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Administrative Review
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December 26, 2013

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

FROM: Melissa G. Skinner MGS
Director, Office III
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Citric Acid and Certain Citrate Salts; 2011

I. Summary

On June 10, 2013, the Department of Commerce (the Department) published the *Preliminary Results* for this countervailing duty (CVD) administrative review, and completed the Post-Preliminary Results and the Creditworthiness Preliminary Determination on November 7, 2013.[1] The respondent company in this review is RZBC Co., Ltd. (RZBC Co.) and its cross-owned affiliates RZBC Group Shareholding Co., Ltd. (RZBC Group), RZBC Juxian Co., Ltd. (RZBC Juxian), and RZBC Import & Export Co., Ltd. (RZBC IE) (collectively, RZBC or the RZBC Companies).

The "Analysis of Programs" and "Subsidies Valuation Information – Benchmarks and Discount Rates" sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. Additionally, we have analyzed the comments submitted by RZBC Companies, the Government of the People's Republic of China (GOC), and Petitioners[2] in their case and rebuttal briefs in the "Analysis of Comments" section below,[3] which contains the Department's positions on the issues raised in those briefs. Based on the comments received, we have revised our Creditworthiness Determination, included sulfuric acid benchmarks submitted by RZBC Companies, and revised our international freight calculation for sulfuric acid.

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[1] *See Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 34648 (June 10, 2013) (*Preliminary Results*); Memorandum to Paul Piquado, "Post-Preliminary Results Decision Memorandum: Citric Acid and Certain Citrate Salts from the People's Republic of China," dated November 7, 2013 (Post-Preliminary Results); Memorandum to Melissa Skinner, "Preliminary Creditworthiness Determination for RZBC Companies," dated November 7, 2013 (Preliminary Creditworthiness Determination).
[2] Petitioners are Archer Daniels Midland Company (ADM), Cargill Incorporated, and Tate & Lyle Ingredients America LLC.
[3] On November 18, 2013, RZBC Companies, the GOC, and Petitioners submitted case briefs, and on November 25, 2013, all parties submitted their rebuttal briefs.

We recommend that you approve the positions described in this memorandum. Below is a complete list of the issues in this administrative review for which we received comments from RZBC Companies, the GOC, and Petitioners:

II. Period of Review

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

III. Scope of Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. Use Of Facts Otherwise Available And Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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

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 so "as to effectuate the statutory purposes of the adverse facts available (AFA) rule to induce respondents to provide the

Department with complete and accurate information in a timely manner."[4] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[5]

GOC – Sulfuric Acid

In the July 11, 2012, initial questionnaire, we requested ownership information from the GOC about the companies that produced the sulfuric acid purchased by the RZBC Companies.[6] We notified the GOC that the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as "authorities" within the meaning of section 771(5)(B) of the Act. However, for those majority government-owned companies that the GOC argues are not "authorities" and for each producer that is not majority owned by the government, we instructed the GOC to answer all questions in the "Information Regarding Input Producers in the PRC" Appendix (Input Producer Appendix).

The GOC responded that the RZBC Companies purchased sulfuric acid from six producers. With regard to three producers, the GOC did not challenge the Department's "authority" practice for enterprises that are majority owned by the government or a government entity. The GOC attempted to provide ownership information for the remaining three producers; however, the GOC failed to respond to section IV of the Input Producer Appendix regarding the presence of Chinese Communist Party (CCP) officials and organizations within those companies.[7] Instead, the GOC stated that the Department's CCP questions are not relevant to the investigation of the LTAR program and that, as a matter of PRC law, the government cannot interfere in the management and operation of the sulfuric acid producers.[8] The GOC stated that, in prior cases, it explained its view that the CCP, the People's Congress, and the Chinese People's Political Consultative Conference are not governmental agencies.[9] The GOC also stated that, "because these entities are not governmental agencies, the GOC cannot require them to provide the information requested by the Department."[10] Furthermore, the GOC stated that "there is no governmental data system that can compile, maintain or provide data or information concerning the political attitudes and/or party affiliations of an individual businessman."[11] As such, the GOC claimed that it was "beyond the capacity of the GOC to access the information requested by the Department."[12]

On January 30, 2013, we issued a deficiency questionnaire in which we asked the GOC to provide a response to those questions in section IV of the Input Producer Appendix which it did not answer in the initial questionnaire response.[13] In its March 1, 2013, response with regards to two of the sulfuric acid producers, the GOC reiterated its initial response: "the GOC

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[4] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[5] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).
[6] *See* Department's initial questionnaire (IQ or Initial QNR) (July 11, 2013) at section II page 5.
[7] *See* GOC's input supplier response (input response) (September 18, 2012) at III-6.
[8] *Id*.
[9] *Id*.
[10] *Id*., at III-8.
[11] *Id*.
[12] *Id*.
[13] *See* Department's 1st supplemental questionnaire (1SQ) (January 30, 2013) to the GOC at 2.

cannot interfere with any ordinary business operation and management of the suppliers listed herein, because it is prohibited to do so by law."[14] With regard to the final sulfuric acid producer, the GOC did not provide a response to section IV of the Input Producer Appendix because it is owned in part by a Russian company; therefore the GOC argued, it "cannot be a Chinese government authority."[15] Prior to the *Preliminary Results*, we gave the GOC the additional opportunity to provide information for the Russian-owned sulfuric acid producer.[16]

Regarding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the sulfuric acid producers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.[17] The Department has previously determined 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."[18] Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[19] 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.[20]

Because the GOC did not respond to our requests for information on this issue, we are not reevaluating the Department's prior factual findings on the role of the CCP. Thus, the Department finds, as it has in other PRC CVD proceedings,[21] that the information requested

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[14] *See* GOC's 1st supplemental questionnaire response (1SQR) (March 1, 2013) at 3.
[15] *Id.*
[16] *See* the Department's 3rd supplemental questionnaire (3SQ) (May 29, 2013) to the GOC.
[17] *See* Memorandum to the File from Patricia M. Tran, "Additional Documents for the Preliminary Results," dated June 3, 2013 (Additional Documents Memorandum), which includes Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "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," dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "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," dated May 18, 2012 (CCP Memorandum).
[18] *Id*., at CCP Memorandum at 33.
[19] *Id*., at Public Body Memorandum at 35-36 and sources cited therein.
[20] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*), and the accompanying Issues and Decision Memorandum (Seamless Pipe IDM) at 16.
[21] *See, e.g., Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and the accompanying Issues and Decision Memorandum (Wind Towers IDM) at "Use of Facts Otherwise Available and Adverse Inferences: Titan Companies – HRS Producers are Authorities," and OCTG Review IDM at "Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Certain Steel Round Producers Are "Authorities."

regarding the role of CCP officials and CCP committees in the management and operations of the sulfuric acid producers, and in the management and operations of the producers' owners, is necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act.

Therefore, 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" in conducting our analysis of the sulfuric acid producers.[22] 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. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only the Department can determine what is relevant to this administrative review.[23] Furthermore, by stating that it is unable to obtain the information because, in its view, the CCP is not the government, the GOC is substantially non-responsive. The GOC would have the Department reach its determination on the role of the CCP with regard to the government and the input producer based solely on the conclusory statements of the GOC without any of the information that the Department considers necessary for its analysis. As this constitutes a failure to cooperate to the best of its ability, we find that an adverse inference is warranted in the application of facts available.[24] As AFA, we find that each of the three sulfuric acid producers for which the GOC did not provide complete information is an "authority" within the meaning of section 771(5)(B) of the Act and, thus, the RZBC Companies' purchase of sulfuric acid inputs from these produces constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

GOC - Calcium Carbonate

The Department is investigating the provision of calcium carbonate for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced the calcium carbonate that RZBC Companies purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. In the NSA questionnaire, we requested ownership information from the GOC about the companies that produced the calcium carbonate purchased by RZBC Companies.[25] We notified the GOC that the Department

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[22] *See* section 776(a)(2)(A) of the Act.

[23] *See Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*) (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 Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (*Essar Steel*) (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, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (*NSK, Ltd.*) ("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-Fujikoshi Corp. v. United States*, 890 F. Supp. 1106, 1111 (CIT 1995) (*Nachi-Fujikoshi Corp.*) ("Respondents have the burden of creating an adequate record to assist Commerce's determinations.").

[24] *See* section 776(b) of the Act.

[25] *See* Department's new subsidy allegation questionnaire (NSA questionnaire) (January 25, 2013) at 13 - 14.

generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as "authorities" within the meaning of section 771(5)(B) of the Act. However, for those majority government-owned companies that the GOC argues are not "authorities," and for each producer that is not majority owned by the government, we instructed the GOC to answer all questions in the Input Producer Appendix.

The GOC responded that RZBC Companies purchased calcium carbonate from two producers. The GOC provided ownership information for the two producers, revealing that each producer is owned by two individuals. The GOC claimed in its responses that the owners, members of the board of directors, and senior management of the two producers are not CCP officials.[26] The GOC, in addition, claimed the calcium carbonate producers did not have CCP Committees.[27] The GOC stated that it has explained on numerous occasions that "it does not have access to a central repository of the membership in each of {the CCP Congresses, CCP Committees, CCP Standing Committees, People's Congresses, Standing Committees of People's Congresses, other government administration entities, including the village committees, the Chinese People's Political Consultative Conferences, as well as the Discipline Inspection Committees of the CCP} entities."[28] As such, the GOC claimed that it was "required to contact these companies directly."[29]

On April 23, 2013, we issued a deficiency questionnaire in which we asked the GOC to describe the method in which the GOC determined whether individual owners, members of the board of directors (BOD), or senior managers were or were not government or CCP officials during the POR.[30] In its May 3 and 10, 2013, responses, the GOC reiterated its initial response, stating "it did not have access to a central repository of the membership in each of these entities. As such, the GOC contacted the companies directly and made inquiries."[31] In addition, we requested the GOC to "explain Article 32 of the CCP Constitution and Article 19 of the 2006 Company, which appears to require the establishment of 'primary party organizations' or 'party committees' in all enterprises, whether state, private, domestic or foreign-invested where there are at least three party members employed." The GOC responded that it "was unable to obtain confirmation of information relevant to this issue in time for this response…"[32]

The GOC failed to respond to section IV of the Input Producer Appendix regarding the presence of CCP officials and organizations within those companies.[33] In past proceedings, we explained our understanding of the CCP's involvement in the PRC's economic structure.[34] The Department previously determined 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."[35] Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in

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[26] *See* GOC's new subsidy allegations questionnaire response (GOC NSAQR) (March 1, 2013) at 17.
[27] *Id.*, at 20.
[28] *Id.*, at 18.
[29] *Id*.
[30] *See* Department's 2nd supplemental questionnaire (2SQ) (April 23, 2013) at 2.
[31] *See* GOC's 2nd supplemental questionnaire response (GOC 2SQR) (May 10, 2013) at 7.
[32] *See* GOC's 3rd supplemental questionnaire response (GOC 3SQR) (June 12, 2013) at 3.
[33] *See* GOC NSAQR (March 1, 2013) at 18 – 21, and GOC 2SQR (May 10, 2013) at 11.
[34] *See* Additional Documents Memorandum at Att. IV, which includes the Public Body Memorandum and CCP Memorandum.
[35] *Id*., at Att. IV, CCP Memorandum at 33.

the company's affairs.[36] As such, the requested information about the individual owners' status as CCP officials is relevant to whether the calcium carbonate supplier is an "authority" under section 771(5)(B) of the Act.

The Department's previous findings that the CCP meets the definition of the term 'government' counters the GOC's claim that it was unable to provide information concerning the CCP and, thus, was reliant upon the respondent firm for purposes of responding to the questions contained in section IV of the Input Producer Appendix concerning the CCP. We find that the GOC is the party in possession of this information and that the GOC has not adequately explained why it was not able to provide it or why it did not attempt to contact any of the CCP or other government entities.

The Department finds, as it has in other PRC CVD proceedings, that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the calcium carbonate producers, and in the management and operations of the producers' owners, is necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act.

Therefore, 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" in conducting our preliminary analysis of the calcium carbonate producers.[37] 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. As this constitutes a failure to cooperate to the best of its ability, we find that an adverse inference is warranted in the application of facts available.[38] As AFA, we adversely infer that CCP and government officials are present at calcium carbonate producers as individual owners, managers, and members of the board of directors. This gives the government control over the companies and their resources. Thus, we find that the calcium carbonate producers for which the GOC did not provide complete information are "authorities" within the meaning of section 771(5)(B) of the Act and, thus, the RZBC Companies' purchase of sulfuric acid inputs from these produces constitute a financial contribution under section 771(5)(D)(iii) of the Act.

The Provision of Calcium Carbonate For LTAR Is Specific to Citric Acid and Certain Calcium Citrate Producers

The Department requested the GOC to provide a list of industries in the PRC that purchase calcium carbonate directly and to provide the amounts (volume and value) purchased by each of the industries, including the citric acid industry.[39] The Department requests such information for purposes of its *de facto* specificity analysis. The GOC stated "calcium carbonate is among the most important and versatile materials used by industry," and "{it} confirms that the National Bureau of Statistics of China (SSB) does not collect any calcium carbonate data based on sales, let alone based on sales volumes by industrial sectors."[40] The Department again asked, in a supplemental questionnaire, the GOC to provide the volume and value of calcium carbonate purchased by each of the applicable industries, including the calcium carbonate

[36] *Id*., at Att. IV, Public Body Memorandum at 35-36 and sources cited therein.
[37] *See* section 776(a)(2)(A) of the Act.
[38] *See* section 776(b) of the Act.
[39] *See* the Department's new subsidy allegation (NSA) questionnaire (January 25, 2013) at 13.
[40] *See* GOC's NSAQR (March 1, 2013) at 24.

industry.[41] The GOC provided print outs of various websites, *i.e.*, PR Newswire, Industrial Minerals Association North America, and British Calcium Carbonate Federation.[42] The information submitted by the GOC, however, is insufficient because it does not report the actual PRC industries that purchased calcium carbonate and the volume and value of each industry's respective purchase for the POR and the prior two years.[43]

Therefore, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our determination.[44] Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.[45] In drawing an adverse inference, we find that the GOC's provision of calcium carbonate to citric acid producers is specific within the meaning of section 771(5A) of the Act.

The Calcium Carbonate Market Is Distorted by State-Owned Enterprises

The Department requested the GOC to provide information concerning the calcium carbonate industry in the PRC for the POR and the prior two years. Specifically, we requested the GOC provide the following information:

(i) the number of producers;
(ii) the total volume and value of domestic production that is accounted for by companies in which the GOC maintains an ownership or management interest either directly or through other government entities (includes governments at all levels, including townships and villages, ministries, or agencies of those governments including state asset management bureaus, state-owned enterprises, and labor unions);
(iii) the total volume and value of domestic consumption of calcium carbonate and the total volume and value of domestic production of calcium carbonate;
(iv) the percentage of domestic consumption accounted for by domestic production;
(v) the total volume and value of imports of calcium carbonate;
(vi) the names and addresses of the top ten calcium carbonate companies – in terms of sales and quantity produced – in which the GOC maintains an ownership or management interest, and identify whether any of these companies have affiliated trading companies that sell imported or domestically produced calcium carbonate.[46]

The Department requests such information to determine whether the GOC is the predominant provider of calcium carbonate in the PRC and whether its significant presence in the market distorts all transaction prices. The GOC stated that it "does not maintain or collect the information requested in sub-parts (i)-(iv) and (vi)."[47] The GOC was able to provide the

[41] *See* Department's 2SQ (April 23, 2013) at 5.
[42] *See* GOC's NSAQR (March 1, 2013) at Exhibit 3.
[43] *Id.*, at page 24 and Exhibit 3, and GOC 2SQR (May 10, 2013) at 6.
[44] *See* section 776(a)(2)(A) of the Act.
[45] *See* section 776(b) of the Act.
[46] *See* the Department's NSA questionnaire (January 25, 2013) at 12.
[47] *See* GOC's NSAQR (March 1, 2013) at 22.

total volume and value of imports of calcium carbonate.[48] The Department issued a supplemental questionnaire requesting the GOC to provide the calcium carbonate industry information.[49] The GOC, however, failed to provide the requested information.[50] In a previous investigation, the Department was able to confirm at verification that the GOC maintains a database at the State Administration of Industry and Commerce (SAIC).[51] The SAIC database for which companies are registered and show the most up-to-date information and the other system is "ARCHIVE," which houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc. We find that the GOC has an electronic system available to them to gather industry specific information the Department requested.[52]

Therefore, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our preliminary determination.[53] Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.[54] In drawing an adverse inference, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.[55] Therefore we find that the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted for calculating the benefit.

GOC –Other Subsidies

The financial statements submitted by the RZBC Companies indicated that they received potentially countervailable subsidies in the form of grants. Consequently, we sought further information from the companies about these grants, and also asked the GOC to provide information about the programs under which the grants were provided.[56]

The Department normally relies on information from the government to assess program specificity; however, the GOC did not submit such information for every program investigated.[57] Where the RZBC Companies submitted information which showed the specificity of a program, we relied upon that information to make our finding. Where neither the RZBC Companies nor the GOC provided information that would allow us to determine the specificity of a program, we

[48] *Id*.
[49] *See* the Department's 2SQ (April 23, 2013) at 5.
[50] *See* the GOC's 2SQR (May 10, 2013) at 5 and 6.
[51] *See* Memorandum to the File from Patricia M. Tran, "Additional Documents for the Post-Preliminary Results," dated November 7, 2013 (Additional Documents for Post-Prelim Memorandum) at Attachment 1 (Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the People's Republic of China Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce).
[52] *Id*.
[53] *See* section 776(a)(2)(A) of the Act.
[54] *See* section 776(b) of the Act.
[55] *See Preamble to Countervailing Duty Regulations*, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*).
[56] *See* Department's supplemental questionnaires issued to the GOC on January 30 and April 23, 2013, and supplemental questionnaires issued to the RZBC Companies on January 22 and April 23, 2013.
[57] The GOC provided legislation governing the following grant programs: Fund for Energy-Saving Technological Innovation; Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River; Shandong Province Science and Technology Development Fund; Shandong Self-Innovation Subsidy; and Special Fund for Foreign Trade Public Service Platform. *See* GOC's IQR (September 4, 2012) at Exhibit 2 through 5, and 1SQR (March 8, 2013) at Exhibit 1.

relied upon AFA to make our finding. For those particular programs, we find that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts available for these final results.[58] 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, an adverse inference is warranted in the application of facts available.[59] Due to the GOC's failure to provide the requested information about the programs under which the RZBC Companies received grants, we are applying an adverse inference that these grants are being provided to a specific enterprise or industry, or group of enterprises or industries.[60]

V. Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding, pursuant to 19 CFR 351.524(d)(2), is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL.[61]

Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[62]

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[58] *See* section 776(a)(2)(A) of the Act.
[59] *See* section 776(b) of the Act.
[60] *See* section 771(5A) of the Act.
[61] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review*, 72 FR 43607, 43608 (August 6, 2007), unchanged in final, 73 FR 7708.
[62] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

The RZBC Companies

The RZBC Companies consist of the RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE. All companies are domestically-owned PRC companies. RZBC Co., RZBC Juxian, and RZBC IE are wholly owned by RZBC Group and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).[63] RZBC Co. and RZBC Juxian are producers of the subject merchandise; RZBC IE is the exporter of the subject merchandise; and RZBC Group is a headquarters company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii), (c), and (b)(6)(iii), respectively.

In their initial questionnaire response, the RZBC Companies reported their ownership history and affiliations prior to the POR, but after December 11, 2001.[64] RZBC Co. reported that the company "Sisha" was a prior owner.[65] In the first administrative review of this order, the Department determined that Sisha Co., Ltd. (Sisha) was cross-owned with RZBC Co. and instructed RZBC Companies to file a response on behalf of Sisha.[66] The Department found that Sisha received a countervailable, allocable subsidy in 2003.[67]

Consistent with the *Citric Acid First Review*, we continue to find that Sisha was cross-owned with RZBC Co. (*see* 19 CFR 351.525(b)(6)(vi)) and have attributed the allocable benefit for Sisha's grant to the RZBC Companies for the POR. For more information, *see* "Enterprise Development Fund from Zibo City Financial Bureau," below.

Also, RZBC IE reported that it exports subject merchandise produced by other, unaffiliated companies, but that this merchandise was not exported to the United States during the POR.[68] Although any subsidies to the unaffiliated producers would normally be cumulated with those of the trading company that sold their merchandise pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where the merchandise was not exported to the United States during the POR or accounted for a very small share of respondent's exports to the United States.[69] In this review, we have not issued CVD questionnaires to the unaffiliated producers of citric acid whose merchandise was exported by RZBC IE, because such merchandise was not exported to the United States during the POR. Also, we have removed the sales of these products from RZBC IE's 2011 sales to derive the denominator for purposes of calculating countervailable subsidy rates for the RZBC Companies.

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[63] *See* RZBC Companies' initial questionnaire response (September 6, 2012) (IQR) at "RZBC Group" page III-16.
[64] The PRC ascended and became a member of the World Trade Organization on December 11, 2001.
[65] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Co. Ltd." page III-18.
[66] In the first administrative review, the Department also found that the company Shandong Province High-Tech Investment Co. Ltd. (HTI) was a prior owner of RZBC Co. and, thus, was cross-owned with the RZBC Companies. *See 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 First Review*) and accompanying Issues and Decision Memorandum (Citric Acid First Review IDM) at "Attribution of Subsidies - RZBC." All subsidies received by HTI that the Department found to be countervailable were expensed. *See* Citric Acid First Review ID Memo at "Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project." *See* Citric Acid First Review IDM at "Attribution of Subsidies - RZBC."
[67] *See* Citric Acid First Review ID Memo at "Enterprise Development Fund from Zibo City Financial Bureau."
[68] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC IE" page III-20 and 2SQR at Exhibit 4.
[69] *See, e.g., Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001), and accompanying Issues and Decision Memorandum at "Attribution."

This approach is consistent with the Department's treatment of RZBC IE's exports of subject merchandise produced by unaffiliated companies in *Citric Acid First Review*.[70]

Sales Denominators

We determine that multiple sales denominators are appropriate for use in the attribution of subsidies to the RZBC Companies. To attribute a subsidy received by RZBC Co., RZBC Juxian, or RZBC IE, we used as the denominator the total consolidated sales of all three companies, exclusive of sales among affiliated companies, for 2011. To attribute a subsidy received by RZBC Group, we used as the denominator the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE, exclusive of sales among affiliated companies, for 2011. Lastly, to attribute an export subsidy received by a company, we used as the denominator the 2011 export sales of RBZC IE, exclusive of sales of merchandise produced by unaffiliated companies.

VI. Benchmarks And Discount Rates

The Department is investigating loans received by the RZBC Companies from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

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.[71] 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."[72] Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons first explained in *CFS from the PRC*,[73] loans provided by PRC 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)(3)(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

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[70] *See* Citric Acid First Review IDM at "Attribution of Subsidies - RZBC."
[71] *See* 19 CFR 351.505(a)(3)(i).
[72] *See* 19 CFR 351.505(a)(3)(ii).
[73] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*) and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 10; *see also* Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding "Placement of Banking Memoranda on Record of the Instant Review" (June 3, 2013)(Banking Memoranda).

in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate.[74]

We first developed in *CFS from the PRC*[75] and more recently updated in *Thermal Paper from the PRC*,[76] 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. As explained in *CFS from the PRC*, the pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[77] Beginning with 2010, however, the PRC is in the upper-middle income category.[78] 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 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 reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[79] Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years 2001-2009, and 2011. For 2010, however, the regression does not yield that outcome for the PRC's income group.[80] This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. 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 (IMF), and

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[74] The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See 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) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (Softwood Lumber IDM) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

[75] *See* CFS IDM at Comment 10.

[76] *See Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum (Thermal Paper IDM) at 8-10.

[77] *See* World Bank Country Classification, http://econ.worldbank.org/; *see also* Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations 8, regarding "Interest Rate Benchmark Memorandum (2001 – 2011)" (Interest Rate Benchmark Memorandum) (June 3, 2013).

[78] *Id*.

[79] *Id.*, and Additional Documents Memorandum at Attachment I for Federal Reserve Consultation Memorandum.

[80] *See* Interest Rate Benchmark Memorandum.

they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010 and 2011, and "lower middle income" for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.[81] 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.[82]

The resulting inflation-adjusted benchmark lending rates are included in RZBC Companies' final calculations memoranda.[83] Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

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 issue, 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.[84]

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.[85] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations.[86] For US dollar short-term loans, the Department used as a benchmark the one-

[81] 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.
[82] 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.
[83] *See* Final Results Calculation Memorandum.
[84] *See, e.g., Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*Rectangular Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Rectangular Pipe IDM) at 8.
[85] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid Investigation*), and accompanying Issues and Decision Memorandum (Citric Acid Investigation IDM) at Comment 14.
[86] *See 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*

year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates 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.

Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.

The resulting interest rate benchmarks that we used in the calculations are provided in the Preliminary Results Interest Rate Benchmark Memorandum,[87] which are unchanged for these final results.

Creditworthiness

As noted above in the "Background" section, Petitioners filed an allegation that RZBC IE was uncreditworthy in 2011. The Department completed its Creditworthiness Preliminary Determination on November 7, 2013, in which we determined that RZBC IE was uncreditworthy in 2011.[88] We received comments from parties, which are addressed in Comment 8 below. As indicated in Comment 8, we have revised our creditworthy analysis. In these final results, we find that it is more appropriate to examine the issue of creditworthiness as it applies to the combined operations of RZBC Companies in 2011, as opposed to limiting our analysis to the financial status of RZBC IE in 2011. Based on this revised analysis, we find that the RZBC Companies, which includes RZBC IE, was creditworthy in 2011. We have modified our subsidy calculations to account for our revised creditworthiness finding. For a detailed discussion, *see* Creditworthiness Final Determination dated concurrently with this Issues and Decision Memorandum.

Determination, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and the accompanying Issues and Decision Memorandum (Solar Cells IDM) at "Loan Benchmarks and Discount Rates for Allocating Non-Recurring Subsidies," *and also* Wind Towers IDM at "Benchmark and Discount Rates."

[87] *See* Interest Rate Benchmark Memorandum.

[88] *See* Preliminary Creditworthiness Determination.

VII. Analysis of Programs

I. Programs Determined To Be Countervailable

A. Shandong Province Policy Loans Program

In the underlying investigation, *Citric Acid First Review*, and *Citric Acid Second Review*, the Department found that the *Shandong Province Development Plan of Chemical Industry during "Tenth Five-Year Plan" Period* identifies objectives and goals for the development of the citric acid industry and calls for lending to support these objectives and goals.[89] Moreover, loan documents, reviewed by the Department in the first administrative review, stated that because the food-use citric acid industry "has characteristics of capital and technology concentration and belongs to high and new technology … the State always takes positive policy to encourage its development."[90] On the record of the instant review, the GOC reported that "while RZBC has reported receiving benefits under this program, the GOC submits that this program was terminated with the conclusion of the *Shandong Eleventh Five-Year Petro-Chemical Plan* on December 31, 2010. The current 12th five year plan, in effect during the POR, does not 'call for lending to support' the development of the citric acid industry."[91] In *Citric Acid Second Review*, we found loans received by the companies in 2010 to be countervailable;[92] therefore, we continue to countervail loans received in 2010 with outstanding interest payments in 2011. Pursuant to our discussion in Comment 7 below, we find that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the objectives and goals of the *12th Five-Year Plan*, in conjunction with the Government of Shandong's past and present policies to develop the citric acid industry.

Therefore, consistent with the underlying investigation, *Citric Acid First Review*, and *Citric Acid Second Review*, we find that Shandong Province policy loans from state-owned commercial banks constitute financial contributions from "authorities" within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. Further, pursuant to section 771(5)(E)(ii) of the Act, such financing provides a benefit equal to the difference between what the recipients paid on the loans and the amount they would have paid on comparable commercial loans. RZBC Co., RZBC Juxian, and RZBC IE reported that they had loans outstanding during the POR, which were provided by state-owned commercial banks. To calculate the benefit under this program, we compared the amount of interest each company paid on their outstanding loans to the amount of interest they would have paid on comparable commercial loans.[93] In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We have attributed benefits under this program to the total consolidated sales of

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[89] *See* Citric Acid Investigation IDM at "Policy Lending;" Citric Acid First Review ID Memo at "Shandong Province Policy Loans Program;" and *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review: 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid Second Review*), and accompanying Issues and Decision Memorandum (Citric Acid Second Review IDM) at Comment 3.

