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February 11, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Decision Memorandum for the Preliminary Determination

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I. SUMMARY

The Department of Commerce ("Department") preliminarily determines that countervailable subsidies are being provided to producers and exporters of chlorinated isocyanurates ("chlorinated isos") in the People's Republic of China ("PRC"), as provided in section 703 of the Tariff Act of 1930, as amended ("Act").

II. BACKGROUND

A. *Case History*

On August 29, 2013, the Department received a countervailing duty ("CVD") Petition concerning imports of chlorinated isos from the PRC, and an antidumping duty ("AD") Petition concerning imports of chlorinated isos from Japan, filed in proper form by Clearon Corp. and Occidental Chemical Corporation (collectively, "Petitioners").[1] On September 25, 2013, the Department published a notice of initiation for the CVD investigation of chlorinated isos from the PRC.[2] On October 29, 2013, the Department selected two mandatory respondent companies

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[1] *See* "Petition for the Imposition of Antidumping Duties on Chlorinated Isocyanurates from Japan and Countervailing Duties on Chlorinated Isocyanurates from the People's Republic of China, dated August 29, 2013 ("Petition").

[2] *See Chlorinated Isocyanurates from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 78 FR 59001 (September 25, 2013) ("*Initiation*"). On the same date we also published a notice of initiation for the AD investigation of chlorinated isos from Japan. See *Chlorinated Isocyanurates from Japan: Initiation of Antidumping Duty Investigation*, 78 FR 58997 (September 25, 2013).

for this investigation[3] and, on October 30, 2013, issued a CVD questionnaire to the Government of the PRC ("GOC"). The GOC and the two mandatory respondents filed initial questionnaire responses with the Department between December 20 and December 27, 2013. Between January 16 and 24, 2014, the Department issued supplemental questionnaires to the GOC and the two mandatory respondents; responses to these questionnaires were received between January 28 and 31, 2014. On January 30, 2014, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of chlorinated isos from Japan.

Due to the shutdown of the Federal Government from October 1 to 16, 2013, Enforcement and Compliance uniformly tolled all administrative and statutory deadlines for the duration of the recent closure (*i.e.*, 16 days).[4] Thus, all deadlines in this segment of the proceeding were tolled by 16 days. On December 3, 2013, based upon a request from Petitioners, the Department extended the deadline for this preliminary determination until February 11, 2014.[5]

B. *Period of Investigation*

The period of investigation ("POI") is January 1, 2012, through December 31, 2012.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, and as noted in the *Initiation*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*.[6] We received no comments concerning the scope of this investigation.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid ("TCCA") ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3$ X $2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular and solid *(e.g.*, tablet or stick) forms.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include

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3 *See* "Respondent Selection" section below.
4 *See* Memorandum for the Record, from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.
5 *See Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Postponement of Preliminary Determination*, 78 FR 72640 (December 3, 2013).
6 *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997); *see also Initiation*, 78 FR at 59001.

chlorinated isocyanurates and other compounds including an unfused triazine ring. The tariff classifications 3808.50.4000, 3808.94.5000 and 3808.99.9500 cover disinfectants that include chlorinated isocyanurates. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

V. ALIGNMENT

The AD (Japan) and CVD (PRC) investigations have the same scope with regard to the merchandise covered. As noted above, on January 30, 2014, the Petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we are aligning the final CVD determination with the final determination in the companion AD investigation of chlorinated isos from Japan. The final CVD determination will be issued on the same date as the final AD determination for Japan, which is currently scheduled to be issued on or about June 28, 2014.

VI. RESPONDENT SELECTION

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

As noted above, on October 29, 2013, the Department determined that it was not practicable to examine more than two respondents in the instant investigation.[7] Therefore, the Department selected, based on data from U.S. Customs and Border Protection, the two exporters/producers accounting for the largest volume of chlorinated isos exported from the PRC during the POI: Hebei Jiheng Chemicals Co., Ltd. ("Jiheng") and Juancheng Kangtai Chemical Co., Ltd. ("Kangtai").[8]

VII. INJURY TEST

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On October 28, 2013, the ITC determined that there is a reasonable indication

[7] *See* Memorandum from Scot T. Fullerton, Program Manager, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Chlorinated Isocyanurates from the People's Republic of China: Respondent Selection," dated October 29, 2013.
[8] *Id.*

that an industry in the United States is materially injured by reason of imports of chlorinated isos from the PRC.[9]

VIII. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[10] In *CFS from the PRC*, the Department found that:

> . . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[11]

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[12] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.[13] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[14]

Additionally, for the reasons stated in *CWP from the PRC*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization ("WTO"), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.[15]

IX. SUBSIDIES VALUATION

A. *Allocation Period*

The Department normally allocates the benefits from non-recurring subsidies over the average useful life ("AUL") of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[16] The Department notified the respondents of the AUL in the initial

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[9] *See* Chlorinated Isocyanurates From China and Japan: Investigation Nos. 701-TA 501 and 73 l-TA-1226 (Preliminary) (November 2013); *Chlorinated Isocyanurates From China and Japan*, 78 FR 66767 (November 6, 2013).

