not presented any new information here that would prompt us to depart from our earlier determination.

Comment 7: Benchmark Issues

Internal vs. External Benchmark

GOC's Arguments[248]

- The Department should use an in-China ("tier one") benchmark to calculate the benefit from steel rounds provided at LTAR, because the GOC has "demonstrated in this review that steel rounds provided to OCTG producers are largely from non-state-owned entities."

Wuxi's Arguments[249]

- Although the Department rejected the use of a "tier one" benchmark in the *Preliminary Results*, "this determination was based on adverse facts available, the basis of which no longer exists for the final results of this review."
- There is no evidence on the record that shows that the prices from actual sales transactions involving Chinese buyers and sellers of steel rounds are significantly distorted.

Petitioner's Rebuttal[250]

- The Department has rejected the identical arguments raised here by the GOC in other cases.
- The GOC has failed to provide any domestic Chinese prices that would meet the requirements of the statute and the Department's regulations and practice for use as benchmarks.

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[246] *See* PRB, at 12.
[247] *See OCTG Investigation*, and accompanying IDM at Comment 12.
[248] *See* GCB, at 32.
[249] *See* WCB, at 11-12.
[250] *See* PRB, at 13-14.

Department's Position:

In the *OCTG Investigation*, relying on AFA, we found that domestic prices in the PRC cannot serve as viable, "tier one" benchmark prices because the GOC did not provide requested information regarding the extent of state ownership in the PRC steel rounds industry.[251] Instead, we relied on "tier two prices," *i.e.*, world market prices.[252] In this proceeding, we notified the GOC that "{w}e do not intend to reevaluate the countervailability of this program. However, if there were any changes to the operation of the program during the POR, please explain the changes and answer all relevant questions in the Standard Questions Appendix."[253]

In an administrative review, we do not revisit prior countervailability findings in the proceeding absent new evidence that would cause the Department to revisit its prior findings. The GOC, however, failed to present new evidence. Therefore, we have continued to rely on "tier two" benchmarks for the final results of this review.

We note further that the GOC's argument inappropriately conflates the Department's analysis of whether a producer is an "authority," which pertains to whether the government provided a financial contribution, and our analysis of whether Chinese prices for steel rounds are significantly distorted, which pertains to whether the respondents received a benefit.

Exclusion of Certain Prices for Steel Rounds from the Benchmark

Petitioner's Arguments[254]

- Section 771(5)(E) of the Act requires the Department to take into consideration "prevailing market conditions" such as "price, quality, availability, marketability, transportation, and other conditions of purchase or sale."
- 19 CFR 351.511(a)(2) requires the Department to make allowances for "factors affecting comparability."
- The Department included LME prices for steel rounds submitted by Wuxi in the benchmark at the *Preliminary Results*. However, the steel billets listed on the LME's exchange cannot be used to produce OCTG and other seamless tube products.
- The LME prices are for steel billets with a square cross-section between 100 mm and 150 mm and a length between 5,800 mm and 6,000 mm.
- Steel billets used in OCTG production have a round cross-section and are designated as "tube billets" or "rounds." Steel rounds are not sold on the LME.
- Information submitted by the respondents demonstrates that they exclusively use steel rounds to produce OCTG, not square steel billets like those traded on the LME.
- Because LME prices are for inputs not used to produce OCTG, these prices should be excluded from the benchmark for the final results.

[251] *See OCTG Investigation*, and accompanying IDM at 4 and Comment 13.
[252] *Id.*
[253] *See* InitQ, at II-5.
[254] *See* GCB, at

Jiangsu Chengde's Rebuttal[255]

- Petitioner makes no attempt to argue or document that the SBB billet prices it wants the Department to rely on do not also incorporate prices for square steel billets that cannot be used to produce OCTG. The SBB data submitted by Petitioner describes the product simply as "Semi-Finished / Billet."
- Whether the LME and SBB prices include prices for square billets is irrelevant because the Department did not limit its analysis to purchases of billets that are used solely to produce subject merchandise. Instead, the Department asked respondents to report all billet purchases, regardless of whether they were used to produce subject merchandise.
- The Department has rejected Petitioner's arguments in other proceedings, including the *OCTG Investigation*.[256]

Wuxi's Rebuttal

- The Department rejected arguments identical to those Petitioner now offers in *Seamless Pipe from the PRC* and in the *OCTG Investigation*, finding that use of LME prices was appropriate because the Department's analysis was not limited to purchases of billets used in the subject merchandise.[257]
- There is no record evidence showing that the SBB billet prices on the record include different types of billets than those included in the LME billet prices.

Department's Position:

We agree with Jiangsu Chengde and Wuxi. As in the *OCTG Investigation*, we have not limited our analysis to purchases of billets specifically for OCTG production. Our initial questionnaire to Wuxi and Jiangsu Chengde specified that respondents "should report this purchase information regardless of whether your company used the input to produce the subject merchandise during the POR."[258] Because our LTAR calculation includes all purchases of these products, we have no basis to exclude the LME prices on these grounds. We have included LME prices in the benchmark for the final results.

Comparison of Individual Purchases to a Monthly Benchmark

Jiangsu Chengde's Arguments[259]

- If the Department calculates an average benchmark by month, it should also average Jiangsu Chengde's transaction prices by month for an "appropriate apples-to-apples comparison."
- This methodology does not "offset" subsidy benefits any more than averaging benchmark prices does, because in both cases there are prices that vary from the average. Normal commercial variations in prices are not the same as preferential prices.

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[255] *See* CRB, at 2-5.
[256] *See OCTG Investigation*, and accompanying IDM at Comment 13A.
[257] *Id.*
[258] *See* InitQ, at III-10.
[259] *See* CCB, at 6-7.

- The Department applied an average-to-average comparison in prior cases such as *Steel Coils from Korea*, where "we used delivered weighted-average prices charged by POSCO to Inchon for hot-rolled coils and delivered weighted-average prices Inchon paid for imported hot-rolled coil."[260]

Petitioner's Rebuttal[261]

- Jiangsu Chengde's proposal would improperly mask the benefit from subsidized steel rounds because it would be able to offset purchases at below the benchmark price with purchases above the benchmark price.
- Section 771(6) of the Act does not permit this type of offset.
- The Department has rejected similar arguments in other proceedings, including the *OCTG Investigation*.[262]
- Although Jiangsu Chengde claims that its approach is justified by a "considerable range of prices" for benchmarks, the only significant variation in benchmark prices is a result of including LME prices for square steel billets.

Department's Position:

In the investigation, the GOC presented similar arguments. It argued that the Department should not "zero," or exclude from the benefit calculation, billet purchases where the purchase price is above the monthly benchmark price. We replied:

> As stated in *Softwood Lumber AR* and accompanying IDM at Comment 43, "in a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions." Additionally, as noted in *Softwood Lumber AR*, the law does not contemplate the Department to provide a respondent with a credit for instances in which the government does not provide a benefit (*i.e.*, instances where a respondent pays adequate remuneration for a good). The Department's position has not changed since *Softwood Lumber AR*, and, accordingly, we will not provide a credit for purchases of steel rounds above the benchmark rates in the final determination.[263]

Section 351.503(b) requires the Department to determine and find a benefit when a firm pays less for its inputs than it otherwise would have paid absent the program. Thus, in order to be consistent with our regulations, we are required to calculate a benefit on a transaction-specific basis.