[90] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 76 FR 33219, 33228 (June 8, 2011) (*Citric Acid First Review Prelim*), unchanged in the final results.

[91] *See* GOC's IQR (September 4, 2012) at 2-3.

[92] *See* Citric Acid Second Review IDM at Comment 3.

[93] *See* 19 CFR 351.505(a).

RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we find that the RZBC Companies received a countervailable subsidy of 0.60 percent *ad valorem*.

B. <u>Export Seller's Credit for High- and New-Technology Products</u>

RZBC IE also reported having outstanding loans from the Export-Import Bank of China (EXIM) during the POR, which were provided under this program.[94] In the underlying investigation, *Citric Acid First Review*, and *Citric Acid Second Review* the Department found that loans under this program conferred a countervailable subsidy.[95]

On the record of the instant review, the GOC reported that that there were no changes to the program during the POR.[96] Therefore, consistent with the *Citric Acid Investigation*, *Citric Acid First Review*, and *Citric Acid Second Review*, we find that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

To calculate the benefit under this program, we compared the amount of interest RZBC IE paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans.[97] In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We divided the total benefit amount by the RZBC Companies' export sales during the POR. On this basis, we find that the RZBC Companies received a countervailable subsidy of 1.10 percent *ad valorem*.

C. <u>Reduced Income Tax Rate for High or New Technology Enterprises</u>

In *Citric Acid First Review* and *Citric Acid Second Review*, the Department found this program to be countervailable.[98] As discussed in *Citric Acid First Review Prelim*, Article 28.2 of the Enterprise Income Tax Law (EITL) authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises (HNTEs).[99] The criteria and procedures for identifying eligible HNTEs are provided in the *Measures on Recognition of High and New Technology Enterprises* (GUOKEFAHUO {2008} No. 172) (*Measures on Recognition of HNTEs*) and the *Guidance on Administration of Recognizing High and New Technology Enterprises* (GUOKEFA HUO {2008} No.362).[100] Article 8 of the *Measures on Recognition of HNTEs* provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall

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[94] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC IE" at Exhibit 7.
[95] *See* Citric Acid Investigation IDM at "Policy Lending;" and Citric Acid First Review IDM and Citric Acid Second Review IDM at "Export Seller's Credit for High- and New-Technology Products."
[96] *See* GOC's IQR (September 4, 2012) at 3.
[97] *See* 19 CFR 351.505(a).
[98] *See* Citric Acid First Review IDM and Citric Acid Second Review IDM at "Reduced Income Tax Rate for High or New Technology Enterprises."
[99] *See Citric Acid First Review Prelim*, 76 FR at 33229-30.
[100] *Id*.

collaborate with the finance and taxation departments at the same level to recognize HNTEs in their respective jurisdictions.[101]

The annex of the *Measures on Recognition of HNTEs* lists eight high- and new-technology areas selected for the state's "primary support": 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.[102]

On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[103] RZBC Co. and RZBC Juxian reported that they received tax savings under this program on their 2010 income tax returns filed during the POR.[104] Consistent with *Citric Acid First Review* and *Citric Acid Second Review*, we find that the reduced income tax rate paid by RZBC Co. and RZBC Juxian is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.[105] We also find, consistent with the *Citric Acid First Review* and *Citric Acid Second Review*, that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that RZBC Co. and RZBC Juxian would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid.[106] We treated the income tax savings realized by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POR by the consolidated sales (excluding inter-company sales) for RZBC Co., RZBC Juxian, and RZBC IE for the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we find that the RZBC Companies received a countervailable subsidy of 1.43 percent *ad valorem*.

D. Income Tax Credits on Purchases of Domestically Produced Equipment

In the underlying investigation, *Citric Acid First Review*, and *Citric Acid Second Review* the Department found that this program provided countervailable subsidies.[107]

As discussed in the *Citric Acid First Review Prelim*, according to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation {Projects}* (CAI SHU ZI {1999} No. 290), a domestically invested

[101] *Id*.
[102] *Id*.
[103] *See* GOC's IQR (September 4, 2012) at 4.
[104] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Co." at pages III-50 through III-52 and Exhibit 5 and 22; and at "RZBC Juxian" at pages III-72 through III-74 and Exhibit 4 and 27.
[105] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[106] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Co." at Exhibit 5 and at "RZBC Juxian" at Exhibit 4.
[107] *See* Citric Acid Investigation IDM at "Income Tax Credits on Purchases of Domestically Produced Equipment;" and Citric Acid First Review IDM and Citric Acid Second Review ID Memo at "Income Tax Credits on Purchases of Domestically Produced Equipment."

company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC.[108] Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.[109]

On the record of the instant review, the GOC reported that that there were no changes to this program during the POR.[110] RZBC Co. and RZBC Juxian reported that they received tax savings under this program on their 2010 income tax returns filed during the POR.[111]

Consistent with the prior segments of this proceeding and prior CVD determinations,[112] we find that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings.[113] We further find that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

We treated the income tax savings enjoyed by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings by the consolidated sales (excluding inter-company sales) for RZBC Co., RZBC Juxian, and RZBC IE for the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we find that the RZBC Companies received a countervailable subsidy of 0.68 percent *ad valorem*.

E. <u>Provision of Sulfuric Acid for LTAR</u>

The Department is examining the provision of sulfuric acid to the RZBC Companies. In the *Citric Acid First Review* and *Citric Acid Second Review*, the Department found that this program provides countervailable subsidies.[114]

In its September 4, 2012, IQR the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Standard Questions Appendix.[115] As such, the Department continues to find that this program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

The GOC reported in its September 18, 2012, input response that the RZBC Companies purchased sulfuric acid from six producers, of which three are majority-owned by the GOC during the POR. For the three sulfuric acid producers that are majority-owned by the GOC, we find them to be "authorities" within the meaning of section 771(5)(B) of the Act. Also, as discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that the remaining sulfuric acid producers from whom the RZBC

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[108] *See Citric Acid First Review Prelim*, 76 FR 33230.
[109] *Id*.
[110] *See* GOC's IQR (September 4, 2012) at 4.
[111] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Co." at pages III-53 through III-55 and Exhibit 5 and 23; and "RZBC Juxian" at pages III-75 through 77 and Exhibit 4 and 28.
[112] *See*, *e.g.*, *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 from the PRC Investigation*), and accompanying Issues and Decision Memorandum (OCTG Investigation IDM) at 18.
[113] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[114] *See* Citric Acid First Review ID Memo and Citric Acid Second Review IDM at "Provision of Sulfuric Acid for LTAR."
[115] *See* GOC's IQR (September 4, 2012) at 24 - 25.

Companies purchased sulfuric acid, are "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, for all of the sulfuric acid producers, we find that the RZBC Companies received a financial contribution in the form of the provision of a good.[116]

In the *Citric Acid First Review* and *Citric Acid Second Review*, the Department found that actual transaction prices for sulfuric acid in China are significantly distorted by the government's involvement in the market.[117] As such, we determined that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark.[118] No new evidence has been presented in this review that would call into question that finding. Accordingly, to determine whether the provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the *Citric Acid First Review*, we applied a tier two benchmark, *i.e.*, world market prices available to purchasers in the PRC (*see* 19 CFR 351.511(a)(2)(ii)).

Petitioners placed on the record export values for sulfuric acid from Belgium, Canada, Chile, Czech Republic, Egypt, France, Germany, Greece, India, Italy, Malaysia, the Netherlands, Peru, Poland, South Africa, Sweden, Switzerland, Thailand, Ukraine, the United States, and Uruguay for the year 2011, taken from trade statistics from Global Trade Atlas (GTA).[119] The RZBC Companies submitted export values for sulfuric acid from various countries sourced from GTA for the year 2011 and later revised those values to exclude exports to the PRC.[120] Accordingly, we have included the revised export values in the final benchmark. *See* discussion at Comment 13.G below.

The average of the export prices provided by parties represents an average of commercially available world market prices for sulfuric acid that would be available to purchasers in the PRC. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate a single benchmark by month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we averaged the international freight rates from Los Angeles, Vancouver, Santos, Buenos Aires, Rotterdam, St. Petersburg, Durban, Cape Town, Sydney, and Auckland to Shanghai, submitted by Petitioners.[121] RZBC Companies also submitted international freight rates from the United States, Canada, Europe, India, Japan, the Philippines, and South Korea to the PRC, which we included in the average.[122] *See* discussion at Comment 13.G below. We also added inland freight in the PRC based on the RZBC Companies' sulfuric acid purchase information,[123] import duties as reported by the GOC, and the VAT applicable to

[116] *See* section 771(5)(D)(iii) of the Act.
[117] *See* Citric Acid First Review IDM and Citric Acid Second Review IDM at "Provision of Sulfuric Acid for LTAR."
[118] *Id*.
[119] *See* Petitioners' Submission of Factual Information (Petitioners' Factual Information) (November 20, 2012) at Exhibit 20.
[120] *See* RZBC Companies' Submission of Factual Information (RZBC Companies' Factual Information) (November 19, 2012) at Exhibit 2-A, and RZBC Companies' Case Brief (November 18, 2013)'s Attachment.
[121] *See* Petitioners' Factual Information (November 20, 2012) at Exhibit 5.
[122] *See* RZBC Companies' Factual Information (November 19, 2012) at Exhibit 2-D.
[123] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Co." at Exhibit 11 and "RZBC Juxian" at Exhibit 10.

imports of sulfuric acid into the PRC.[124] Both RZBC Co. and RZBC Juxian reported the prices that they paid for sulfuric acid inclusive of inland freight and VAT.

To derive the benchmark, we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[125]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for sulfuric acid, we find that the GOC provided sulfuric acid for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid.[126] To calculate the benefit, we calculated the difference between the delivered world market price and the price that the companies paid for sulfuric acid, including delivery charges. Next, we divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales). On this basis, we determine that the RZBC Companies received a countervailable subsidy of 4.10 percent *ad valorem* in 2011.

F. Provision of Steam Coal for LTAR

The Department is examining whether the RZBC Companies purchase steam coal for LTAR during the POR. In the *Citric Acid Second Review*, the Department found that this program provides countervailable subsidies.[127]

In the July 11, 2012, initial questionnaire issued to the GOC in this review, we informed the GOC that the Department would not reevaluate the countervailability of this program. However, if there were any changes to the operation of the program during the POR, then the GOC was instructed to explain the changes and answer all relevant questions in the Standard Questions Appendix.[128] In its September 4, 2012, IQR the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Standard Questions Appendix.[129] As such, the Department continues to find that this program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

On the record of the instant review, the GOC reported that the RZBC Companies purchased steam coal from state-owned enterprises during the POR.[130] Therefore, we determine that the RZBC Companies received a financial contribution from "authorities" in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

In the *Citric Acid Second Review*, the Department found that it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. As such, we determined that domestic prices by coal producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.[131]

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[124] For import duties and VAT, *see* GOC's 1SQR (March 1, 2013) at 11.
[125] *See*, *e.g.*, PC Strand IDM at Comment 13.
[126] *See* 19 CFR 351.511(a).
[127] *See* Citric Acid Second Review ID Memo at "Provision of Steam Coal for LTAR."
[128] *See* Department's IQ (July 11, 2012) issued to the GOC at "Provision of Steam Coal for LTAR."
[129] *See* GOC's IQR (September 4, 2012) at 25 - 26.
[130] *Id*. at 26 and 2SQR (May 3, 2013) at 1.
[131] *See* Citric Acid Second IDM at "Provision of Steam Coal for LTAR."

No new evidence was presented in this review that would call into question that finding. Accordingly, to determine whether the provision of steam coal conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the *Citric Acid Second Review*, we applied a tier two benchmark, *i.e.*, world market prices available to purchasers in the PRC (*see* 19 CFR 351.511(a)(2)(ii)).

Petitioners submitted monthly steam coal prices for January 2011 through December 2011: reported by the IMF for Australia (Newcastle); from the Platts International Coal Report (Platts Report) for Australia (Gladstone), Japan, Korea, Colombia, Poland, and Russia; and from Global Trade Atlas for Australia, Belgium, Bulgaria, Colombia, Egypt, France, Germany, Greece, Italy, Malaysia, Mexico, the Netherlands, Peru, Poland, Slovenia, South Korea, Spain, Thailand, Turkey, United Kingdom, and the United States.[132] RZBC Companies submitted monthly export values for 2011 from Global Trade Atlas for India, Indonesia, South Africa, the United States,[133] Australia, and Colombia.[134] The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, where more than one benchmark price was submitted for a given month, we averaged those prices to calculate the single benchmark price for that month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners and RZBC Companies. Petitioners placed on the record ocean freight pricing data from Haver Analytics, for the POR, pertaining to shipments of steam coal from various world ports (in Australia (Newcastle), Australia (Gladstone), Colombia (Bolivar), Poland (Gdansk), and Russia (St. Petersburg)) to Qingdao, China.[135] RZBC Companies placed on the record ocean freight pricing data from Maersk and Searates, for the POR, pertaining to shipments of steam coal from India (Nhava Sheva), Indonesia (Jakarta), Peru (Callao), South Africa (Durban), and the United States (Los Angeles) to Shanghai, China.[136] We averaged the international freight rates to derive the amount included in our benchmark.

RZBC Companies purchased steam coal from domestic sources; therefore, for inland freight we relied on RZBC Companies' reported inland freight expense to transport citric acid from its plant to the port.[137] Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of steam coal into the PRC as reported by the GOC.[138] We did not include marine insurance. In prior CVD investigations involving the PRC, the

[132] *See* Petitioner's Factual Information (November 20, 2012) at Exhibit 17.
[133] RZBC Companies submitted benchmark prices from the United States for HTS - 2701120050: Bituminous Coal Nt Metallurgical, Not Agglomerated and HTS - 2701190010: Sub-Bituminous Coal. .
[134] *See* RZBC Companies' Factual Information (November 19, 2012) at Exhibit 1C and RZBC Companies' Submission of Additional Factual Information (Factual Information) (November 21, 2013) at Exhibit 2. Where we could, we extracted from the pricing data export prices to China. If we could not extract export prices to China, then we excluded the price from the average monthly benchmark price.
[135] *See* Petitioner's Factual Information (November 20, 2012) at Exhibit 18.
[136] *See* RZBC Companies' Factual Information (November 19, 2012) at Exhibit 1A.
[137] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Co." at page III-34 and "RZBC Juxian" at page III-33.
[138] *See* GOC's 1SQR (March 1, 2013) at 11.

Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[139]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for steam coal during the POR, we find that the GOC provided steam coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.[140] To calculate the benefit, we calculated the difference between the delivered world market price and the price that the companies paid for steam coal, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales). On this basis, we determine that the RZBC Companies received a countervailable subsidy of 3.17 percent *ad valorem* in 2011.

G. Provision of Calcium Carbonate for LTAR

We initiated and are investigating whether the GOC provides calcium carbonate for less than adequate remuneration. In the Post-Preliminary Results, the Department found that this program conferred a countervailable subsidy.[141] As explained above in "Use of Facts Otherwise Available and Adverse Inferences," we determine that the GOC has failed to act to the best of its ability in terms of providing the Department with the information it requested concerning the ownership of the firms that produced the calcium carbonate purchased by RZBC Companies during the POR. Specifically, the GOC provided basic ownership information (*e.g.*, registration change records and articles of association) but failed to respond to questions concerning the extent to which the owners of the calcium producers were CCP officials and the extent to which the presence of CCP officials or committees rendered the calcium carbonate producers "authorities." Thus, pursuant to section 776(b) of the Act, we find that all of the calcium carbonate producers supplying RBZC Companies during the POR were authorities that provided a financial contribution in the form of a provision of a good, as described under section 771(5)(D)(iii) of the Act.

Also as discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that the provision of calcium carbonate for LTAR is specific because the GOC failed to provide information which was requested of it on two occasions regarding the industries that used/consumed calcium carbonate and the associated volume data for the years 2009, 2010, and 2011. Accordingly, we find that the provision of calcium carbonate is specific under section 771(5A)(D)(iii) of the Act.

To determine whether the government's provision of calcium carbonate conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. 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).

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[139] *See*, *e.g.*, PC Strand IDM at Comment 13.
[140] *See* 19 CFR 351.511(a).
[141] *See* Post-Preliminary Results at "Provision of Calcium Carbonate for LTAR" section.

As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions in the industry under investigation.[142]

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble*: "Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative tier two in the hierarchy."[143] The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[144]

In the instant review, we are relying on AFA regarding the calcium carbonate industry to determine whether the PRC market is distorted by the involvement of the GOC. As discussed in the "Use of Facts Otherwise Available and Adverse Inferences," section above, the GOC failed to provide the number of calcium carbonate producers in the PRC and the number of those producers that are owned by the Chinese government. Because the GOC failed to provide the requested information, the Department concludes as AFA that Chinese state-owned enterprises are responsible for a dominant percentage of domestic production volume and that actual transaction prices are significantly distorted as a result of the government's involvement in the market. For this reason, we determine that domestic prices charged by privately-owned calcium carbonate producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.

Turning to tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, we received calcium carbonate and limestone flux[145] benchmark pricing data from Petitioners and RZBC Companies.[146] In its questionnaire response, RZBC Companies indicated that they purchased limestone flux in the production of citric acid;[147] therefore, we will utilize the limestone flux benchmark pricing data to apply a more accurate benchmark price corresponding to the company's domestic purchases.[148] As we discuss in Comments 11 and 12 below, we find

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[142] *See Softwood Lumber from Canada*, and accompanying Softwood Lumber IDM at "Market-Based Benchmark" section.
[143] *See Preamble,* 63 FR at 65377.
[144] *Id.*
[145] Parties have submitted evidence on the record that explains that the chemical composition of calcium carbonate is $CaCO_3$. Calcium carbonate exists in two types: its natural form, *i.e.*, limestone (limestone flux), chalk, marble, known as ground calcium carbonate; and through the direct carbonization of hydrated lime known as precipitated calcium carbonate. Both types are the exact same chemical formula. *See* the GOC's NSAQR (March 1, 2013) at Exhibit 3, Petitioners' Factual Information (November 20, 2013) at Tab 23, and RZBC's factual information rebuttal submission (Rebuttal Factual Information) (March 25, 2013) at Attachment 1.
[146] *See* RZBC Companies' March 18 and 23, 2013, factual information submission (Factual Information) at Attachment 1; *see also* Petitioners' new subsidy allegation (September 26, 2012) at Exhibit 42, Factual Information (November 20, 2013) at Exhibit 22, and Factual Information (March 18, 2013) at Exhibit 2 and 4.
[147] *See* RZBC Companies' new subsidy questionnaire response (NSAQR) (March 1, 2013) at 11.
[148] *See 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) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (Steel Wheels IDM) at Comment 15; *see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 4936 (January 28, 2009) (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum (CWASPP IDM) at "Provision of SSC for LTAR" (where the Department compared prices by steel grade); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of*

that precipitated calcium carbonate (PCC) and ground calcium carbonate (GCC) are different grades of the same input, calcium carbonate. We find that GCC, as categorized under Chapter 25 of the Harmonized Tariff Schedule (HS), best reflects the RZBC Companies' purchases of limestone flux (*i.e.*, GCC); therefore, we have continued to use world export prices under Chapter 25 of the HS as the benchmark price.[149] Petitioners submitted monthly calcium carbonate prices for Chapter 25 of the HS for January 2011 through December 2011, reported by the GTA for Australia, Brazil, Bulgaria, Costa Rica, Czech Republic, Denmark, Estonia, Finland, Greece, Ireland, Italy, Kenya, Malaysia, New Zealand, South Africa, South Korea, and Turkey.[150] 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, where more than one benchmark price was submitted for a given month, we averaged those prices to calculate the single benchmark price for that month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners. Petitioners placed on the record ocean freight pricing data from Maersk, for the POR, pertaining to shipments of calcium carbonate from various world ports (in Los Angeles, Vancouver, Santos, Buenos Aires, St. Petersburg, Durban, Cape Town, Sydney, and Auckland) to Shanghai, China.[151] We averaged the international freight rates to derive the amount included in our benchmark.[152]

RZBC Companies purchased calcium carbonate from domestic sources; therefore, for RZBC Co.'s inland freight, we relied on RZBC Companies' reported inland freight expense to transport citric acid from its plant to the port.[153] We also added inland freight in the PRC based on RZBC Juxian's calcium carbonate purchase information.[154]

Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of calcium carbonate into the PRC as reported by the GOC.[155] We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of

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Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (*Hot-Rolled Flat Products from India*), and accompanying Issues and Decision Memorandum (*Hot-Rolled Flat Products India IDM*) at "Sale of High-Grade Iron Ore for LTAR" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005) (*Softwood Lumber Review*), and accompanying Issues and Decision Memorandum (Softwood Lumber Review IDM) at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" (where the Department computed species-specific benefits).

[149] For more information on this topic, *see* Final Calculation Memorandum.

[150] *See* Petitioners' Factual Information (March 18, 2013) at Exhibit 4. We are unable to include RZBC Companies' calcium carbonate benchmark data into the benchmark price because they were reported on an annual basis; it is the Department's practice to calculate monthly benchmark prices. *See* Comment 13.D.

[151] *See* Petitioners' Factual Information (November 20, 2012) at Exhibit 23.

[152] *See* Comment 13.H.

[153] *See* RZBC Companies' NSAQR (March 1, 2013) at 14.

[154] *Id*. at Exhibit 3.

[155] *See* GOC NSAQR (March 1, 2013) at 23.

levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[156]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for calcium carbonate during the POR, we find that the GOC provided calcium carbonate for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid. To calculate the benefit, we calculated the difference between the delivered world market price and the price that the companies paid for calcium carbonate, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales). On this basis, we determine that the RZBC Companies received a countervailable subsidy of 22.32 percent *ad valorem* in 2011.

H. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province

As explained in our NSA Decision Memorandum,[157] we are investigating the extent to which Shandong Province has industrial plans in place that support the provision of land to strategic emerging industries for LTAR. RZBC Co. reported that it purchased two parcels of land in the Rizhao Hi-Tech Industrial Development Zone (Rizhao Zone) from the Rizhao Land Resources Bureau on September 14, 2011; and RZBC Juxian reported it purchased one parcel of land in the Shandong Ju County Industry Park Zone (Ju County Zone) from the Juxian Land Resources Bureau on November 18, 2010.[158]

According to *Implementation Opinions of the People's Government of Shandong Province on Accelerating the Cultivation and Development of Strategic Emerging Industries (Shandong Province Implementation)*, Shandong Province called for the implementation of preferential land policy: "governments at all levels should give priorities to strategic emerging industries when supplying the land, and for strategic emerging industry projects that qualify for priority industries and intensive land use, may specify a land grant floor price no less than 70 {percent} of the lowest price of the industrial land corresponding to the land of the locality."[159] Attached to the *Shandong Province Implementation* is a list of the "First Batch of Provincial-Level Strategic Emerging Industry Projects of Shandong Province," naming RZBC Group with a project of industrialization and application of citric acid biological conversion technology.[160] We find that the subsidies provided under this program are limited to strategic emerging industries, and thus, are *de jure* specific under section 771(5A)(D)(i) of the Act.

We also find that the land-use contracts signed by RZBC Co. with the Rizhao Land Resources Bureau in 2011 for land in the Rizhao Zone, and land-use contracts signed by RZBC Juxian with the Juxian Land Resources Bureau in 2010 for land in the Ju County Zone, constitute negotiations between RZBC Companies and the government authorities managing each zone.

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[156] *See, e.g.*, *PC Strand from the PRC,* and PC Strand IDM at Comment 13.
[157] *See* Memorandum to the File to Melissa Skinner, Director, AD/CVD, Office 8, through Eric Greynolds, Program Manager, AD/CVD Operations, Office 8, from Kristen Johnson, International Trade Compliance Analyst, AD/CVD Operations, Office, "Decision Memorandum on New Subsidy Allegations," dated January 25, 2013 (NSA Decision Memorandum).
[158] *See* RZBC Companies' NSAQR (March 8, 2013) at pages 1 through 6.
[159] *See* GOC's 2SQR (May 10, 2013) at Exhibit 4.
[160] *Id*. and RZBC Companies' 1SQR (March 8, 2013) at Exhibit 7 "RZBC Juxian's Certificate of Strategic Emerging Industry."

We find that the provisions of land for LTAR constitute financial contributions in the form of a provision of a good within the meaning of section 771(5)(D)(iii) of the Act.[161] The provision of land constitutes a benefit to the extent the local land authority provides the land for LTAR.[162]

To determine whether RZBC Co. and RZBC Juxian received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices (referred to as tier-one prices in the LTAR regulation) within the country.[163] In *LWS from the PRC* and past investigations, the Department determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that tier-one benchmarks do not exist.[164] The Department also found that tier-two benchmarks, world market land prices that would be available to purchasers in China, are not appropriate because "they cannot be simultaneously 'available to an in-country purchaser' while located and sold out-of-country on the world market."[165] Because benchmarks were unavailable under the first and second tiers, in *LWS from the PRC* the Department determined the adequacy of remuneration by reference to tier-three.[166] In *LWS from the PRC* the Department found, however, that the sale of land-use rights in China was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land.[167] We determine that in this administrative review, the GOC has submitted no information that questions this analysis.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are comparing the price that RZBC Co. and RZBC Juxian paid for their land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, China. Specifically, we are comparing the prices RZBC Juxian paid in 2010 and RZBC Co. paid in 2011 to the price of certain industrial land in industrial estates, parks, and zones in Thailand in 2010 and 2011.[168] To calculate the benefit, we calculated the difference between the price RZBC Co. and RZBC Juxian paid for their land-use rights and a Thai land benchmark. For purchased land, we next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year of the relevant land-use agreement by dividing the total benefit for each tract by the appropriate sales denominator. If

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[161] The Department determined in *LWS from the PRC* that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. *See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum (LWS IDM) at Comment 8.

[162] *See* section 771(5)(E)(iv) of the Act.

[163] *See* 19 CFR 351.511(a)(2)(i).

[164] *See* LWS IDM at Comment 10, *and also* Seamless Pipe IDM at Comment 15, OCTG Investigation IDM at Comment 16, and *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and the accompanying Issues and Decision Memorandum (Aluminum Extrusions IDM) at Comment 24.

[165] *LWS* IDM at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration" (internal citation omitted); *see also* 19 CFR 351.511(a)(2)(ii).

[166] *Id*.

[167] *See* LWS IDM at Comment 10; *see also* 19 CFR 351.511(a)(2)(iii).

[168] *See* LWS IDM at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration" and Comment 10; and Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office III, regarding "Final Results Calculation Memorandum" (Final Calculation Memorandum) (December 26, 2013).

more than one tract was provided in a single year, we combined the total benefits from the tracts before conducting the "0.5 percent test."

Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold. Therefore, we used the discount rate described under the "Benchmarks and Discount Rates" section above to allocate the benefit over the life of the land-use rights contract, which is 50 years. To calculate the net subsidy rate, we divided the benefit by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. On this basis, we calculated a net subsidy rate of 1.37 percent *ad valorem* for the RZBC Companies.

I. Return of Land Use Right Deed Tax for Initial Public Offering (IPO) Companies

RZBC Group reported that it received a grant from Rizhao City Donggang District during the POR because it is an enterprise planning an IPO.[169] We determine that the grant received by RZBC Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to firms undertaking an initial public offering, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.05 percent *ad valorem*.

J. Award for Contribution to City and People

RZBC Group reported that it received a grant from Rizhao City Donggang District during the POR because the company's total tax payment to Donggang District reached a certain level.[170] The company did not apply for this grant.

We determine that the grant received by RZBC Co. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the grant program is specific under section 771(5A) of the Act because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

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[169] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Group" page III-38, and 1SQR (March 1, 2013) at 7.
[170] *See* RZBC Companies' 1SQR (March 1, 2013) at 3 and 4.

K. <u>Enterprise Technology Research and Development Subsidy</u>[171]

RZBC Group reported that it received a grant from Rizhao City Donggang District during the POR because it has qualified as an enterprise technology research and development center.[172] We determine that the grant received by RZBC Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to technology research and development centers, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.03 percent *ad valorem*.