[10] *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*").

[11] *Id*. and accompanying Issues and Decision Memorandum at Comment 6.

[12] *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 at Comment 1.

[13] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

[14] *See* Public Law 112-99, 126 Stat. 265 §1(b).

[15] *See*, *e.g.*, *CWP from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2.

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

questionnaire and requested data accordingly.[17] No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. *Attribution of Subsidies*

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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 another corporation in essentially the same ways it can use its own assets. 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.[18] In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.[19] The Court of International Trade 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 ways it could use its own subsidy benefits.[20]

Jiheng

Jiheng, Hebei Jiheng Group Co., Ltd. ("Jiheng Group"), and Hebei Jiheng Baikang Chemical Industry Co., Ltd. ("Baikang") submitted responses to the Department's CVD questionnaire. Jiheng reported the following roles for each of these companies:

Jiheng – producer of subject merchandise;

Jiheng Group – a holding company and majority shareholder of Jiheng, which provides raw materials (sulfuric acid and steam) to Jiheng and other affiliated companies;

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[17] As discussed above and in accordance with the Department's practice, regardless of the AUL chosen, we will not countervail subsidies conferred before December 11, 2011, the date of the PRC's accession to the WTO. *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) and accompanying Issues and Decision Memorandum at "Subsidies Valuation Information."

[18] *See*, *e.g.*, *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

[19] *Id.*

[20] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Baikang – producer of subject merchandise and a subsidiary company of Jiheng.[21]

Jiheng reported that it is owned by the Jiheng Group, and that Jiheng owns Baikang. Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), between Jiheng, Baikang, and Jiheng Group through Jiheng Group's ultimate ownership of Jiheng and Baikang.[22]

Because the Jiheng Group is a parent company, we are attributing subsidies received by the Jiheng Group to its consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii). The Jiheng Group combines its subsidiaries' results in its consolidated financial statements.[23]

Jiheng and Baikang are producers of subject merchandise, therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by Jiheng and Baikang to the combined sales of Jiheng and Baikang.[24] We note that Jiheng's and Baikang's sales are combined in Jiheng's consolidated financial statements, and that the only subsidiary included in these statements is Baikang.[25]

In addition, Hebei Jiheng (Group) Fertilizer Co., Ltd. ("Jiheng Fertilizer") submitted a response to the Department's CVD questionnaire. Jiheng Fertilizer, a subsidiary of Jiheng Group, provided raw materials to Jiheng.[26] While record evidence indicates that Jiheng and Jiheng Fertilizer are affiliated, we preliminarily determine that Jiheng Group cannot use or direct the assets of Jiheng Fertilizer in essentially the same way it can use its own assets.[27] Therefore, we preliminarily determine that Jiheng Fertilizer is not cross-owned with the responding Jiheng companies (*i.e*., Jiheng, Jiheng Group, and Baikang), pursuant to 19 CFR 351.525(b)(6)(vi).

Kangtai

In its initial questionnaire response, Kangtai reported that it was affiliated with Juancheng Ouya Chemical Co., Ltd. ("Ouya"), but that cross-ownership did not exist between the two

[21] *See*, *e.g.*, Jiheng's December 23, 2013, submission at 3.
[22] The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."
[23] *See* Jiheng Group's December 23, 2013, submission at Appendix 6.
[24] *See*, *e.g.*, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) and accompanying Issues and Decision Memorandum at 9 and Comment 35 (where we discuss application of the attribution regulations at 19 CFR 351.525(b)(6) to a company that is both a parent company and a producer of subject merchandise).
[25] *See* Jiheng's December 23, 2013, submission at Appendix 5, Jiheng's 2012 consolidated financial statements at 26.
[26] *See* Jiheng's December 23, 2013, submission at 3.
[27] Because the details of this analysis are proprietary, we included them in a separate memo. *See* Memorandum from Paul Walker, Case Analyst, to Scot T. Fullerton, Program Manager, "Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Cross-ownership of Hebei Jiheng Chemicals Co., Ltd., Hebei Jiheng Group Co., Ltd. and Hebei Jiheng Baikang Chemical Industry Co., Ltd." dated concurrently with this memorandum.

companies.[28] According to Kangtai, the two companies do not have common shareholders nor are voting rights shared between the two companies. The two companies operate independently and have different plants at different locations. Kangtai also states that the two companies have never shared directors or management officers. Our review of the Articles of Association reveals that control of the respective companies is exercised through voting rights. Kangtai also reports that the companies do not share, nor have they transferred liabilities and/or assets. While we may have additional questions regarding the relationship between Kangtai and Ouya after the preliminary determination, based upon our review of the current record evidence submitted in both Kangtai's initial and supplemental questionnaire response, we preliminary determine that the companies are not cross-owned because neither company can use or direct the individual assets of the other company in essentially the same way that it could use its own assets, as required under 19 CFR 351.525(b)(6)(vi).[29]

