C-570-971
Administrative Review
POR: 4/6/2011 – 12/31/2011
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January 16, 2014

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

FROM: Thomas Gilgunn
Acting Director, Office I
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China

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Summary

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on multilayered wood flooring (wood flooring) from the People's Republic of China (PRC). The period of review (POR) is April 6, 2011, through December 31, 2011. We preliminarily find that the mandatory respondents, Armstrong Wood Products (Kunshan) Co., Ltd. (Armstrong) (also known as, "Armstrong Wood Products Kunshan Co., Ltd.") and The Lizhong Wood Industry Limited Company of Shanghai (Lizhong) (also known as, "Shanghai Lizhong Wood Products Co., Ltd."), as well as the voluntary respondent, Fine Furniture (Shanghai) Limited (Fine Furniture), received countervailable subsidies during the POR. The mandatory respondents' CVD rates have been used to calculate the rate applied to the other firms subject to this review. The Department also intends to rescind the review of one company, Changzhou Hawd Flooring Co., Ltd., that certified that it had no shipments of subject merchandise to the United States during the POR.

Background

On December 8, 2011, the Department published the CVD order on wood flooring from the PRC.[1] On December 3, 2012, we published a notice of "Opportunity to Request Administrative

[1] *See Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order*, 76 FR 76693 (December 8, 2011); *see also Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012), wherein the scope of the CVD order was modified.

Review" for the CVD order for the POR, *i.e.*, April 6, 2011, through December 31, 2011.[2] Subsequently, on December 31, 2012, the Coalition for American Hardwood Parity[3] (hereinafter, Petitioner) requested that the Department review 83 exporters and/or producers of the subject merchandise.[4] In accordance with 19 CFR 351.221(c)(1)(i), we published a notice initiating the review on January 30, 2013.[5]

On February 8, 2013, we released under administrative protective order (APO), and requested comments regarding, data obtained from U.S. Customs and Border Protection (CBP) on entries of the subject merchandise from the PRC during the POR for the 83 exporters and/or producers Petitioner requested.[6] On February 15, 2013, we received comments on the CBP data from Fine Furniture;[7] Shanghai Lairunde Wood Co., Ltd. (Shanghai Lairunde);[8] Lizhong;[9] and Petitioner.[10] On March 28, 2013, Changzhou Hawd Flooring Co., Ltd. certified that it had no exports, sales, or entries for consumption in the United States of subject merchandise during the POR. On April 5, 2013, we released, under APO, additional data obtained from CBP, taking into account the comments from outside parties,[11] and requested further comments. On April 12, 2013, we received comments from Baroque Timber Industries (Zhongshan) Co., Ltd.;[12] Riverside Plywood Corporation;[13] Samling Elegant Living Trading (Labuan) Limited;[14] Suzhou Times Flooring Co., Ltd.;[15] Samling Riverside Co., Ltd.;[16] and Shanghai Lairunde.[17]

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[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 77 FR 71579 (December 3, 2012).
[3] The Coalition for American Hardwood Parity includes: Anderson Hardwood Floors, LLC; Award Hardwood Floors; Baker's Creek Wood Floors, Inc.; From the Forest; Howell Hardwood Flooring; Mannington Mills, Inc.; Nydree Flooring; and, Shaw Industries Group, Inc.
[4] *See* Letter from Petitioner, "Request for Administrative Review: Multilayered Wood Flooring from the People's Republic of China" (December 31, 2012).
[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 6291, 6295 (January 30, 2013).
[6] *See* Memorandum to the File, "Release of Customs and Border Protection (CBP) Data" (February 8, 2013).
[7] *See* Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Comments on Customs and Border Protection Data and Respondent Selection" (February 15, 2013).
[8] *See* Letter from Shanghai Lairunde, "Re: Shanghai Lairunde's Comments on CBP Data in the First Administrative Review of Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China" (February 15, 2013).
[9] *See* Letter from Lizhong, "Re: Multilayered Wood Flooring from the People's Republic of China: Comments on CBP Data For Respondent Selection" (February 15, 2013).
[10] *See* Letter from Petitioner, "Re: Comments on Use of CBP Data for Respondent Selection: First Administrative Review Multilayered Wood Flooring from the People's Republic of China" (February 15, 2013).
[11] *See* Memorandum to the File, "Release of Customs and Border Protection (CBP) Data" (April 5, 2013).
[12] *See* Letter from Samling Group, "Samling Group's Comments on the Re-Released CBP Data in the First Administrative Review of Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China" (April 12, 2013).
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *See* Letter from Shanghai Lairunde, "Shanghai Lairunde's Comments on Re-Released CBP Data in the First Administrative Review of Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China" (April 12, 2013).