L. <u>Financial Resource Construction Award</u>[173]

RZBC Group reported that it received grants from Rizhao City under four different sub-categories during the POR because of its tax payment, enterprise technology research and development center, Shandong Province famous trademark, and quality management.[174] We determine that the grant received by RZBC Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the grant program is specific under section 771(5A) of the Act because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.06 percent *ad valorem*.

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[171] We initiated the examination of "Awards to Enterprise Technology Centers in the Donggang District" as a new subsidy program. In RZBC Companies' March 1, 2013, NSAQR, it responded that "Awards to Enterprise Technology Centers in the Donggang District" is the same program as "Enterprise Technology Research and Development Subsidy." Therefore we find countervailable benefits to RZBC Companies under "Enterprise Technology Research and Development Subsidy."

[172] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Group" page III-38, and 1SQR (March 1, 2013) at 7.

[173] Also known as "Award for Financial Construction," which we found countervailable in *Citric Acid Second Review*.

[174] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Group" page III-43 through III-44, III-62 through III-64, and 1SQR (March 1, 2013) at 4 through 5.

M. Technology Innovation Advanced Unit Award[175]

RZBC Group reported that it received a grant from Rizhao City during the POR because it operated a technology innovation project.[176] We determine that the grant received by RZBC Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to enterprises with technology innovation projects, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

N. Special Fund for Foreign Trade Public Service Platform

RZBC Group reported that it received a grant from Rizhao City during the POR because it has a citric acid biological manufacturing technology research and development project.[177] We determine that the grant received by RZBC Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to enterprises with research and development projects, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.04 percent *ad valorem*.

O. Subsidy for Providing Employment Internship Base

RZBC Group reported that it received a grant from Rizhao City during the POR because it provided an internship program to the city's college graduates.[178] The program was established pursuant to Rizhao City's *Administration Measures of Rizhao College Graduates Employment Internship* (Lu Ren She 2011 No. 8), *Notice of Further Strengthen College Graduates Employment Internship Base* (Ri Zheng Fa 2006 No. 42), and *Temporary Administration Method of Rizhao College Graduates Employment Internship (Trial Measures)* (Ri Ren Fa 2006 No. 42) and the Rizhao City's mandate to "develop college graduates

[175] We initiated an examination of "Award to Advanced Industry-Academia-Research Cooperation Innovation Entities of Shandong Province" as a new subsidy allegation. In RZBC Companies' March 1, 2013, NSAQR, it responded that "Award to Advanced Industry-Academia-Research Cooperation Innovation Entities of Shandong Province" is the same program as "Technology Innovation Advanced Units Award." Therefore we find countervailable benefits to RZBC Companies under "Technology Innovation Advanced Units Award."

[176] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Group" page III-45 through III-46, III-65 through III-67, and Exhibit 13.

[177] *Id*. at "RZBC Group" page III-47 through III-48, III-68 through III-70, and Exhibit 14 and 15.

[178] *Id*. at "RZBC Group" page III-49 through III-50, III-71 through III-73, and Exhibit 17; and RZBC Companies' 1SQR (March 1, 2013) at 6 and Exhibit 6.

employment internship work." The program is administered by Rizhao Human Resource and Social Security Bureau.[179] We determine that the grant received by RZBC Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the grant program is specific under section 771(5A) of the Act because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

P. Shandong Province Science and Technology Development Fund

In the *Citric Acid Second Review*, the Department found this program to be countervailable.[180] On the record of the instant review, the GOC stated that there were no changes to the program during the POR.[181] As we discussed in the preliminary results of the second review, the GOC reported that this program was established in 2004, pursuant to the *Provisional Measures on Shandong Province Applied Technology Research and Development Fund (the Provisional Measures)*, to facilitate the development of science and technology in Shandong Province.[182] The program is jointly administered by the Shandong Province Department of Finance and Shandong Province Science and Technology Department.[183]

The GOC provided a copy of *the Provisional Measures* which, at Article 2, states that the fund is to promote technological development and strengthen technological application.[184] As stated in Article 8, the fund will cover the project fees and plan management fees, *i.e.*, labor, equipment, energy, and travel costs.[185] RZBC Co. reported that it received a subsidy under this program during the POR.[186]

We found that the grants received by RZBC Co. under Shandong Province's Applied Technology Research and Development Fund constitute a financial contribution, in the form of a direct transfer of funds from the government, which bestows a benefit equal to the amount of the grant within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also found that, because the receipt of assistance under the program is limited in law to certain enterprises, *i.e.*, companies with science and technological development projects, the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5

[179] *See* RZBC Companies' 1SQR (March 1, 2013) at Exhibit 6.
[180] *See* Citric Acid Second Review IDM at "Shandong Province Science and Technology Development Fund."
[181] *See* GOC's IQR (September 4, 2012) at 18.
[182] *See* Citric Acid Second Review IDM at "Shandong Province Science and Technology Development Fund.".
[183] *See* GOC's IQR (September 4, 2012) at 19.
[184] *Id*. at Exhibit 4.
[185] *Id*.
[186] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Co." page III-41 through III-43, and Exhibit 16 and 17.

percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.02 percent *ad valorem*.

Q. Application Technology Research and Development Fund

RZBC Co. reported that it received grants from Rizhao City during the POR because it operated technology improvement projects.[187] We determine that the grant received by RZBC Co. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to enterprises with technology improvement projects, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

R. Self-Innovation Special Fund

RZBC Juxian reported that it received a grant from Rizhao City during the POR because the company had a "citric acid production technology development and application project."[188] We determine that the grant received by RZBC Juxian constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to enterprises with technology development projects, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the grant to the POR, the year of receipt. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.02 percent *ad valorem*.

S. Economic Task Special Contribution Award

RZBC Juxian reported that it received a grant from the township government during the POR because the company made an economic contribution.[189] We determine that the grant received by RZBC Juxian constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the grant program is specific under section 771(5A) of the Act because the GOC failed to

[187] *Id*. at "RZBC Co." page III-39 through III-40, III-47 through III-49, and Exhibits 20 and 21.
[188] *Id*. at "RZBC Juxian" page III-39, III-57 through III-59, and Exhibits 20 and 21.
[189] *Id*. at "RZBC Juxian" page III-44 through III-45, III-66 through III-68, and Exhibits 24 and 25.

provide information, which was requested of it on two occasions, regarding the details of the government assistance.

To calculate the benefit, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the grant to the POR, the year of receipt. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

T. Self-Innovation Achievement Convert into Major Industry Structure Optimization Upgrade Project

RZBC Juxian reported that it received a grant from the provincial government during the POR because the company had technology innovation projects.[190] We determine that the grant received by RZBC Juxian constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to enterprises with technology innovation projects, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the grant to the POR, the year of receipt. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.27 percent *ad valorem*.

U. Shandong Self-Innovation Subsidy

In the *Citric Acid Second Review*, the Department found this program to be countervailable.[191] The GOC reported that this program was established in 2007, pursuant to the *Measures on Shandong Province Self-Innovation Results Commercialization Special Fund* (*Measures*), to promote the commercialization of self-innovation, to facilitate the development of high technology industries with intellectual property rights, to guide economic growth and to improve the competitiveness of Shandong Province.[192] The program is jointly administered by the Shandong Province Department of Finance and Shandong Province Science and Technology Department.[193]

The GOC provided a copy of the *Measures* which, at Article 8, state that the fund is to strictly adhere to the strategic plan of Shandong Province's medium- and long-term technology development plan and focus on the development of 15 high-tech industry groups.[194] As stated in Article 10, depending on the characteristics of the project and enterprise, assistance under the

[190] *Id*. at "RZBC Juxian" page III-40 through III-41, III-60 through III-62, and Exhibit 22.
[191] *See* Citric Acid Second Review ID Memo at "Shandong Self-Innovation Subsidy."
[192] *See* GOC's IQR (September 4, 2012) at 21 through 24 and Exhibit 5.
[193] *Id*. at 22.
[194] *Id*. at Exhibit 5.

fund consists of direct funding of projects, equity investment, discount loans, financial rewards, and reimbursable aid.[195]

RZBC Juxian reported that it received a subsidy under this program during the POR.[196] The GOC stated that there were no changes to this program during the POR.[197]

We found that the grant received by RZBC Juxian under Shandong Province's Self-Innovation Results Commercialization Special Fund constitutes a financial contribution, in the form of a direct transfer of funds from the government, which bestows a benefit equal to the amount of the grant within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also found that, because the receipt of assistance under the program is limited in law to certain enterprises, *i.e.*, 15 high-technology industry groups, the program is specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the grant to the POR, the year of receipt. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.03 percent *ad valorem*.

V. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River

The Department found this program to be countervailable in the *Citric Acid First Review* and *Citric Acid Second Review*.[198] On the record of the instant review, the GOC stated that there were no changes to the program during the POR.[199] RZBC Juxian reported that it applied and received a benefit under this program during the POR.[200]

This program was established pursuant to the State Council's *Comprehensive Work Plan on Energy Conservation and Emission Reduction* (Guo Fa 2007 No. 7115) and the State Council's mandate to "strengthen pollution control of Three Rivers, Three Lakes, and the Songhua River."[201] The program is administered by the Shandong Finance Department and the Shandong Environmental Protection Bureau.[202] The purpose of the program is to enhance pollution control efforts by financing projects affecting the Huaihe River, Haihe River, Liaohe River, Taihu Lake, Chaohu Lake, Dianchi Lake, and the Songhua River.[203]

Because the fund is limited to enterprises located in these designated areas, the Department determined in the *Citric Acid First Review* that the program is specific within the

[195] *Id*. at Exhibit 5.
[196] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Juxian" pages III-28, III-54 through III-56, and Exhibits 18 and 19.
[197] *See* GOC's IQR (September 4, 2012) at 21 and 24.
[198] *See* Citric Acid First Review ID Memo at "Other Subsidies Received by RZBC" and "Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River" and Citric Acid Second Review ID Memo at "Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River."
[199] *Id*. at 16.
[200] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Juxian" pages III-28, III-51 through III-53, and Exhibits 16 and 17.
[201] *See* GOC's IQR (September 4, 2012) at Exhibit 3.
[202] *Id*. at 16.
[203] *Id*. at Exhibit 3.

meaning of section 771(5A)(D)(iv) of the Act.[204] The Department also found that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant, as described under section 771(5)(E) and 19 CFR 351.504(a).[205]

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.43 percent *ad valorem*.

W. Fund for Energy-saving Technological Innovation

We found this program to be countervailable in the *Citric Acid First Review*.[206] In the instant review, the GOC stated that there were no changes to this program during the POR.[207] RZBC Juxian reported that it applied for and received a benefit under this program during the POR.[208] This program was established on August 10, 2007, pursuant to the *Circular on the Issuance of Interim Measures on Financial Award Funds for Energy-saving Technological Innovation*, and the mandate was "to guarantee the practical effect of technological innovation project of energy conservation."[209] The program is administered by the Ministry of Finance and National Development and Reform Commission.[210]

The Department has found that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant, as described under section 771(5)(E) and 19 CFR 351.504(a).[211] Because the fund is limited to enterprises with technological innovation projects, the Department has also determined that the program is specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.04 percent *ad valorem*.

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[204] *See* Citric Acid First Review IDM and Citric Acid Second Review IDM at "Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River."
[205] *Id*.
[206] *See* Citric Acid First Review IDM at "Other Subsidies Received by RZBC" and "Fund for Energy-saving Technological Innovation."
[207] *Id*. at 7.
[208] *See* RZBC Companies' IQR (September 6, 2012) at "RZBC Juxian" page III-28, III-48 through III-50, and Exhibits 14 and 15.
[209] *See* GOC's IQR (September 4, 2012) at Exhibit 2.
[210] *Id*. at 7.
[211] *See* Citric Acid First Review IDM at "Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River."

X. Enterprise Development Supporting Fund from Zibo City Financial Bureau

In *Citric Acid First Review* and *Citric Acid Second Review*, the Department found that Sisha, RZBC Co.'s prior cross-owned parent company, received a countervailable subsidy under this program in 2003.[212] The Department determined to use Sisha's consolidated sales as reported by Sisha as the denominator for the 2003 allocation test pursuant to 19 CFR 351.524(b)(2).[213] We found that the 2003 grant was greater than 0.5 percent of the reported consolidated sales for 2003.[214] Thus, because the 2003 grant was a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 10-year AUL. No new information has been presented in the instant review that has caused us to revisit our prior finding concerning the program's countervailable status.

Because RZBC Co. and Sisha ceased to be cross-owned after March 2008, we applied a Sisha/RZBC Co. sales ratio to compute the benefit attributable to the RZBC Companies during the POR; this approach is consistent with the Department's decision in *Citric Acid First Review*.[215] We then divided that benefit amount by RZBC Co.'s, RZBC IE's, and RZBC Juxian's total combined sales (excluding inter-company sales) for 2011 to obtain the *ad valorem* subsidy rate. On this basis, we find that the RZBC Companies received a countervailable subsidy of 0.06 percent *ad valorem*.

VIII. Programs Determined Not To Provide Countervailable Benefits During the POR

After the Department inquired about several items in each company's financial statement, RZBC Companies reported that it received a total of 21 grants from various governmental entities. RZBC Companies reported that RZBC Group received ten grants in 2011; RZBC Co. received four grants in 2010 and 2011; and RZBC Juxian received eight grants in 2010 and 2011. Those grants for which we find a countervailable benefit are described above. We determine that the benefit from the programs listed below each result in a net subsidy rate that is less than 0.005 percent *ad valorem*. Consistent with our past practice, we have not included these programs in our net countervailing duty rate calculations.[216]

1. Award for Shandong Province Famous Trademark
2. Foreign Trade Development Special Fund
3. Subsidy for Monitoring Unemployment Information Collection
4. Award for Enterprise Technology Improvement Project
5. Enterprise Technology Improvement Award

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[212] *See* Citric Acid First Review IDM and Citric Acid Second Review IDM at "Enterprise Development Fund from Zibo City Financial Bureau," in which the Department found that the program constitutes a financial contribution under section 771(5)(D)(i), a benefit under section 771(5)(E) of the Act, and was specific under section 771(5A)(D)(iii)(I) of the Act.
[213] *Id*.
[214] *Id*.
[215] *Id*.
[216] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from the PRC*), and accompanying Issues and Decision Memorandum (Coated Paper IDM) at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" *see also* Steel Wheels IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."

6. Financial Grant for Enterprise Outstanding Financial Information Works

IX. Programs Determined Not to be Used[217]

With regard to "Provision of Land for LTAR to Enterprises Located in Development Parks/Zones in the Donggang District" the Department found this program not to be used by RZBC Companies. We have revised the name of this program to "Exemption and Refund of Fees and Reduced Rents for Enterprises Located in Development Parks/Zones in Donggang District." For a full discussion of the Department's findings, *see* Comment 9 below. Additionally, we find that the RZBC Companies did not use the following programs during the POR:

1. Reduced Income Tax Rates to Foreign Invested Enterprises (FIEs) Based on Location
2. Reduced Income Tax Rate for Tech or Knowledge Intensive FIEs
3. Two Free, Three Half Tax Program for FIEs
4. Local Income Tax Exemption & Reduction Program for Productive FIEs
5. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
6. Famous Brands - Yixing City
7. Anqui City Energy & Water Savings Grant
8. Land for LTAR in Anqui Economic Development Zone
9. Land-Use Rights Extension in Yixing City
10. National Government Policy Lending
11. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
12. International Market Development Fund Grants for Small and Medium Enterprises
13. Jiangsu Province Energy Conservation and Emissions Reduction Program
14. Rizhao City: Subsidies to Encourage Enterprise Expansion
15. Rizhao City: Subsidy for Antidumping Investigations
16. Rizhao City: Special Fund for Enterprise Development
17. Rizhao City: Technological Innovation Grants
18. Rizhao City: Technology Research and Development Fund
19. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers
20. Shandong Province: Subsidy for Antidumping Investigations
21. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
22. Shandong Province: Environmental Protection Industry R&D Funds
23. Shandong Province: Waste Water Treatment Subsidies
24. Yixing City: Leading Enterprise Program
25. Yixing City: Tai Lake Water Improvement Program
26. Loans Provided to the Northeast Revitalization Program
27. State Key Technology Renovation Project Fund
28. National Level Grants to Loss-making State-Owned Enterprises (SOEs)
29. Income Tax Exemption Program for Export-Oriented FIEs
30. Tax Benefits to FIEs for Certain Reinvestment of Profits
31. Preferential Income Tax Rate for Research and Development for FIEs

[217] In this section, we refer to programs found to be not used by the RZBC Companies.

32. Preferential Tax Programs for Encouraged Industries
33. Preferential Tax Policies for Township Enterprises
34. Provincial Level Grants to Loss-making SOEs
35. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
36. Provision of Land for Less Than Adequate Remuneration in Anhui Province
37. Funds for Outward Expansion of Industries in Guangdong Province
38. Income Tax Exemption for FIEs Located in Jiangsu Province
39. Administration Fee Exemption in the Yixing Economic Development Zone (YEDZ)
40. Tax Grants, Rebates, and Credits in the YEDZ
41. Provision of Construction Services in the YEDZ for LTAR
42. Grants to FIEs for Projects in the YEDZ
43. Provision of Electricity in the YEDZ for LTAR
44. Provision of Water in the YEDZ for LTAR
45. Provision of Land in the YEDZ for LTAR
46. Provision of Land to SOEs for LTAR
47. Torch Program – Grant
48. Discounted Loans for Export-Oriented Industries
49. Provision of Land in the Zhuqiao Key Open Park for LTAR
50. Special Funds for Energy Saving and Recycling Program
51. Water Resource Reimbursement Program
52. Shandong Province: Energy Saving Award
53. VAT and Import Duty Exemptions on Imported Equipment
54. Ecology Compensation Subsidy Funds
55. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Rizhao City
56. Provision of Plants for LTAR to Enterprises in the Science and Technology Incubator of Rizhao High-Tech Industrial Development Zone
57. Fund for Large Technology-Intensive Projects in the Donggang District
58. Strategic Emerging Industries Fund of Shandong Province
59. Tax Refunds for Export-Oriented Trading Companies in the Donggang District
60. Tax Refunds to Large-Scale Trading Companies in the Donggang District
61. Provision of Electricity for LTAR
62. Provision of Natural Gas for LTAR
63. Provision of Water for LTAR
64. Exemption and Refund of Fees and Reduced Rents for Enterprises Located in Development Parks/Zones in Donggang District

X. Analysis of Comments

Comment 1: Whether There is a Basis for the Imposition of Countervailing Duties on RZBC's Imports

RZBC Companies' Arguments

- There is no reasonable basis for the Department to impose countervailing duties on RZBC Companies' imports given the Department's preliminary finding in the companion antidumping (AD) review that the alleged subsidies had no impact on U.S. price.

- In the *AD Preliminary Results*, the Department determined that RZBC Companies' U.S. price is already artificially high due to the existence of the AD and CVD orders on citric acid.[218] Thus there is no evidence that changes to the cost of manufacturing as a result of any subsidies had an impact on the price of subject merchandise sold to the United States.
- The courts have held that the purpose of the AD and CVD laws is remedial, not punitive.[219] In the instant review, the alleged subsidies had no impact on U.S. price and hence there was no unfair competitive advantage enjoyed by RZBC Companies as a result of these alleged subsidies.
- Under the Department's non-market economy (NME) methodology, the Department compares U.S. price to a normal value based on factors of production in a surrogate country. In doing so, the Department uses subsidy-free factors of production. Thus, any subsidy received by producers in an NME country has already been accounted for and eliminated in the AD review and is reflected in the AD margin.
- In the companion AD review, RZBC Companies received a zero margin, which is indicative of the fact that the alleged subsidies did not impact U.S. price and that the company did not enjoy a competitive advantage as a result of the alleged countervailable subsidies.
- For these reasons, the Department should not impose any countervailing duty for any program in the final results which it has not found to have impacted import prices and, therefore, for which it could not make an appropriate adjustment to the final AD margins under Section 777A(f) of the Act.

Petitioners' Arguments

- No provision of the statute or section of the Department's regulations support RZBC Companies' claims, nor does RZBC Companies provide any case citations to support its novel argument.
- Section 701(a) of the Act discusses the general rule for imposition of countervailing duties where the Department "determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailing subsidy." Section 701(a) of the Act further states that if a subsidy occurs "with respect to the manufacture, production, or export of a class of merchandise imported, or sold. . . for importation into the United States," then "there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy."
- Concerning reviews, section 751(a) of the Act instructs the Department to "review and determine the amount of any net countervailing subsidy" during the POR.
- There is no statutory language requiring the Department to decline imposing countervailing duties in instances in which the Department has not found that the subsidies had an impact on net price.
- Further, there is no legal basis for the Department to offset any subsidy rate by the corresponding negative margins from the companion AD review.

[218] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review*; 2011-2012, 78 FR 34642 (June 10, 2013) (*Citric Acid AD Preliminary Results*) and accompanying Decision Memorandum (Citric Acid AD Preliminary Decision Memorandum) at 15.
[219] *See Nucor v. United States*, 414 F.3d 1331, 1336 (Fed. Cir. 2005), citing *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103-04 (Fed. Cir. 1990).

- RZBC Companies is also wrong to argue that the Department should decline to impose countervailing duties absent an appropriate adjustment under Section 777A(f) of the Act to the final AD margins in the companion AD review.
- The Department rejected this same argument in the prior review and should do so again here.[220]

Department's Position: We disagree with RZBC Companies and will continue to impose duties for programs which the Department determines are countervailable. RZBC Companies' proposed approach essentially would introduce an "effects test" to the Department's existing CVD analysis in which the Department would only be able to impose countervailing duties when evidence indicates that the respondent firm used the alleged subsidies in a manner that had an impact on the U.S. prices charged during the POR. There is no support in the statute or the Department's regulations for doing so. In fact, section 771(5)(C) of the Act expressly states that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists." Further, the Department's CVD regulations expressly state that the Department shall not consider the effect of the subsidy when conducting its subsidy analysis:

> In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, *including its prices or output, or how the firm's behavior otherwise is altered.*[221]

Concerning double counting, we reject RZBC Companies' arguments. Public Law 112-99 clearly indicates that the Department may impose CVD duties on countries classified as non-market economies. Public Law 112-99 applies to all investigations or reviews initiated on or after March 13, 2012. The Department initiated the instant review on June 21, 2012.[222] Thus, we find the provisions of Public Law 112-99 apply to the instant review. Further, Public Law 112-99 states that any adjustments to duty rates, as referenced by the RZBC Companies, shall be made to dumping margins calculated in the context of AD proceedings. Public Law 112-99 contains no provision for making the adjustments advocated by the RZBC Companies in the context of CVD proceedings. Further, RZBC Companies has not provided an argument based on record evidence that explains how an AD proceeding affects the amount of subsidies received in the context of a CVD proceeding.

Comment 2: Whether the Provision of Sulfuric Acid is Specific under Section 771(5A) of the Act

GOC's Arguments

- In previous CVD proceedings not involving the PRC, the Department limited its affirmative LTAR findings to inputs that were truly limited to a handful of industries.[223]

[220] *See Citric Acid Second Review*, and Citric Acid Second Review IDM at Comment 2.
[221] *See* 19 CFR 351.503(c), emphasis added. *See also* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 926 (1994).
[222] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 40565 (*Initiation*).
[223] *See, e.g., Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007) (*Free Sheet Paper from Indonesia*) and accompanying Decision Memorandum (Free

- Further, for subsidy programs not involving the provision of a good or service for LTAR, the Department and the Court have found that sections 771(5A)(D)(i) and (iii) of the Act only apply when the alleged program is, in fact, limited to a handful of industries.[224]
- In the *Preliminary Results*, the Department deviated from its practice and from the holdings of the Court when it determined that the GOC provided inputs to RZBC Companies for LTAR.
- As it has in the prior reviews, the Department's findings in the *Preliminary Results* ignore the plain fact that sulfuric acid is widely distributed throughout the economy of the PRC. Instead, the Department continued to improperly conclude that there are three major groups of industrial categories that are direct users of sulfuric acid and that these categories constitute a limited group under the statute.[225]
- The Department's analysis in this regard was and continues to be flawed. The facts demonstrate that the industry groups cited by the Department comprise the mining industry, various raw material and down-stream manufacturing industries, and utilities. Thus, the information supplied by the GOC demonstrates that there are few industries that do not use sulfuric acid.
- Notably, the Department did not request information on the volume of each industry's purchases of sulfuric acid. To the extent that the Department considers volume data to be important in the context of the steam coal and calcium carbonate LTAR programs, then the Department must defer a specificity finding with regard to sulfuric acid until the next review so that it can request such volume information.

Petitioners' Rebuttal Arguments

- The Department made clear its intention not to revisit the countervailable status of previously examined input for LTAR programs absent new information from the GOC.[226] Therefore, to challenge the countervailability of the programs at issue, the GOC was required to provide new information that it believed warranted a reexamination. The GOC failed to provide such information.
- The Department noted the GOC's refusal to provide new information in the *Preliminary Results*.[227] However, the GOC nonetheless belatedly demands in its case brief that the Department now defer a specificity finding until the next administrative review based on the premise that the Department failed to solicit volume data from each user industry.
- The GOC wrongly argues that absent such volume data the Department lacks a sufficient basis to adversely assume that the provision of sulfuric acid for LTAR program is specific.
- The GOC's argument in this regard ignores the fact that the Department made its preliminary affirmative specificity finding under section 771(5A)(D)(iii)(I) of the Act,

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Sheet Paper from Indonesia IDM) at Comment 10, where the Department found that the LTAR program at issue was limited to five industries.

[224] *See e.g., Royal Thai Government v. United States*, 341 F.Supp 2d 1315, 1319 (CIT 2004) (*Royal Thai*), where the Department found and the Court affirmed that subsidies provided to 351 industries did not constitute a limited group under section 771(5A)(D) of the Act.

[225] *See, e.g., Citric Acid First Review*, and Citric Acid First Review IDM at Comment 7.

[226] *See* The Department's IQ (July 11, 2012) at II-1.

[227] *See Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 34648 (June 10, 2013) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum) at 17.

which provides that a subsidy is specific if "the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."

- The volume data referenced by the GOC are not necessary for purposes of evaluating specificity under section 771(5A)(D)(iii)(I) of the Act. The Court has found that the three specificity criteria under section 771(5A)(D)(iii)(I) of the Act are sequential and has further explained that the statutory threshold for specificity is met whenever one of the three criteria are met.[228] The volume data referenced by the GOC pertain to the specificity criteria described under sections 771(5A)(D)(iii)(II) and (III) of the Act. Thus, when the GOC failed to respond to the Department's questions that addressed section 771(5A)(D)(iii)(I) of the Act, the Department had a sufficient basis for adversely assuming that the sulfuric acid for LTAR program was specific.

Department's Position: In its briefs, the GOC contests the Department's findings from *Citric Acid First Review*, which the Department carried over into the instant review, that the GOC provided RZBC with sulfuric acid in a manner that was specific under section 771(5A)(D)(iii)(I) of the Act. In its Initial QNR, the Department made clear that it would not reconsider prior subsidy findings absent a response or new information from the GOC.[229] The GOC, by its own admission, did not supply any of the specificity information requested by the Department in the context of the current review, nor did the GOC report any changes to the program since the prior review.[230] Thus, the GOC has provided no factual basis in the context of the instant review to support its claim that the provision of sulfuric acid for LTAR is not specific. Accordingly, absent any new information from the GOC, the Department continues to find that the program at issue is specific under section 771(5A)(D)(iii)(I) of the Act.

We further disagree with the GOC's claim that the Department's decision not to solicit data concerning the volume of sulfuric acid purchased by PRC industries means the Department lacks sufficient information to make a specificity finding. Absent new information from the GOC, the Department continues to find that the GOC provided RZBC sulfuric acid for LTAR in a manner that is specific under section 771(5A)(D)(iii)(I) of the Act. As petitioners note, section 771(5A)(D)(iii)(I) of the Act deals with subsidies programs in which "the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." Thus, the volume data referenced by the GOC are not required in order for the Department to continue to find that the number of actual recipients is limited in number, consistent with the statute.

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[228] *See Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354, 1368 (CIT 2001) (*Bethlehem I*); *see also Bethlehem Steel Corp. v. United States*, 155 F. Supp. 2d 707 (CIT 2001) (*Bethlehem II*).