Kangtai responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POI. While Kangtai reported that it had one affiliated company during the POI, as noted immediately above, we are preliminary finding that there was no cross-ownership. Therefore, we are attributing subsidies received by Kangtai to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. *Denominators*

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). For a further discussion of the denominators used, *see* the preliminary calculation memoranda.[30]

X. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by the respondents from Chinese policy banks and state-owned commercial banks ("SOCBs"), as well as non-recurring, allocable subsidies.[31] The derivation of the benchmark and discount rates used to value these subsidies is discussed

[28] *See* Kangtai's December 20, 2013, submission at 2-4, and its January 31, 2014, submission at 1-5.
[29] Because the details of this analysis are proprietary, we included them in a separate memo. *See* Memorandum from Matthew Renkey, Case Analyst, to Scot T. Fullerton, Program Manager, "Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Cross-ownership of Juancheng Kangtai Chemical Co., Ltd. and Juancheng Ouya Chemical Co., Ltd." dated concurrently with this memorandum.
[30] *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Hebei Jiheng Chemicals Co., Ltd. Preliminary Calculation Memo," dated concurrently with this memorandum ("Jiheng Preliminary Calculation Memo"), and Memorandum to the File, through Scot T. Fullerton, Program Manager, from Matthew Renkey, Senior Analyst, "Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Juancheng Kangtai Chemical Co., Ltd. Preliminary Calculation Memo," dated concurrently with this memorandum ("Kangtai Preliminary Calculation Memo").
[31] *See* 19 CFR 351.524(b)(1).

below.

A. *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.[32] 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."[33]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from the PRC*, 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.[34] Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, 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. The use of an external benchmark is consistent with the Department's practice. For example, in *Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[35]

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*[36] and more recently updated in *Thermal Paper from the PRC*.[37] 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,* this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, the PRC fell in the lower-middle

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32 *See* 19 CFR 351.505(a)(3)(i).

33 *See* 19 CFR 351.505(a)(3)(ii).

34 *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10; *see also* Memorandum to the File from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Banking Memoranda," dated February 11, 2014 ("Banking Memoranda").

35 *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) ("*Lumber from Canada*") and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

36 *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

37 *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 at 8-10.

income category.[38] Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2012.[39] Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.[40]

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark has been 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 of the years from 2003-2009 and 2011-2012, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[41] For 2010, however, the regression does not yield that outcome for the PRC's income group.[42] This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and 2011-2012. 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 2010-2012 and "lower middle income" for 2001-2009.[43] 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. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-

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[38] *See* World Bank Country Classification, http://econ.worldbank.org/; *see also* Memorandum to the File from Paul Walker, Case Analyst,"Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Benchmark Memo," dated concurrently with this memorandum ("Preliminary Benchmark Memo").
[39] *See* World Bank Country Classification.
[40] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).
[41] *See* Banking Memoranda.
[42] *See* Preliminary Benchmark Memo.
[43] *Id*.

denominated rates; therefore, the rates for these three countries have been excluded. 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.[44] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[45]

B. *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 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.[46]

In *Citric Acid from the PRC*, 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.[47] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[48]

C. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we 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.[49] The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the respondents' preliminary calculations memoranda.[50]

XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or 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.

[44] *Id.*
[45] *Id.*
[46] *See, e.g., Thermal Paper from the PRC*, and accompanying Issues and Decision Memorandum at 10.
[47] *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 from the PRC*") and accompanying Issues and Decision Memorandum at Comment 14.
[48] *See* Jiheng Preliminary Calculation Memo and Kangtai Preliminary Calculation Memo.
[49] *Id.*
[50] *Id.*

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 fails to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of this preliminary determination, we find it necessary to apply adverse facts available ("AFA") with respect to the GOC's responses to questions on the alleged provision of electricity for less than adequate remuneration ("LTAR"), as described below.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[51] 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."[52]

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific with the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the January 23, 2014, supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.[53] The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.[54]

Consequently, we preliminarily determine that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an

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[51] *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).
[52] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).
[53] *See* the GOC's December 20, 2013, submission at 22-26.
[54] *See* the GOC's January 31, 2014, submission at 25.

adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.[55]

In addition, the GOC did not provide complete responses to the Department's questions regarding the following programs: Special Fund for Energy Saving Technology, Grants under the Haixing County Science and Technology Research & Development Plan Project, Special National Bond Fund for Energy Conservation and Waste Recycling Projects, and Value Added Tax ("VAT") Tax Rebate for Comprehensive Utilization of Resources. Accordingly, we preliminarily determine that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in making our preliminary determination with respect to these programs pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, with respect to the Special Fund for Energy Saving Technology, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information concerning this program. We discuss each of these programs, and the application of facts available ("FA") and AFA to each below.