The Department has calculated the benefit from various inputs for LTAR by comparing a monthly average of world market prices to individual transactions in a number of recent cases in

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[260] *See Steel Coils from Korea*, and accompanying IDM at 10-11.
[261] *See* PRB, at 14-17
[262] *See OCTG Investigation*, and accompanying IDM at Comment 14; *see also OTR Tires from the PRC*, and accompanying IDM at Comment D.7.
[263] *See OCTG Investigation*, and accompanying IDM at Comment 14.

an effort to address this problem. For example, in *Sinks from the PRC*, one of the respondents reported its purchases of SSC based on entries into its accounting system, rather than individual invoices. We discovered at verification that "each line item in Yingao's purchase database… may represent multiple VAT invoices and/or multiple line items on a VAT invoice."[264] We went on to explain that "because Yingo did not report its purchases based on each line item in its VAT invoices, we cannot determine the total benefit from each purchase of SSC (*i.e.*, each unique price, quantity and specification) from a government authority. We are unable to determine the total benefit because any individual purchases above the benchmark price improperly offset the subsidy benefit from individual purchases below the benchmark price."[265] We applied AFA for the prices of Yingao's purchases of SSC, but for another respondent, we "compared the monthly benchmark prices to Superte's actual purchase prices for SSC."[266]

Jiangsu Chengde's proposal that the Department average the company's purchases by month and compare the result to a benchmark would have the same effect as Yingao's failure to report individual transactions for its purchases of SSC. By offsetting positive benefits with negative benefits, this methodology would distort the benefit Jiangsu Chengde received from steel rounds provided for LTAR. Therefore, for the final results, we have continued to calculate the benefit from steel rounds provided for LTAR by comparing the prices for individual transactions to a benchmark reflecting a monthly average of world market prices.

D. Policy Lending

Comment 8: Whether Loans to the Respondents are Specific

Wuxi's Arguments[267]

- Nothing cited by the Department directs any of the SOCBs to provide preferential loans; expressions of support and development cannot constitute *de jure* specificity.
- That "policy" loans have been granted to a range of industries is *prima facie* evidence that the loans are generally available and not specific to any one industry.[268]
- There is no evidence showing that Wuxi or its subsidiaries received any preferential treatment by virtue of being OCTG producers and, thus, the loans were not *de facto* specific.

GOC's Arguments[269]

- Banks in the PRC operate with full autonomy and responsibility for risks, profits and losses,[270] and SOCBs no longer provide policy loans or special loans.[271]

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[264] *See Sinks from the PRC*, and accompanying IDM at 11-12.
[265] *Id.*
[266] *Id.*, and accompanying IDM at 21.
[267] *See* WCB, at 12-13.
[268] *See, e.g., Citric Acid AR*, 76 FR at 77206; *Wood Flooring from the PRC*, 76 FR at 64313; *Aluminum Extrusions from the PRC*, 76 FR at 18521; *Drill Pipe from the PRC*, 76 FR at 1971; *Coated Paper from the PRC*, 75 FR at 59212.
[269] *See* GCB, at 38-39.
[270] *See* GQR, Exhibit 12, Article 4.
[271] *Id.*, at Exhibit 13, Article 1.

- There is no record evidence establishing a link between any government policy to encourage the OCTG industry and particular loans received by Wuxi.

Petitioner's Rebuttal[272]

- No party presented evidence in this proceeding that would call into question the findings of the *OCTG Investigation* that the laws governing bank lending in the PRC require Chinese banks to "carry out their loan business under the guidance of the State industrial policies."[273]
- Industrial policies call for support of certain industries, including the OCTG industry, through preferential lending,[274] beyond simply "aspirational" goals.
- Preferential lending policies of Jiangsu Province continue to be in place and applicable to the loans at issue in this administrative review.[275]
- The CVD investigations cited by Wuxi each dealt with a specific product that had been expressly targeted by the GOC for financial support and the large number serves to illustrate the magnitude of the GOC's efforts to support certain favored industries.
- Record evidence shows that Wuxi was uncreditworthy in 2011, and SOCBs stepped in to lend to Wuxi when no commercial bank would.

Department's Position:

The Department found in the *OCTG Investigation* that the GOC has in place a policy to encourage the development of OCTG production through policy lending and, based on this, that policy loans to the OCTG industry were *de jure* specific.[276] No parties have placed on the record of this review any information that would cause us to reexamine our earlier finding of specificity. The GOC points to two exhibits from its response: both not only predate the *OCTG Investigation* but they also predate the underlying analysis conducted in *CFS from the PRC*, where the Commercial Bank Law of China (one of the exhibits cited by the GOC) was specifically addressed.[277] Therefore, we continue to find policy loans specific to the OCTG industry, and therefore, the Wuxi Companies and Jiangsu Chengde.

Comment 9: Whether a Financial Contribution Exists and SOCBs are Authorities

Wuxi's Arguments[278]

- GOC ownership of a bank does not establish government authority within the meaning of the statute,[279] and without affirmative evidence of government control, the SOCBs cannot be deemed to be authorities.

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[272] *See* PRB, at 22-25.
[273] *See Wind Towers from the PRC*, and accompanying IDM at Comment 3.
[274] *Id.*; *see also OCTG Investigation*, at 12 and Comment 21; *CFS from the PRC*, and accompanying IDM at Comment 8; *CWP from the PRC*, and accompanying IDM at Comment 8; *Citric Acid Investigation*, and accompanying IDM at Comment 5.
[275] *See OCTG Investigation*, and accompanying IDM at Comment 21.
[276] *Id.*, and accompanying IDM at 12.
[277] *See CFS from the PRC*, and accompanying IDM at Comment 8.
[278] *See* WCB, at 13-14.
[279] *See DRAMS from Korea*, and accompanying IDM at 17.

- There is no record evidence that the GOC "entrusted or directed" the SOCBs to provide a financial contribution.

GOC's Arguments[280]

- The Department provides no analysis of SOCBs as authorities beyond referencing the GOC's policy to encourage OCTG production as stated in the *OCTG Investigation*.
- The *OCTG Investigation* quoted *CFS from the PRC* in stating that the "Department considers banks that are owned or controlled by the government to be public authorities under CVD law."[281]
- The Department's reference to *CFS from the PRC* fails to satisfy the WTO SCM Agreement or the WTO Appellate Body's requirement as stated in WTO AB Decision China CVD.[282]

Petitioner's Rebuttal[283]

- The Department has repeatedly found the PRC's SOCBs to be authorities.[284]
- In *Wind Towers from the PRC*, the Department emphasized that:
  - The determination that SOCBs are authorities is not based on government ownership alone, but takes into account the fact that the PRC's banking system remains under government control and is subject to a requirement that it make loans on preferential terms to implement government policies;
  - The GOC has failed to provide any evidence that it has changed or removed these requirements, divested its ownership in SOCBs, or made any other changes that would provide a factual basis for reconsidering the Department's prior findings that SOCBs are "authorities" that provide a financial contribution within the meaning of the statute; and
  - WTO AB Decision China CVD is an "as applied" finding limited to the specific proceedings involved and is not part of U.S. law except to the extent that it has been implemented in those specific proceedings.[285]