[229] *See* Initial QNR at II-1.

[230] *See* GOC's IQR (September 4, 2012) at 24-25, where the GOC did not respond to the Department's Standard Questions Appendix, which contains specificity questions.

Comment 3: Whether the Provision of Steam Coal is Specific under Section 771(5A) of the Act

GOC's Arguments

- The Department did not re-analyze its finding from the prior review. While no new information exists on the record, the GOC reiterates its objections regarding the notion that the GOC provides steam coal to RZBC Companies for LTAR.
- In the *Preliminary Results*, the Department concluded that the GOC provided steam coal to RZBC Companies in a manner that was specific under section 771(5A)(D)(iii) of the Act based on adverse inferences. The Department's findings in this regard contain a number of misstatements and unsupported conclusions.
- The Department's conclusion to find this program countervailable is based on the Department's improper conclusion in the *Citric Acid Second Review* that "the GOC clearly maintains data on steam coal purchases."[231] There is no basis for this speculation. In the *Citric Acid Second Review*, the GOC acted to the best of its ability and noted that it does not maintain steam coal purchase statistics.
- Faced with the fact that the GOC was unable to provide the requested information, it was the Department's responsibility in the *Citric Acid Second Review* to assist the GOC in seeking an alternative means of analyzing the alleged subsidy program. Yet, the Department refused to do so. Instead, the Department merely repeated prior questions that the GOC had demonstrated that it was not able to answer.
- In the *Citric Acid Second Review*, the GOC, in an effort to cooperate to the best of its ability, provided a list of industries it believed purchased steam coal directly. The information is not evidence that the GOC maintained purchase information or volume data that it was withholding from the Department. The GOC does not maintain volume statistics of steam coal purchases. Therefore, the application of AFA in the *Citric Acid Second Review* and in the *Preliminary Results* was improper and the Department has no basis to find that the GOC sold steam coal to RZBC Companies for LTAR.

Petitioners' Rebuttal Arguments

- The GOC readily admits that no new information exists on the record of the instant review. Further, the GOC did not report any changes with regard to the provision of steam coal for LTAR program and did not answer the Standard Questions Appendix.[232]
- Thus, in light of the GOC's refusal to provide new information, the Department properly carried forward its affirmative *de facto* specificity finding for this program from the *Citric Acid Second Review*.
- The GOC reiterates arguments from the *Citric Acid Second Review* in asserting that the Department should not find the program at issue specific in the instant review. The Department already fully considered and dismissed the GOC's objections in this regard in the *Citric Acid Second Review* (*i.e.*, that it is the Department's responsibility to seek alternative information when a party does not maintain the information in the manner requested) and should continue to do so here.[233]

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[231] *See* Citric Acid Second Review IDM at Comment 4.
[232] *See* Preliminary Decision Memorandum at 19.
[233] *See* Citric Acid Second Review IDM at Comment 4.

Department's Position: The Department indicated in the Initial QNR that it would not revisit the countervailable status of the provision of steam coal for LTAR program, as determined in the *Citric Acid Second Review*, absent new information from the GOC.[234] In the *Citric Acid Second Review*, we relied on "adverse facts otherwise available," because the GOC failed to provide volume data for the industries reported to purchase steam coal.[235] In a previous investigation, the Department was able to confirm at verification that the GOC maintains a database at the State Administration of Industry and Commerce (SAIC). The SAIC database for which companies are registered and show the most up-to-date information and the other system is "ARCHIVE," which houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc. We found that the GOC has an electronic system available to them to gather industry specific information the Department requested.[236]

In its initial questionnaire response, the GOC did not report any changes to the program.[237] In its briefs, the GOC contests the specificity finding the Department reached in the *Citric Acid Second Review*; however, the GOC has provided no factual basis in the context of the instant review to support its claim that the provision of steam coal for LTAR program is not specific. Accordingly, absent any new information from the GOC, the Department continues to find that the program at issue is specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 4: Whether the Provision of Calcium Carbonate is Specific under Section 771(5A) of the Act

GOC's Arguments

- In the Post-Prelim Decision Memorandum, the Department concluded that the GOC failed to act to the best of its ability because it did not provide the volume and value of calcium carbonate purchased by each of the applicable industries, including the calcium carbonate industry.[238] As a result, the Department applied adverse inferences and determined that the GOC provided calcium carbonate to RZBC for LTAR in a manner that was specific under section 771(5A)(D)(iii) of the Act.
- The GOC's actions in the instant review do not warrant the application of AFA. The GOC very clearly stated in its initial questionnaire response concerning this allegation that its statistical agencies do not "collect any calcium carbonate data based on sales, let alone based on sales volume by industrial sectors."[239]
- Further, the GOC provided information demonstrating that calcium carbonate is used in a wide variety of industries including, but not limited to, adhesives and sealants, building products, glass, paints and inks, paper, plastic and rubber, animal feeds, fertilizers, pharmaceuticals, and water treatment.[240]

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[234] *See* the Department's IQ (July 11, 2013) at II-6.
[235] *See* Citric Acid Second Review IDM at "VI. Use of Facts Otherwise Available and Adverse Inferences."
[236] *See* Additional Documents for Post-Prelim Memorandum at Attachment 1, entitled "Memorandum to Susan Kuhbach, "Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce," dated October 29, 2009, from the countervailing duty investigation of certain oil country tubular goods from the People's Republic of China.
[237] See GOC's Initial QNR Response at 25-26.
[238] *See* Post-Prelim Decision Memorandum at 6-7.
[239] *See* the GOC's new subsidy allegation questionnaire response (NSAQR) (March 1, 2013) at 24.
[240] *Id.*

- In its second supplemental response, the GOC indicated that it does not collect any statistics regarding calcium carbonate production or producers and reiterated its view that the information provided in its new subsidy questionnaire response could be used to analyze the specificity of the alleged subsidy program.[241]
- In the *Citric Acid Second Review*, the Department concluded that "only the GOC has knowledge of how its agencies and organizations compile and maintain data."[242] Thus, consistent with the *Citric Acid Second Review*, the GOC informed the Department of the information not in its possession and provided an alternative means of analyzing specificity. It is not in the Department's discretion to disregard the GOC's unimpeached statement of fact.
- Section 782(c) of the Act requires the Department to "take into account any difficulties experienced by interested parties . . .in supplying information requested. . .and shall provide to such interested parties any assistance that is practicable in supplying such information." The GOC diligently notified the Department regarding the dearth of statistical information concerning calcium carbonate, but the Department provided no such assistance and never made any attempt to do so.
- Neither of the two supplemental questionnaires that the Department issued to the GOC regarding calcium carbonate indicated that the GOC's initial response regarding calcium carbonate was deficient. Thus, the Department failed to provide fair notice to the GOC that its initial response with regard to calcium carbonate was deficient and that the application of AFA was necessary. Therefore, at most, the Department can apply facts available without adverse inferences.
- If the Department applies facts available, it will find that the program is not specific. Petitioners contend that the calcium carbonate for LTAR program is specific because calcium carbonate is part of the chemical industry and the chemical industry is favored in the PRC. However, such an argument is only relevant in the context of an upstream subsidy allegation.
- Instead, the Department should analyze this allegation in the context of subsidies given by calcium carbonate producers. Further, by arguing that both calcium carbonate and citric acid are part of the same industry (the chemical industry) Petitioners' argument becomes increasing circular. According to Petitioners, the GOC favors the chemical industry by ensuring its ability to acquire calcium carbonate inputs for LTAR while simultaneously hindering the chemical industry by requiring its members to sell calcium carbonate for LTAR.
- The proper analysis examines whether calcium carbonate producers sell their product for LTAR in a limited capacity to citric acid producers in a manner that would trigger *de facto* specificity under section 771(5A)(D)(iii) of the Act.
- The information submitted by the GOC as well as the information supplied by Petitioners indicates that calcium carbonate is one of the most versatile minerals in the world and is used in a host of different industries.[243] As a result, the Department should use facts available to determine that the alleged subsidy program is not specific under section 771(5A)(D)(iii) of the Act.

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[241] *See* GOC's 2SQR (May 10, 2013)at 5-6.
[242] *See* Citric Acid Second Review IDM at Comment 4.
[243] *See* the GOC's NSAQR (March 1, 2013) at 24; *see also* Petitioners' New Subsidy Allegation (NSA) (September 26, 2012) at 28.

Petitioners' Rebuttal Arguments

- The Department is investigating the provision of calcium carbonate for LTAR for the first time in this review. In order to determine whether the alleged subsidy program was specific, the Department asked the GOC to provide a list of industries in the PRC that purchase calcium carbonate, the amounts purchased by the Chinese citric acid industry, and the totals purchased by every other industry.[244]
- The GOC disregarded the Department's requests for such information. Instead, the GOC provided three articles in Exhibit 3 of the GOC NSAQR that generally discuss the users of calcium carbonate but do not provide any of the usage information requested.
- The Department issued a supplemental questionnaire in which it again requested the usage information.[245] In its response, the GOC simply referenced the information contained in Exhibit 3 of the GOC NSAQR. The GOC refused to provide the requested information even after the Department provided an unsolicited third opportunity to do so.[246] The GOC continued to provide its original answer that references Exhibit 3.[247]
- The GOC's repeated refusal to provide the requested information demonstrates that the Department correctly determined that the GOC failed to act to the best of its ability.[248] Further, the Department was justified in adversely assuming that the provision of calcium carbonate for LTAR program was specific under section 771(5A) of the Act.
- Lastly, the GOC wrongly claims that it was deprived of "fair notice" as to what information is required of it. Information that is critical to the Department's specificity analysis and that is in the GOC's possession is not on the record. It is the GOC's responsibility to provide this information. Absent such information, the Department is justified in adversely assuming that the input for LTAR program at issue is specific under the statute.

Department's Position: In the NSA questionnaire, the Department requested the following information concerning calcium carbonate producers: the number of producers, the total volume and value information accounted for by companies owned/controlled by the GOC, volume and value data concerning the domestic production of calcium carbonate, and a list of the 10 largest calcium carbonate producers owned/controlled by the GOC.[249] Further, concerning *de facto* specificity, the Department requested for the POR a list of the industries that purchased calcium carbonate and the volume and value purchased by each industry.[250]

In response, GOC stated that it "does not maintain or collect" the information that the Department requested regarding state-owned/controlled calcium carbonate producers.[251] Concerning the *de facto* specificity questions, the GOC stated the National Bureau of Statistics

[244] *See* the GOC's NSAQR (March 1, 2013) at 24, which includes the questions posed by the Department in its new subsidy allegation questionnaire.
[245] *See* GOC's 2SQR (May 10, 2013) at 6, which includes the questions posed by the Department in its new subsidy allegation questionnaire.
[246] *See* the Department's May 3, 2013, extension of time to the GOC to respond to the Department's supplemental questionnaire.
[247] *See* the GOC's 2SQR (May 10, 2013) at 2.
[248] *See* Post-Prelim Decision Memorandum at 7.
[249] *See* the Department's NSA questionnaire (January 25, 2013) at 12.
[250] *Id*. at 13.
[251] *See* GOC's NSAQR (March 1, 2013) at 23.

of China (SSB) "does not collect any calcium carbonate data based on sales, let alone based on sales volume by industrial sector."[252] Instead, the GOC cited to three news articles it obtained via the internet which it claims demonstrates that calcium carbonate is used in a variety of industries.[253]

In a supplemental questionnaire, the Department explained that the GOC's response to the *de facto* specificity questions was "deficient." [254] Thus, we instructed the GOC to provide a "list of industries in China that use calcium carbonate and the volume of calcium carbonate used/consumed by each industry."[255] In response, the GOC reiterated its prior statement that it does not maintain "statistics on either calcium carbonate production or consumption."[256] It further stated that "after undertaking efforts to the best of its ability, the GOC has not uncovered any information to indicate that Chinese calcium carbonate consumption is any different from the uses" identified in the news articles included in its initial NSAQR.[257]

We continue to find that the GOC has not acted to best of its ability when responding to our requests for *de facto* specificity information concerning the manner in which calcium carbonate is bought and sold in the PRC. We acknowledge the information in Exhibit 3 of the GOC's NSAQR Response indicates that calcium carbonate is a versatile industrial input. However, the information in the news articles contained in Exhibit 3 provides no information on the industries that actually bought and sold calcium carbonate during the POR. Thus, we disagree with the GOC that the information in Exhibit 3 may serve, by itself, as a basis for concluding that calcium carbonate is not specific to citric acid and certain calcium citrate producers under section 771(5A) of the Act.

According to the GOC, the Department ignored the GOC's claims that it could not provide the requested information and, instead, merely chose to repeat its *de facto* specificity questions without modifying its requests. We disagree. As indicated above, in the initial NSAQR, we instructed the GOC to list the industries that purchased calcium carbonate during the POR as well as the industries' corresponding volume and value.[258] In a follow up questionnaire, we asked the GOC to provide a list of the industries that used or consumed calcium carbonate during the POR as well as the industries' corresponding volume and value data. Thus, contrary to the GOC's claims, the Department did not merely repeat its prior questions. Rather, the Department altered its original question to include industries that use or consume the input, as opposed to those industries that purchase it. However, the GOC response to both lines of questioning was the same, that the SSB does not maintain such data.[259]

In this regard, we conclude that the GOC failed to act to best of its ability because it limited its responses to our request for *de facto* specificity information concerning the calcium carbonate industry program to data collected by the SSB. For example, the GOC could have attempted to respond to the Department's questions by obtaining some or all of the requested *de facto* specificity information from firms that were owned or otherwise controlled by the GOC during the POR as a proxy for the requested industry-wide information. However, the GOC did not do so. In fact, the GOC claimed that it does not "maintain or collect" production data for

[252] *Id*. at 25.
[253] *Id*. at Exhibit 3.
[254] *See* the Department's Second Supplemental Questionnaire to the GOC (2SQ) (April 23, 2013) at 5.
[255] *Id.*
[256] *See* GOC's 2SQR (May 10, 2013) at 6.
[257] *Id.*
[258] *See* the Department's NSA questionnaire (January 25, 2013) at 12.
[259] *See* GOC's NSAQR (March 1, 2013) at 24.

state-owed calcium carbonate producers or even the identities of such producers.[260] However, we find that a party attempting to act to the best of its ability nonetheless would have sought to obtain such information even if, in the ordinary course of business, it did not "maintain or collect" it.

Additionally, we find that the GOC's claims concerning its inability to obtain the requested *de facto* information ignored the possibility of seeking the information from the China Inorganic Salts Industry Association (CISA). In its NSAQR, the GOC, in response to the Department's request for information concerning relevant industry associations, states that CISA, an organization comprised of 450 members, is "the narrowest industry association that would include calcium carbonate producers."[261]

At the Department's request, the GOC provided CISA's Charter of Association.[262] Article 4 of the Charter of Association indicates that CISA "shall. . .accept the business guidance and the supervision of the supervising authority, State-owned Assets Supervision and Administration Commission of the State Council, and the registration authority, Ministry of Civil Affairs of the People's Republic of China." Additionally, Chapter II, "Scope of Business," Article 6(ii) of the charter states that CISA shall "conduct deep survey and research on hot issues of industrial development." Also, Chapter II, Article 6(v) of the charter states that CISA shall "assist government and enterprises to appropriately settle the International Trade disputes and maintain the safety of the Industry." And, Chapter II, Article 6(vii) of the charter states that CISA shall "collect, organic, and analyze statistic information for the development and key products of domestic and foreign inorganic products; to conduct industry statistics upon authorization; and to provide the basis for the government on making industrial policy." *Id*.

Thus, we find the GOC's claims that it acted to best of its ability to obtain the requested *de facto* specificity information are undermined by the fact that the GOC failed to consult with or seek information from CISA, an industry association that the GOC directly oversaw and, moreover, whose business scope included the collection of industrial statistics and assisting the GOC in international trade disputes, such as those involving antidumping and countervailing duty proceedings.

We disagree with the GOC's claim that the Department failed to properly inform the GOC that its *de facto* specificity responses were not sufficient. In the Initial QNR, the Department informed the GOC that failure to fully respond to the Department's questions could lead to the Department applying AFA.[263] Furthermore, as noted above, the Department's April 23, 2013, supplemental questionnaire indicated that the GOC's response to the *de facto* specificity questions was "deficient."[264] Thus, we find the Department adequately informed the GOC that its questionnaire responses were not sufficient and could give rise to the application of AFA.

[260] *See* GOC's 2SQR (May 10, 2013) at 6.
[261] *See* GOC NSAQR (March 1, 2013) at 22. Further, we note that the 2011 National Calcium Carbonate Industry Annual Meeting Minutes also indicates that calcium carbonate producers are members of CISA. *See* Petitioners' Factual Information submission (March 15, 2013) at Exhibit 6.
[262] *See* the GOC's 2SQR (May 10, 2013) at Exhibit 1.
[263] *See* the Department's IQ (July 11, 2012) at I-1.
[264] *See* the Department's 2SQ (April 23, 2013) to the GOC at 5.

We also disagree that the Department's investigation into whether the GOC provides calcium carbonate to citric acid producers is circular. The Department frequently investigates whether the government is providing an input to certain members within the same industry.[265]

Lastly, the GOC argues that the proper specificity analysis calls for the Department to examine whether calcium carbonate producers sell their product for LTAR in a limited capacity to citric acid producers in a manner that would trigger *de facto* specificity under section 771(5A)(D)(iii) of the Act. Regardless of the merits of this argument, the issue is moot in the instant review because the GOC has failed to provide any industry usage information that would enable to the Department to conduct such an examination.

Comment 5: Whether the Department Should Countervail Input Purchases Made Through Trading Companies and Produced by "Authorities"

GOC's Arguments

- RZBC Companies purchased all of their steam coal and a portion of their sulfuric acid through trading companies. The Department included these purchases in its preliminary subsidy calculations. In so doing, it failed to make the requisite demonstration that the benefit to RZBC Companies was a result of the financial contribution made from the government authority to the private trading company.
- Absent a causal connection between these requisite elements of the subsidy analysis, the Department's preliminary finding is unsupported by evidence and contrary to law.
- The Department has previously responded to this line of argument by arguing that the statute contemplates countervailing subsidies and that the statute does not require the financial contribution and benefit to go to the same entity.[266]
- While the statute allows for indirect subsidies, it does not permit a financial contribution to one party and a benefit to another with no showing of the connection between the contribution and the benefit. A purported subsidy involving an independent private actor (a trading company) in the transaction requires a definitive causal connection between the government action and the benefit bestowed.[267]
- This causal nexus is required because the trading company is free to raise or lower its price of the input from the receipt of the government's financial contribution. Thus, without establishing the benefit to the trading company, the Department cannot establish that the benefit calculated from RZBC Companies' transaction was actually a result of the financial contribution to the trading company.
- In other words, under this analysis, the Department must examine whether the GOC entrusted or directed the trading company to sell the input to the respondent at a price that constitutes LTAR.
- The Department has not established that such entrustment or direction of trading companies has occurred in the instant review. Further, the Department cannot simply presume, as it did in the *Preliminary Results* and Post-Prelim Decision Memorandum,

[265] *See, e.g., CWASSP from the PRC*, and CWASSP IDM at 16, where the Department found that the GOC provided stainless steel coil (a steel product) to CWASPP producers for LTAR.
[266] *See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Cylinders from the PRC*) and accompanying Issues and Decision Memorandum (Cylinders IDM) at Comment 7.
[267] *See AK Steel Corp. v. United States*, 192 F.3d 1367, 1372 (Fed. Cir. 1999) (*AK Steel*).

that the third-party trading companies acquired inputs from the GOC for LTAR and passed the benefit on to RZBC Companies.
- If the receipt of an indirect subsidy could merely be established by demonstrating a financial contribution to one private party and then a benefit to another private party there would be no need for the entrustment discussion in the *Preamble* and the statute.[268]
- Despite the requirements of the *Preamble* and the statute, the Department adopted a new methodology for the PRC that completely ignores the actions and presence of private trading companies in the input transaction. This approach involving the PRC is unsupported by evidence and contrary to law.

Petitioners' Rebuttal Arguments
- In the *Citric Acid First Review* the Department examined sulfuric acid inputs that RZBC acquired from trading companies. In that proceeding, the Department found that "a subsidy is deemed to exist" under section 771(5)(B) of the Act "when there is a financial contribution 'to a person' and a benefit is thereby conferred."[269] The Department further found that the "GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase sulfuric acid," and "all or some portion of the benefit is conferred on the respondents citric acid producers through their purchases of sulfuric acid from trading company suppliers."[270] The Department's approach in the *Citric Acid First Review* was consistent with its practice.[271]
- The GOC is wrong to argue that the benefit conferred must be a consequence of the financial contribution made by the government authority. The GOC's argument is based on a misplaced emphasis on the word "thereby" in section 771(5)(E) of the Act, which states, "an authority provides a financial contribution. . .to a person and a benefit is thereby conferred. . ."
- Section 771(5)(E)(iv) of the Act demonstrates that the GOC's interpretation of the statute is incorrect: "a benefit shall normally be treated as conferred where there is a benefit to the recipient, including. . .in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration."
- The GOC is wrong to argue that the "entrustment or direction" language of section 771(5)(B)(iii) of the Act applies to trading companies that sold the inputs at issue to RZBC. The statute contemplates multiple types of subsidies, and there is no requirement that LTAR subsidy programs are only cognizable under section 771(5)(B)(iii) of the Act. In the instant review, the Department found that section 771(5)(B)(i) of the Act applies.
- The GOC has no basis to compel the Department to use a different subsidy analysis when the methodology used complies with the statute and its practice.

Department's Position: In prior CVD proceedings, the Department has determined that when a government's financial contribution (*e.g.*, the provision of a good) is made to the trading

[268] *See* section 771(5)(D)(iii) of the Act and *Countervailing Duties; Final Rule*, 63 FR 65348, 65351 (November 25, 1998) (*Preamble*).
[269] *See* Citric Acid First Review IDM at Comment 3.
[270] *Id*.
[271] *See e.g., Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (*Steel Wire from the PRC*) and accompanying Decision Memorandum (Steel Wire IDM) at Comment 5.

company suppliers that purchase the input at issue, while all or some portion of the benefit is conferred on the respondents who purchase the input from the trading company suppliers.[272] The Department's practice in this regarded has been affirmed by the Court.[273] In such instances, when the price paid by the producer of subject merchandise is less than the benchmark price, the producers receive a benefit when they purchase these government-provided goods and, accordingly, receive these inputs for LTAR. Accordingly, we adopted this same approach in the instant review with respect to inputs produced by GOC authorities that RZBC acquired through trading companies.

We disagree that a causal nexus, as referenced in *AK Steel*, is required in order for the Department to determine that inputs produced by GOC authorities and sold through trading companies to the respondent constitute a financial contribution and confer a benefit under the statute. At issue in *AK Steel* was the Department's determination that the Government of Korea (GOK) entrusted or directed private Korean banks to lend to the steel industry in a manner that conformed to the GOK's industrial policies. In *AK Steel*, the Court determined that such a finding required evidence indicating that the GOK, in fact, pressured the private banks to lend to Korean steel producers.[274] Thus, in *AK Steel*, the issue centered on whether a financial contribution (in an indirect form), in fact, existed such that the Department would be able to countervail loans issued by private banks.[275] The situation is different in the instant proceeding. As noted above, we find that the GOC has provided a direct financial contribution (provision of a good) to the trading companies and, therefore, the existence of a financial contribution is not in doubt. Thus, the issue of whether the trading companies' sales of the inputs at issue constitute a countervailable subsidy hinges on whether the prices they charged conferred a benefit upon RZBC. As noted in the "Analysis of Programs" section of this decision memorandum, we have determined that the prices RZBC paid to the trading companies for the inputs at issue are less than the benchmark prices and, thus, we have determined that the transactions conferred a benefit in the form of a provision of a good for LTAR. Finally, we disagree with the GOC that our finding here means there was no need for the entrustment or direction provision of the Act. Entrustment or direction involves an authority entrusting or directing a private entity to provide a financial contribution; it does not involve an authority providing a financial contribution to a private entity, which is the situation here.

[272] *See, e.g., 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) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP IDM) at 10 and referencing, *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company – Specific Reviews: Certain Softwood Lumber from Canada*, 69 FR 75917 (Dec. 20, 2004) and accompanying Issues and Decision Memorandum at Comment 47 (Other Non-Stumpage Programs, #3); *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India*, 71 FR 7534 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 8.
[273] *See Guangdong Wireking Housewares & Hardware Co. v. United States*, 900 F. Supp. 2d 1362, 1380 (CIT 2013).
[274] *See AK Steel*, 192 F.3d at 1370-1373.
[275] *Id*. at 1377-1378.

Comment 6: Whether the Certain Sulfuric Acid Producers are "Authorities"

GOC' Arguments

- The Department requested information that it believed necessary to determine whether certain sulfuric acid producers were government authorities capable of providing a financial contribution under section 771(5)(D)(iii) of the Act. The requested information included, among other things, whether the producers in question were owned by the GOC, whether company officials were members of the GOC or held government positions or were members of the Chinese Communist Party (CCP).
- The only government authority questions the GOC did not answer were those relating to whether the owners of the input producers were government or CCP officials. Thus, the only adverse inference that the Department is permitted to apply is to fill the gap left by missing pieces of information.[276]
- Further, the Department must fill such gaps under AFA with reference to other information on the record and, moreover, the conclusions the Department draws under AFA must not be made with "unbounded discretion" and must be grounded in commercial reality.[277]
- Pursuant to Article 53 of the Civil Servant Law, government officials are barred from holding positions in a Chinese company and, therefore, the Department cannot adversely infer that the owners, managers, or directors of respondents' suppliers are government officials.[278]
- Thus the only adverse inference that the Department may assume is that the input producers at issue are owned by individuals that are members of the CCP. However, the Department cannot use this adverse assumption as a basis for concluding that the input producers are government authorities.
- The Department has never encountered a scenario where a company owned by individuals was controlled by the government. In fact, the Department has found the opposite to be true, "we have analyzed the Company Law and have found it to establish sufficiently an absence of *de jure* control over privately owned companies in the PRC."[279]
- There are several Chinese laws on the record demonstrating that the government has no influence or control over a publicly owned company even if the owners, managers, or directors are CCP officials or representatives of the seven organizations referenced in the Department's LTAR Appendix of its Initial QNR. Namely, Articles 37, 38, 47, 50, and 148 all stipulate that the government shall not interfere in the operations of companies.
- Thus, even if the owners of the input producers at issue are adversely assumed to be members of the CCP, such membership, when examined in the context of the entire factual record, does not provide a sufficient basis for the Department to conclude that

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[276] See *Zhejiang Dunan Hetin Metal Co. v. United States*, 652 F.3d 1333 (Fed. Cir. 2011) (Zhejiang): "...Commerce can only use facts otherwise available to fill a gap in the record."
[277] *See F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*); *see also Gallant Ocean (Thail.) Co. v. United States*, 602 F.3d 1319, 1324 (Fed. Cir. 2010) (*Gallant Ocean*).
[278] *See* GOC's Input Response (September 18, 2012) at Exhibit 10.
[279] *See Certain Cut-to-Length 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 10, 2010) (*AD CTL Plate from the PRC*) and accompanying Decision Memorandum (AD CTL Plate IDM) at Comment 2.

such input producers are government authorities capable of providing a financial contribution as described under section 771(5)(D)(iii) of the Act.