XII. ANALYSIS OF PROGRAMS

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

A. *Programs Preliminarily Determined to Be Countervailable*

1. *Grants for Export Credit Insurance*

Jiheng reported receiving a grant for this program in 2012.[56] Kangtai reported that it did not use this program. According to the GOC, Jiheng applied for, and received benefits from this program.[57] This program is a grant from the Henghsui Finance Bureau which provides a subsidy for 30 percent of the insurance premium if an export company's exports are valued at less than five million USD, and 20 percent for exports valued above 5 million USD.[58] There are no restrictions on the types of goods covered by this program, and the eligibility criteria for Jiheng to receive benefits was contingent on the fact that it purchased export credit insurance from the China Export and Credit Insurance Corporation.[59]
We preliminarily determine that these reimbursements are grants that constitute a financial contribution, and confer a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because receipt of the grants were contingent upon export performance, as explained in the previous paragraph, we preliminarily determine that they are specific under

[55] *See* Preliminary Benchmark Memo.
[56] *See* Jiheng's December 23, 2013, submission at 16 and Appendices 10 & 11.
[57] *See* the GOC's December 20, 2013, submission at 9.
[58] *See* Jiheng's December 23, 2013, submission at 16 and Appendices 10 & 11.
[59] *Id.*

section 771(5A)(A) and (B) of the Act. We also note that the Department found a similar program in Zhejiang Province countervailable in a prior countervailing duty investigation.[60]

Under 19 CFR 351.520(a)(2) benefits from export insurance are expensed in the year of in which they are received; and, thus are considered to be recurring benefits under 19 CFR 351.524. Because the benefits from this program reimburse exporters for costs incurred in purchasing export insurance, grants under this program will be expensed in the year of receipt. Therefore. we divided the amount of the grants received by Jiheng under this program during the POI by the Jiheng Companies' free-on-board ("FOB") value of total exports. Based on this methodology, we calculated a total net subsidy rate of 0.05 percent *ad valorem* for the Jiheng Companies.[61]

2. *Special Fund for Energy Saving Technology*

Jiheng reported receiving grants under this program in 2010 and 2012, while the Jiheng Group reported receiving a grant under this program in 2012.[62] Kangtai reported that it did not use this program. According to the GOC, Jiheng and the Jiheng Group applied for, and received benefits from this program.[63] In order to popularize energy saving technology and equipment and improve energy efficiency, *i.e.*, reduce the amount of coal consumption, the GOC provides grants to companies for renovations which improve energy efficiency.[64] Jiheng and the Jiheng Group applied for, and received, grants from the Hengshui Finance Bureau for their energy saving technology renovations.

We preliminarily determine that these grants were provided by the GOC, and that they constitute financial contributions under section 771(5)(D)(i) of the Act. We further preliminarily determine that these grants confer a benefit equal to the amount of the funds provided under 19 CFR 351.504.

In order to conduct the analysis of whether a program is specific under section 771(5A)(D) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity. The GOC did not provide a response to the specificity questions related to this program even though the Department twice requested such information.[65] Because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(D)(i) of the Act. We would

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[60] *See, e.g.*, *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17017 (March 23, 2012) ("*Steel Wheels from the PRC*") and accompanying Issues and Decision Memorandum at Section I.O *Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees*.

[61] *See* Jiheng Preliminary Calculation Memo.

[62] *See* Jiheng's December 23, 2013, submission at 17 and Appendix 12; *see also* Jiheng Group's December 23, 2013, submission at 13 and Appendix 11.

[63] *See* the GOC's December 20, 2013, submission at 9.

[64] *See*, *e.g.*, Jiheng's December 23, 2013, submission at Appendix 12.

[65] *See* the GOC's December 20, 2013, submission at 9, and the GOC's January 31, 2014 submission at 8.

also note that there is some limited information placed on the record by respondent companies related to the issue of specificity.[66] Based upon this information, the program could also be considered *de facto* specific under section 771(5A)(D)(iii)(I) because there were a limited number of enterprises that received benefits under this program. We note that the Department found a similar program in Guangdong Province countervailable in a prior countervailing duty investigation.[67]

To calculate the benefit for the grant that Jiheng received in 2010, we divided the benefit by Jiheng's sales in 2010, pursuant to 19 CFR 351.524(b)(2). Because the result was greater than 0.5 percent, we allocated the benefit over the 9.5-year AUL, using the discount rate described in the "Benchmarks and Discount Rates" section above, and divided the allocated amount by Jiheng's total sales during the POI.

To calculate the benefit for the grant that Jiheng received during the POI, we divided the amount received by Jiheng by Jiheng's total POI sales. The grant that Jiheng received during the POI was less than 0.5 percent of its total POI sales. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI.