[280] *See* GCB, at 39-41.
[281] *See OCTG Investigation*, and accompanying IDM at 96, citing *CFS from the PRC*, 72 FR at 60645.
[282] The GOC quotes from WTO AB Decision China CVD, paragraph 354: "In our view, merely incorporating by reference findings from one determination into another determination will normally not suffice as a reasoned and adequate explanation. Nonetheless, where there is close temporal and substantive overlap between the two investigations, such cross reference may, exceptionally, suffice. We do see substantive overlap between the *CFS from the PRC* and the *OTR Tires from the PRC* determinations, as both investigations were concerned with the nature of SOCBs in China. With respect to the temporal element, we note that there was only one year's difference between the period of investigation in *CFS from the PRC* (calendar year 2005) and the period of investigation in *OTR Tires from the PRC* (calendar year 2006)."
[283] *See* PRB, at 25-27.
[284] *See, e.g.*, *Wind Towers from the PRC*, and accompanying IDM at Comment 4; *PC Strand from the PRC*, and accompanying IDM at Comment 21; *OCTG Investigation*, at 9-13 and Comment 20; *Citric Acid Investigation*, and accompanying IDM at I.A.; *Thermal Paper from the PRC*, and accompanying IDM at Comment 6; *OTR Tires from the PRC*, and accompanying IDM at Comment E.2; and *CFS from the PRC*, and accompanying IDM at Comment 8.
[285] *See Wind Towers from the PRC*, and accompanying IDM at Comment 4.

Department's Position:

Our findings as stated in *Wind Towers from the PRC* mirror the situation here, and we adopt those findings in full here.[286] Accordingly, we agree with Petitioner, and affirm our findings as stated in the *Preliminary Results* and Post-Preliminary Analysis.

Comment 10: Use of an In-Country Benchmark or "Secured" Loan Benchmark

Wuxi's Arguments[287]

- Section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(3) direct the Department to use a market-based benchmark to measure the benefit of a loan.
- The Department should base the loan benchmark on a rate that Wuxi or its subsidiaries could "actually obtain on the market" or rely on a Chinese national average rate for comparable commercial loans.
- Wuxi's loans were secured by a mortgage and, thus, the Department should use a benchmark that reflects secured loans or an unsecured benchmark loan should be adjusted to reflect the lower risk represented by the mortgage.

GOC's Arguments[288]

- The multi-country short-term interest rate benchmark computations in the *Preliminary Results* are flawed because the Department:
  - Relied upon a collection of IMF rates that are not entirely short-term and has not adjusted them to correct this;
  - Used some rates that do not reflect business loans;
  - Excluded negative inflation-adjusted rates;
  - Used an invalid regression analysis to determine a short-term interest rate based on a composite governance indicator factor; and,
  - Calculated an adjustment spread between short and long-term rates using USD "BB" bond rates with no explanation.
- The Department should use the actual PRC interest rates on comparable bank loans for these final results.

Petitioner's Rebuttal[289]

- The GOC and Wuxi have provided no new information or argument that would call the findings as stated in *Wind Towers from the PRC*, that:
  - Loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Therefore, any loans received by respondents from banks in the PRC are unsuitable as benchmarks under sections 351.505(a)(2)(i) and 351.505(a)(3)(ii) of the Department's

[286] *Id.*
[287] *See* WCB, at 14.
[288] *See* GCB, at 41-42.
[289] *See* PRB, at 27-28.

regulations. Because of "special difficulties inherent" in using a PRC benchmark for loans, the Department must use an external market-based benchmark interest rate.
    - The practice of using an external benchmark interest rate was established based on an extensive study conducted in *CFS from the PRC*, and the GOC has provided no evidence that would lead the Department to reconsider its earlier findings.
    - The Department's benchmark calculation appropriately reflects conditions of lending in the PRC, accounts for changes in the PRC's level of economic development in recent years, and excludes negative interest rates that do not reflect interest rates for commercial loans.[290]
- No basis exists to adjust Wuxi's benchmark to reflect the "lower risk" of loans it received that were partially secured with a mortgage because it was uncreditworthy during the POR.

Department's Position:

Multi-Country Short-Term Benchmark

First, we disagree with the GOC that the Department's regression-based methodology is invalid and that the assumptions underlying the benchmark calculation are flawed. The benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC, as well as variables that take into account the quality of a country's institutions (as reflected by World Bank governance indicators, which are not directly tied to state-imposed distortions in the banking sector). Thus, we continue to rely on the calculated regression-based benchmark first developed in *CFS from the PRC*.

Regarding the GOC's objection to the Department excluding inflation adjusted, negative interest rates from the short-term benchmark, the Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially.[291] Therefore, we continue to exclude negative real interest rates in calculating our regression-based benchmark rates.

The GOC has raised the argument that many of the IFS-reported lending rates are not rates for short-term loans.[292] We agree that certain of the interest rates used in our regression analysis may reflect maturities of longer than one year. Indeed, the notes to the IFS state that these rates apply to loans that meet short- and medium-term financing needs. Therefore, we find that these rates should not be treated as exclusively short-term in nature.[293] To address this concern, we will continue to use the same interest rate data from the IMF and regression-based benchmark rate methodology, but will apply it to loans with terms of two years or less. This approach is consistent with the Department's approach in prior proceedings.[294]

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[290] *See Wind Towers from the PRC*, and accompanying IDM at Comments 4-5.
[291] *See, e.g., Steel Wheels from the PRC*, and accompanying IDM at Comment 24.
[292] *Id.*
[293] *See* 19 CFR 351.102, where a short-term loan is defined as having repayment terms of one year or less.
[294] *See Thermal Paper from the PRC*, and accompanying IDM at "Benchmark and Discount Rates" section; *see also Steel Wheels from the PRC*, and accompanying IDM at Comment 24.

We also disagree with the GOC's objection to the Department's derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar "BB" bond rates. The Department has fully addressed the arguments raised by the GOC in prior cases.[295] The Department explained that 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of AAA to BAA and CAA to C- in deriving a probability of default in the stated formula. However, there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy by the Department. As we have received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we are choosing the highest non-investment rate.[296]

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed.[297] In this instant case, we have also not received any suggested alternatives. As no new arguments have been presented, we will continue to use the BB corporate bond rate for the final results in any long-term loan calculations or discount rate calculations. This mark-up accounts for the time value of money and credit risk over the long term, *i.e.*, over and above that which is already reflected in the short-term benchmark rate. Since the mark-up is the difference in nominal rates for an n-year bond and a 2-year bond, the mark-up also implicitly reflects, in theory, expected inflation for the n-2 year time period. Under this approach, we find there is no overlap between this inflation factor and the inflation factor added to the short-term benchmark because that factor represents only inflation in year one and not beyond. We further note our approach in this regard is consistent with the Department's practice.[298]

Lastly, we disagree with the GOC's and Wuxi's arguments that the Department should have used actual interest rates on bank loans in the PRC or a PRC national interest rate as the benchmark. In the *Preliminary Results* PDM, the Department stated that the "GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks."[299] As a result, the Department preliminarily determined that interest rates in the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to the respondents in this review. Thus, we used an external benchmark to measure the benefit of countervailable loans.[300] The Department finds that no new information has been submitted on the record to give it reason to revisit its preliminary finding

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[295] *See, e.g., OCTG Investigation*, and accompanying IDM at Comment 27; *see also Steel Wheels from the PRC*, and accompanying IDM at Comment 24.
[296] *Id.*
[297] *See Citric Acid Investigation*, and accompanying IDM at Comment 13.
[298] *See, e.g., id.*, at Comment 15.
[299] *See Preliminary Results*, and accompanying PDM at 8-9; *see also Thermal Paper from the PRC*, and accompanying IDM at Comment 20; *see also Steel Wheels from the PRC*, and accompanying IDM at Comment 23.
[300] *See Preliminary Results*, and accompanying PDM at 8-9.

regarding the use of an external benchmark to measure the benefit of loans found to be countervailable.