Petitioners' Rebuttal Arguments

- In the *Preliminary Results*, the Department adversely assumed that two of the firms that produced the sulfuric acid acquired by RZBC during the POR were government authorities.[280] The Department properly reached this conclusion based on the fact that the GOC refused to identify the producers' owners, members of the board of directors, or managers who were also government or CCP officials or representatives during the POR.
- Instead of complying with the Department's repeated requests for information the GOC merely repeated the same arguments made in the *Citric Acid Second Review* that the Department's line of questioning was not relevant.
- The GOC claimed in the instant review that certain producers had no company officials that were members of the CCP or otherwise held a GOC position. However, when pressed by the Department to describe the method the GOC utilized to make such a determination, the GOC claimed that information regarding CCP membership is not in its possession. Concerning the sulfuric acid producers in question, the GOC also refused to respond completely to the Input Supplier Appendix included in the Department's Initial QNR.
- Despite the GOC's recalcitrance, Petitioners submitted information indicating that important company officials at the two sulfuric acid producers at issue are members of the municipal CCP Committee.[281] Further, information supplied by Petitioners demonstrates that the municipal CCP Committee in question approves and jointly issues legislation, thereby indicating that the CCP takes an active role in governing the municipality.
- Concerning the third sulfuric acid producer addressed by the GOC in its briefs, the Department appropriately adversely assumed in the Post-Prelim Decision Memorandum that the producer was a government authority.[282]
- The GOC claimed that the producer in question was majority-owned by foreign investors during the POR. However, the GOC failed to respond to certain questions in the Input LTAR Appendix that the Department needed in order to fully examine whether the producer was a government authority.
- Petitioners have submitted information indicating that the producer in question is a government authority. For example, information on the record indicates that the producer revised its corporate governance rules such that the power of foreign company officials was diluted.[283] Information from Petitioners also indicates that a company official from the producer served as an elected legislator during the POR.[284]
- The information submitted by Petitioners refutes the claims made by the GOC in the instant and prior reviews that company officials may not simultaneously serve as a government official and senior company official.

[280] *See* Preliminary Decision Memorandum at 4. The identities of the sulfuric acid producers are proprietary.
[281] *See* Petitioners' Pre-Preliminary Comments (May 14, 2013) at Exhibit 3.
[282] *See* Post-Prelim Decision Memorandum at 3. The identity of the sulfuric acid producer is proprietary.
[283] *See* Petitioners' Pre-Preliminary Comments (May 13, 2013) at Exhibit 1.
[284] *Id*. at Exhibit 2.

- The Department's decision in the *Preliminary Results* and Post-Prelim Decision Memorandum to adversely assume that the three producers in question are government authorities is consistent with the court's holding in *ADM*.[285]

Department's Position: As explained in the *Preliminary Results* and Post-Prelim Memorandum, in order to do a complete analysis of whether the sulfuric acid producers are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information related to whether any individual owners, board members, or senior managers were government or CCP officials and to the role of any CCP committee within the companies.[286] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, the Department inquired into the means by which the GOC may exercise control over company operations and other CCP-related information.[287] The Department has explained its understanding of the CCP's involvement in the PRC's economic and political structure in the current, as well as past, PRC CVD proceedings,[288] and has explained why it considers the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.

In this review, the GOC provided none of the requested information.[289] Instead, the GOC argued that pursuant to Article 53 of the *Civil Servant Law*, government officials cannot serve as owners, members of the board of directors, or managers of the input producer without violating the law. It has further stated that the Department's CCP questions are not relevant to the investigation of LTAR programs and that, as a matter of PRC Law, the government cannot interfere in the management and operation of the sulfuric acid producers.[290]

Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.[291] As noted, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because public information suggests that the CCP exerts significant control over activities in the PRC.[292]

Specifically, the Department has determined 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."[293] Further, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a

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[285] *See Archer Daniels Midland Co. v. United States,* 917 F. Supp. 2d 1331 (CIT 2013) (*ADM v. United States).*
[286] *See* Preliminary Decision Memorandum at 4; *see also* Post-Prelim Memorandum at 2.
[287] *See* the Department's IQ (July 11, 2012) at the Input Producer Appendix.
[288] *See, e.g., Aluminum Extrusions from the PRC*, and Aluminum Extrusions IDM at "Provision of Primary Aluminum for LTAR;" *see also Solar Cells from the PRC*, and Solar Cells IDM at Comment 6. *See also* Additional Documents Memorandum, which includes Public Body Memorandum; and its attachment CCP Memorandum.
[289] *See Preliminary Results*, and accompanying Decision Memorandum at "Provision of Sulfuric Acid for LTAR."
[290] *See* GOC's Input Response (September 18, 2012) at III-6.
[291] *See NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("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.'"); *see, e.g., Ansaldo Componenti, S.p.A. v. United States,* 628 F. Supp. 198, 205 (CIT 1986) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").
[292] *See* Additional Documents Memorandum, which includes Public Body Memorandum; and its attachment CCP Memorandum.
[293] *Id.* at CCP Memorandum at 33.

controlling influence in the company's affairs.[294] Because the GOC did not provide the information we requested regarding this issue, we have no basis for reevaluating the Department's prior factual findings on the role of the CCP.

Citing to *AD CTL Plate from the PRC*, the GOC argues that the Department has previously found that the *Company Law* demonstrates the absence of legal state control over privately owned Chinese companies. However, this argument relies exclusively on the Department's findings with respect to separate rate applications in AD Proceedings,[295] which involve a different test, standard and focus with regard to "control." In NME AD proceedings, 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 control over export activities and not other aspects of the enterprise's operations.[296] 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.

As a result of the GOC's withholding of information and failure to cooperate by not acting to the best of its abilities, we adversely infer that CCP and/or government officials act as owners, board members, or senior managers of the relevant sulfuric acid producers. As stated above, the CCP, along with the formal state apparatus, is part of the "government" in China for purposes of the CVD law. This means that the CCP and the government controls the relevant producers, and therefore these producers are "authorities" within the meaning of section 771(5)(B) of the Act.[297]

Comment 7: Shandong Province Policy Loans

GOC's Arguments

- In the *Preliminary Results*, the Department cited language in the *Shandong Province Planning for Development of the Chemical Industries during the Twelfth Five-Year Plan* (*12th Five-Year Plan*) as the basis for concluding that the GOC has established industrial policies designed to promote lending to the citric acid industry. Specifically, the Department found that language in the *12th Five-Year Plan* mentioned the provision of financial support.
- Subsequent to the *Preliminary Results*, the GOC submitted a correction to the translation of the *12th Five-Year Plan*, which does not mention financial support for materials industries but rather focuses on the use of new technologies to reform the traditional industries, *i.e.*, citric acid. Such a statement cannot be support for a program on policy lending. The Department should refrain from countervailing any of RZBC Companies' loans under this program.

[294] *Id*. at Public Body Memorandum at 35-36, and sources cited therein.
[295] *See* AD CTL Plate Decision Memorandum at Comment 2.
[296] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013) (*OCTG from the PRC Review*), and accompanying Issues and Decision Memorandum (OCTG Review IDM) at Comment 5.
[297] *See ADM v. United States*, 917 F. Supp. 2d at 1341-42.

Petitioners' Rebuttal Arguments

- The *12th Five-Year Plan* and additional record evidence support the Department's preliminary decision to continue to countervail the policy loans at issue in this review. As Petitioners noted previously, the GOC waited more than one full year to claim that the original translation of one phrase in the *12th Five-Year Plan* was incorrect, and well after the deadline for submitting factual information. The GOC had multiple opportunities to discover the purported error. The GOC submitted its initial questionnaire response on September 4, 2012. The GOC stated that "{t}he current 12th five-year plan ... in effect during the POR" was the *12th Five-Year Plan*.
- Even though the Department has chosen to accept the GOC's untimely revised translation of the phrase in question, this does not affect the Department's preliminary findings that "the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the objectives and goals of the *12th Five-Year Plan*, in conjunction with the Government of Shandong's past policies to develop the citric acid industry."
- Aside from the one phrase discussed by the GOC, there is far greater evidence of a clear mandate for policy lending to preferred industries including the citric acid industry in the *12th Five-Year Plan*. The GOC ignores this other evidence. In its *12th Five-Year Plan*, Shandong Province states that the chemical industry "is an important energy and raw material industry" with a "decisive role in the national economy."[298] The chemical industry is also a "pillar industry of Shandong Province," and "to maintain the sustained, healthy and scientific development of the industry, we hereby make the plan."[299] As the Department noted in the *Preliminary Results*, "citric acid is listed as a biochemical categorized under 'traditional fine chemicals.'"[300] The *12th Five-Year Plan* calls for focused development "to improve the citric acid" industry in the province.[301] The "Supporting Measures" of the *12th Five-Year Plan* call for a policy to "transform and upgrade traditional industries" and to "make full use of the relevant policies introduced by" national and provincial governments through "government investment enterprises to invest in a combination of state- owned investment combined with private investment, increase capital investment{.}"[302]
- This very clear evidence of policy lending to the citric acid industry under the *12th Five-Year Plan* contradicts the GOC's assertion that the Shandong Province Policy Lending program terminated with the conclusion of the *Shandong Eleventh Five-Year Petro-Chemical Plan* on December 31, 2010.[303] The *12th Five-Year Plan* provides a "Guiding Ideology" for continued development of preferred industries such as "traditional fine chemicals" producers of citric acid. With regard to "traditional fine chemicals," the GOC identified continued development as a key goal of this "strategic industry."[304] The "Supporting Measures" of the *12th Five-Year Plan*, including policy lending and government investment, are the means to effectuate these policy goals. The GOC fails to acknowledge this information in its case brief and instead continues to rely upon the re-

[298] *See* GOC's 1SQR (March 1, 2013) at page 1 of Exhibit 9.
[299] *Id.*
[300] *See* Preliminary Results IDM at 14.
[301] *See* GOC's 1SQR (March 1, 2013) at page 19 of Exhibit 9.
[302] *Id*. at 21-22.
[303] *See* Preliminary Results IDM at 14.
[304] *Id*.

translation of one phrase. The Department should uphold its countervailability determination in the final results.

- Other documents on the record further rebut the GOC's claim. For example, the provincial government of Shandong Province directs all municipalities, counties, departments, enterprises, and institutions of higher education within the province to implement the *Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries (Guo Fa (2010) No. 32)* (*State Council Decision on Strategic Emerging Industries*).[305] That decision calls for the provinces to accelerate the development of strategic emerging industries in the PRC's provinces. Shandong Province implements the *State Council Decision on Strategic Emerging Industries* in the *Implementation Opinions of the People's Government of Shandong Province on Accelerating the Cultivation and Development of Strategic Emerging Industries (Lu Zheng Fa (2011) No. 15), May 3, 2011* (*Shandong Province Implementation Plan*).[306] This plan calls for various forms of assistance to designated projects, including to "actively obtain the support of policy banks and encourage policy credit loans to favor" strategic emerging industries.[307] A "project of industrialization and application of citric acid biological conversion technology" at RZBC Group is identified as one of 100 strategic emerging industry projects to receive assistance from Shandong Province.[308]
- Rizhao City also separately implemented the provincial directive in the *Implementation Opinions of the People's Government of Rizhao City on Accelerating the Development of Strategic Emerging Industries, Ri Zheng Fa (2011) No. 1*, (*Rizhao City Implementation Plan for Strategic Emerging Industries*). This directive includes various forms of government assistance to support strategic emerging industries, including government grants, loan interest subsidies, credit loans, preferential land policies, government procurement, and a host of other support measures. The *Rizhao City Implementation Plan for Strategic Emerging Industries* identifies RZBC Group as a company in one of the seven strategic emerging industries, namely, the biopharmaceutical industry. The GOC ignored other policy documents on the record which demonstrate the GOC's continuing policy to provide assistance to the citric acid industry through the provision of policy loans. The Light Industry 12th Five-Year Development Plan, for example, calls for implementing financial policies to support small- and medium-sized enterprises (SMEs) and for expanding financial support provided to SMEs. The plan also calls for a policy of financial support through mergers and acquisitions and restructuring to cultivate new large-scale enterprises. RZBC Juxian is a "small and medium-sized enterprise producing citric acid products.
- The continued existence of a policy lending program is also confirmed by the *Opinions of the People's Government of Shandong Province on Implementing Guo Fa (2011) No. 47 Document to Accelerate Industry Transformation and Upgrade, Lu Zheng Fa (2012) No. 17* (Apr. 16, 2012). This plan calls for renovating and upgrading traditional industries, and calls on financial institutions to increase credit loan support to technology renovation

[305] *See* Petitioners' Submission of Rebuttal Factual Information Associated with "Correction of Information on the Record" by the GOC dated November 8, 2013 (Petitioners' Re-Translation Rebuttal FIS) at Exhibit 1.
[306] *Id*. at Exhibit 2.
[307] *Id*. at para. 24.
[308] *Id*. at para. 80.

and technology innovation projects consistent with state industrial policies. As noted in the *Preliminary Results*, citric acid is categorized under "traditional fine chemicals" in the *12th Five-Year Plan*.

Department's Position: We disagree with the GOC. Notwithstanding the revised translation of a portion of the *12th Five-Year Plan*, the Department determines there is sufficient evidence on the record to continue to find the Shandong Province Policy Loans program countervailable. The *12th Five-Year Plan* outlines provisions to transform and "upgrade traditional industries" and "accelerate the development of strategic emerging industries" by making "full use of the relevant policies introduced by the national {and} provincial {governments}." Provincial policies directed to "accelerate" the development of strategic emerging industries are contained in the *Shandong Province Implementation Plan* and *State Council Decision on Strategic Emerging Industries.*[309] The GOC provided the *Shandong Province Implementation Plan* which included a list of the "First Batch of Provincial-Level Strategic Emerging Industry Projects of Shandong Province" naming RZBC Group as part of a project of industrialization and application of citric acid biological conversion technology.[310] The *Shandong Province Implementation Plan* "guide{s} financial institutions to increase the credit support for strategic emerging industries. Guide commercial banks to adjust and optimize the credit loan structure…Actively obtain the support of policy banks, and encourage policy credit loans to favor strateg{ic} emerging industries."[311] Similarly, the *State Council Decision on Strategic Emerging Industries* seeks "to speed up the cultivation and development of strategic emerging industries, . . .improve…{the} financial policy support system" by "encourage{ing} financial institutions to increase the credit loan support. Guide financial institutions to set up a credit loan management and loan evaluation system that fits the characteristics of strateg{ic} emerging industries. Actively promote the innovation of financial products."[312]

Based on this evidence, we find that RZBC's loans outstanding during the POR are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the objectives and goals of the *12th Five-Year Plan,* in conjunction with the Government of Shandong's past and present policies to develop the citric acid industry.

Comment 8: Creditworthiness

RZBC Companies' Arguments
For purposes of the final results, the Department should take the following facts into account and find that RZBC IE was creditworthy in 2011:

- The Department failed to consider the critical fact that RZBC IE took out a long-term commercial loan in 2010 from a private bank. The Department considers it dispositive evidence of creditworthiness if a firm received a long term commercial loan from commercial sources. *See* 19 CFR §351.505(a)(4)(i). However, in this case, the

[309] *See* GOC's 2SQR (May 10, 2013) at Exhibit 4 and Petitioners' Re-Translation Rebuttal FIS at Exhibit 1.
[310] *See* GOC's 2SQR (May 10, 2013) at Exhibit 4 and RZBC Companies' 1SQR (March 8, 2013) at Exhibit 7 "RZBC Juxian's Certificate of Strategic Emerging Industry."
[311] *See* GOC's 2SQR (May 10, 2013) at Exhibit 4.
[312] *See* Petitioners' Re-Translation Rebuttal FIS at Exhibit 1.

Department refused to even consider evidence of this loan because it was not provided in 2011. This was unreasonable.

- It is undisputed, under the Department's own regulations, that RZBC was creditworthy in 2010. None of the indicators between 2010 and 2011 changed so dramatically that they can support a finding that a dispositive creditworthy company suddenly became uncreditworthy in the space of a single year. Certainly, the Department cannot make such a finding without reasoning as to why a determination, by a commercial market economy bank, acting on market principles and with real world experience as to the creditworthiness of companies, is not a relevant piece of information.
- The Department also failed to consider the condition of the overall group in assessing the creditworthiness of RZBC IE. As the Department notes in its Preliminary Creditworthiness Determination, the RZBC companies consist of RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Juxian Co., Ltd., and RXBC IE. No bank is going to consider only the creditworthiness of RZBC IE without also considering the fact that it is a part of a larger group of companies that can cover its liabilities. The Department, however, ignores this issue stating that Petitioners only based their allegation on RZBC IE and implies that no party challenged this by citing to its decision in the CVD proceeding on certain oil country tubular goods from the PRC.[313] This is not accurate. RZBC Companies provided the Department with the required information for the consolidated companies noting that "all banks (government/private) will generally consider the overall group's capital, credit and financial situation."[314] RZBC Companies also noted that when RZBC IE received its loan from a private bank in 2010, its affiliated companies provided a guarantee for that loan.[315] If the Department had taken the consolidated group's condition into account, it would have found that the group and its members could obtain long term loans from conventional sources in 2011, given the group's financial information.

Petitioners' Rebuttal Argument

- The Department should reject RZBC Companies' arguments and continue to find that RZBC IE was uncreditworthy in 2011 in the final results. RZBC Companies argue that the Department did not follow its practice regarding the impact of current and quick ratios on the creditworthiness analysis. However, the nature of RZBC IE's ratios distinguishes the facts of this record from *Solar Cells from the PRC*. RZBC IE's ratios require an examination of RZBC IE's finances in other ways to determine if any underlying factors may have masked significant problems with RZBC IE's finances. This is exactly what the Department did here. In this instance, RZBC IE's 2011 profit levels magnified its 2011 cash flow-to-total liabilities ratio, which is an indicator of bankruptcy risk.
- The critical question in any creditworthiness analysis is whether a firm has enough cash to pay its liabilities. Here, RZBC IE's cash flow-to-total liabilities ratio, in conjunction with its 2011 profit levels, indicates that RZBC IE was on the brink of bankruptcy. The Department correctly relied upon other factors in determining whether RZBC IE had the funds to cover its liabilities, as any commercial banker would. The Department

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[313] *See* Preliminary Creditworthiness Determination at 2, footnote 4.
[314] *See* RZBC Companies' Fourth Supplemental CVD Questionnaire Response (4SQR) (August 5, 2013) at 3.
[315] *Id*. at 2.

explained that it "examined information pertaining to the present and past indicators of RZBC IE's financial health," and "its ability to meet costs and fixed financial obligations with cash flow, and evidence of its future financial position." This is consistent with 19 CFR 351.505(a)(4)(i).

- The Department was also correct to disregard the private loan that RZBC IE received in 2010. The Department's longstanding practice is to make creditworthiness determinations on a year-by-year basis. Thus, the question is whether a firm received commercial loans in the year in which the government loans were obtained. The loan obtained in 2010 has no bearing on whether RZBC IE was creditworthy in 2011.
- The Department should not rely on RZBC Companies' consolidated statements in making its determination because those consolidated financial statements are not audited, indicating that there may be erroneous information included in them. Further, given the nature of RZBC IE's balance sheet ratios, *i.e.*, the current and quick ratio, an in-depth, underlying examination of other indicators, such as cash flows, is warranted. RZBC's unaudited consolidated financial statement does not include a cash flow statement. As a result, it is impossible to conduct the same critical analysis on the "group as a whole."
- The fact that RZBC IE's affiliated companies guaranteed its 2010 loan is irrelevant because, as previously stated, creditworthiness determinations are made on a year-by-year basis, and information about a prior year's loan is not material to the Department's analysis.
- Furthermore, the fact that RZBC may leverage its loans through affiliated cross-guarantee schemes is evidence that RZBC IE is uncreditworthy. Petitioners placed publicly available information on the record earlier in this review which indicates that RZBC was involved in a government-sponsored cross-guarantee financing operation. While the Department rightly decided not to consider "RZBC IE's 2010 foreign bank loan" in its creditworthiness analysis for 2011, that information nevertheless shows that RZBC IE was uncreditworthy in 2011. Such guarantees permit RZBC IE to obtain a high level of debt it could not otherwise obtain.

Department's Position: Petitioners filed a creditworthiness allegation limited to RZBC IE for 2011 based on its audited unconsolidated financial statements. In our Creditworthiness Preliminary Determination, we examined the financial ratios and preliminarily determined the company was uncreditworthy based on its 2011 profit levels and high debt-to-equity ratio. As discussed in our past practice, we review creditworthiness on a consolidated or unconsolidated basis companies depending on the facts of the case.[316] Upon further examination of the record evidence of the instant review, we have conducted the creditworthy analysis for the final results based on the unaudited consolidated financials of the parent company, RZBC Group, because it wholly owns its subsidiaries RZBC Co., RZBC Juxian, and RZBC IE.[317] The audited financial statements of each individual company indicate significant inter-company financial transactions

[316] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and its accompanying Issues and Decision Memorandum (CFS IDM) at Comment 12; and Citric Acid First Review IDM at 9 – 10 and Comment 18.

[317] RZBC Group's unaudited consolidated financial statements were certified by RZBC company officials and its counsel as accurate and complete. The unaudited consolidated financial statements of RZBC Group are a more appropriate source to calculate the creditworthiness financial ratios than the audited unconsolidated financial statements of individual companies because inter-company transactions are deducted in the consolidated financial statements.

suggesting the ability to shift resources.[318] In 2011, RZBC Co. and RZBC Juxian guaranteed a commercial loan to RZBC IE, which further indicates integrated financial activities among these cross-owned affiliates. This approach is also consistent with *Citric Acid First Review*, where we used RZBC Group's consolidated financials in assessing creditworthiness.[319] For further details, *see* Creditworthiness Final Determination Memorandum concurrently dated with this decision memorandum.

Comment 9: Whether Provision of Land for Less Than Adequate Remuneration (LTAR) to Enterprises Located in Development Parks/Zones in the Donggang District is Countervailable

Petitioners' Argument

- The record confirms that the Rizhao Hi-Tech Industrial Development Zone in Donggang District is a designated region within the jurisdiction that provided land-use rights to RZBC Group's predecessor. As the GOC explained, "the Bureau of Land and Resources of Rizhao City" is the GOC "agency responsible for providing land and/or land-use rights in the development parks/zones of the Donggang District" and its "area of authority extends beyond the development parks/zones of the Donggang District." The record of this investigation also shows "distinctions in the government's provision of land-use rights within" the Rizhao Hi-Tech Industrial Development Zone and outside that zone. For example, the *Preferential Policies of Donggang District of Rizhao City for Investment Promotion* (Feb. 25, 2000) details the provision of free land use rights, land use rights at reduced rates, and the rebate of land use fees to enterprises located in development parks or zones of the Donggang District.[320]
- Consistent with *Drawn Stainless Steel Sinks From the PRC,*[321] the Department should determine in the final results that the GOC's provision of land-use rights for the land parcel in the Rizhao Hi-Tech Industrial Development Zone provides a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, and is specific under section 771(5A)(D)(iv) of the Act. This result is supported by the record of this review and is consistent with the Department's findings in the *Preliminary Results* regarding other parcels of land in the same the Rizhao Hi-Tech Industrial Development Zone that were acquired by RZBC Juxian and RZBC Co. in 2010 and 2011, respectively.

RZBC Companies' Rebuttal Arguments

- As explicitly explained in RZBC Companies' NSA questionnaire response, RZBC Co. did not purchase the land parcel at issue from the government.[322] Instead, RZBC Co.

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[318] *See* RZBC Companies' IQR at section "RZBC Group" at Exhibit 2 – 2009, 2010, 2011 Audit Reports; section "RZBC Co." at Exhibit 4 – 2009, 2010, 2011 Audit Reports; section "RZBC Juxian" at Exhibit 3 – 2009, 2010, 2011 Audit Reports; and section "RZBC IE" at Exhibit 2 – 2009, 2010, 2011 Audit Reports.
[319] *See* Citric Acid First Review IDM at 9 -10 and Comment 18.
[320] *See* Petitioners' NSA (September 26, 2012) at Exhibit 8.
[321] *See Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Drawn Stainless Steel Sinks from the PRC*), and accompanying Issues and Decision Memorandum (Drawn Stainless Steel Sinks IDM) at Section I.D – Land for LTAR to Companies Located in Industrial or Other Special Economic Zones.
[322] *See* RZBC Companies' (NSAQR) (March 8, 2013) at 10.

> obtained the land parcel in 2009 through a merger with another company.[323] Although the original lease of land was made by Company X in 2006, the land was transferred on several occasions. Neither RZBC Co. nor the company with which it merged obtained the land from an authority within the meaning of the statute and as such the land is not countervailable. Therefore, for the final results, the Department should continue to find that RZBC Co. did not receive a benefit from the land parcel. If the Department, however, determines to countervail the land, it should do so for the transferred value.

Department's Position: We disagree with Petitioners. The Department initiated an investigation into whether RZBC Companies received land-use rights for LTAR, exemptions from government land earnings, and a refund of the land grant fee. RZBC Companies stated it did not receive its land-use rights for free. To the contrary, RZBC Group's predecessor, Company X, purchased the land-use rights in December 7, 2006 for a given price.[324] That predecessor then transferred the land-use certificate to Company Z on July 4, 2007; which was prior to Company Z's November 5, 2009, merger with RZBC Co.[325] There is no record evidence to support Petitioners' assertions that Company X purchased the land-use rights at a discounted rate. The language within *Preferential Policies of Donggang District of Rizhao City for Investment Promotion* (February 25, 2000) (*Policies of Donggang District*) does not identify an enterprise's ability to purchase land-use rights at a discounted rate. The government laws and regulations provided by the GOC do not provide any record evidence of land-use rights for LTAR.[326] The *Policies of Donggang District* state that enterprises renting land will be able to do so at reduced rents at "half of the minimum amount required by the state."[327] However, Company X purchased its land-use rights, and did not rent its land.[328]

Further, we disagree with Petitioners that an increase in the value of the land in question between 2006 and 2009 constitutes evidence that the GOC operates a land for LTAR program in the Donggang District. RZBC Companies provided the January through April 2009 audit report for Company Z dated May 18, 2009, and RZBC Co.'s August 2009 accounting vouchers which both provided the same value information for Company Z.[329] We find that the valuation for land in 2009, indicating an increase in the land's value over the 2006 purchase price, is not dispositive evidence that the land-use rights purchased in 2006 were made for LTAR. Moreover, RZBC Companies and the GOC reported that the Company X was not exempt from paying land earning fees, was required to pay the land grant fee in full 60 days from signing the contract, and did not receive a refund of the land grant fee.[330] Thus, we find no evidence indicating that provision of land-use rights for LTAR program exists.

In the *Preliminary Results*, the Department preliminarily found the "Provision of Land for LTAR to Enterprises Located in Development Parks/Zones in the Donggang District" not used. We clarify for our final results that we find RZBC Companies did not use the exemption of land

[323] *Id.* at 10-1.
[324] *See* RZBC Companies' 4SQR (July 22, 2013) at 6, 7, and Exhibit 9.
[325] *See* RZBC Companies' 2SQR (May 10, 2013) at 6.
[326] *See* GOC's Fourth Supplemental Questionnaire Response (GOC 4SQR) (July 22, 2013) at Exhibits 1 through 8.
[327] *See* Petitioners' NSA at Exhibit 8.
[328] *See* RZBC Companies' 4SQR (July 22, 2013) at Exhibit 8 and 9.
[329] *See* RZBC Companies' NSAQR (March 8, 2013) at Exhibit 9and 2SQR (May 10, 2013) at Exhibit 8.
[330] See RZBC Companies' 4SQR (July 22, 2013) at 8.

earning fees and refund of land grant fees of this program. With regard to the land-use rights for LTAR allegation of this program, there is not sufficient evidence on the record to warrant an affirmative finding that land-use rights were purchased for LTAR. Hereinafter, the program title is revised to, "Exemption and Refund of Fees and Reduced Rents for Enterprises Located in Development Parks/Zones in Donggang District."

Comment 10: Whether Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province is Countervailable

RZBC Companies' Argument

- RZBC Companies explained in their questionnaire response that the three pieces of land purchased by RZBC Co. and RZBC Juxian remained vacant and were not involved in the production of any merchandise.[331] As such, there is no reasonable basis for the Department to impose countervailing duties based on RZBC Companies' purchases of the land given that the land was not used in the production of subject merchandise, and the land purchase did not benefit the company. In short, because the land did not provide financial assistance that benefited RZBC Companies' production or manufacturing operations, directly or indirectly, it is not countervailable. Therefore, for purposes of the final results, the Department should decline to impose any countervailing duty based on the three pieces of land purchased during the period January 1, 2010, through the end of the POR.