To calculate the benefit for the grant that Jiheng Group received during the POI, we divided the amount received by the Jiheng Companies' consolidated POI sales, as described above under the "Attribution of Subsidies" section. The grant that Jiheng Group received during the POI was less than 0.5 percent of consolidated POI sales. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI.

On this basis, we preliminarily determine that the Jiheng companies received a net countervailable subsidy of 0.58 percent *ad valorem*.[68]

3. *Export Seller's Credits from Export-Import Bank of China* ("*China ExIm*")

Jiheng reported that it had outstanding financing under this program during the POI.[69] Kangtai reported that it did not use this program. The purpose of this program provided by China ExIm is to support the export of PRC products and improve their competitiveness in the international market.[70] The export seller's credit as a loan with a large amount, long maturity, and preferential interest rate.[71]

The Department previously found this program countervailable.[72] The GOC did not provide any new information on the record that would cause us to reexamine this countervailability of this program. Therefore, consistent with *Citric Acid from the PRC*, we preliminarily determine that

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[66] *Id.*
[67] *See, e.g.*, *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 accompanying Issues and Decision Memorandum at Section VII.N.
[68] *See* Jiheng Preliminary Calculation Memo.
[69] *See* Jiheng's December 23, 2013, submission at 24 and Appendix 18.
[70] *See* Petition at 59-61.
[71] *Id.*
[72] *See, e.g.*, *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at 6 "Policy Lending."

these loans were provided by the GOC under this program constitute financial contributions under section 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provided a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts Jiheng paid and would have paid for a comparable commercial loan. 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) and (B) of the Act.

To calculate the benefit conferred by these loans, we used the benchmarks described in the Preliminary Benchmarks Memo and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by the export sales reported by the Jiheng Companies during the POI. On this basis, we preliminarily determine that the Jiheng Companies received a countervailable subsidy of 0.87 percent *ad valorem* under this program.[73]

4. *Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that Are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources*

Jiheng reported that it applied for, and received, benefits under this program.[74] Kangtai reported that it did not use this program. According to the GOC, Jiheng applied for, and received benefits from this program.[75] The eligibility criteria for Jiheng to receive benefits under this program were contingent on the fact that it produced and sold products, *i.e.*, hydrogen and ammonium sulfate, that are in line with state industrial policy and involve synergistic utilization of resources.[76] The particular amount of assistance is calculated by multiplying the sales revenue of the products that are in line with state industrial policy and involve synergistic utilization of resources by 10 percent.[77] The assistance is a deduction from taxable income, rather than a credit toward taxes payable.[78]

This tax reduction is a financial contribution in the form of revenue forgone by the GOC under section 771(5)(D)(ii) of the Act, and it provided a benefit to Jiheng in the amount of tax savings under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). According to Article 33 of the Enterprise Tax Law that was provided in the GOC response, this tax benefit is available only to enterprises that are producing products conforming to the industrial policies of the state in a way of comprehensive utilization of resources.[79] Therefore, we preliminarily determine this program to be *de jure* specific under 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the income tax reduction claimed by Jiheng as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid on the tax return filed during the POI to the rate that would have been paid by Jiheng otherwise, and multiplied the difference by Jiheng's taxable income from the income tax return filed during the POI. In accordance with 19 CFR

[73] *See* Jiheng Preliminary Calculation Memo.
[74] *See* Jiheng's December 23, 2013, submission at 25 and Appendix 21.
[75] *See* the GOC's December 20, 2013, submission at 14.
[76] *See* Jiheng's December 23, 2013, submission at Appendix 21.
[77] *Id.*
[78] *Id.*
[79] *Id.*

351.525(b)(6)(i), we attributed the benefit received to the total sales of the Jiheng Companies. On this basis, we calculated a net countervailable subsidy rate of 0.14 percent *ad valorem* for the Jiheng Companies.[80]

5. *Grants under the Haixing County Science and Technology Research & Development Plan Project*

One of Jiheng's cross-owned companies, Baikang, received a grant from the Government of Haixing County under this program in 2012.[81] Kangtai stated that it did not use this program. The criteria for Baikang to receive the assistance provided by the Haixing County was that it had to complete required research and development ("R&D") work in accordance with its project application, regardless of what kind of merchandise it produced.[82] The Haixing County Finance Bureau and Haixing County Science & Technology Bureau approved Baikang's R&D work on water treatment for pharmaceutical products.

We preliminarily determine that this grant was provided by the Government of Haixing County and that it constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine preliminarily that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504.

In order to conduct the analysis of whether a program is specific under section 771(5A)(D), it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity. The GOC has not yet provided a complete response to the specificity questions related to this program.[83] As a result, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information from the GOC concerning the manner in which this program is administered is not on the record. Based on the information contained in Baikang's questionnaire response, which indicates that it received the grant,[84] we are relying upon FA and determine that the program is *de facto* specific under section 771(5A)(D)(iii)(I) because there were a limited number of enterprises that received benefits under this program.[85] The Department intends to provide the GOC with another opportunity to provide complete specificity information for this program; if the GOC fails to provide such information the Department may rely on facts available with an adverse inference in making a final specificity determination for this program.