For all these reasons, we determine that it is appropriate to use the external benchmark methodology as used in the *Preliminary Results*.

Secured Loan Benchmark for Wuxi

We agree with Petitioner. Wuxi is requesting a company-specific benchmark adjustment that would only be appropriate in a market-based banking system. Such a benchmark adjustment would be inconsistent with our finding that the GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. To accept Wuxi's request is to accept that SOCBs have the capacity, commercial orientation, and arms-length relationships to make meaningful pricing and risk decisions, which is inconsistent with our finding on the PRC banking sector as a whole. Moreover, our finding that Wuxi was uncreditworthy during the POR makes such an adjustment even more improper. Therefore, we have made no changes to the benchmarks we used to calculate the benefit from Wuxi's loans.

E. Export Restraints on Coke

Comment 11: The SCM Agreement, Financial Contribution, and Application of AFA Regarding Export Restraints on Coke

Wuxi's Arguments[301]

- Applying AFA requires the Department to decide what adverse facts to apply to remedy the "missing" information and how the adverse inference affects the issue at hand.[302] Moreover, the result must be supported by record evidence and must "have some grounding in commercial reality."[303]
- The Department cannot apply an adverse inference to information that is irrelevant or inconsequential to the Department's determination, cannot automatically apply an adverse inference that a financial contribution exists without an analysis of what the GOC did provide, and without any factual support as to why the missing information is relevant.
- The GOC responded to all "relevant" questions and the record contained ample information to determine the existence of financial contribution concerning export restraints on coke.[304] The Department failed to explain what the "missing" information was and why such information was necessary to determine the existence of financial contribution and without such explanation, the Department's reasoning for applying AFA is legally deficient.[305]

[301] *See* WCB, at 3-7.
[302] *See F.Lii de Cecco*, at 1027, 1032, quoting that it is "within Commerce's discretion to choose which sources and facts it will rely on to support an adverse inference when a respondent has been shown to be uncooperative … Commerce's discretion in these matters … is not unbounded."
[303] *See Gallant Ocean*, at 1319, 1324.
[304] *See* G3SR and G4SR.
[305] *See* Post-Preliminary Analysis, at 10.

- Even if the Department were to find the GOC's responses to be incomplete, the facts on the record demonstrate that export restraints on coke do not constitute a financial contribution, as section 771(5)(B) of the Act states that a countervailable subsidy exists only where a government authority provides a financial contribution or entrusts or directs a private entity to provide a financial contribution. This is mirrored in Article 1.1(a)(1) of the SCM Agreement.
- Nowhere in section 771 of the Act or the SCM Agreement are export tariffs or restraints defined to constitute a financial contribution, and the WTO ruled that export restraints by definition cannot constitute a financial contribution.[306]
- Export restraints on coke do not fall under any of the definitions of financial contribution, as the GOC's involvement is limited to imposition of export tariffs on coke and an export licensing system, and there is no evidence that the GOC has entrusted or directed any entity to provide a financial contribution to producers of OCTG.
- The Department did not countervail this program in the *OCTG Investigation* because long-term price data or an independent study showing a connection between the imposition of export restraints and the divergence of prices were not on the record. No such evidence exists in this review, either.

GOC's Arguments[307]

- In finding that export restrictions on coke constitute a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, the Department determined that the GOC forwent revenue otherwise due, but the GOC is not involved in the production or sale of coke and, thus, it is not possible for the GOC to have foregone or not collected revenue.
- The GOC has not "entrusted" or "directed" a private entity to forego or not collect revenue that is otherwise due, and export restraints are not governmental measures which constitute an entrustment or direction of private parties to provide coke to domestic downstream industries.
- As stated in the *OCTG Investigation*, the record failed to contain any evidence that suppliers of coke were "entrusted or directed" by the GOC to make a financial contribution to the OCTG industry, nor was there any evidence that suppliers of coke were motivated by reasons other than commercial considerations.
- Accordingly, export restraints are not a financial contribution and, therefore, cannot be found to confer a countervailable subsidy within definition of Article 1.1(a)(1) of the SCM Agreement.
- The SCM Agreement requires an investigating authority to ask whether there is a financial contribution within the meaning of Article 1.1(a)(1)(iv).[308]
- The Department has not explained how an export restraint can confer a financial contribution nor has the Department provided sufficient evidence supporting its determination that the export restraints confer a financial contribution to the producers of OCTG, a necessary prerequisite in accordance with the SCM Agreement.

[306] *See* WTO Panel Decision Export Restraints, at paragraph 8.75.
[307] *See* GCB, at 32-38.
[308] *See* WTO Export Restraints, at paragraph 8.72.

- The Department relied on "facts otherwise available" and drew an adverse inference because the Department determined that the GOC "failed to cooperate by not acting to the best of its ability to comply with our request for information."
- As adverse inference, the Department found that the GOC's export restraints on coke constitute a financial contribution despite the extensive information provided by the GOC.[309]
- The additional information that the Department requested was not necessary to analyze whether the export restraints on coke provided a financial contribution.[310]
- The Department can only use adverse inferences against non-cooperating parties when selecting from among the facts otherwise available, and the GOC did cooperate, providing information necessary to confirm the existence of export restraints on coke.
- Application of facts otherwise available under section 776(a) of the Act requires that there be a "gap" of missing information in the record, that the missing information be necessary for the Department's determination, and there can be no valid basis for the use of facts otherwise available or an adverse inference absent showing that the missing information is necessary.[311]
- The Department has not explained how the missing information was necessary to establish that the export restraints constitute a financial contribution, as information cannot be deemed "necessary" merely because the Department has requested it.[312]

Petitioner's Rebuttal[313]

- In *Seamless Pipe from the PRC*, the Department recognized that it has authority to countervail export restraints, and found that export restraints on coke provide a financial contribution pursuant to section 771(5)(D) of the Act.[314]
- The terms of the SCM Agreement and a ruling by a WTO dispute settlement panel do not foreclose a finding of financial contribution in this case. The SAA, as quoted in *Seamless Pipe from the PRC*, states that WTO decisions are not binding on the United States and do not have any "power to change U.S. law or to order such a change."[315]
- The ruling was in the context of WTO jurisprudence and did not conclusively find that export restraints can never be a financial contribution within the meaning of the SCM Agreement.[316]
- The Department's application of AFA was proper under sections 776(a) and 776(b) of the Act because the GOC refused to provide complete and meaningful responses to the

[309] *See* G3SR and G4SR, wherein the GOC states that it provided information regarding the coke industry in the PRC during the POR and the prior two years; the CCIA, its members, and its rules; confirmation that there were no price controls on coke during the POR and the prior two years; confirmation that the coke industry in the PRC is based on market and commercial principles and that all enterprises, regardless of ownership, make their own decisions concerning production and sales activities; the VAT rate in effect; the export tariff rate and export licensing requirements in effect during the POR; and data on the industries that use coke.
[310] *See* Post-Preliminary Analysis, at 10.
[311] *See*, *e.g.*, *Nippon Steel*, at 1373, 1381; *Zhejiang Dunan*, at1333, 1347; or *Gerber Food*, at 1270, 1284.
[312] *See*, *e.g.*, *Kawasaki*, at 684, 689 (CIT 2000) (quoting *Ferro Union* at 178, 199 (CIT1999)).
[313] *See* PRB, at 17-20.
[314] *See Seamless Pipe from the PRC*, and accompanying IDM at Comment 32. Petitioner disputes Wuxi's contention about the Department's "past practice," as *Seamless Pipe from the PRC* illustrates that the Department has since found export restraints to be countervailable.
[315] *See* SAA, at 659.
[316] WTO Panel Decision Export Restraints.