Petitioners' Rebuttal Argument

- The Department should reject RZBC Companies' argument. The statute explains that a "determination of whether a subsidy exists shall be made without regard ... to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise."[332] The statute also instructs that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph."[333]
- RZBC Companies ignore the fact that the Department is not required to consider the effect of the subsidy. In addition, 19 CFR 351.503(c) states that in considering whether a benefit is conferred, the Department "is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered." With LTAR programs in particular, the Department measures the benefit "to the extent that such goods or services are provided for less than adequate remuneration."[334] That is exactly what the Department did here.
- RZBC Companies also failed to show that these LTAR land acquisitions were tied to any non-subject merchandise at the time of bestowal. As stated in 19 CFR 351.525(b)(5)(i), "{i}f a subsidy is tied to the production or sale of a particular product," the Department "will attribute that subsidy only to that product." In *Bottom Mount Combination*

[331] *See* RZBC Companies' NSAQR (March 8, 2013) at 4-5.
[332] *See* Section 771(5)(C) of the Act.
[333] *Id*.
[334] 19 CFR 351.511(a)

> *Refrigerator-Freezers From Korea,*[335] the Department found that the respondent "provided no information that would allow the Department to determine that tax credits received ... are tied to the production or sale of any product." The Department further stated that "there is no additional information that would allow the Department to determine that the subsidy was intended to benefit any particular product, the intended use was known to the subsidy giver and was so acknowledged prior to or concurrent with the bestowal of the subsidy."[336] The Department further determined that the "untied tax credits benefit the company as a whole, and this it is appropriate to attribute {the respondent's} receipt of tax credits under the program to the company's total sales."[337] The same is true here. RZBC Companies as a whole benefit from purchasing multiple land tracts in an industrial zone where it already operates for LTAR. RZBC Companies' assertion that "the land did not provide financial assistance that benefitted RZBC Companies' production or manufacturing operations, directly or indirectly" is irrelevant. Thus, the Department should continue to countervail these three land purchases.

Department's Position: We disagree with RZBC Companies. RZBC Companies' argument that the subsidy program did not confer a benefit because the land purchased for LTAR remains undeveloped is not supported by the statute or the Department's regulations. RZBC Companies received its benefit at the time of purchase, when it paid a preferential land price due to its strategic emerging industries status.[338] Whether RZBC Companies build a production facility or converted it to commercial property is of no consequence. Section 771(5)(C) of the Act expressly states that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists…." The Department's CVD regulations also state that the Department shall not consider the effect of the subsidy when conducting its subsidy analysis:

> In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, *including its prices or output, or how the firm's behavior otherwise is altered.*[339]

"Once the firm receives the financial contribution, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince."[340] Moreover, on the record of the instant review, the land-use rights contracts do not indicate the purchases are contingent upon the completion of citric acid facilities; therefore the subsidy is not tied to a particular product as referenced in 19 CFR 351.525(b)(5)(i). Thus, consistent with the "Attribution of Subsidies" section above, we find the Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province is attributable to the total sales of RZBC Co., RZBC Juxian, and RZBC IE.

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[335] See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 17410 (March 26, 2012) (*Bottom Mount Combination Refrigerator-Freezers From Korea)* and accompanying Issues and Decision Memorandum (Bottom Mount Combination Refrigerator-Freezers From Korea IDM) at Comment 3.
[336] *Id.*
[337] *Id.*
[338] *See* RZBC Companies' NSAQR (March 8, 2013) at Exhibit 1-3.
[339] *See* 19 CFR 351.503(c), emphasis added.
[340] *See Preamble* at 63 FR 65403; and Bottom Mount Combination Refrigerator-Freezers From Korea IDM at Comment 3.

Comment 11: Whether Limestone Flux is Calcium Carbonate and sold at LTAR

RZBC Companies' Argument

- The Department should find that the allegation of the subsidy is insufficient because Petitioners' new subsidy allegation (NSA) only covered precipitated calcium carbonate (PCC) under the Harmonized Tariff Schedule (HS) heading of Chapter 28 and not all forms of calcium carbonate, *i.e.*, chalk, limestone, or marble, known as ground calcium carbonate (GCC). While limestone flux is a form of calcium carbonate, just as chalk and marble are forms of calcium carbonate, Petitioners' NSA was for a completely different commodity than the limestone or limestone flux used by RZBC Companies in its production.[341] As such, the products used by RZBC Companies in its production were not covered by Petitioners' allegation.
- Petitioners calculated the NSA benefit by using Chapter 28 of the HS which covers PCC that is derived chemically or through methods beyond mechanical or physical processing.[342] Moreover, the RZBC Companies submitted additional evidence indicating limestone and calcium carbonate are independently marketed as distinct commodities.[343] The HS headings demonstrate that each of these products is treated as distinct commodities regardless of whether they share a similar chemical form.
- Ignoring the differences between the commodities is particularly problematic in light of the fact that Petitioners' own expert described the raw material as limestone and not calcium carbonate.[344] The only evidence on the record shows that there are allegations of subsidies with regard to a different product (*i.e.*, PCC) that is not limestone. As such, the Department cannot find that RZBC benefited from its purchases of limestone for LTAR. Nor can the Department find that RZBC benefited from the provision of chemically produced "calcium carbonate" at LTAR, given that RZBC made no purchases of this product. Therefore, for the final results there is no record evidence or reasonable basis to calculate a subsidy for the provision of calcium carbonate at LTAR.

Petitioners' Rebuttal Argument

- As the Department explained in the Post-Preliminary Results, "Parties have submitted evidence on the record that explains that the chemical composition of calcium carbonate is $CaC0_3$."[345] The Department further explained that "calcium carbonate exists in two types: its natural form, *i.e.*, limestone (limestone flux), chalk, marble, known as ground calcium carbonate; and through the direct carbonization of hydrated lime known as precipitated calcium carbonate." As the Department noted, "Both types are the exact same chemical formula."[346] Thus, the RZBC Companies' claim that this subsidy program covers "a completely different commodity than the limestone or limestone flux used by RZBC in its production" is wrong.

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[341] *See* RZBC Companies' NSAQR (March 1, 2013) at 11 and 12.
[342] *Id.*; *see also* Petitioners Pre-Preliminary Comments, dated May 13, 2013, (asserting that HS 283650, or PCC, is the appropriate benchmark); Petitioners' NSA dated September 26, 2012 at 42 (using HS 283650 to calculate the benefit); and Exhibit 30 (article from Calcium Carbonate (Industrial Minerals Association of North America) (describing how PCC is produced and also noting that PCC is different from other forms of calcium carbonate).
[343] *See* RZBC Companies' Rebuttal Submission (May 17, 2013)at Exhibit 2.
[344] *Id.* at Exhibit 4.
[345] *See* Post-Preliminary Results at 11 footnote 55.
[346] *Id.*

- RZBC Companies' claim that limestone flux and calcium carbonate are independently marketed as distinct commodities is contradicted by the very evidence that the RZBC Companies provided.[347] One product series identified by the RZBC Companies is described as "high-quality, white, finely ground calcium carbonates{.}"[348] The same exhibit also states that in the United States Food Chemicals Codex (FCC), which lists the requirements for materials used in foods, there are two separate listings for ingredients based on the chemical calcium carbonate: FCC calcium carbonate and FCC limestone. Purity requirements differ for the two, primarily in the level of calcium carbonate content required, and in the acid-insoluble components allowed.[349] The evidence confirms that the RZBC Companies' emphasis on "limestone flux" is a distinction without a difference. Limestone flux is calcium carbonate. Thus, the RZBC Companies' claim that "it does not use calcium carbonate in its production" is wrong.
- The RZBC Companies' reliance on the difference in HS headings is also incorrect. The relevant HS headings confirm that the RZBC Companies use high-grade calcium carbonate in the production of subject merchandise and that the Department appropriately countervailed its purchases under the calcium carbonate program.
- Chapter 28 of the HS covers high-grade calcium carbonate suitable for use in pharmaceuticals and food. The notes to the HS state that the calcium carbonate categorized under Chapter 28 is "{u}sed as an extender, in the preparations of toothpastes and face-powder, in medicine (treatment of rickets), etc." This is consistent with the information provided by the RZBC Companies, which identify "major applications for food grade limestone" as "chewing gum masticating and dusting agent," "animal and pet food calcium fortification," "toothpaste abrasive," "frosting and confectionary," and "food processing."[350] The RZBC Companies' submission also discusses "FCC Limestone" (which is identified as consisting of ">94.0% calcium carbonate") and "FCC Calcium Carbonate" (which is identified as consisting of ">96.0% calcium carbonate"). As the Department found in the *Preliminary Results*, both are comprised of high-grade calcium carbonate.
- The RZBC Companies have made no showing that they produce high grade pharmaceutical or food use citric acid with low-grade, dirty limestone rocks used to manufacture "cement." Rather, the information available indicates that the RZBC Companies use high grade calcium carbonate, such as the calcium carbonate used in "medicine" and "toothpaste," and covered in Chapter 28 of the HS, to produce high grade citric acid.
- The World Customs Organization (WCO) HS Explanatory Notes (ENs) for Chapter 25 of the HS state that limestone flux "is chiefly employed as a flux in the iron and steel industry."[351] The WCO ENs further state that "the heading also includes these materials when presented in powder form for soil improvement."[352]

[347] *See* RZBC Companies' Rebuttal Submission at Exhibit 2.
[348] *Id*. at Exhibit 2.A.
[349] *Id*. at Exhibit 2.A.
[350] *Id.*
[351] *See* RZBC Companies' NSA Rebuttal Comments (NSA Rebuttal) (March 25, 2013) at Attachment 1.
[352] *Id.*

Department's Position: We disagree with the RZBC Companies' argument that limestone flux and calcium carbonate are two different commodities and, thus, two different inputs requiring separate subsidy initiations. As the Department explained in the Post-Preliminary Results and below at Comment 12, parties have submitted evidence demonstrating that the chemical composition of calcium carbonate is $CaCO_3$. Calcium carbonate exists in two types: its natural form, *i.e.*, limestone (limestone flux), chalk, marble, known as GCC; and through the direct carbonization of hydrated lime known as PCC. Both types have the exact same chemical formula.[353] We address how GCC and PCC are integral to the citric acid production process below. *See* Comment 12.

The Department initiated an investigation on an LTAR allegation involving the provision of calcium carbonate. We acknowledge RZBC Companies' argument that PCC is listed under Chapter 28 of the HS, and limestone flux (*i.e.*, GCC) is listed under Chapter 25 of the HS. However, we find that this issue essentially concerns a matter of grades within the same product category and which benchmark is the most comparable to the grade of the input purchased by the RZBC Companies during the POR. *See* Comment 12. With regard to the calcium carbonate industry, information on the record supports the Department's post-preliminary finding that the calcium carbonate industry includes both GCC and PCC. The GOC responded that the narrowest industry association that would include calcium carbonate producers is the China Inorganic Salts Industry Association.[354] The China Inorganic Salts Industry Association conducted the 2011 National Calcium Carbonate Industry Annual Meeting with "participants… including approximately 330 leaders, engineers, and technicians from precipitated calcium carbonate and ground calcium carbonate enterprises and research institutes, and equipment, agents, and automatic appliances manufacturing enterprises, who were gathering together, discussing the development of the industry."[355] Thus, we find the fact that PCC enterprises and GCC enterprises both attended the National Calcium Carbonate Industry Annual Meeting supports our conclusion that PCC and GCC may be considered calcium carbonate for purposes of our LTAR subsidy allegation. Additional information submitted by the GOC in its new subsidy allegation questionnaire response supports our conclusion in this regard. For example, the GOC's new subsidy allegation questionnaire response references GCC and PCC as the calcium carbonate industry.[356] The information describes the use of both GCC and PCC in food, pharmaceutical, and industrial applications, *i.e.*, paper and plastics.[357]

Therefore, the Department finds that GCC and PCC constitute different grades of the same input, calcium carbonate. We continue to find that we appropriately included the RZBC Companies' purchases of GCC (*i.e.*, limestone flux) in our analysis of whether the GOC sold calcium carbonate to the RZBC Companies for LTAR during the POR. *See* Comment 4 for a discussion on specificity and sections "Use of Fact Otherwise Available and Adverse Inferences" and "Provision of Calcium Carbonate for LTAR" on "authorities."

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[353] *See* GOC's NSAQR (March 1, 2013) at Exhibit 3, Petitioners' Factual Information Submission (FIS) (November 20, 2013) at Tab 23, and RZBC Companies' NSA Rebuttal (March 25, 2013) at Attachment 1.
[354] *See* GOC's NSAQR (March 1, 2013) at 22 and Exhibit 3.
[355] *See* Petitioners' Deficiency Comments (March 18, 2013) at Exhibit 6
[356] *See* GOC's NSAQR (March 1, 2013) at Exhibit 2.
[357] *See* GOC's NSAQR (March 1, 2013) at Exhibit 3.

Comment 12: Whether the Department Should Modify the Calcium Carbonate Benchmark to Use World Export Prices Derived from Chapter 28 of the Harmonized Tariff Schedule

Petitioners' Argument

- In the final results, the Department should measure the benefit RZBC received from the calcium carbonate for LTAR program using world export prices derived from Chapter 28 of the HS. Calcium carbonate ($CaC0_3$) is a critical raw material chemical input used during the extraction or recovery phase of citric acid production. The record of this review demonstrates that RZBC uses high purity calcium carbonate.[358] Petitioners relied upon RZBC's own chemical equations, provided in the *Citric Acid First Review*, to calculate the expected calcium carbonate purchases in the POR.[359] As a result, and pursuant to the Department's longstanding practice, the Department should take the simple average of the high grade calcium carbonate export prices placed on the record by Petitioners to construct the world price for benchmark purposes.
- The calcium carbonate used to produce citric acid is of a higher quality than that claimed by RZBC. RZBC reported that it "designated" the calcium carbonate it uses to produce citric acid as "limestone flux" because it uses "the limestone to purify the citric acid by separating solid and liquid substances."[360] However, all of the citric acid RZBC produces is high-grade citric acid suitable for pharmaceutical or food use. The GOC designated RZBC to be a "key enterprise" in the "New Pharmaceutical Industry."[361] As a result, the calcium carbonate raw material input used to produce the high grade citric acid must also be of a high grade. Thus, notwithstanding RZBC's claim that Chapter 25 of the HS, covering limestone flux, is the proper benchmark category, Chapter 28 of the HS, covering precipitated calcium carbonate, is the appropriate classification for this input.
- RZBC's production and quality standards are common in the citric acid industry. Citric acid is used in pharmaceutical, food, and household items.[362] According to the U.S. International Trade Commission (ITC), "{e}nd uses in foods, beverages, and pharmaceuticals constitute an upper tier, while detergent formulation and industrial uses make up a lower tier."[363] The RZBC Companies, like most large-scale citric acid producers, manufactures citric acid to the "upper tier," for pharmaceutical or food use.[364] Thus, the RZBC Companies' claim that it uses low-grade calcium carbonate to produce high-grade citric acid is not credible.
- The chemical pure calcium carbonate is classified under Chapter 28 of the HS.[365] In contrast, limestone flux is covered in the "minerals" chapter of the HS in Chapter 25

[358] *See* Petitioners' Case Brief (November 18, 2013) at Exhibit 1 and Petitioners' Deficiency Comments (March 18, 2013) at Exhibit 2.
[359] *See Citric Acid First Review*, and accompanying Citric Acid First Review IDM.
[360] *See* RZBC Companies' NSAQR (March 1, 2013) at 11.
[361] *See* RZBC Companies' NSAQR (March 1, 2013) at Exhibit 7.
[362] *See Citric Acid and Certain Citrate Salts from Canada and the PRC*, Inv. No. 731-TA-1151-1152 (Final), USITC Pub. 4076 (May 2009) (*ITC Final Determination*) at 8.
[363] *Id*. at I-10.
[364] *Id.*
[365] *See* Petitioners' New Subsidy Allegation Benchmark Submission (NSA Benchmark Submission) (March 18, 2013) at Exhibit 1 at 28-21.

(2521).[366] Chapter 25 covers impure minerals and stones mined from the earth. The HS defines the limestone flux covered under Chapter 25 as follows: "Limestone flux; limestone and other calcareous stone, of a kind used for the manufacture of lime or cement."[367] Furthermore, the WCO EN for Chapter 25 states that limestone flux "is chiefly employed as a flux in the iron and steel industry" and that "the heading also includes these materials when presented in powder form for soil improvement." These specified end use applications provide further evidence that Chapter 25 of the HS covers a lower grade of limestone than that used to make calcium carbonate. Chapter 25 of the HS is, thus, an inappropriate HS classification for measuring the benefits of calcium carbonate provided to RZBC for LTAR.

- According to RZBC, Chapter 25 is more appropriate because limestone flux is "naturally derived" GCC that is produced through a "mechanical or physical process." However, the Department considered and rejected a similar claim made by the respondents in the *LTFV Citric Acid Investigation* and should do so again in this review.[368]

RZBC Companies' Rebuttal Arguments

- RZBC stated unequivocally in its submissions that it uses limestone powder that is naturally derived from limestone rock through mechanical or physical processes such as grinding, powdering, sifting, and screening, with no other chemicals or minerals added to the limestone.[369] There is no record evidence that RZBC's limestone flux is not derived from such natural limestone. Petitioners only state that RZBC "must" use a very pure limestone, and as such, it would require the highly pure predicated calcium carbonate reported under Chapter 28 of the HS.
- Petitioners fail to acknowledge that the offhanded reference in the *ITC Final Determination* to "calcium carbonate" is followed by a detailed description of the production process that refers to "lime," thus undercutting Petitioners' argument that limestone cannot be used for upper tier uses. There is nothing in the headings, descriptions, or explanatory notes of the HS or WCO that addresses or establishes purity in Chapter 28 or 25 of the HS. Petitioners provide no evidence that Chapter 28 or 25 of the HS represents a purer commodity. What is clear from the record is that the explanatory notes unequivocally state that Chapter 28 "excludes natural limestone (Chapter 25) and chalk," the input used by RZBC.[370]
- Petitioners' characterization of the *ITC Final Determination* is also incorrect. First, as with the HS Chapters, the *ITC Final Determination* does not provide any purity description or requirement for calcium carbonate or limestone. Second, the *ITC Final Determination* does not provide an HS for limestone or calcium carbonate on which the Department could rely to value RZBC's limestone flux raw material. Finally, Petitioners' citation to the *ITC Final Determination* regarding calcium carbonate does not indicate that "calcium carbonate ($CaC0_3$) is a critical raw material chemical input used during the

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[366] *See* Petitioners' NSA Benchmark Submission at Exhibit 3 at 25-5.
[367] *Id.*
[368] *See Citric Acid and Certain Citrate Salts from the People's Republic of the PRC: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) (*LTFV Citric Acid Investigation*) and accompanying Issues and Decision Memorandum at Comment 5B ("we continue to find that HTS Chapter 28, which is specific to calcium carbonate, is the most appropriate category with which to value this input").
[369] *See* RZBC Companies' NSAQR (March 1, 2013) at 4 - 5.
[370] See RZBC Companies' NSA Rebuttal (March 25, 2013) at Attachment I (quote from the WCO).

extraction or recovery phase of citric acid production."[371] In fact, the *ITC Final Determination* does not discuss calcium carbonate at all in its explanation of that phase of production.[372] Instead, it explains that lime/limestone is extracted in the form of calcium sulfate and charcoal slurry after the sulfuric acid is added to the crude citric acid. This description matches the description RZBC provided in its May 17, 2013, comments, when it said that it is not necessary for the lime/limestone to be "food grade" or "pharmaceutical grade" because none of the lime/limestone used in the production process at this stage is included in RZBC's final product of subject merchandise.[373] Similarly, information submitted by Petitioners in the concurrent AD review explains that purification of the citric acid occurs after the lime/limestone and hazardous sulfuric acid are introduced.[374]

- Petitioners' arguments regarding limestone also are belied by Petitioners' own hired expert for the concurrent AD review. That expert sent production surveys to major non-Chinese citric acid producing companies (including ADM, Cargill and Tate & Lyle) asking them to provide production information. These surveys listed various potential raw materials that could be used in the production of citric acid, including lime and limestone. Significantly, there is not a single mention of "calcium carbonate" as a raw material included in the production survey, a survey that was created according to Petitioners' expert's understanding of the citric acid production process.[375]
- Petitioners' citation to the *LTFV Citric Acid Investigation* is not appropriate because the two records are based on responses from companies other than RZBC, and the information included on this record clearly rebuts Petitioners' erroneous characterizations of the raw material used by RZBC. Moreover, there is no evidence that RZBC and the respondents in the *LTFV Citric Acid Investigation* have similar production processes or used the same raw materials.
- There is no record evidence indicating that "food grade" citric acid requires "food grade" limestone.
- The Department cannot reasonably use a benchmark based on an HS heading that does not represent the raw material used in the manufacture of subject merchandise.
- Furthermore, Petitioners' benchmark information for Chapter 28 of the HS suffers from the same problems addressed by RZBC in its case brief for the other benchmarks and does not take into account any factors of comparability with respect to what RZBC used in its production.
- Commerce cannot reasonably find that RZBC has purchased calcium carbonate at LTAR since it never used "calcium carbonate" in its production.

GOC's Rebuttal Arguments

- In the event the Department continues to countervail calcium carbonate for LTAR, it is obligated to calculate the countervailing duty to be applied, if any, to this program as

[371] Petitioners' Case Briefing at 9 (citing to *ITC Final Determination* at 23 (in which Petitioners quote "In the second stage, the crude citric acid is recovered and refined.")
[372] *See ITC Final Determination* at I-11-2 (internal citations omitted)(emphasis added).
[373] *See* RZBC Companies' Pre-Preliminary Rebuttal (May 17, 2013) at 2.
[374] *See* RZBC Companies' Pre-Preliminary Rebuttal (May 17, 2013) at Exhibit 4 (Vogelbusch Citric Acid Production brochure).
[375] *Id.*

> accurately as possible.[376] There can be no dispute that 19 CFR 351.511 seeks to compare the respondent's purchase of a good and the market price for that same good in determining the adequacy of remuneration. Nor can there be any dispute that the more similar the benchmark is to the actual good being purchased, the more accurate the CVD rate will be.[377] Accordingly, in this case, the Department should select as the benchmark a price for a product that most closely approximates the actual product purchased by RZBC.

Department's Position: We disagree with the RZBC Companies' assertion that Petitioners failed to provide evidence that calcium carbonate ($CaCO_3$) is a critical raw material in the production of citric acid. Further, the RZBC Companies' argument that calcium carbonate is not a part of the lime/sulfuric acid production process is false. As described in the *ITC Final Determination* and referenced by RZBC Companies' in its rebuttal briefs, calcium hydroxide ($Ca(OH)_2$), also known as hydrated lime, is the lime in the lime/sulfuric acid process.[378] That information explains that calcium hydroxide is calcium oxide (CaO) plus water (H_2O) and that calcium oxide, in turn, is derived from calcium carbonate.[379]

Moreover, the RZBC Companies submitted in the *First Citric Acid Review*, and placed on the record of the instant review, its citric acid production methodology and chemical reaction equation for an essential process in its production methodology.[380] For a detailed description, *see* Final Results Calculation Memorandum. That equation makes clear whether GCC or PCC is used, the fundamental chemical composition of $CaCO_3$ is what matters to the chemical reaction. Because both grades have the same chemical composition, both grades can be used to create calcium hydroxide in the lime - sulphuric acid process. Further, both GCC and PCC have applications in food, pharmaceutical, and industrial end-uses, suggesting that they are interchangeable for purposes of that chemical reaction.[381] Thus, we find that there is evidence that calcium carbonate ($CaCO_3$) is a critical raw material for citric acid production.

However, in light of the evidence, the Department disagrees with Petitioners that we should calculate the benchmark for RZBC Companies' limestone purchases using Chapter 28 of the HS.

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[376] *See Al Tech Specialty Steel Corp. v. United States*, 28 C.I.T. 1468, 1504 (2004) (noting that the Department must follow an "important policy of the antidumping and countervailing duty laws -- calculating antidumping and countervailing duties accurately").

[377] *See Zhaoqing New Zhongya Aluminum Co. v. United States,* 2013 Ct. Intl. Trade LEXIS 92, 10-11 (June 27, 2013) (rejecting as a benchmark for undeveloped land in the PRC a developed land price from Thailand); *see Certain New Pneumatic Off-the-Road Tires from the People's Republic of the PRC: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC Investigation*)(explaining that "in order to accurately reflect the benefit provided through these sales of {the subject input}at less than adequate remuneration, the Department must make an 'apples-to-apples' comparison"); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) (finding a species-specific benchmark for timber to be more appropriate than a generic timber value).

[378] *See ITC Final Determination* at 23, and Petitioners' FIS (November 20, 2013) at Tab 1 and Tab 23.

[379] *Id*.

[380] *See* Petitioner's Deficiency Comments (March 18, 2013) at Exhibit 2 and RZBC Companies' IQR (September 6, 2012) at RZBC Co. at Exhibit 2A.

[381] *See* RZBC Companies' Pre-Preliminary Rebuttal (May 17, 2013) at Exhibit 2; GOC's NSAQR (March 1, 2013) at Exhibit 3, Petitioners' FIS (November 20, 2013) at Tab 23, and *see also* RZBC Companies' NSA Rebuttal at Attachment 1.

The Department recognized in our Post-Preliminary Results that GCC and PCC are different grades of the same input, as GCC is calcium carbonate derived from its natural form and PCC is derived through the direct carbonization of hydrated lime (*i.e.*, calcium hydroxide).[382] Petitioners have not provided sufficient evidence to deviate from the Department's post-preliminary finding that Chapter 25 of the HS is the most appropriate source for the benchmark with which to compare RZBC Companies' purchases. As the Department explained in our Post-Preliminary Results, where possible, it is the Department's practice to compute benefit calculations for input for LTAR programs using benchmark price data for the particular input product under examination.[383]

Petitioners cite to the *LTFV Citric Acid Investigation*, where the Department found that the respondents purchased PCC as the input in the production of citric acid.[384] However, it is the Department's practice to consider the record of each proceeding individually and as RZBC Companies argues, those respondents' purchases are not RZBC Companies' purchases of the same input.[385] Further, in the concurrent AD antidumping administrative review, the Department found that RZBC Companies purchased GCC and utilized Chapter 25 as the surrogate value.[386]

Further, we are not convinced by Petitioners' argument that Chapter 28 of the HS should be the source of the benchmark prices based on RZBC Companies' production of "high-grade" citric acid. RZBC Companies have certified their GCC purchases as complete and accurate.[387] Petitioners have not provided supporting documentation to counter RZBC Companies' certification. As stated above, record evidence indicates that PCC and GCC have applications in food, pharmaceuticals, and industrial uses, which corresponds to citric acid's various applications. Therefore, we find the purity of the PCC or GCC irrelevant.

Thus, for the reasons discussed above, we continue to find it is appropriate to use prices for GCC, as listed in Chapter 25 of the HS, as the tier two benchmark for determining whether the RZBC Companies' purchases of GCC during the POR conferred a benefit under the provision of calcium carbonate for LTAR program.

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382 *See* Post-Preliminary Results at "Provision of Calcium Carbonate for LTAR" footnote 55, and Petitioners' FIS (November 20, 2013) at Tab 23.

383 *See* Post-Preliminary Results at "Provision of Calcium Carbonate for LTAR," and *Steel Wheels from the PRC*, and Steel Wheels IDM at Comment 15; *see also CWASPP from the PRC*, and accompanying CWASPP IDM at "Provision of SSC for LTAR" (where the Department compared prices by steel grade); *Hot-Rolled Flat Products from India*, and Hot-Rolled Flat Products India IDM at "Sale of High-Grade Iron Ore for LTAR" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and *Softwood Lumber Review*, and accompanying Softwood Lumber Review IDM at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" (where the Department computed species-specific benefits).

384 LTFV Citric Acid Investigation IDM at Comment 5B.

385 RZBC Companies' Rebuttal Brief (November 25, 2013) at 9-10.

386 *See* Additional Documents for Post-Prelim Memorandum at Attachment 2 (Memorandum to the File, "Final Results of the Second Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum," dated December 4, 2012) and 3 (Memorandum to the File, "Preliminary Results of the Third Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum," dated June 3, 2013 and attachment 1.).

387 *See* RZBC Companies' NSAQR (March 1, 2013).