Subsequently, on June 5, 2013, we selected Armstrong and Lizhong as mandatory respondents in this administrative review, and accepted Fine Furniture's request to be a voluntary respondent under section 782(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.204(d).[18]

The Department issued initial questionnaires to the Government of the PRC (GOC), Armstrong, Fine Furniture, and Lizhong on June 17, 2013. Armstrong, Fine Furniture, Lizhong, and the GOC each submitted their respective responses to the initial questionnaires on August 7, 2013.[19]

On July 15, 2013, the Department extended the time limit for completion of these preliminary results by 120 days to no later than December 31, 2013, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).[20] Subsequent to this, as explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[21] Therefore, all deadlines in this segment of the proceeding were extended by 16 days. Accordingly, the deadline for the preliminary results of this administrative review was revised forward January 16, 2014.

We issued first supplemental questionnaires to Armstrong and Fine Furniture, the GOC, and Lizhong on August 27, September 6, and September 9, 2013, respectively. Fine Furniture filed its response on September 17,[22] the GOC on September 20,[23] Armstrong on September 27,[24] and Lizhong on October 17, 2013.[25]

We issued second supplemental questionnaires to Fine Furniture, the GOC and Lizhong, and Armstrong on September 30, November 15, and November 19, 2013, respectively. Fine

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[18] *See* Memorandum to Susan H. Kuhbach, "Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China: Respondent Selection" (June 5, 2013).

[19] *See* Letter from Armstrong, "Countervailing Duty Questionnaire Response Administrative Review – Armstrong Wood Products (Kunshan) Co., Ltd." (August 7, 2013) (AQR); Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Questionnaire Response of Fine Furniture (Shanghai) Limited" (August 7, 2013) (FFQR); Letter from Lizhong, "Multilayered Wood Flooring from the People's Republic of China: Voluntary {sic} Respondent Shanghai Lizhong Countervailing Duty Response" (August 7, 2013) (LQR); and, Letter from the GOC, "Government of China's Response to the Initial Questionnaire: Multilayered Wood Flooring From the People's Republic of China (C-570-971)" (August 7, 2013).

[20] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Multilayered Wood Flooring from the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review" (July 17, 2013).

[21] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

[22] *See* Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Supplemental CVD Questionnaire Response of Fine Furniture (Shanghai) Limited" (September 17, 2013) (FF1SR).

[23] *See* Letter from the GOC, "Response of the Government of the People's Republic of China to the Department's Supplemental Questionnaire: Multilayered Wood Flooring From the People's Republic of China (C-570-971)" (September 20, 2013).

[24] *See* Letter from Armstrong, "Countervailing Duty Supplemental Questionnaire Response Administrative Review – Armstrong Wood Products (Kunshan) Co., Ltd." (September 27, 2013) (A1SR).

[25] *See* Letter from Lizhong, "Multilayered Wood Flooring from the People's Republic of China: Shanghai Lizhong's Response to the First Supplemental Countervailing Duty Questionnaire" (October 17, 2013) (L1SR).

Furniture filed its response on October 31, 2013,[26] Lizhong on November 27, 2013,[27] the GOC on December 5, 2013,[28] and Armstrong on December 13, 2013.[29]

We issued third supplemental questionnaires to the GOC and Lizhong on December 18, 2013, to which both the GOC[30] and Lizhong[31] filed responses on December 26, 2013.