Department's questions, claiming only that the export restraints on coke were not a countervailable subsidy within the meaning of the SCM Agreement.[317]

- The evidence provided by the GOC offers support for the Department's finding, showing that producers and exporters of coke, as members of the CCIA, "{o}bey national constituency, law, regulation and policy" and "{accept} the guidance, supervision, and administration of registration management authority Ministry of Civil Affairs of PRC and State-Owned Assets Supervision and Administration Commission."[318] This demonstrates that the GOC is "entrusting or directing" entities in the PRC to make a financial contribution to coke-consuming industries.
- The GOC's statements concerning the function of the CCIA show that it operates similarly to other industry associations in the PRC in carrying out the policies of the GOC.[319]

Department's Position:

The questions in our Export Restrictions Appendix---questions that the GOC did not answer---are necessary to our analysis of whether the GOC entrusted or directed coke producers to provide coke for less than adequate remuneration. Part of our analysis for this program considers the potential entrustment or direction of private entities by the GOC through various measures or actions that, *inter alia*, may together or on their own contribute to the provision of an input for less than adequate remuneration.

Regarding the GOC's claim that the Department preliminarily found a financial contribution within the meaning of section 771(5)(D)(ii) of the Act (relating to revenue forgone), we acknowledge that we mistakenly referred to that section of the Act in our Post Preliminary Analysis, when in fact we based our finding on section 771(5)(D)(iii) of the Act (regarding the provision of goods and services other than general infrastructure). We have corrected the citation in the final results.

As we also explained under "Use of Facts Otherwise Available and Adverse Inferences," the *CVD Preamble* states that, "while {export restraints} may be imposed to limit parties' ability to export, they can also, in certain circumstances, lead those parties to provide the restrained good to domestic purchasers for less than adequate remuneration."[320] Thus, while exports restraints are not listed among the forms of financial contributions at section 771(5)(D) of the Act or Article 1.1(a)(1) of the SCM Agreement, they can result in a countervailable subsidy when they lead domestic input producers to provide that input (a good), a recognized form of a financial contribution under both section 771(5)(D) of the Act or Article 1.1(a)(1) of the SCM Agreement. Regarding WTO Panel Decision Export Restraints, the Federal Circuit has ruled that WTO

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[317] *See* Post-Preliminary Analysis, at 8-9.
[318] *Id*., at 9-10.
[319] *See Brief of Amicus Curiae of the Ministry of Commerce of the People's Republic of China in Support of Defendants' Motion to Dismiss the Complaint, Docket No. 69*, In re Vitamin C Antitrust Litigation, No. 06-MD 01738-BMC-JO (E.D.N.Y. June 29, 2006) at 5-6 (Public Document), where the GOC acknowledged "that it established a 'Chamber of Commerce of Medicines and Health Products Importers & Exporters' under the direct control of the GOC's Ministry of Commerce to set minimum price thresholds through coordination among manufacturers in order to benefit Chinese industry" which Petitioner avers to be virtually identical to the acknowledged function of the CCIA with regard to coke production and export.
[320] *See CVD Preamble*, at 65351.

reports are without effect under U.S. law unless adopted pursuant to the statutory scheme described in the URAA.[321] Moreover, we agree with Petitioner that the panel ruling did not conclusively find that export restraints can never be a financial contribution, within the meaning of the SCM Agreement.)

The structure, context, purpose, scope, timing, results, *etc.*, of government measures or actions are relevant lines of inquiry. That is, we are examining whether government measures or actions amounted to the government implicitly or explicitly giving responsibility to, or exercising authority over, coke producers to provide goods, or otherwise causing or trusting coke producers to provide goods for less than adequate remuneration. Accordingly, the questions in our Export Restrictions Appendix are necessary to our analysis in this regard, and require the GOC among other things to: describe the purpose and impact of these measures, describe why these particular measures were chosen over other non-border measures and why the particular level of restrictions were chosen, and whether domestic industries were consulted with respect to the implementation of these measures. A complete response from the government on all these questions is necessary for the Department to have an accurate and full understanding of this program and its potential countervailability. As explained above under "Use of Facts Otherise Available and Adverse Inferences," the GOC failed to respond to a number of our questions for this program, leaving us unable to complete our analysis.

Wuxi claims that the Department reversed its prior finding of non-countervailability without long-term price data on the record to support this change. We disagree. In the *OCTG Investigation*, the Department explained that "there is no record evidence in this investigation, such as independent studies, demonstrating that the PRC's export restraints could be linked to the divergence between Chinese domestic prices and world prices of coke over a period of time..."[322] However, the evidence that was missing in the *OCTG Investigation* is present on the record of this review. As stated in the NSA Initiation Memorandum, independent studies submitted by Petitioner stated that "{u}ntil today, the export quota keeps international coke prices high and ensures that coke prices in China remain significantly below world market level,"[323] "{t}he Chinese domestic and export prices have always been somewhat disconnected due to export license system,"[324] and in connection with the January 1, 2008, increase in the export tariff, the difference in domestic and export prices for first-grade coke in Shanxi was RMB 2150 per ton (domestic) and RMB 2200 per ton (export).[325]

Wuxi claims that the study conducted by Dr. Seth Kaplan "does not constitute an independent study," but fails to support this argument and does not address the other record evidence, such as the Thomas Study, upon which we relied when we determined to investigate this program.[326] Even if the study conducted by Dr. Kaplan were excluded from our analysis (and it is not clear that it should be), we find that other record information provides a sufficient justification for investigating this program. Wuxi also faults the Department for not soliciting similar studies

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[321] *See, e.g. Corus I* at 1375; *NSK II*, at 1379-80.
[322] *See OCTG Investigation*, at Comment 32.
[323] *See* Thomas Study, at 14. We note that this is an academic study.
[324] *See* NFI Submission, at Exhibit III-245 at 9. We note that this is part of an industry market report.
[325] *Id.*, at Exhibit III-244. We note that this is an industry news article.
[326] *See* WCB, at 8.

from the GOC.[327] However, the studies provided by Petitioner were not provided in response to the Department's questionnaires. Rather, they were provided by Petitioner as new factual information in support of its new subsidy allegations. If the GOC objected to this information, it had the option to provide other studies in support of its position, but did not do so.