To calculate the benefit for the grant that Baikang received during the POI, we divided the amount received by Baikang by the Jiheng Companies' total POI sales, as described above under the "Attribution of Subsidies" section. The grant that Baikang received during the POI was less

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[80] *See* Jiheng Preliminary Calculation Memo.
[81] *See* Baikang's December 23, 2013, submission at 29 and Appendix 13.
[82] *Id.*
[83] *See* the GOC's January 31, 2014, submission at 32.
[84] *See* Baikang's December 23, 2013, submission at 29 and Appendix 13.
[85] *See Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at Section VII.M (where the Department applied FA in its specificity finding by relying on information provided the respondent, when the GOC did not respond to the Department's questions).

than 0.5 percent of total POI sales, and pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. Therefore, we divided the amount of the grant received under this program by the Jiheng Companies' total sales of the POI. On this basis, we preliminarily determine that the Jiheng Companies received a countervailable subsidy of 0.02 percent *ad valorem*.[86]

6. *Special National Bond Fund for Energy Conservation and Waste Recycling Projects*

The Jiheng Group, which is cross-owned with Jiheng, reported receiving a grant for this program in 2007.[87] Kangtai reported that it did not use this program. The eligibility criteria for the Jiheng Group to receive benefits was that it had to invest in a technological renovation project encouraged by the state, approved by the Development and Reform Commission, and included in the *State Key Technical Renovation Programs Plan*.[88] The Jiheng Group applied for this grant from the Development and Reform Commission of Hengshui City, and it was approved by the Government of Hengshui City.[89] Specifically, the Jiheng Group constructed a series of devices to save energy and recycling waste.[90] According to the policy documents, benefits received shall not be recorded as assets of the company. Instead, after the project is finished, the GOC will inspect the project to ensure it achieved the intended effect, and then benefits received should be recorded in the company's capital reserve.[91] The Jiheng Group recorded the program benefits in a special payable account, where it remained during the POI.[92]

We preliminarily determine that the funds provided by the government under this program constitute a financial contribution under section 771(5)(D)(i) of the Act. We further preliminarily determine that this program confers a benefit under section 771(5)(E)(ii) of the Act.

In order to conduct the analysis of whether a program is specific under section 771(5A)(D), it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity. The GOC has not yet provided a complete response to the specificity questions related to this program.[93] As a result, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information concerning the manner in which this program is administered is not on the record. Based on the information contained in the Jiheng Group's questionnaire response, which indicates that it received the grant,[94] we are relying upon FA and determine that the program is *de jure* specific under section 771(5A)(D)(i) of the Act because funds provided under this program were limited to state-owned enterprises ("SOEs") undergoing restructuring.[95] The Department intends to provide the GOC with another opportunity to provide complete

[86] *See* Jiheng Preliminary Calculation Memo.
[87] *See* Jiheng Group's December 23, 2013, submission at 25 and Appendix 17.
[88] *Id.* at Appendix 17.
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *See* the GOC's January 31, 2014, submission at 33.
[94] *See* Jiheng Group's December 23, 2013, submission at 25 and Appendix 17.
[95] *See Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at Section VII.M.

specificity information for this program; if the GOC fails to provide such information the Department may rely on facts available with an adverse inference in making a final specificity determination for this program.

Although the Jiheng Group received these funds per an application for a grant, the government has not conducted an inspection of this project, and thus, the funds are subject to repayment by the Jiheng Group. Because there is a possibility that the funds provided under this program may have to be returned to the government, we are treating the balance of these funds as a contingent liability. Therefore, until the government conducts its inspection of the project and gives final approval, the outstanding balance of the funds provided under this program is, in essence, equivalent to an interest-free loan. Accordingly, we treated the amount of the funds provided under the program as a contingent liability interest-free loan using the methodology set forth under 19 CFR 351.505(d)(1).[96] To calculate the benefit conferred by this program, we used the benchmarks described in the Preliminary Benchmarks Memo and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by the Jiheng Group's total sales for the Jiheng Companies during the POI. On this basis, we preliminarily determine that the Jiheng Companies received a countervailable subsidy of 0.03 percent *ad valorem*.[97]

7. *VAT Tax Rebate for Comprehensive Utilization of Resources*

The Jiheng Group, which is cross-owned with Jiheng, reported receiving a VAT tax rebate for this program during the POI.[98] Kangtai reported that it did not use this program. This program provides a VAT tax rebate to companies which sell energy by-products.[99] In this case, the Jiheng Group used the waste heat generated during production to produce steam and sell steam as a by-product.[100] We note that the merchandise specified in the application and approval documents is steam produced by wasted heat.[101]