Scope of the Order

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[32] in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, "engineered wood flooring" or "plywood flooring." Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid curing formaldehyde finishes.) The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition

[26] *See* Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Second Supplemental CVD Questionnaire Response of Fine Furniture (Shanghai) Limited" (October 31, 2013) (FF2SR).
[27] *See* Letter from Lizhong, "Multilayered Wood Flooring from the People's Republic of China: Shanghai Lizhong's Response to the Second Supplemental Countervailing Duty Questionnaire" (November 27, 2013) (L2SR).
[28] *See* Letter from the GOC, "Response of the Government of the People's Republic of China to the Department's Second Supplemental Questionnaire: Multilayered Wood Flooring From the People's Republic of China (C-570-971)" (December 5, 2013) (G2SR).
[29] *See* Letter from Armstrong, "Second Countervailing Duty Supplemental Questionnaire Response Administrative Review – Armstrong Wood Products (Kunshan) Co., Ltd." (December 13, 2013) (A2SR).
[30] *See* Letter from the GOC, "Response of the Government of the People's Republic of China to the Department's Third Supplemental Questionnaire: Multilayered Wood Flooring From the People's Republic of China (C-570-971)" (December 26, 2013) (G3SR).
[31] *See* Letter from Lizhong, "Multilayered Wood Flooring from the People's Republic of China: Shanghai Lizhong's Response to the Third Supplemental Countervailing Duty Questionnaire" (December 26, 2013).
[32] A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

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

<u>Intent to Partially Rescind Administrative Review</u>

On March 28, 2013, we received a timely filed no-shipment certification from Changzhou Hawd Flooring Co., Ltd. We submitted no-shipment inquiries to CBP for this company on January 2, 2014. We have not received information to date from CBP to contradict this company's claim of no sales, shipments, or entries of subject merchandise to the United States during the POR. Because this company timely filed its no-shipment certification and CBP has not provided information to contradict the company's claim, we preliminarily intend to rescind the review of this company. Absent any evidence of shipment being placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of this company in the final results of review.

Subsidies Valuation Information

A. Allocation Period

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[33] Accordingly, we have only measured subsidies from the beginning of the AUL, *i.e.*, January 1, 2002.

B. Attribution of Subsidies

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

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

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) … Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[34]

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[33] *See* U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods, publicly available at http://www.irs.gov/publications/p946/ar02.html.
[34] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

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

The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[35]

1. Armstrong

Armstrong was founded in 2003 as "Yingbin Wood Industry (Kunshan) Co., Ltd.," a foreign-invested enterprise (FIE)[36] under the ownership of Macau-based Hoi Leong Investments and Holdings Company, Limited (Hoi Leong).[37] During 2006 and 2007, Hong Kong-based Armstrong China Holdings, Limited (ACHL), entered into various agreements and ventures with Hoi Leong and intermediary affiliates of Hoi Leong,[38] which led to the 2007 name change to Armstrong Wood Products (Kunshan) Co., Ltd,[39] and ultimately resulted in a joint-ownership of Armstrong by ACHL and Hoi Leong.[40]

During the POR, Hoi Leong's shares of Armstrong were acquired by ACHL,[41] leaving ACHL as the sole owner of Armstrong.[42] ACHL is owned by the United States-based Armstrong World Industries (Delaware) LLC, which in turn is owned by the United States-based Armstrong World Industries, Inc.[43] Accordingly, Armstrong responded on behalf of itself in this proceeding, maintaining no cross-owned affiliates in the PRC,[44] and thus, we have attributed subsidies to Armstrong to its own sales.[45]

2. Fine Furniture

Fine Furniture was founded in 2000,[46] is a "productive" FIE,[47] and responded on behalf of itself and affiliated parties, Great Wood (Tonghua) Limited (Great Wood) and FF Plantation (Shishou) Limited (FF Plantation) (collectively, the FF Companies). These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.[48] For Fine Furniture, we are attributing subsidies it received to its sales, in accordance with 19 CFR 351.525(b)(6).