Beyond addressing the divergence between Chinese domestic and export prices, Petitioner's evidence also discussed the effect of China's export restraints on Chinese coke consumers. In particular, the Thomas Study stated:

- "The export restraints for raw materials like coke and zinc, which are important inputs for steelmaking and finishing, respectively, lead to a bottling up of resources on the Chinese market while at the same time reducing supplies on the world market."[328]
- "(Chinese) government officials argue that measures to curb outflows of low value added materials should serve the conservation of precious natural resources and keep domestic energy consumption, environmental pollution and greenhouse gasses in check (citation omitted). As for the case of coke, these objectives may well be in line with public interest in a country that already suffers from serious environmental damage, energy shortages and heavily relies on burning coal (a major input for the coking process) for electricity generation and heating such as China. But the whole extent of trade restraints suggests that there are other goals as well, notably, the creation of a significant price differential for domestic and international consumers of coke and other materials;"[329] and,
- "While there was no price difference to speak in January 2007 with one ton of coke for both domestic consumption and exports costing about US $150, until December 2008 coke prices for domestic consumption had risen to about US $200 while export prices exceeded that by US $241. The resulting price difference conferred a discount of more than 50 percent upon domestic coke users … Assuming an average input ratio of 0.6 tons of coke per ton of crude steel (citation omitted), the benefit in input costs per ton of crude steel that could be claimed by Chinese steelmakers was US$ 400."[330]

Comment 12: Specificity of Export Restraints to the OCTG Industry

Wuxi's Argument[331]

- Since the Department concluded that coke is provided mostly to the steel industry, and since Mengfeng only produces steel billets for internal consumption by Wuxi, a subsidy that is specific to the steel industry do not apply to Wuxi and Mengfeng.

[327] *Id.*
[328] *See* Thomas Study, at 9.
[329] *Id*., at 11-12.
[330] *Id*., at 14-15.
[331] *See* WCB, at 8.

Petitioner's Rebuttal[332]

- Wuxi and Mengfeng are part of the steel industry and benefit from the GOC's export restraints on coke, a key input into the "integrated OCTG production process."[333]

Department's Position:

We agree with Petitioner that Mengfeng is part of China's steel industry, even if it only supplies Wuxi. Thus, Mengfeng benefits from this subsidy and, through its cross-ownership of Mengfeng, Wuxi also receives a benefit.

Comment 13: Cancellation of Export Tariffs and Quotas on Coke

GOC's Argument[334]

- Effective January 1, 2013, the GOC has cancelled export tariffs and export quotas on coke.

Department's Position:

Because the date of the claimed cancellation of these measures falls after our POR, their termination has no effect on the countervailing duty rates calculated for the POR. The GOC has not provided the information required under 19 CFR 351.526(d) to take this termination into account in setting the cash deposit rate.

F. Other Issues

Comment 14: Wuxi's Sales Denominator

Petitioner's Arguments[335]

- The Department should adjust Wuxi's reported sales used as the denominator in the subsidy rate calcualtions because they include "other business revenue,"[336] and 19 CFR 351.525 directs the Department to attribute subsidies to the "product or products" sold by the respondent.[337]
- Wuxi's 2011 audited financial statements show that the "other business revenue" was not generated from the sale of a "product or products" but was instead from "business activities" other than the sale of goods (*e.g.*, services).[338]

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[332] *See* PRB, at 20-21.
[333] *See* Post-Preliminary Analysis, at 8-10.
[334] *See* GCB, at 38.
[335] *See* PCB, at 1-2.
[336] *See* W1SR, at Exhibit S1-13.
[337] *See, e.g., Seamless Pipe from the PRC*, and accompanying IDM at Comment 29c.
[338] *See* WQR, at Exhibit 8.

Wuxi's Rebuttal[339]

- There is no record evidence that Wuxi's other sales revenue derived from business activities such as services; rather, it was included as income from Wuxi's "main operations."
- The company was not provided any opportunity to provide any information concerning this income, as Petitioner only raised this issue in its case brief.
- It is not the Department's practice to exclude such income from the denominator of the subsidy rate calculation where subsidies attributable to the company are "untied," as 19 CFR 351.525 references subsidies being attributed to "product or products" when "tied."
- It is the Department's policy to include the company's total revenue, including revenue derived from sales of services,[340] as codified in *Countervailing Duties; Final Rule*.
- The Department included "other business income" in the denominator in the *OCTG Investigation*.[341]
- None of the subsidies that applicable to Wuxi are tied to the production of any particular merchandise.

Department's Position:

We agree with Petitioner that 19 CFR 351.525 directs the Department to not include revenue earned from the sale of services in the denominators used to calculate subsidy rates. However, the record is unclear regarding Wuxi's "other business revenue" and whether it includes sales of services, scrap, or something else entirely. Because this issue was raised late in the proceeding and we were not able to seek information from Wuxi about the source of this income, we have continued to include it as part of Wuxi's sales denominator for these final results.

Comment 15: Specificity of the ESA and TPA

GOC's Arguments[342]

- The GOC provided information showing that the ESA and TPA were only for enterprises in the Jiangsu Province.[343]
- The Department's assertion that the GOC "did not provide the information requested… namely, whether Jiangsu Province is a designated geographical region within the jurisdiction

[339] *See* WRB, at 1-3.
[340] *See Steel from Austria*, 58 FR 372171, where Wuxi references the Department stating in the Subsidies Appendix: "We determine that the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise. This determination derives from the reasonable presumption that, to the extent a government provides a subsidy which is not tied to a company's productive activities, a recipient company can be presumed to use that subsidy to benefit its entire operations, including its service functions."
[341] *See OCTG Investigation*, and accompanying IDM at Comment 36, where the Department included "Jianli's total sales figure inclusive of 'other business income' which included sales of scrap, coal sales, processing fees and other income."
[342] *See* GCB, at 44-48.
[343] *See* G4SR, at 4, 7; *see also* G3SR, at 18 and Exhibit S3-16, II.2.

of the authority that authorized the program,"[344] is not relevant to the application of AFA, and the GOC provided information to the Department in a timely manner.

- The Department ignored record evidence when it found the GOC did not provide information about ESA and TPA program usage:[345]
  - Regarding the ESA, the GOC informed the Department that ESAs were provided to the automobile, casting and cement production industries, and listed enterprises receiving awards under the program.[346]
  - Regarding the TPA, the GOC confirmed that other industries receive TPA and provided the allocation diversity of the fund.[347]
  - The GOC provided ample information to determine whether the ESA and TPA are specific under section 771(5A)(D)(iii) of the Act.[348]
- Application of facts otherwise available under section 776(a) of the Act requires that there be a "gap" of missing information in the record and that the missing information be necessary for the Department's determination.[349] Absent a showing that the missing information is necessary, there can be no valid basis for the use of facts otherwise available or an adverse inference.
- Even if the Department finds necessary information is missing and/or that the GOC was non-cooperative, the GOC answered the questionnaires concerning the ESA and TPA to the best of its abilities. Thus, no adverse inference is warranted.

Petitioner's Rebuttal[350]

- The record evidence that the GOC references, *i.e.*, Exhibit S4-1 of the G4SR, shows that ESA funding is specific within the meaning of sections 771(5A)(D)(i) and 771 (5A)(D)(iv) of the Act because it is limited to companies located within a designated area of Jiangsu Province.
- There is also evidence showing that the ESA funding is specific under sections 771(5A)(B), 771(5A)(D)(i), and 771(5A)(D)(iii) of the Act.
- Exhibit S4-4 of the G4SR does not to provide a list of the enterprises or industries receiving TPA funds, nor does it establish that the TPA funding is not specific.