We preliminarily determine that the VAT tax rebates provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. In order to conduct the analysis of whether a program is specific under section 771(5A)(D), it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity. The GOC has not yet provided a complete response to the specificity questions related to this program.[102] As a result, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information concerning the manner in which this program is administered is not on the record. Based on the information contained in the Jiheng Group's questionnaire

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[96] *See, e.g., Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013) and accompanying Issues and Decision Memorandum at 1.A.
[97] *See* Jiheng Preliminary Calculation Memo.
[98] *See* Jiheng Group's December 23, 2013, submission at 26 and Appendix 19.
[99] *Id.* at Appendix 19.
[100] *Id.*
[101] *Id.*
[102] *See* the GOC's January 31, 2014, submission at 35.

response, which indicates that it received the grant,[103] we are relying upon FA and determine that the program is *de jure* specific under section 771(5A)(D)(i) of the Act because VAT rebates provided under this program were limited to companies that sell steam as a by-product.[104] The Department intends to provide the GOC with another opportunity to provide complete specificity information for this program; if the GOC fails to provide such information the Department may rely on facts available with an adverse inference in making a final specificity determination for this program.

To calculate the net subsidy rate, we divided the amount of the tax rebates received by the Jiheng Group during the POI by the Jiheng Companies' total sales for the POI. On this basis, we calculated a net countervailable subsidy rate of 0.06 percent *ad valorem* for the Jiheng Companies.[105]

8. *Shandong Industrial Structure Adjustment Entrusted Loan*

Kangtai reported that it had outstanding financing under this program during the POI.[106] Jiheng reported that it did not use this program. This program was promulgated by the government of Shandong province to assist manufacturing companies in certain key industries.[107]

Because this loan was provided under a government program, we preliminarily determine that this loan constitutes a financial contribution under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. We further preliminarily determine that this loan confers a benefit under section 771(5)(E)(ii) of the Act because Kangtai paid less than it would for a comparable commercial loan. Based upon the GOC's response, this program is limited by law to six "pillar industries" producing a "key product" in Shandong.[108] Therefore, we are finding this program *de jure* specific under 771(5A)(D)(i) because benefits under this program are limited to "pillar industries" producing "key products."

To calculate the benefit conferred by this loans, we used the benchmarks described in the Preliminary Benchmarks Memo and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by Kangtai's total reported sales during the POI. On this basis, we preliminarily determine that Kangtai received a countervailable subsidy of 0.13 percent *ad valorem* under this program.[109]

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[103] *See* Jiheng Group's December 23, 2013, submission at 26 and Appendix 19.
[104] *See Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at Section VII.M.
[105] *See* Jiheng Preliminary Calculation Memo.
[106] *See* Kangtai's December 20, 2013, submission at 15-16 and Exhibits 15 and 16; *see also* Kangtai's rebracketed portions of its questionnaire response pertaining to this program submitted on January 27, 2014.
[107] *See* the GOC's January 31, 2014, submission at Exhibit S1-10.
[108] *Id*.
[109] *See* Kangtai Preliminary Calculation Memo.

9. *Electricity for LTAR*

Both of our respondents used this program during the POI. For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of electricity, in part, on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. Jiheng and Kangtai provided data on the electricity the companies consumed and the electricity rates paid during the POI.[110]

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program despite multiple requests for such information. We find that, in not providing the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC pursuant to section 776(b) of the Act and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act. To determine the existence and amount of any benefit from this program, we relied on the respondents' reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POI. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.*, "General Industry," "Lighting," "Base Charge/Maximum Demand") for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.[111] The electricity rate benchmark chart is included in the Preliminary Benchmark Memo. This benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether the respondents received a benefit under this program, we first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POI from the monthly benchmark electricity price. We

[110] *See, e.g.*, Jiheng's December 23, 2013, submission at Appendix 28; *see also* Kangtai's December 20, 2013, submission at 24-25 and Exhibits 12-14; *see also* Kangtai's January 31, 2013, submission at Exhibits SQ1-7 and 1-8.

[111] *See* the GOC's December 20, 2013, submission at Exhibit E2-3.

then calculated the total benefit for each company during the POI by summing the monthly benefits for each company.[112]

Jiheng reported "efficiency adjustments" in its electricity rate charts.[113] We treated these efficiency adjustments as a benefit and added the amounts of these adjustments to the total benefit for purposes of calculating the benefit for this program.

To calculate the subsidy rate pertaining to the GOC's provision of electricity for LTAR, we divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the "Subsidy Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 16.14 percent *ad valorem* for the Jiheng companies, and 1.42 percent *ad valorem* for Kangtai.[114]

10. *Enterprise Income Tax Reduction for High and New Technology Enterprises*

Under Article 2 of the Enterprise Income Tax Law ("EITL"), the income tax a firm pays is reduced to a rate of 15 percent from the standard 25 percent rate is an enterprise is recognized as a High or New Technology Enterprise ("HNTE").[115] The Department previously found this program to be countervailable.[116] During the course of this investigation we discovered that Jiheng used this program and requested additional information from the respondent and the GOC. Kangtai did not use this program.