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[35] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[36] *See* AQR at III-5 and III-6.
[37] *Id*., at III-6; *see also* A2SR at 1.
[38] *See* AQR at III-6 and A2SR at 1-2.
[39] *See* AQR at III-6.
[40] *See* AQR at III-3 and III-6, A1SR at 1, and A2SR at 1-2.
[41] *Id*.
[42] *See* A1SR at 1.
[43] *See* AQR at III-2 and III-3.
[44] *Id*., at III-3 through III-8.
[45] *See* Memorandum to the File, "Preliminary Results Calculation Memorandum for Armstrong Wood Products (Kunshan) Co., Ltd." (January 16, 2014) (Armstrong Preliminary Calculation Memorandum).
[46] *See* FFQR at 8.
[47] *Id*., at 9.
[48] *Id*., at 4 and 6.

Fine Furniture identified Great Wood as a supplier of kiln dried lumber, cut-to-size lumber, and face veneer for furniture and flooring.[49] Because these products are primarily dedicated to the production of the downstream product, we are attributing subsidies received by Great Wood to the combined sales of the input and downstream products (excluding intercompany sales) produced by each company, respectively, in accordance with 19 CFR 351.525(b)(6)(iv).

Fine Furniture identified FF Plantation as a supplier of plywood cores to Fine Furniture for the production of wood flooring.[50] Because these products are primarily dedicated to the production of the downstream product, we are attributing subsidies received by FF Plantation to the combined sales of the input and downstream products (excluding intercompany sales) produced by each company, respectively, in accordance with 19 CFR 351.525(b)(6)(iv).

Entered Value Adjustment

Fine Furniture reported that its affiliate, Double F Limited (Double F), issued invoices for Fine Furniture's sales of subject merchandise to the United States.[51] Thus, Fine Furniture has requested that the Department make an adjustment to the calculated subsidy rate to account for the mark-up between the export value from the PRC and the entered value of subject merchandise into the United States,[52] as the Department did in the *Investigation Final*.[53]

Citing *Coated Paper from the PRC*, Fine Furniture states that the adjustment is appropriate because:[54] 1) the U.S. invoice is issued through Fine Furniture's affiliate, Double F, and includes a mark-up from the invoice issued from Fine Furniture to Double F; 2) the exporter, Fine Furniture, and the party that invoices the customer, Double F, are affiliated; 3) the U.S. invoice establishes the customs value to which CVDs are applied; 4) there is a one-to-one correlation between the Double F invoice and the Fine Furniture invoice; 5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.[55]

As indicated by Fine Furniture's reference to *Coated Paper from the PRC*, the Department has a practice of making an adjustment to the calculated subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can provide data to demonstrate that the six criteria above are met. Furthermore, Fine Furniture is correct in noting that the Department made the adjustment in the

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[49] *Id.*, at 4 and 9.
[50] *Id.*, at 6 and 9.
[51] *Id*. at 24-25 and Exhibit 17.
[52] *Id*., at 25.
[53] *See Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) (*Investigation Final*), and accompanying Issues and Decision Memorandum (IDM), "B. Attribution of Subsidies" at 6-8.
[54] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) (*Coated Paper from the PRC*), accompanying IDM at Comment 32.
[55] *See* FFQR at 24-25.

Investigation Final.[56] Since the information submitted by Fine Furniture supports its claim and the information also permits an accurate calculation of the adjustment, we have preliminarily granted the entered value adjustment.[57]

3. Lizhong

Lizhong was founded in 2002 as a limited liability, domestically-owned enterprise (DOE), and responded on behalf of itself and affiliate Linyi Youyou Wood Co., Ltd. (Youyou).[58] From its inception through the POR, Lizhong remained a DOE, shifting from an original ownership by nine individuals to an ownership by six individuals during the POR.[59] Youyou was established in 2009 as a DOE by two of the individuals with ownership in Lizhong.[60] As such, these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.[61]

Lizhong identified Youyou as a producer of wood products, such as veneer, core and unfinished multilayered wood flooring.[62] Because Lizhong and Youyou are both producers of the subject merchandise, we are attributing subsidies received by either Lizhong or Youyou to the combined sales of the two companies, in accordance with 19 CFR 351.525(b)(6)(ii).