Department's Position:

Due to the proprietary nature of much of Petitioner's rebuttal brief, we have not addressed its arguments at length. However, we disagree with the GOC's characterization of its questionnaire responses, and affirm our findings as stated in the Post-Preliminary Analysis and above under "Use of Facts Otherwise Available and Adverse Inferences." The GOC failed to provide requested information about the distribution of benefits, which is necessary for analyzing the specificity of these programs under section 771(5A)(D)(iii) of the Act.

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[344] *See* Post-Preliminary Analysis, at 11.
[345] *Id*.
[346] *See* G4SR, at 4 and S4-1.
[347] *See* G3SR, at 17 and G4SR, at Exhibit S4-4.
[348] *See* G4SR, at Exhibits S4-2 and S4-3.
[349] *See, e.g., Nippon Steel* at 1373, 1381; *Zhejiang Dunan*, at 1333, 1347; and, *Gerber Food*, at 1270, 1284.
[350] *See* PRB, at 32-35.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these positions are accepted, we will publish these final results in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

7 August 2013
(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
API	American Petroleum Institute
AUL	Average useful life
Bazhou	Bazhou Seamless Oil Pipes Co. Ltd.
BPI	Business proprietary information
CAFC	U.S. Court of Appeals for the Federal Circuit
CCIA	China Coke Industry Association
CCP	Chinese Communist Party
CFR	Code of Federal Regulations
c.f.r.	Cost and freight
Chaoyang	Chaoyang Seamless Oil Steel Casting Pipes Co., Ltd.
CIT	U.S. Court of International Trade
CVD	Countervailing Duty
Department	Department of Commerce
FIE	Foreign-Invested Enterprise
First Space	First Space Holdings Limited
GDP	Gross Domestic Product
GLC	Government of Liaoyang County
GOC	Government of the PRC
HTSUS	Harmonized Tariff Schedule of the United States
IA	Import Administration
IA ACCESS	Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System
IDM	Issues and Decision Memorandum
IFS	International financial statistics
IRS	Internal Revenue Service
Jiangsu Chengde	Jiangsu Chengde Steel Tube Share Co., Ltd.
Jianli	Zhejiang Jianli Company Limited
Kv	Kilovolt
Liaoyang	Liaoyang Seamless Oil Pipes Co. Ltd.
LIBOR	London Interbank Offering Rate
LME	London Mercantile Exchange
LTAR	Less than adequate remuneration

Mengfeng	Mengfeng Special Steel Co. Ltd.
mm	Millimeter
NME	Non-Market Economy
OCTG	Certain oil country tubular goods
PDM	Preliminary Decision Memorandum
Petitioner	United States Steel Corporation
POR	Period of Review
PRC	People's Republic of China
RMB	Renminbi
SASAC	State-Owned Assets Supervision and Administration Commission
SBB	Steel Business Briefing
SOCBs	State-owned commercial banks
SOEs	State-Owned Enterprises
Songyuan	Songyuan Seamless Oil Pipes Co. Ltd.
SSC	Stainless Steel Coil
Thomas Study	"Chinese Sectoral Industrial Policy Shaping International Trade and Investment Patterns — Evidence from the Iron and Steel Industry" presented as Exhibit 96 of the NFI Submission.
WND	Wuxi New District
WSP Holdings	WSP Holdings Ltd.
WTO	World Trade Organization
Wuxi	Wuxi Seamless Oil Pipe Co., Ltd.
VAT	Value-Added Tax
Yangzhou Chengde	Yangzhou Chengde Steel Tube Co., Ltd.

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GQR	Letter from the GOC, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review Initial CVD Response," (April 27, 2012).
GNSAR	Letter from the GOC, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review NSA Response," (December 17, 2012).
G2SR	Letter from the GOC, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review 2nd Supplemental Response" (January 22, 2013).
G3SR	Letter from the GOC, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review 3rd Supplemental Response" (March 21, 2013).
G4SR	Letter from the GOC, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review GOC 4th Supplemental Response" (May 7, 2013).
GCB	Letter from the GOC, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review GOC Case Brief" (July 15, 2013).
GRB	Letter from the GOC, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review GOC Amended Rebuttal Brief" (July 25, 2013).
	Petitioner
NSA Letter	Letter from Petitioner, "Certain Oil Country Tubular Goods from the People's Republic of China" (June 15, 2012).
NFI Submission	Letter from Petitioner, "Oil Country Tubular Goods from the People's Republic of China" (June 19, 2012).
PCB	Letter from Petitioner, "Certain Oil Country Tubular Goods from the People's Republic of China" (July 15, 2013).
PRB	Letter from Petitioner, "Certain Oil Country Tubular Goods from the People's Republic of China" (July 22, 2013).
	Jiangsu Chengde
CQR	Letter from Jiangsu Chengde, "Oil Country Tubular Goods from the People's Republic of China; Initial Response of Jiangsu Chengde Steel Tube Share Co., Ltd.," (April 30, 2012).
C2SR	Letter from Jiangsu Chengde, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): Second Supplemental Questionnaire Response" (January 10, 2013).
C3SR	Letter from Jiangsu Chengde, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): Third Supplemental Questionnaire Response" (January 17, 2013).
CCB	Letter from Jiangsu Chengde, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): Case Brief" (July 15, 2013).

CRB	Letter from Jiangsu Chengde, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): Rebuttal Brief" (July 22, 2013).
	Wuxi
WQR	Letter from Wuxi, "Certain Oil Country Tubular Goods From The People's Republic of China: Countervailing Duty Questionnaire Response," (May 7, 2012).
W1SR	Letter from Wuxi, "Certain Oil Country Tubular Goods from the People's Republic of China: First Supplemental Questionnaire Response," (December 10, 2012).
W3SR	Letter from Wuxi, "Certain Oil Country Tubular Goods from the People's Republic of China: Third Supplemental Questionnaire Response" (January 3, 2013).
W4SR	Letter from Wuxi, "Certain Oil Country Tubular Goods from the People's Republic of China: Fourth Supplemental Questionnaire Response," (January 14, 2013).
W5SR	Letter from Wuxi, "Certain Oil Country Tubular Goods from The People's Republic of China: Fifth Supplemental Questionnaire Response" (March 8, 2013).
WCB	Letter from Wuxi, "Case Brief of Wuxi Seamless Oil Pipe Co., Ltd." (July 15, 2013).
WRB	Letter from Wuxi, "Rebuttal Brief of Wuxi Seamless Oil Pipe Co., Ltd." (July 22, 2013).
	Department
Additional Documents Memo	Memorandum to the File, "Additional Documents for Preliminary Results" (January 18, 2013).
Interest Rate Benchmark Memorandum	Memorandum to All Interested Parties, "Interest Rate Benchmark Memorandum" (January 3, 2013).
Jiangsu Chengde Post-Prelim Calc Memo	Memorandum to the File, "Post-Preliminary Analysis Calculation Memorandum for Jiangsu Chengde Steel Tube Share Co., Ltd." (July 5, 2013).
Jiangsu Chengde Final Calc Memo	Memorandum to the File, "Final Results Calculation Memorandum for Jiangsu Chengde Steel Tube Share Co., Ltd." (August 7, 2013).
Jiangsu Chengde Prelim Calc Memo	Memorandum to the File, 'Preliminary Results Calculation Memorandum for Jiangsu Chengde Steel Tube Share Co., Ltd. (February 1, 2013).
Initiation Notice	*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 11490, 11491 (February 27, 2012).
InitQ	Department's Initial Questionnaire (March 7, 2012).
Post-Preliminary Analysis	Memorandum to Paul Piquado, "Post-Preliminary Analysis of Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China ("PRC")" (July 3, 2013).
CCP Memorandum	Memorandum for Paul Piquado, "The relevance of the Chinese

	Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation" (May 18, 2012). Attached to the Public Bodies Memorandum.
NSA Initiation Memorandum	Memorandum to Susan Kuhbach, "New Subsidy Allegations" (November 5, 2012).
Public Bodies Memorandum	Letter from Petitioner, "Oil Country Tubular Goods from the People's Republic of China" (June 19, 2012) at Attachment 1: Memorandum for Paul Piquado, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379" (May 18, 2012).
Wuxi Final Calc Memo	Memorandum to the File, "Final Calculation Memorandum for Wuxi Seamless Oil Pipe Co., Ltd." (August 7, 2013).
Wuxi Post-Prelim Calc Memo	Memorandum to the File, "Post-Preliminary Analysis Calculation Memorandum for Wuxi Seamless Oil Pipe Co., Ltd." (July 3, 2013).
Wuxi Prelim Calc Memo	Memorandum to the File, "Preliminary Calculation Memorandum for Wuxi Seamless Oil Pipe Co., Ltd." (February 1, 2013).
Wuxi Preliminary Creditworthiness Analysis	Memorandum to Susan H. Kuhbach, "Preliminary Creditworthiness Determination for Wuxi Seamless Oil Pipe Co., Ltd." (February 1, 2013).

III. LITIGATION TABLE

Short Cite	**Cases**
Ansaldo	*Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986)
Bethlehem Steel	*Bethlehem Steel Corporation v. United States*, 223 F. Supp. 2d 1372 (CIT 2002)
Carlton	*United States v. Carlton*, 512 U.S. 26 (1994)
Chaparral	*Chaparral Steel Co. v. United States*, 901 F.2d 1097 (CAFC 1990)
Corus I	*Corus Staal BV v. Department of Commerce*, 395 F.3d 1343 (CAFC 2005)
Corus II	*Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (CAFC 2007)
Eastern Enterprises	*Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998)
Essar Steel	*Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010)
F.Lii de Cecco	*F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (CAFC 2000)
Fabrique	*Fabrique de Fer de Charleroi, S.A. v. United States*, 166 F. Supp. 2d 593 (CIT 2001)
Ferro Union	*Ferro Union, Inc. v. United States*, 23 C.I.T. 178 (1999)
Gallant Ocean	*Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010)
General Motors	*General Motors Corp. v Romein*, 503 U.S. 181, 191 (1992)
Georgetown Steel	*Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986).
Gerber Food	*Gerber Food (Yunnan) Co. Ltd. v. United States*, 387 F. Supp. 2d 1337 (CIT 2005)
GPX CAFC (2011)	*GPX International Tire Corp. v. United States*, 666 F.3d 732 (CAFC 2011)
GPX CAFC (2012)	*GPX International Tire Corp. v. United States*, 678 F.3d 1308 (CAFC 2012)
GPX CIT (2009)	*GPX International Tire Corp. v. United States*, 645 F. Supp. 2d 1231 (CIT 2009)
GPX CIT (2010)	*GPX International Tire Corp. v. United States*, 715 F. Supp. 2d 1337 (CIT 2010)
GPX CIT (2013)	*GPX International Tire Corp. v. United States*, 893 F. Supp. 2d 1296 (CIT 2013)
GPX Remand	Department of Commerce Final Results of Determination Pursuant to Remand (April 26, 2010)
Gray	*Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717 (1984)
Guangdong	*Guangdong Wireking Housewares & Hardware Co., Ltd. v. United States*, 900 F. Supp. 2d 1362 (CIT 2013)

Huaiyin	*Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369 (CAFC 2003)
Inland Steel	*Inland Steel v. United States*, 188 F.3d 1349 (CAFC 1999)
Kawasaki	*Kawasaki Steel Corp. v. United States*, 24 CIT 684 (2000)
Landgraf	*Landgraf v. USI Film Products*, 511 U.S. 244 (1994)
Nachi	*Nachi-Fujikoshi Corp. v. United States*, 890 F. Supp. 1106 (CIT 1995)
Nippon Steel	*Nippon Steel Corporation v. United States*, 337 F.3d 1373 (CAFC 2003)
NSK I	*NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996)
NSK II	*NSK Ltd. v. United States*, 510 F.3d 1375 (CAFC 2007)
Peer Bearing	*Peer Bearing Co. v. United States*, 182 F. Supp. 2d 1285 (CIT 2001)
Royal Thai	*Royal Thai Government v. United States*, 441 F. Supp. 2d 1350 (CIT 2006)
Salmon	*Salmon v. Burges*, 97 U.S 381 (1878)
Usery	*Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976)
Zheijiang Dunan	*Zheijiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333 (CAFC 2011)

IV. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Short Cite	**Administrative Case Determinations**
Aluminum Extrusions from the PRC	*Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 11, 2011).
Bricks from the PRC	*Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010).
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).
Citric Acid AR	*Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011).
Citric Acid Investigation	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009).
Coated Paper from the PRC	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010).
CVD Preamble	*Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998).
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).
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).
Hot-Rolled Steel from Thailand	*Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001).
Initiation of AD AR - 2011	*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 37781 (June 28, 2011).
Initiation of AD AR - 2012	*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 40565 (July 10, 2012).
KASR from the PRC	*Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009).
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).
OCTG - AD AR 2010-2011	*Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012).
OCTG - AD AR 2011-2012	*Oil Country Tubular Goods From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 4125 (January 18, 2013).
OCTG Investigation	*Certain 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).
OCTG Order	*Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010).
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 40480 (July 15, 2008).
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).
Pencils from the PRC	*Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625 (November 8, 1994).
Phosphoric Acid from Israel	*Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel*, 52 FR 25447 (July 7, 1987).
Preliminary Results	*Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 9368 (February 8, 2013).
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).
Section 129 Implementation	*Implementation of Determinations Under Section 129 of the Uruguay Rounds Agreement Act: Certain New Pneumatic Off the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 77 FR 52683 (August 30, 2012).
Sinks from the PRC	*Drawn Stainless Steel Sinks From the People's Republic of*

	China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013).
Softwood Lumber AR	*Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005).
Softwood Lumber Investigation	*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).
Solar Cells from the PRC	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012).
SRAMS 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).
Steel Coil from Korea	*Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003).
Steel Cylinders from the PRC	*High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012).
Steel from Austria	*See Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria*, 58 FR 372171 (July 9, 1993).
Steel Plate from the PRC	*Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010).
Steel Wheels from the PRC	*Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012).
Sulfanilic Acid from Hungary	*Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary*, 67 FR 60223 (September 25, 2002).
Thermal Paper from the PRC	*Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008).
Wind Towers from the PRC	*Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012).
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).
Wire Rod from Saudi Arabia	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia*, 51 FR 4206 (February 3, 1986).
Wood Flooring from the PRC	*Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011).

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

Short Cite	**Full Name**
Background Note	Memorandum from Christopher Siepmann to the File, "Additional Documents for Preliminary Results" (January 18, 2013) at Attachment III.
P. L. 112-99	Pub. L. No. 112-99, 26 Stat. 265-66 (2012).
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 Panel Decision Export Restraints	United States – Measures Treating Export Restraints as Subsidies WT/DS194/R (June 29, 2001).
WTO AB Decision China CVD	United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011).