Comment 13: Benchmark Issues

A. Whether the Available World Market Prices for Input Benchmarks are Adequate

RZBC Companies' Argument

- Based on section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(ii), for the LTAR benefit calculation, the benchmark price used by the Department under the tier two calculation must: (1) represent a world market price where it is reasonable to conclude that such a price would be available to the RZBC Companies or purchasers in the PRC; (2) take into account factors of comparability; (3) include market conditions that include price, quality, availability, marketability, transportation, and other conditions of purchase or sale; and (4) be averaged to the extent practicable.
- For all three inputs for LTAR benchmarks, the Department: (1) failed to cite any record evidence that shows that the benchmark prices it used represented world market prices that would reasonably be available in the PRC; and (2) failed to take into account factors of comparability with respect to RZBC Companies' purchases of limestone.
- Any benchmark based on export data or other country information should show actual exports from the country(ies) to the PRC. If such data is not available, then a party submitting the benchmark should provide other supporting evidence showing that the benchmark is a market price that is reasonably available in the PRC.[388]
- Petitioners' own information indicates that the benchmarks it reported are not traded on the "world market," or are not "world market prices." Rather, Petitioners' benchmarks represent exports to adjacent countries or regionally close countries. There is no evidence that indicates that the limestone, sulfuric acid, or steam coal benchmarks used by the Department would have been reasonably available to RZBC Companies in the PRC. Moreover, the benchmark values used by the Department at most represent regional values and not world market prices as "claimed" by the Department.
- With respect to the sulfuric acid benchmark, Petitioners' benchmarks are from countries that only export to adjacent countries or regionally close countries in small quantities, such as Egypt, Mexico, Peru, South Africa, Thailand, Ukraine, Uruguay, Chile, Czech Republic, Greece, and Italy.
- RZBC Companies included information regarding exports of limestone flux to the PRC. Regardless of whether the PRC export data are included in the actual benchmark calculation, the inclusion of the export data, at a minimum, provides evidence whether the prices from the specific country would be reasonably available in the PRC. RZBC Companies note that they also submitted export data from the United States, Canada, and Japan. Unlike Petitioners' information, these data showed significant export quantities, *e.g.*, the United States exported 546,314 MT, Canada exported 1,134,308 MT, and Japan exported 4,341,194 MT during the POR. However, these countries did not have exports to the PRC. Although these quantities might suggest that these export data represent market prices available in the PRC, this is not the case. Instead, these data sets demonstrate that just because a country has exports, or even significant exports, it cannot be assumed that it is reasonable to conclude that the prices were available in the PRC.

[388] *See*, *e.g.*, 19 CFR 351.511(a)(2)(ii).

Rather, the data provides evidence of how important it is that the Department provide record evidence that supports the regulatory requirements of 19 CFR 351.511(a)(2)(ii) to ensure that the benchmark is accurately calculated.

- Regarding limestone flux, for the final results, the Department must either reject Petitioners' submitted information or reopen the record with respect to the countries submitted by Petitioners to determine whether it is reasonable to assume that any of these countries' limestone export prices would have been available in the PRC during the POR. Obtaining this information would not burden parties or affect the finality of the Department's results. The Department has access to and extensive knowledge of using and obtaining GTA data that were submitted by Petitioners in the companion antidumping investigations and reviews.[389]
- Unlike limestone, obtaining this sulfuric acid information by opening the record would burden parties and affect the finality the Department's results since in prior reviews the Department did separate Chinese exports from the benchmarks.[390]
- As a result of the high costs of transportation, the world coal market is split into two-markets: the "Pacific" and the "Atlantic."[391] Based on record evidence submitted by the RZBC Companies concerning these two different markets, it would not be reasonable to conclude that the "Atlantic" market coal benchmarks submitted by Petitioners are reasonably available in the PRC.[392] Therefore, any steam coal benchmark used by the Department should come from the "Pacific" Market.
- The only steam coal benchmarks on the record that meet all the statutory and regulatory requirements of section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(ii) are: Australia 27011299, Bituminous Coal (Eg. Steaming Coal) (Excl. Metallurgical Coal); Columbia HS 2701120010 Thermal Coal; Indonesia HS- 2701129000, Bituminous Coal: Other Than Coking Coal; and South Africa 27011200, Bituminous Coal.[393] These are the only values that evince prices available to the PRC, represent significant quantities of steam coal, are specific to type of coal used by RZBC in its production, and can reasonably classified as world market prices.

Petitioners' Rebuttal Argument

- Petitioners' proposal to use Chapter 28 of the HS as the calcium carbonate benchmark complies with longstanding Department practice. First, with regard to including the PRC, the Department's longstanding practice is to exclude exports to the "country in question." As discussed further below, Chinese imports are not usable because they are distorted by pervasive GOC interference in the domestic market. As the Department has done in many Chinese subsidy cases, the Department rejected in-country prices ("tier 1" benchmark) as the benchmark in the Post- Preliminary Results. Thus, Chinese domestic

[389] *See* Additional Documents for Post-Preliminary Results at Attachment 3 (Memorandum to the File, "Preliminary Results of the Third Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of the PRC: Surrogate Value Memorandum," dated June 3, 2013 and attachment 1 (explaining that The Department obtained the data from GTIS at page 3 and providing the GTIS data obtained by The Department in Attachment 1)).
[390] *See*, *e.g.*, Petitioners' FIS (November 20, 2013) at Tab 6.
[391] *Id.* at Exhibit 6.
[392] *See* RZBC Companies' Factual Information (November 21, 2013) at Exhibit 6.
[393] Although RZBC Companies argue that these benchmarks meet the relevant regulatory and statutory requirements, RZBC Companies argue that the other 33 data points should be disqualified for other reasons. *See* Comment 13.B.

or import prices cannot be used for benchmarking purposes. To do so would, in effect, be comparing the benchmark to itself.[394] The same argument applies to sulfuric acid benchmark prices.

- In *Wind Towers from the PRC*, the Department included the same type of benchmarks that Petitioners provided here (*i.e.,* GTA exports).[395] Petitioners' benchmarks are derived from a wide variety of 17 countries. In contrast, the RZBC Companies submitted benchmarks from just six countries.[396] Further, the exports from the largest exporting countries submitted by the RZBC Companies, the United States, Japan, and Canada, were nearly all close to each other, *i.e.*, "regionally close."[397] Furthermore, the United States and Canada are one integrated North American market (*i.e.,* NAFTA). As a result, the RZBC Companies' assertion that the benchmarks submitted by Petitioners should be rejected because they are regionally specific is directly contradicted by their own suggested benchmarks. As stated in the Department's regulations, the Department "will average" all world prices in order to derive the benchmark.[398] The RZBC Companies' case brief ignores this fundamental aspect of the Department's benchmark methodology.
- No reason exists for the Department to re-open the record. There is no need to further examine the benchmarks submitted by interested parties. The RZBC Companies had ample opportunity to review the information submitted on the record of this case and to submit factual rebuttals or contrary arguments, but it failed to do so. Thus, the Department should continue to use Petitioners' suggested benchmarks in the final results.

Department's Position: In the *Preliminary Results* and Post-Preliminary Results, we used several series of price data from three sources, *i.e.*, Global Trade Atlas (GTA), International Monetary Fund Country Data (IMF), and Platts, to construct the benchmark prices for the provision of calcium carbonate, sulfuric acid, and steam coal for LTAR. The RZBC Companies argue that the world export prices used by the Department in the *Preliminary Results* and Post-Preliminary Results are not reasonably available to purchasers in the PRC. We disagree with the RZBC Companies. As the Department stated in *Wind Towers from the PRC*, and consistent with 19 CFR 351.511(a)(2)(ii), we have not used world export prices where it is reasonable to conclude that they would not be available to purchasers of these inputs in the PRC.[399] However, we have interpreted this provision of our regulations within the context of our goal to derive the most robust benchmarks possible and, thus, we have sought to include as many data points as possible.[400] The fact that some data sources contain prices between countries that do not include the PRC does not diminish the fact that they provide information concerning what an unfettered market would bear for calcium carbonate, sulfuric acid, and steam coal during the POR.[401] The RZBC Companies have not provided any evidence to support their assertion that Chinese

[394] *See Rectangular Pipe from the PRC*, and accompanying Rectangular Pipe IDM at Comment 7 (use of a "tier 1" benchmark (*i.e.*, Chinese domestic or import prices) is "akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence").
[395] *See Wind Towers from the PRC*, and Wind Towers IDM at Comment 15.
[396] *See* RZBC Companies' New Subsidy Allegation Benchmark (NSA Benchmark) (March 18, 2013) at Attachment 1.
[397] *Id.*
[398] 19 CFR 351.511(a)(2)(ii).
[399] *See* Wind Towers from the PRC IDM at Comment 15.
[400] *Id.*
[401] *Id.*

producers are precluded from purchasing these inputs on the world market at the prices reported. Therefore, we continue to utilize all appropriate series of price data for each provision of inputs for LTAR.

In addition, the RZBC Companies urge the Department to re-open the record to include additional monthly export prices for limestone from Chapter 25 of the HS. However, doing so at this late stage of the proceeding would impede our ability to complete this administrative review within the statutorily prescribed deadline.[402] Further, it is the responsibility of all parties to provide useable benchmark information at the time of request.

B. Whether to Consider Respondent's Production Requirements in the Selection of World Market Prices

RZBC Companies' Argument

- For all three inputs for LTAR programs, the Department used export values based on quantities that are significantly less than the RZBC Companies' purchases. If the exporting country cannot supply the demand of RZBC Companies, then the export value is not a comparable benchmark or a viable world market price. Moreover, if the export quantity cannot meet the demand of the company, then the reported export price from the country is not of the type that one could reasonably conclude would be available to RZBC because it would never be able to purchase enough of the input from the countries in question for its production. Thus, any export value benchmark used by the Department, at a minimum, should be able to supply the production needs of the company.
- The benchmark price should be based on representative quantities used by the respondent in order to ensure that the benchmark can be determined to be comparable, or even available, to the company. This argument is based on the plain statutory and regulatory requirements of section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(ii).
- The only available benchmark for GCC (*i.e.*, limestone) that meets all statutory and regulatory requirements is the RZBC Companies' reported export value from India because: the value represents a world market price (*i.e.*, exported world-wide), was available in the PRC during the POR, and is specific to limestone flux.
- Greece, Egypt, and Ukraine should not qualify as benchmarks for sulfuric acid because each of these countries lacked exports of any type of sulfuric acid for some months of the POR. If a country does not export in every month of the POR, then it is not reasonable to conclude that its exports represent world market prices that are comparable to RZBC's purchases and are available in the PRC. Moreover, the RZBC Companies submitted information showing "small quantity high price different grade sulfuric acid that is not similar to RZBC's raw material that the Department never accounted for in its benchmarks."[403]

[402] *See* Memorandum to the File from Patricia Tran, "Citric Acid and Certain Citrate Salts from the People's Republic China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated September 9, 2013; and Memorandum to the File from Patricia Tran, "Countervailing Duty (CVD) Administrative Review: Citric Acid & Certain Citrate Salts from the People's Republic of China, covering period 1/01/2011 – 12/31/2011 (2011 Citric Acid from the PRC): Tolling of Final Results Deadline," dated October 21, 2013.
[403] *See* RZBC Companies' FIS (November 19, 2012) at Exhibit 2-c.

- Similarly, the Australian, Colombian, and South Korean data should not qualify as benchmarks for steam coal because each of these countries failed to have exports of the anthracite coal during all months of the POR.
- The Department should only use the RZBC Companies' reported benchmarks for sulfuric acid, which meet all the statutory and regulatory requirements of section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(ii). Specifically, RZBC Companies' reported export values from Japan and Korea are: (1) values that represent world market prices (*i.e.*, exported world-wide); (2) were available in the PRC; and (3) the benchmarks are also specific to RZBC purchases.

Petitioners' Rebuttal Argument

- The RZBC Companies' claim that the Department must consider the significance of individual export quantities is contrary to the Department's practice and contradicted by RZBC Companies' own suggested benchmarks. In *Wind Towers from the PRC*, the respondent argued that the Department should exclude benchmark data because it contained small quantities. The Department rejected that request by finding that there was no evidence on the record to demonstrate a correlation between quantity and price.[404]
- Furthermore, the RZBC Companies suggest, without citing any precedent, that a benchmark price cannot be representative where "the exporting country cannot supply the demand of RZBC." The Department rejected a similar argument in *Certain Magnesia Carbon Bricks*.[405] The Department explained that 19 CFR 351.511(a)(2)(ii) "contains no requirement that the Department calculate world market prices only from significant producers."[406] Thus, the RZBC Companies' suggestion that export data from a country may only be used where it could supply all of the company's demand is meritless. The "world market price" required by the Department's regulations is an average of prices reasonably available to purchasers in the PRC. The RZBC Companies could have purchased inputs from any of the countries selected by the Department for use in the benchmark.
- The Department should also reject RZBC Companies' argument that the Department must exclude Petitioners' benchmarks where exporting countries did not have shipments in a particular month. The RZBC Companies' argument contradicts the Department's practice and is contrary to RZBC Companies' own benchmark submissions. In *OCTG from the PRC*, the Department declined to reject a pricing series because of missing monthly data. The Department explained that there was no reason that "inclusion of a portion of the POI results in distortion," and "we have included this data in the calculation in the benchmark only in the last six months of the POI."[407] Further, RZBC Companies' own suggested benchmarks contain the same issue attacked in its case brief. The RZBC Companies submitted export prices for sulfuric acid from the Philippines. In both September and November, the Philippines had no exports of sulfuric acid and, therefore, no monthly export price.

[404] *See* Wind Towers from the PRC IDM at Comment 15.
[405] *See Certain Magnesia Carbon Bricks From the People's Republic of the PRC: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) (*Magnesia Carbon Bricks from the PRC*), and accompanying Issues and Decision Memorandum (Magnesia Carbon Bricks from the PRC IDM) at Comment 7.
[406] *Id*.
[407] *See OCTG from the PRC Investigation*, and OCTG Investigation IDM at Comment 13.

- The Department's regulations state that the Department "will average" the world prices on the record in order to construct the benchmark.[408] The Department does so to assemble the broadest range of documented prices. Some country data points may not have exports in all months while others may. The RZBC Companies' brief proves why the Department averages as many data points as possible on the record. Averaging the data points ensures that any anomalies in the data have a negligible impact on the final calculated subsidy rate. The RZBC Companies argue the Department should use only the export prices from India as a benchmark, but provide no explanation as to why India is the only useable country and do not point to any record evidence to support their theory. The Department's practice makes clear that it will average the data points on the record, so long as the data points comport with the Department's regulations and longstanding practice (*i.e.*, monthly export prices excluding the PRC).[409]
- Petitioners assembled benchmarks for steam coal from multiple sources from countries around the world (*i.e.*, OTIS, IMF, and Platts).
- Petitioners note the disconnect between the RZBC Companies' arguments and the data it submitted regarding the steam coal program benchmark. For example, the quantity for the RZBC Companies' suggested steam coal program benchmark for September 2011 is a mere 54 metric tons.[410] Thus, RZBC's claim that the Department's benchmark is defective because it includes "countries that exported insignificant quantities," is meritless.

Department's Position: We disagree with the RZBC Companies that the Department must eliminate small quantity export prices because the supplier would not be able to meet its purchase requirements. The Department's regulation at 19 CFR 351.511(a)(2)(ii) does not require us to determine whether a country will meet respondent's production needs, but whether the export price is reasonably available. Similar to arguments made in *Wind Towers from the PRC*, the RZBC Companies in this instant review assert that pricing data from small quantity purchases do not represent the respondent's purchases in varying quantities.[411] Under 19 CFR 351.511(a)(2)(ii) the Department compares the government price to a world market price, and "this provision contains no requirement that the Department calculate world market process only from significant producers."[412] Moreover, the RZBC Companies have not provided supporting evidence to disprove that those prices are not consistent with market principles, *i.e.*, that large and small-quantity producing countries are profit maximizers and will charge what the market will bear. Therefore, we will continue to use all appropriate series of data from the *Preliminary* and Post-Preliminary Results to create a robust world market price for each input provision.

With respect to the RZBC Companies' argument the Department should exclude data series that do not have world export prices for every month of the year; we note that the RZBC Companies

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[408] *See* 19 CFR 351.511(a)(2)(ii).
[409] *See* Wind Towers from the PRC IDM at Comment 15 ("The Titan Companies contend that the Department should exclude the SteelBenchmarker price data because the data include small quantity purchases in a single size that do not represent the Titan Companies' purchases in varying sizes. We find that the Titan Companies did not submit any evidence on the record to demonstrate a correlation between plate dimensions, quantity, or production lag time to price; therefore, we will not exclude the world export prices from SteelBenchmarker").
[410] *See* RZBC Companies' FIS (November 19, 2012) at Exhibit 1-B and 2-D.
[411] *See* Wind Towers IDM at Comment 15.
[412] *See* Magnesia Carbon Bricks from the PRC IDM at Comment 7.

have not explained why the inclusion of these data series results in a distortion of the world market price, and we find that there is no reason to believe that they do so. As such, we have included this data in the benchmark calculation for all three provisions of inputs for LTAR.[413]

C. Whether to Exclude Export Prices to the PRC in the Benchmark Calculation

RZBC Companies' Arguments

- In the *Preliminary Results*, the Department stated that it "found that actual transaction prices for sulfuric acid in the PRC are significantly distorted by the government's involvement in the market. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark."[414] Exports reported to the PRC are export prices from the country in question. The prices are neither actual final prices to the customer nor import prices, as the Department's preliminary results indicates. In fact, the Department makes significant adjustments to the prices to account for the fact that the benchmark prices are export values and not import values or actual in-country transactions. Furthermore, record evidence indicates that the export prices to the PRC for sulfuric acid from Japan, South Korea, and Philippines were either higher than the export prices sold to other countries or equal. Thus, the evidence on the record is that the export prices to the PRC are not distorted and there is no evidence that the exports to the PRC from market economy countries were not obtained through standard free market negotiations and the Department has cited nothing to the contrary.
- There is also no rational basis to exclude export values into the PRC under a tier-two benchmark analysis. The tier-two regulation assumes that the benchmark price should include prices that would be available in the PRC. Thus, based on 19 CFR 351.511(a)(2)(ii) and its requirements, there is no better benchmark than a price that is shown to be actually available in the PRC from around the world. If the Department's reasoning is taken to its logical end, any price that is shown to be reasonably available in the PRC should be rejected because it might somehow be distorted by the government's involvement. Under this premise, the Department's tier-two regulation is meaningless. In fact, the Department has included export values to the PRC in previous reviews.[415]
- For the final results, the Department should include the RZBC Companies' submitted benchmarks which include export values to the PRC. Furthermore, because Petitioners failed to submit complete data sets for its benchmarks by excluding exports to the PRC, the Department should reject the Petitioners' benchmarks.
- The Department did not use the RZBC Companies' sulfuric acid benchmark information because it contained exports to the PRC. The Department's rejection of the RZBC Companies' sulfuric acid benchmark information is unfounded considering the exports to the PRC can easily be extracted from the submitted data, and RZBC Companies provided those revised data. The RZBC Companies argue that the most accurate benchmarks on the record are the data reported from South Korea and Japan. These values are the only benchmarks that meet the requirements of 19 CFR 351.511(a)(2)(ii). They represent

[413] *See Seamless from the PRC Investigation*, and accompanying Seamless Pipe IDM at Comment 9.A ("while it would be preferable to have these prices for the entire POI, U.S. Steel has not explained why the inclusion of this series for a portion of the POI results in distortion.")
[414] *See* Preliminary Results Decision Memo at 18.
[415] *See, e.g.*, Petitioners' Factional Information (November 20, 2012) at Tab 6.

world market prices that were available in the PRC. Moreover, these world price benchmarks represent the most accurate information with respect to factors of comparability, considering they represent significant quantities and are of the type of sulfuric acid used by RZBC in its production.[416]

Petitioners' Rebuttal Argument

- When the Department determines that the government distorts the market for a good or service, prices for those goods and services in the country are considered unreliable and are not appropriate for determining whether there is a benefit.[417] In the *Preliminary Results* and Post-Preliminary Results, the Department appropriately determined that the Chinese domestic markets for steam coal, sulfuric acid, and calcium carbonate were dominated by the GOC. The Department cannot use tier one prices in this scenario and appropriately looked to tier two prices, consistent with its longstanding practice.[418] The Department uses a tier two world price because, use of Chinese prices is "akin to comparing the benchmark to itself. . . *i.e.*, such a benchmark would reflect the distortions of the government presence."[419] As a result, the Department should reject the RZBC Companies' argument and continue to exclude benchmarks containing Chinese prices.
- In the closing paragraph of its case brief, the RZBC Companies attempt to submit "revised benchmarks" for the sulfuric acid program. The Department should reject the information contained in the attachment pursuant to 19 CFR 351.302(d)(2). This constitutes untimely filed factual information. Moreover, the RZBC Companies offered no explanation as to how it prepared "the revised benchmarks that exclude the Chinese export data" contained in that attachment. Thus, the Department should not consider this information in the final results.

Department's Position: For the *Citric Acid First Review*, the GOC reported that Chinese state-controlled and collectively-controlled sulfuric acid producers accounted for 56 percent of sulfuric acid production in 2008 and 54 percent of domestic sulfuric acid production in 2009.[420] In addition, the GOC reported that in 2008 and 2009, respectively, Chinese domestic production accounted for 97.09 and 95.47 percent of domestic consumption of sulfuric acid.[421] The Department found that, based on the fact that Chinese SOEs were responsible for such a large percentage of domestic production volume and that imports accounted for such a small share of

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[416] *See* Post-Preliminary Results Calculation Memorandum, dated November 8, 2013 (showing that RZBC purchased significant quantities of sulfuric acid that was exported and produced in these countries).
[417] See *Certain Oil Country Tubular Goods From the People's Republic of the PRC: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47219 (September 15, 2009) (*OCTG Preliminary Determination*), and *Softwood Lumber from Canada*, and accompanying Softwood Lumber IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies."
[418] *See OCTG Preliminary Determination* at 74 FR at 47219; *Certain Kitchen Shelving and Racks from the People's Republic of the PRC: Final Affirmative Countervailing Duty Determination*, 74 FR37012 (July 27, 2009) (*Kitchen Racks from the PRC*), and accompanying Issues and Decision Memorandum (Kitchen Racks IDM) at 51-52; *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of the PRC: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) (*Lawn Groomers from the PRC*), and accompanying Issues and Decision Memorandum (Lawn Groomers IDM) at 15-16.
[419] *See* Rectangular Pipe IDM at Comment 7.
[420] *See* Citric Acid First Review IDM at "Provision of Sulfuric Acid for LTAR."
[421] *Id.*

domestic consumption, it was reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market.[422] In the instant review, the GOC has not provided new information that would merit a reevaluation of its previous finding.

In *Citric Acid Second Review*, we found the GOC failed to provide necessary information in responding to the Department's information request about the Chinese industries that use steam coal and the volume of steam coal used/consumed by each of those industries.[423] We relied on "facts available" to evaluate the steam coal industry and used information submitted by the GOC for the coal industry as a proxy to determine whether the Chinese steam coal market is distorted by the involvement of the GOC. The GOC reported that Chinese wholly state-owned or state controlled coal producers accounted for 60.59, 61.94, and 59.13 percent of gross industry revenue in 2008, 2009, 2010, respectively.[424] We determined that Chinese state-owned enterprises were responsible for such a large percentage of domestic production volume that it was reasonable to conclude that actual transaction prices were significantly distorted as a result of the government's involvement in the market. We found, for this reason, that domestic prices charged by privately-owned producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices. In the instant review, the GOC has not provided new information that would merit a reevaluation of its previous finding.

In the instant review, we find the GOC failed to cooperate by not acting to the best of its ability in responding to the Department's request for information concerning the calcium carbonate industry in the PRC. Based on adverse facts available, the Department has also found that the PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.[425] As we have established, SOEs dominate the industries of each input.[426] Therefore, and consistent with prior determinations in which we found government distortion, the Department has excluded export prices to the PRC from our tier-two benchmark for the same reasons we do not use tier-one domestic prices - because prices to the PRC are akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[427] The sulfuric acid, steam coal, and calcium carbonate industries in the PRC are dominated by the government, allowing the large government presence to influence prices of these inputs into the country.[428] Consequently, our preliminary determination remains unchanged for the final results.

With regard to the world export prices the RZBC Companies submitted for sulfuric acid, the Department will accept the revised GTA export prices from South Korea, Japan, and the Philippines. The revised export prices are based on information already on the record and the

[422] *Id.* (citing Preamble, 63 FR at 65348).
[423] *See Citric Acid Second Review*, and Citric Acid Second Review IDM at "Use of Facts Available and Adverse Inferences – GOC Steam Coal" and "Provision of Steam Coal for LTAR."
[424] *Id.*
[425] *See* Post-Preliminary Results at 8.
[426] *Id.*, and Citric Acid First Review IDM at "Provision of Sulfuric Acid for LTAR," Citric Acid Second Review IDM at "Provision of Steam Coal for LTAR."
[427] *See* Rectangular Pipe IDM at Comment 7; and Utility Scale Wind Towers from the PRC IDM at Comment 15.
[428] *See* Citric Acid First Review IDM at "Provision of Sulfuric Acid for LTAR," Citric Acid Second Review IDM at "Provision of Steam Coal for LTAR," and above at "Provision of Calcium Carbonate for LTAR."

RZBC Companies have sufficiently explained how they excluded exports from these countries to the PRC, consistent to our tier-two criteria.[429]

D. Whether To Include the RZBC Companies' Limestone Flux Benchmark Submission

RZBC Companies' Argument

- In the Post-Preliminary Results, the Department did not include the RZBC Companies' calcium carbonate benchmark data in the benchmark price because they were reported on an annual basis, rather than monthly.[430] First, the benchmarks are for Chapter 25 of the HS. Second, the Department provides no citation for this practice, and no citation to the statute or regulation. Moreover, it has been the Department's long-standing preference to use period of review or annual values to smooth out volatility of aberrant data-points.[431]
- The Department did not provide an explanation why the annual benchmarks are unreasonable or otherwise do not represent the most accurate information. In this case, the annual India data are the only benchmark specific to limestone flux and would represent the most accurate information on which to calculate the LTAR for limestone flux. Additionally, as discussed above regarding the Petitioners' benchmarks used by the Department, use of these benchmarks in monthly calculations results in significant distortions and aberrational results that bear no resemblance to economic reality.
- Finally, given that the Indian data are specific to the RZBC Companies' purchases of limestone flux, the Department could easily obtain the monthly information from GTA to calculate the data, if this is necessary for its analysis. This would be no different than what the Department does in antidumping cases, where the Department extracts all the recommended surrogate values from GTA in its normal value calculation.[432] Obtaining the monthly information for limestone flux for the final results would not inhibit the Department's ability to issue the final results in a timely manner.

Petitioners' Rebuttal Arguments

- RZBC submitted total export prices for 2011 from the United States, Canada, Thailand, Philippines, India, and Japan, but did not provide the data on a monthly basis. The only legal support for RZBC Companies' position is one antidumping duty administrative review, which RZBC cites for the proposition that the Department prefers "to use period of review or annual values to smooth out volatility of aberrant data-points." However, the Department always uses monthly averages when constructing the benchmark in CVD cases because prices fluctuate over time. In *Coated Free Sheet Paper from Korea*, the

[429] *See* RZBC Companies' Factual Information (November 19, 2012) at Exhibit 2-C and Case Brief (November 18, 2013) at Attachment 1.
[430] *See* Post-Preliminary Results at footnote 60.
[431] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of the PRC: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 Fed. Reg. 3,086 (January 19, 2011) and accompanying issues and decision memorandum at Comment 5 (noting that it is the Department preference to use full POR AUV prices and annual averages, because longer term data can smooth out volatility and may be less affected by aberrant data-points).
[432] *See* Additional Documents for Post-Preliminary Results at Attachment 3 (Memorandum to the File, "Preliminary Results of the Third Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of the PRC: Surrogate Value Memorandum," dated June 3, 2013 and attachment 1 (explaining that the Department obtained the data from GTIS at page 3 and providing the GTIS data obtained by the Department in Attachment 1)).

respondent argued that the Department should use annual benchmark prices. The Department rejected the respondent's suggestion and reiterated its practice to use monthly pricing information, stating, that "the most accurate calculation is on a monthly, not annual, basis."[433]

- The RZBC Companies assert that the Department "could easily obtain" the information itself for the record. This request is inappropriate. In November 2011, the RZBC Companies placed monthly benchmarks on the record for the steam coal and sulfuric acid programs. The RZBC Companies failed to place benchmarks on the record for the calcium carbonate program, but Petitioners did. Despite this fact, the Department permitted the submission of additional benchmarks. At that time, the RZBC Companies placed the annual calcium carbonate program benchmark data on the record. Given this fact pattern, Petitioners submit that the RZBC Companies were well aware of the Department's practice but chose to submit annual benchmark data anyway. In addition, opening the record at this late date is not feasible. The Department would be forced to open the record, allow parties to comment, and then issue the final results. Not enough time is left in this review to do so, and it would not be appropriate in any event.