C. Loan Benchmarks and Discount Rates

The Department is examining non-recurring, allocable subsidies.[63] The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

1. Short-Term Renminbi (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.[64] 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."[65] As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

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[56] *Id*., at 24; *see also Investigation Final* and accompanying IDM at 7-8.
[57] Due to the proprietary nature of the adjusted values, *see* Memorandum to the File, "Preliminary Results Calculation Memorandum for Fine Furniture (Shanghai) Limited" (January 16, 2014) (Fine Furniture Preliminary Calculation Memorandum).
[58] *See* LQR at III-2
[59] *Id*., at III-7 and Exhibit 1.
[60] *Id*.
[61] *Id*.
[62] *Id*., at III-7.
[63] *See* 19 CFR 351.524(b)(1).
[64] *See* 19 CFR 351.505(a)(3)(i).
[65] *See* 19 CFR 351.505(a)(3)(ii).

For the reasons explained in *CFS from the PRC*,[66] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate.[67] There is no new information on the record of this review that would lead us to deviate from our prior determinations regarding government intervention in the PRC's banking sector.

We first developed in *CFS from the PRC*,[68] and more recently updated in *Thermal Paper from the PRC*,[69] the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.[70] Beginning with 2010, however, the PRC is in the upper-middle income category.[71] 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[72] reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant

[66] *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 IDM at Comment 10.
[67] *See, e.g., Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[68] *See CFS from the PRC*, and accompanying IDM at Comment 10.
[69] *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 IDM, "Benchmarks and Discount Rates" at 8-10.
[70] *See* World Bank Country Classification, http://econ.worldbank.org/.
[71] *Id.*
[72] *See* Memorandum to the File, "Interest Rate Benchmark Memorandum" (December 6, 2013) (Interest Rate Benchmark Memorandum).

of interest rates. Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's 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 NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.[73] 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.[74]

Because these rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued by state-owned commercial banks.[75]

2. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[76]

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.[77] Finally, because these

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[73] 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.

[74] 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.

[75] *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

[76] *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), and accompanying IDM, "Discount Rates" at 8.

[77] *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 IDM at Comment 14.

long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[78]

3. Discount Rates

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

Analysis of Programs

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

I. Programs Preliminarily Found To Be Countervailable

A. Income Tax Subsidies for Foreign-Invested Enterprises Based on Geographic Location

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.[79] Because no new information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we preliminarily find that the reduced income tax rate paid by FIEs under this program confers a countervailable subsidy. The reduced income tax rate is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings.[80] We further find that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

Fine Furniture reported using this program during the POR.[81] To calculate the benefit, we treated the income tax savings enjoyed by Fine Furniture as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax Fine Furniture would have paid in the absence of the program (*i.e.*, at the 25 percent rate) with the tax rate applicable to the company for the tax return filed during the POR (*i.e.*, 22 percent). To calculate the countervailable subsidy, we divided the benefits received by Fine Furniture in the POR by its sales during the POR, in accordance with 19 CFR 351.525(b)(6)(i).

On this basis, we preliminary find that the FF Companies received a countervailable subsidy of 0.17 percent *ad valorem* under this program during the POR.[82]

B. Value Added Tax (VAT) and Tariff Exemptions on Imported Equipment

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[78] *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.
[79] *See Investigation Final* and accompanying IDM, "Income Tax Subsidies for FIEs Based on Geographic Location" at 11.
[80] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[81] *See* FFQR at 13-14 and Exhibits 8a and 8b; *see also* FF1SR at 15 and Exhibit 2.
[82] *See* Fine Furniture Preliminary Calculation Memorandum.