Department's Position: We disagree with RZBC Companies. In the Department's NSA questionnaire to the RZBC Companies, we requested the company to report all purchases of calcium carbonate and "{b}y each purchase, we are referring to each line item on a VAT invoice that corresponds to a unique price and/or quantity."[434] The Department regularly requests respondents to report their input purchases on a transaction-specific basis. Because of that transaction-specific approach, and consistent with the Department's practice, we have determined that use of monthly benchmarks will yield a more accurate calculation of the benefits.[435] A monthly benchmark better reflects price fluctuations within the market than an annual benchmark. Thus, we will continue not to use annual benchmark prices from Chapter 25 of the HS covering limestone (*i.e.*, GCC). Moreover, because of the timing of the final results, the Department will not reopen the record to obtain additional benchmarks for Chapter 25 of the HS. Instead, we will continue to use the monthly Chapter 25 benchmarks from the Post-Preliminary Results.

E. Whether the Benchmark Averaging Methodology is Unreasonable, Distortive, and Otherwise Not in Accordance with Law

RZBC Companies' Argument

- Whether the Department rejects or accepts the RZBC Companies' above arguments with respect to market price, availability, and quantity for the benchmarks, the Department at a

[433] *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*Coated Free Sheet Paper from Korea*), and accompanying Issues and Decision Memorandum (Coated Free Sheet Paper Korea IDM) at 51 and 52.

[434] *See* the Department's NSA questionnaire (January 25, 2013) at 12.

[435] *See Final Negative Countervailing Duty Determination: Live Swine from Canada*, Friday, 70 FR 12186 (March 11, 2005) (*Live Swine from Canada*). In *Live Swine from Canada*, the application of monthly benchmarks was with respect to benchmarks for loan programs. However, the reasoning remains the same for monthly benchmarks of provisions of inputs for LTAR; see also, *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 21594 (April 11, 2013) (*2010 Kitchen Racks Review*); *Steel Cylinders from the PRC*, and accompanying Steel Cylinders IDM at 18.

minimum should use the weighted average for all benchmarks to the extent practicable. In the *Preliminary Results* and the Post-Preliminary Results, the Department used the monthly country weighted-average export values reported by GTA for limestone flux, sulfuric acid and certain coal benchmarks. The Department then took the simple average of these monthly weight-averaged export values from each country to derive its benchmark. The Department fails to cite to any statutory and regulatory provisions, or provide any reasoning that supports the above method.

- By using the mixed methodology, the Department's overall benchmark is distortive on its face because the Department in the final average gives equal weight to countries with small export quantity values and countries with large export quantity values.
- The Department's benchmark calculation is also unreasonable because its methodology is inconsistent. For example, there is no rational basis to weight-average the country data and not the overall data for the same product. For the final results, the Department must correct these distortive values, and weight average all of the final benchmarks, to be consistent with its own regulations and the law.
- Significant portions and values of the Department's GTA benchmark data are obtained from shipments that report no quantity data. The Department should exclude all such zero shipment data in its benchmark calculation.[436] Second, as has been discussed *supra* regarding export quantities, the benchmarks used by the Department are based on small aberrational quantities, especially compared with RZBC Companies' purchases.
- Information that is on the record or submitted by Petitioners is not necessarily accurate, nor is the Department required to use it. Thus, the Department must address and correct any aberrational values for final results that may be included in the benchmarks.

Petitioners' Rebuttal Argument

- The Department's practice on this issue is not subject to debate: "As the Department has found in previous investigations and administrative reviews, the best methodology is to calculate a simple average of these prices."[437] According to the Department, a simple average of the most data points possible provides for a reliable world price benchmark. The RZBC Companies' case brief challenges this methodology, but RZBC Companies itself submitted suggested benchmark information using simple averages, not weighted-averages.[438] The RZBC Companies identify two instances where a weighted-average price yields a lower price than a simple average. As the Department is well aware, however, precisely the opposite result may also occur. The result is dependent upon the number of data points submitted, and in this case, RZBC Companies chose to submit relatively few benchmarks. The Department should therefore reject the RZBC Companies' argument and follow its longstanding practice to calculate the benchmark based on a simple average of the export prices on the record.
- The RZBC Companies cite no record evidence in support of their claim regarding export values with corresponding quantities of zero. The RZBC Companies' argument assumes that the Department must only use limited data points, but 19 CFR 351.511(a)(2)(ii)

[436] *See, e.g.,* Petitioners' NSA Benchmark Submission (March 18, 2013) at Exhibit 4 (showing the inclusion of $3,099 in the Australian export value with a zero quantity).
[437] *See* Wind Towers IDM at Comment 15; Steel Wheels IDM at Comment 15; Steel Cylinders IDM at 18; and Citric Acid Second Review IDM at 19.
[438] *See* RZBC Companies' FIS (November 19, 2012) at Exhibit 1-B and 2-D.

requires the Department to "average" the world prices on the record in order to construct the benchmark. The Department does so because of the presence of variable prices. Similarly, some country data points may not have exports in all months while others do. The RZBC Companies suggest that "accuracy of the benchmark values is extremely important." Petitioners agree. The Department's longstanding practice and regulations are dedicated to the same result. The Department followed those requirements in this review and should reject the RZBC Companies' arguments in the final results.

GOC's Rebuttal Argument

- In their briefs, both Petitioners and RZBC argue that benchmark prices on the record for the LTAR programs on steam coal, sulfuric acid and calcium carbonate should be averaged pursuant to 19 CFR 351.511(a)(2)(ii). The GOC submits that the averaging provision in this regulation is inconsistent with section 771(5)(E)(iv) of the Act and should not be followed. In the alternative, the GOC adopts the RZBC Companies' arguments in this regard by reference.
- The primary goal in determining the most appropriate benchmark, based upon both the statute and the regulation, is to identify a benchmark that would result in a comparison between the allegedly subsidized price and a market price, so long as that market price would be reasonably available to the respondent purchaser.
- Section 771(5)(E)(iv) of the Act states that the benefit, if any, from an input for LTAR program should be "determined in relation to prevailing market conditions for the good or service being provided or the good being purchased in the country which is subject to the investigation." The statute then goes on to define "prevailing market conditions" as "price, quality, availability, marketability, transportation, and other conditions of purchase or sale."
- 19 CFR 351.511(a)(2)(ii) states that when using a world market price as the benchmark for determining the adequacy of remuneration, as the Department did here, the Department's goal is to establish a world market price "where it is reasonable to conclude that such a price would be available in the country in question." The goal of using prices that would be available attempts to mirror the "actually available" language in the paragraph on tier one benchmarks.[439] However, 19 CFR 351.511(a)(2)(ii) then goes into additional, and unnecessary, detail on how this benefit is to be quantified. In other words, the Department's regulation goes beyond its "gap filling" purpose and implements rules completely at odds with the plain language of the statute.[440] Specifically, the regulation states that "where there is more than one commercially available market price, the Secretary will average such prices to the extent practicable." There is no further explanation in the *Preamble*, nor is there any logical reason, for this methodological choice. Indeed, while other portions of this regulation require that certain "prevailing market conditions" be taken into account to achieve the most specific comparison possible, this averaging requirement effects precisely the opposite result: it compares a

[439] *See* 19 CFR 351.511(a)(2)(i).
[440] *See Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984).

generic average market price to an individual subsidized transaction price.[441] This methodology is inconsistent with both the remainder of the regulation and the statute.[442]

- In determining the adequacy of remuneration, a benefit can only exist to the extent that the subsidized price is lower than the market value of the good. Instead of evaluating whether a respondent purchased an input at a market price, the Department has evaluated whether the respondent's input purchase was made at an average market price. Doing so results in the Department finding half of the market prices on the record (*i.e.*, the ones in the bottom half used to calculate the average price) to be not "adequate" remuneration. This is not an accurate reflection of the prices on the record because each and every one of the prices on the record is a "market" price and, therefore, by definition, is adequate.
- The definition of the term "adequate" is unambiguous, and does not mean "average." "Adequate" is at the lower end of available market prices, not the middle. Average price and adequate price are simply not synonymous. When determining adequate remuneration, the respondent's benefit is only as large as the gap between its purchase price and the lowest available market price. Any benefit that is calculated using a price above that lowest market price on the record is inflated. In other words, fully half of the perceived benefit results from the difference between two adequate market prices, and the respondent is being penalized for not purchasing at average market levels. This is not consistent with the LTAR statute.
- In this case, the LTAR statute seeks to measure the difference between the RZBC Companies input purchases and the market prices for those inputs. The only way to measure the adequacy of remuneration and to remain consistent with section 771(5)(E)(iv) of the Act is to use the lowest market price in the analysis. The Department should therefore refrain from averaging market prices pursuant 19 CFR 351.511.

Department's Position: The Department's regulation at 19 CFR 351.511(a)(2)(ii) is clear that the Department "will average" world market prices when multiple prices are available and they are comparable. In past proceedings, the Department has found data from GTA, Platts, and the IMF to be sufficiently reliable and representative of world market prices, and we find no reason to question this conclusion based on the record of this segment.[443] As the Department has found in previous investigations and administrative reviews, a reasonable methodology is to calculate a simple average of these prices where the datasets on the record were not reported in a uniform manner. Furthermore, we do not have information on the record that would allow the Department to weight-average the prices properly because some benchmark prices are a simple average derived from total quantity and total value from GTA data and others are weighted-average unit values from publications by Platts, the IMF, and GTA. We have consistently utilized a simple average of world market prices when the world market prices are not reported

[441] *See NSK Ltd. v. United States*, 390 F.3d 1352, 1358 (Fed. Cir. 2004) (finding Commerce's unexplained, inconsistent treatment of certain expenses in the regulation as arbitrary and impermissible).
[442] *See Mittal Canada, Inc. v. United States*, 30 C.I.T. 1565, 1570 (2006) ("Where an agency's interpretation of a statute is internally inconsistent, its claim to reasonableness is obviously compromised").
[443] *See* Citric Acid Second Review IDM at "Provision of Steam Coal" and "Provision of Sulfuric Acid" and Wind Towers from the PRC IDM at "Provision of Hot-Rolled Steel."

in a uniform manner, the Department lacks the information to consistently weight-average the prices, and in order to create a robust world market price.[444]

With regard to the GOC's direct challenge to the benchmark averaging methodology contained in 19 CFR 351.511(a)(2)(ii) as being inconsistent with section 771(5)(E)(iv) of the Act,[445] the Department's decision under the regulation to average benchmarks to develop a world benchmark price is a reasonable interpretation of the statute.[446] Specifically, section 771(5)(E)(iv) of the Act explains that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." While the structure of 19 CFR 351.511(a)(2) and the statute itself express a preference for using a market price in the country subject to the review, such a market price in the country under review may not be available, as here. Thus, 19 CFR 351.511(a)(2) fills the necessary gap in the statute by allowing the Department to consider "a world market price" as the benchmark. As the Court has said, "{w}hen there are no usable tier-one prices, a tier-two benchmark is established using an average of available, comparable world market prices."[447]

The GOC is correct that "each and every one of the prices *is* a 'market' price and, therefore, by definition, is adequate."[448] However, the Department averages reliable benchmarks together to arrive at a *world* market price, which is the focus of 19 CFR 351.511(a)(2)(ii).[449] The Department has not found that the prices in the bottom half of the average world market prices are inadequate but, rather, in order to derive the most robust world market price possible, we have averaged them with all prices on the record. If the Department were to select only the lowest world prices as its benchmark, it would be arbitrarily excluding data on the record just as if it selected only the highest prices. Absent record evidence justifying the exclusion of a data set, the Department considers it reasonable to average all available data in order to determine a robust benchmark price.

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[444] *See* Wind Towers IDM at Comment 15, and *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) (*OCTG from the PRC Review*), and accompanying Decision Memorandum at "Provision of Steel Rounds," and unchanged in the final results.

[445] *See* GOC's rebuttal brief, at 2-5.

[446] *See Hangzhou Spring Washer Co. v. United States*, 387 F. Supp. 2d 1236, 1240 (CIT 2005) ("{i}n determining whether Commerce's interpretation and application of the antidumping statute is in accordance with law, this Court must consider 'whether Congress has directly spoken to the precise question at issue,' and if not, whether the agency's interpretation of the statute is reasonable") (quoting *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984)); *Mittal Canada, Inc. v. United States*, 461 F. Supp. 2d 1325, 1330 (CIT 2006) ("{b}ecause the statute leaves a gap for the agency to fill, and because {the regulation} fills that gap, the Court owes Chevron deference to the agency, and will overturn its regulation only if it is unreasonable, arbitrary, or capricious").

[447] *ADM v. United States*, 917 F. Supp. 2d at 1343.

[448] See GOC's Rebuttal Brief, at 4.

[449] *See Countervailing Duties*, 63 FR 65348, 65377 (November 25, 1998) ("if there are no useable market-determined prices stemming from *actual* transactions, we will turn to *world* market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the *world* market") (emphasis added). The CIT has also recognized that "when using a tier two benchmark, Commerce must average all commercially available world market prices to arrive at the benchmark figure." *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1293 (CIT 2010).

The GOC argues that the term "adequate" in the Act is unambiguous and must mean the lowest price on the record. We disagree. Clearly, the highest prices on the record were judged to be "adequate" by the market participants in those transactions. There simply is no basis to say that the prices at the low end of the spectrum are adequate, but that the prices at the high end of the spectrum are not adequate. To prevent cherry-picking of one end of the spectrum over another, the Department averages the prices. Given that the Department's interpretation vis-à-vis the averaging methodology in 19 CFR 351.511(a)(2)(ii) is a reasonable construction of section 771(5)(E)(iv), there is no basis in the regulations for selecting the lowest monthly world market price in identifying the monthly benchmark.[450] Furthermore, while the GOC relies on a hypothetical example to demonstrate that the benefit would be inflated,[451] the GOC points to no evidence on the record of this segment to suggest that the benefit would be inflated here if the Department were to average the benchmarks on the record. Accordingly, the Department will average the benchmark prices on the record to arrive at the most robust world market price possible.

F. Whether the Department Should Average Import Duties When Calculating the LTAR Benchmarks

Petitioners' Argument

- For each of the three countervailable LTAR programs at issue in this review (steam coal, sulfuric acid, and calcium carbonate), the GOC reported multiple import duty rates that apply to each of the raw material inputs under investigation. In the final results, the Department should average the rates when constructing the benchmark for each input. The Department's regulations require inclusion of "delivery charges and import duties" when calculating the benchmark.[452] The Department's regulations also require the Department to "average such prices to the extent practicable." In the final results, the Department should average the multiple import duty rates to calculate the benchmark for raw material input.

RZBC Companies' Rebuttal Arguments

- Petitioners' arguments have no basis in law or fact. The Department should not average the import duties rates as recommended by Petitioners. 19 CFR 351.511(a)(2)(ii) does not require that the import duties be averaged as asserted by Petitioners. Instead, 19 CFR 351.511(a)(2)(ii), states that the Department will average "world market prices ... to the extent practicable." There is also no requirement in the regulation that the average be a simple average rather than a weighted average, and no requirement that a simple average be used here, when it would yield absurd results, unjustified by any record evidence.

[450] *See* Steel Cylinders IDM at Comment 8; Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 8 (rejecting argument that Department should not average benchmarks on the record but, rather, should select lowest single monthly price from across all sources. The Department found that the regulation is clear and the Department will average world market prices when multiple prices are available and they are comparable, and all four sets of world market prices there were reliable and representative).
[451] See GOC's Rebuttal Brief, at 4-5.
[452] *See* 19 CFR 351.511(a)(2)(iv).

- If the Department were to use import duties inconsistent with section 771(5)(E)(iv) of the Act's requirement of examining "prevailing market conditions," it would be acting in violation of the statute.
- In this case, there is no record evidence that indicates any of the countries used for the benchmark do not have most favored nation (MFN) status for import duties. Furthermore, even if there were such information on the record, using a simple average is nonsensical. The Department, as an agency of the U.S. government that has an expertise in international trade, should know that most countries have MFN status as a result of years of WTO negotiations. If imports from 90 countries have MFN status and imports from 10 countries do not, for example, it would be absurd to apply a simple average of the import duty rates and claim it shows "prevailing market conditions." This is especially so because high non-MFN rates make it highly unlikely that imports from such countries would be available in the PRC in any meaningful volumes.

GOC's Rebuttal Arguments

- In previous cases the Department has consistently used import rates under the MFN heading "because the MFN rate reflects the general tariff rate applicable to world trade."[453] The Department should follow this practice in this case.

Department's Position: Petitioners have not provided a convincing argument to alter the Department's use of the MFN import duty rate. The countries represented in the data series for limestone flux, sulfuric acid, and steam coal are members of the World Trade Organization. Therefore, consistent with *Aluminum Extrusions from the PRC*, the Department continues to use the MFN import duty rate because it reflects the general tariff rate applicable to world trade.[454]

G. Whether the Department Should Modify The Sulfuric Acid Benchmark By Adding Hazardous Shipping Charges

Petitioners' Argument

- The Department should modify the sulfuric acid benchmark to include hazardous shipping charges. The RZBC Companies would have incurred those charges had it imported sulfuric acid, and the Department should therefore "adjust the comparison price to reflect the price a firm actually paid or would pay if it imported the product."[455] The RZBC Companies provided suggested international freight charges from Maersk, but it failed to include hazardous shipping. The Department should remedy that omission in calculating the final benchmark.
- This is an appropriate adjustment because sulfuric acid includes a group of highly volatile, corrosive acids. The United Nations has designated sulfuric acid as Hazard Class 8, meaning that it poses a "severe" health hazard. The U.S. Department of Transportation imposes stringent requirements for its transportation. Furthermore, Chinese law mandates that all shipments of sulfuric acid be reported in hazardous chemical registrations with the local police department. International shipment of sulfuric acid imposes additional costs in the form of hazardous shipping charges.

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[453] *See Aluminum Extrusions from the PRC*, and accompanying Aluminum Extrusions IDM at Comment 20.
[454] *Id.*
[455] *See* 19 CFR 351.511(a)(2)(iv).

- Petitioners placed on the record information demonstrating that Maersk assesses a "dangerous cargo service charge" to transport volatile chemicals such as sulfuric acid (i.e., UN ID Num=UN1830; UN Hazard Class=8). While Petitioners included the hazardous shipping charges in their suggested Maersk shipping charges, the RZBC Companies did not. The charges suggested by Petitioners and RZBC are nearly the same except for the missing hazardous shipping charges. The final benchmark should be adjusted to reflect a hazardous shipping charge because it more accurately reflects the price that would be paid for this service.

RZBC Companies' Rebuttal Arguments

- There is no basis for the Department to change or adjust the international freight rates submitted by RZBC. Specifically, Petitioners fail to cite anything from the Maersk website that indicates sulfuric acid requires the dangerous cargo service charge, as alleged by Petitioners. Therefore, for final results, Commerce should continue to the RZBC submitted freight in the international freight price.

Department's Position: In *Citric Acid Second Review*, we calculated the benchmark price and added international freight for sulfuric acid on the record of the review sourced from Maersk.[456] Review of the final results calculations for *Citric Acid Second Review* demonstrates the international freight charges used in the calculation for sulfuric acid did include "dangerous cargo service" fee.[457] Therefore to remain consistent with *Citric Acid Second Review*, we will include, where reported, international freight charges that includes a "dangerous cargo service" fee. Where the RZBC Companies and Petitioners have reported the same routes sourced from Maersk, *i.e.*, Los Angeles, Vancouver, and Rotterdam to Shanghai, we will only include the international freight charges that include "dangerous cargo service" fee. The Department will continue to use the RZBC Companies' international freight submission sourced from Maersk, *i.e.*, India, Japan, Philippines, and South Korea to Shanghai, and simple average the overall international freight charge to derive the most robust benchmarks possible. *See* Final Results Calculation Memorandum.

H. Whether International Freight for Limestone Flux is Aberrational

RZBC Companies' Arguments

- The Department should adjust the international freight rate to include rates only from countries that the Department actually used in the benchmark calculation and exclude the "Special Equipment Service" fee. The Department should rely on the RZBC Companies' reported benchmark from India if it continues to erroneously countervail limestone. The India benchmark is specific to limestone flux, and represents the most accurate value on the record. Moreover, RZBC submitted freight rate information from India for inorganic chemicals, which applies to limestone based on Petitioners' subsidy allegation.[458]

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[456] *See* Citric Acid Second Review at "Provision of Sulfuric Acid for LTAR."
[457] *See* RZBC Companies' 2SQR (May 10, 2013) at Exhibit 10 (Final Results Calculations Memorandum for RZBC Co., Ltd., RZBC Import & Export Co., Ltd., RZBC (Juxian) Co., Ltd., and RZBC Group Co., Ltd. (collectively, RZBC Companies or RZBC).
[458] *See* RZBC Companies' Factual Information Submission (November 19, 2012) at Exhibit 3-C.

- The Department should not use Petitioners' submitted international freight rates from Maersk for 40' Flat rack-Collapsible Container that results in a "Special Equipment Service" surcharge on the rate. First, there is no record evidence that limestone flux requires a 40' flat rack-collapsible container that requires the additional surcharge. In fact, the only relevant record evidence (submitted by Petitioners) states that this type of container would not be used for limestone flux and that flat racks are used for "items such as heavy machinery, pipes and boats."[459] Including this inapplicable "special equipment fee" in each price quote is clearly distortive given that the fee increased the overall rate anywhere from $9,775 to $863 per container depending on the country, and in most cases was higher than the actual shipping rate.
- Furthermore, the Department's international freight calculation is not in accordance with section 771(5)(E)(iv) of the Act. In this case, there is no record evidence that any of the benchmark countries shipped limestone flux to the PRC or that those freight rates are based on any sound evidence. Moreover, the Department included several freight rates from countries for which there was no limestone flux benchmark used by the Department. For example, the Department did not calculate the limestone flux benchmark using exports from the United States, Canada, Netherlands, or Russia. Yet, the Department included international freights from these countries in its calculation. There is no rational basis to include a freight rate from a country that is not included in the benchmark price in the international freight calculation.

Petitioners' Rebuttal Argument

- The Department should reject the RZBC Companies' arguments because the international freight rates suggested by Petitioners are derived from record evidence. Petitioners included freight rates that utilize flat- rack containers, which include certain equipment charges.[460] The extra equipment charges are appropriate given the input in question. Quoting a shipping company's product brochure, the RZBC Companies argue that such containers are used for items "such as heavy machinery, pipes, and boats." However, use of those containers is not limited to those items. The brochure clearly states that these types of containers are used for "heavy cargo" in general.[461] The Department verified in the original investigation that calcium carbonate is "heavy."[462] Given that specialized containers are required to ship "heavy cargo," use of flat rack containers in the international freight calculation is justified.
- The Department's longstanding practice is to use an average international freight rate in the same way it constructs an average world price. In this case, Petitioners complied with that practice and submitted international freight rates from major ports in each continent (i.e., Los Angeles, Vancouver, Santos, Buenos Aires, Rotterdam, St. Petersburg, Durban, Cape Town, Sydney, and Auckland) to Asia (Shanghai, the PRC).[463] This methodology ensures that the Department captures the worldwide average to ship the relevant input to the country in question, which is the very point of the Department's benchmark

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[459] *See* Petitioners' FIS (November 20, 2012) at Tab 23 (last page).
[460] *Id*.
[461] *Id*.
[462] *See* LTFV Citric Acid Investigation IDM at 19.
[463] *See* Petitioners' FIS (November 20, 2012) at Tab 23 (first page).

regulations.[464] The Department has consistently used this methodology to account for international freight in constructing a world price benchmark.[465]

Department's Position: As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier one or tier two benchmark pursuant to 19 CFR 351.511(a)(2)(i) or (ii), respectively, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Further, 19 CFR 351.511(a)(2)(ii) is clear that the Department "will average" world market prices when multiple prices are available.

As discussed above in section "Provision of Calcium Carbonate for LTAR", to determine whether calcium carbonate is being provided to the RZBC Companies for LTAR, the Department is using a benchmark price derived from world export prices pursuant to 19 CFR 351.511(a)(2)(ii). We explained that Chapter 25 of the HS is the appropriate benchmark source for the provision of calcium carbonate because it most accurately reflects RZBC Companies' purchases of limestone (*i.e.*, GCC). Chapter 25 of the HS is listed as salts; sulfur; earths and stone; plastering material, lime and cement.[466] Contrary to RZBC Companies' arguments, the international freight pricing data sourced by Petitioners has a commodity description of "salt, sulphur, earths and stone, plastering materials, lime, cement, marble, granite."[467] We have no information on the record that the "special equipment service" fee included in those data is not required for this commodity; therefore, we will continue to use the international freight pricing data on the record because it best accurately reflects RZBC Companies' purchases of GCC.[468]

We disagree with RZBC Companies' argument that the Department should calculate international freight limited to countries included in the benchmark price. The world market prices for limestone flux (*i.e.*, GCC) include data points from 17 different countries; however, the data points for international freight are from only 8 countries. Therefore, pursuant to 19 CFR 351.511(a)(2)(ii), the Department continues to include all international freight data in the calculation to create a more robust world market price.

Comment 14: Whether to Adjust Sulfuric Acid Input Purchases by the RZBC Companies

Petitioners' Argument

- Based on information placed on the record of *Citric Acid First Review*,[469] Petitioners have calculated an adjustment the Department should apply and increase the POR sulfuric acid purchases by RZBC to ensure an accurate subsidy rate.

RZBC Companies' Rebuttal Arguments

[464] *See* 19 CFR 351.511(a)(2)(ii).
[465] *See* Wind Towers from the PRC IDM at Comment 15.
[466] *See* Petitioners' FIS (March 18, 2013) at Exhibit 3.
[467] *See* Petitioners' FIS (November 20, 2012) at Tab 23.
[468] *See* Seamless IDM at Comment 20.
[469] *See* Petitioners' Deficiency Comments (March 15, 2013) at Exhibit 1.

- Petitioners raised this issue in *Citric Acid First Review*. There, the Department verified the RZBC Companies' submissions and found that the information was accurately reported.
- Moreover, as stated in its May 17, 2013, comments, the RZBC Companies explained that the reported sulfuric acid purchases tie directly to their accounting record. The information RZBC Companies have reported is a complete and accurate accounting of its sulfuric acid purchases in this review. The RZBC Companies also explained that, if asked by the Department, it would provide all the records necessary to show that its submissions were consistent and reflect the actual figures presented to Commerce, and that it could support those submissions at verification. However, the Department did not request further information or conduct verification.
- Petitioners' calculations are based on erroneous theoretical assumptions that do not take into account the RZBC Companies' actual production. Furthermore, the Department's subsidy benefit calculation is based on purchases and not production ratios. Petitioners' reasoning does not address or take into account beginning and ending inventories of the raw materials or citric acid. There is no information that indicates that the RZBC Companies have not fully cooperated and submitted complete and accurate information in this review. Furthermore, there is no new record evidence from the preliminary results that indicates that the Department's determination should be changed. Therefore, for the final results, if the Department continues to find that sulfuric acid was sold at LTAR, the Department must use RZBC's reported information.

Department's Position: Petitioners have not provided sufficient evidence to warrant an adjustment to the RZBC Companies' purchases of sulfuric acid. RZBC Companies have certified their questionnaire responses as complete, accurate, and adequately responded to the Department's request for their sulfuric acid purchases. Sections 776(a)(l) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record, or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(l) 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.

Because the RZBC Companies have cooperated and provided their sulfuric acid purchases as requested by the Department, the Department has no basis to apply "facts available" pursuant to sections 776(a)(l) and (2) of the Act, and no basis to adjust RZBC Companies' sulfuric acid purchases based on Petitioners' calculations.

XI. Conclusion

We recommend applying the above methodology for these final results.

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Agree Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

12/26/13
Date