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.[83] Because no new information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we preliminarily find that VAT and tariff exemptions on imported equipment under this program confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC, and they provide a benefit to the recipients in the amount of the VAT and tariff savings.[84] We further find the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises with government-approved projects.[85]

Fine Furniture and Great Wood reported using this program and provided a list of the VAT and tariff exemptions that they received for imported capital equipment since December 11, 2001.[86] However, since the AUL for wood flooring is 10 years, we did not look at exemptions Fine Furniture and Great Wood received prior to January 1, 2002.

As explained in the *Investigation Final*,[87] we normally treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and expense these benefits in the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.[88] Because these VAT and tariff exemptions were received for capital equipment, we have applied the allocation rules described in 19 CFR 351.524(b), as explained below.

For Fine Furniture and Great Wood, we applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2), for each of the years in which exemptions were reported (treating the year of receipt as the year of approval). For the years in which the amount of VAT and tariff exemptions was less than 0.5 percent of the appropriate sales value, we expensed the exempted amounts in the year of receipt, consistent with 19 CFR 351.524(b)(2). For those years in which the VAT and tariff exemptions were greater than or equal to 0.5 percent of the appropriate sales value, we have allocated the benefit over the AUL, consistent with 19 CFR 351.524(b)(1). We used the discount rate described above in the "Discount Rates" section to calculate the amount of the benefit for the POR.

To calculate the countervailable subsidy for the VAT and tariff exemptions received by Fine Furniture, we divided the benefits received in or allocated to the POR by its sales during the POR, in accordance with 19 CFR 351.525(b)(6)(i). For Great Wood, we divided the benefits received in or allocated to the POR by the combined POR sales of Fine Furniture and Great Wood, less intercompany sales, in accordance with 19 CFR 351.525(b)(6)(iv).

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[83] *See Investigation Final* and accompanying IDM, "VAT and Tariff Exemptions on Imported Equipment" at 12-13.
[84] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[85] *See CFS from the PRC* and accompanying IDM at Comment 16.
[86] *See* FFQR at 16-19 and Exhibits 11a and 11b.
[87] *See Investigation Final* and accompanying IDM at 13.
[88] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

On this basis, we determine that the FF Companies received a countervailable subsidy of 0.58 percent *ad valorem* during the POR.[89]

C. Provision of Electricity for Less than Adequate Remuneration (LTAR)

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.[90] Because no new information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we preliminarily find that the GOC's provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the companies' reported consumption volumes and rates paid.[91] To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest non-seasonal provincial rates in the PRC for each user category (*e.g.*, "large industry," "general industry and commerce," *etc*.) and voltage class of the respondents (*e.g.*, 1-10kv), as well as the respondents' "base charge" (maximum demand and/or transformer capacity).[92] We then compared what the respondents paid for electricity during the POR to our benchmark prices. Based on this comparison, we find that electricity was provided for LTAR. To calculate the subsidy, we divided the benefit amount by the appropriate sales denominator for each respondent as described above under "Attribution of Subsidies."

On this basis, we find that Armstrong received a countervailable subsidy of 0.90 percent *ad valorem*, the FF Companies received a countervailable subsidy of 0.57 percent *ad valorem*, and Lizhong received a countervailable subsidy of 0.43 percent *ad valorem* under this program during the POR.[93]

D. Minhang District Little Giant Enterprise Support

Established in 2007 by the Minhang District Government, and administered by the Minhang District Committee of Science and Technology, this grant program aims to facilitate technological innovation by enterprises in the Minhang District.[94] In its supplemental questionnaire responses, the GOC affirmed and re-affirmed that this program is limited, by law

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[89] *See* Fine Furniture Preliminary Calculation Memorandum.
[90] *See Investigation Final* and accompanying IDM, "GOC – Electricity" at 2-3, and "Provision of Electricity for LTAR" at 13-14.
[91] For Armstrong, s*ee* AQR III-14, III-15, and Exhibits 8-9; *see also* ASQR at 14-15 and Exhibit S-5. For the FF Companies, *see* FFQR at 22-23 and Exhibits 15-16; *see also* FF1SR at 16-17. For Lizhong, *see* LQR at 20-22 and Exhibits 8-9; *see also* L1SR at 17-18 and Exhibits 23-24.
[92] We provide additional discussion of these benchmarks in the "Electricity Rate Benchmark Memorandum" issued concurrently with these preliminary results.
[93] *See* Armstrong Preliminary Calculation Memorandum; *see also* Fine Furniture Preliminary Calculation Memorandum; and, Lizhong Preliminary Calculation Memorandum.
[94] *See* G2SR at 15.

or in fact, to any enterprise or group of enterprises, or to any industry or group of industries.[95] Specifically, the GOC affirmed that the program is limited to "encouraged" industries, particularly "high and new tech industries, such as those of new energy, new materials, bio-medicine, electronics, information, among others."[96] Eligibility is further restricted to industries that are: 1) domestic or domestically controlled, registered and paying taxes in the Minhang District; 2) undertaking business in compliance with the industrial orientation of the Minhang District; 3) incurring innovation outlays and establishing an in-house innovation system; and 4) hold self-developed brand and/or intellectual property rights.[97] Lizhong reported receiving funds under this program from the GOC during the POR.[98]

We preliminarily find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit under 19 CFR 351.504, and is *de jure* specific under section 771(5A)(D)(i) of the Act because the GOC affirmed that it is limited to "encouraged" industries (such as high and new tech), such as those of new energy, new materials, bio medicine, electronics, and information, as described by the GOC in the *Implementation Rules on Little Giant Project in Minhang.*[99]

To calculate the countervailable subsidy, we divided the grant amount received during the POR by Lizhong's total sales during the POR. On this basis, we find that Lizhong received a countervailable subsidy of 0.10 percent *ad valorem* under this program during the POR.[100]

E. <u>Minhang District Pujiang Town Enterprise Support</u>

Established in 2010, by the Commission of Oriental Economic City of Pujiang Town in the Minhang District, this tax incentive program aims to attract investment and encourage business activities in the industrial development of Pujiang Town.[101] The GOC submits that eligibility requirements for assistance under this program stipulate that an existing enterprise must have paid at or above a minimum amount of relevant taxes to Pujiang Town, and that while the program was designed to provide recurring assistance to participants, it was terminated prior to December 31, 2010.[102] Lizhong reported receiving funds under this program from the GOC during the POR,[103] which the GOC confirms took the form of a grant from the Pujiang Town government.[104]

We preliminarily find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit pursuant to 19 CFR 351.504, and is specific under section 771(5A)(D)(i) of the Act because, as reported by the GOC,

[95] *See* G2SR at 19 and G3SR at 1-2.
[96] *See* G3SR at 1.
[97] *See* G2SR at 15-19.
[98] *See* L1SR at 8-9.
[99] *See* G2SR at Exhibit SQ-3.
[100] *See* Lizhong Preliminary Calculation Memorandum.
[101] *See* G2SR at 26.
[102] *Id*., at 28-32.
[103] *See* L1SR at 8-9.
[104] *See* G3SR at 3.

it is limited to enterprises engaged in industrial business that have paid above a minimum level of tax.[105]

To calculate the countervailable subsidy, we divided the grant amount received during the POR by Lizhong's total sales during the POR. On this basis, we find that Lizhong received a countervailable subsidy of 0.07 percent *ad valorem* under this program during the POR.[106]

F. Technology Innovation Support

Established in 2009 pursuant to *Circular of Minhang District Government Implementation Measures On Materializing The Scientific Concept Of Development And Promoting The Development Of Technology Innovation And Industrialization Of New Technology Achievements* (Minfubanfa 2009 No.13), and administered by the Committee of Science and Technology of Minhang District, the purpose of this program is to encourage activities in technological innovation in the Minhang District.[107] The GOC submits that a research and development project may be eligible for this grant if it is considered capable of substantially enhancing competitiveness of high-tech industries and/or promoting technological innovation in an industrial field in the Minhang District, and has obtained intellectual property rights and/or has the potential capacity to obtain such rights.[108] During the POR, the GOC reports that 40 projects, including Lizhong's resin research project, received funding under this program.[109] Moreover, Lizhong confirmed the receipt of funds under this program during the POR.[110]

We preliminarily find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit pursuant to 19 CFR 351.504, and is specific under section 771(5A)(D)(iii)(I) of the Act because the recipients of the subsidy are limited in number.

To calculate the countervailable subsidy, we divided the grant amount received during the POR by Lizhong's total sales during the POR. On this basis, we find that Lizhong received a countervailable subsidy of 0.03 percent *ad valorem* under this program during the POR.[111]

II. Programs Preliminarily Found to Be Not Countervailable

A. Pudong New District Subsidy for Aged Employees Subject to Farmer Insurance

Established in 2011 by the Pudong New District Government, and implemented under the direction of the Pudong New District Bureau of Human Resources and Social Security, this program compensates employers for the cost of purchasing insurance for older employees formerly subject to farmers insurance.[112] The GOC submits that the goal of the program is to

[105] *See* G2SR at 30-31.
[106] *See* Lizhong Preliminary Calculation Memorandum.
[107] *See* G2SR at 35-38.
[108] *Id*., at 39-40.
[109] *See* G3SR at 5 and Exhibit SQ-6.
[110] *See* L1SR at 9.
[111] *See* Lizhong Preliminary Calculation Memorandum.
[112] *See* G2SR at 1-2.

ease the transition from the social insurance policies for farmers to the social insurance policies for urban workers of those enterprises and their employees in question by allowing enterprises operating in the Pudong New District who employ local workers to buy social insurance policies without additional premiums. Fine Furniture reported receiving funds under this program from the GOC during the POR.[113]

We preliminarily find that this program is not countervailable. We reach this preliminary finding due to a lack of specificity. Namely, section 771(5A)(D)(ii) of the Act states that:

> where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if (I) eligibility is automatic; (II) the criteria or conditions for eligibility are strictly followed; and (III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

The GOC submits that: 1) if the eligibility criteria as listed in the administering document are met, an applicant will always and automatically receive assistance; 2) the amount of the assistance provided is determined solely by established criteria found in Article 3 of the administering document; and 3) the government agency or authority does not have any discretion that goes beyond the criteria laid out in the administering document.[114] As such, this program appears to not be *de jure* specific.

Next, the Department's specificity analysis examines whether there are reasons to believe that a subsidy may be specific as a matter of fact.[115] The GOC provided responses to the Department's questions pertaining to actual usage of the assistance provided under the program.[116] Based on the information provided, we preliminarily find that the program is not *de facto* specific under any of the factors in section 771(5A)(D)(iii)(I)-(IV) of the Act. Thus, we preliminarily find this program not countervailable.

III. <u>Programs Preliminarily Found to Be Not Used or that Provided No Benefit During the POR</u>

A. <u>Two Free, Three Half Program</u>
B. <u>Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County</u>
C. <u>International Market Development Fund Grants for Small and Medium Enterprises</u>
D. <u>GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands</u>
E. <u>Local Income Tax Exemption and Reductions for "Productive" FIEs</u>
F. <u>Provision of Electricity at LTAR for FIEs and "Technologically Advanced" Enterprises by Jiangsu Province</u>

[113] *See* FF2SR at 1-8.
[114] *See* G2SR at 7 and Exhibit SQ-1.
[115] *See* section 771(5A)(D)(iii) of the Act.
[116] *See* G2SR at 9-10.

Recommendation

We recommend applying the above methodology for these preliminary results.

✓ Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

1/16/14
(Date)