Based upon the information submitted by Jiheng and the GOC, Jiheng paid a reduced income tax rate on the tax return it filed during the POI.[117] In accordance with Article 28.2 of the EITL, Jiheng paid an income tax rate of 15 percent instead of the standard corporate income tax rate of 25 percent.[118]

Consistent with our determination in *Warmwater Shrimp*, we preliminarily determine that this program constitutes a financial contribution in the form of revenue foregone by the GOC and confers a benefit in the amount of the tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in "high-tech fields with state support," and, hence, is *de jure* specific under section 771(5A)(D)(i) of the Act.

We calculated the benefit as the difference between taxes Jiheng would have paid under the standard 25 percent tax rate and the taxes that the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return filed during the POI, as provided for under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit consistent with

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112 *See* Jiheng Preliminary Calculation Memo and Kangtai Preliminary Calculation Memo.
113 *Id.*
114 *See* Jiheng Preliminary Calculation Memo; *see also* Kangtai Preliminary Calculation Memo.
115 *See* Jiheng's January 31, 2014, submission at 9-10 and Appendix S-11.
116 *See, e.g.*, *Warmwater Shrimp*, and accompanying Issues and Decision Memorandum at 25.
117 *See, e.g.*, Jiheng's January 31, 2014, submission at 9-10 and Appendix S-11.
118 *Id.*

19 CFR 351.524(c)(1). We then divide the benefit by the Jiheng Companies total sales during the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.68 percent *ad valorem* for the Jiheng Companies.[119]

B. *Programs Preliminarily Determined Not to Confer a Benefit During the POI*

The Department preliminarily determined that the following programs did not confer a measurable benefit to Jiheng during the POI (Kangtai reported that it did not use these programs):

1. *Grants for the Application of Patents*

Jiheng applied to the Intellectual Property Office of Hebei Province for this benefit, which it reported receiving in 2012.[120] The eligibility criterion to receive assistance under this program was that the company had to have made a domestic application for patents for invention between April 1, 2011 and December 31, 2011.[121]

We find that the benefit from this program results in a subsidy rate that is less than 0.005 percent *ad valorem*.[122] Consistent with the Department's practice, a program with a rate of less than 0.005 percent *ad valorem* is not measureable and thus does not provide a benefit to the company during the POI.[123] Because the program does not provide a benefit during the POI, there is no need to determine whether the program is otherwise countervailable.

2. Export Credit Insurance from the China Export and Credit Insurance Corporation (Sinosure)

During the POI, Jiheng reported that it purchased export insurance from Sinosure; however, the company stated that it did receive any payouts of claims under its export insurance policy from Sinosure during the POI.[124] Under 19 CFR 351.520(a)(b), a benefit is only provided under a government export insurance program if a firm receives payouts under the program during the POI; therefore, we preliminary determine that Jiheng received no benefits under this program during the POI.

C. *Programs Preliminarily Determined Not to Be Countervailable*

1. *Urea for LTAR*

Both of our respondents purchased urea during the POI. Regarding the provision of urea for LTAR, the record evidence indicates that the producers of the urea purchased by both respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such,

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119 *See* Jiheng Preliminary Calculation Memo.
120 *See* Jiheng's December 23, 2013, submission at 35 and Appendices 32 & 33.
121 *Id.*
122 *See* Jiheng Calculation Memo.
123 *See, e.g.*, *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Section II.C.
124 *See* Jiheng's January 29, 2014, submission at 7.

the provision of urea constitutes a financial contribution under section 771(5)(D)(iii) of the Act.[125] This is based on the fact that many of the purchases were made from urea producers that were classified as state-owned enterprises in the GOC response. For non-designated SOE producers we required information from the GOC with respect to government control and the ultimate owners of these companies that were not designated majority-owned by the GOC. The GOC failed to provide this information, and therefore, we would apply AFA with respect to those other urea producers, and consider them to be "authorities" under the Act. In addition, the record evidence also indicates that there are no actual market-determined domestic prices we can use as the benchmark pursuant to 19 CFR 351.511(a)(2)(i), given the level of SOE involvement in the urea industry.[126] We would further note that tariffs of up to 110 percent are applied to urea exports during most of the POI, and that the GOC also imposed import quotas on urea imports and import tariffs of up to 50 percent. Given that no such market-determined prices are available, the Department would use world market prices in accordance with 19 CFR 351.511(a)(2)(ii).

With respect to the issue of specificity, the GOC states that urea in China is the same as urea use globally and is therefore used by a large number of different industries, including agriculture.[127] The GOC states that globally urea is used in industries including (1) agriculture (both as fertilizer and feed additives), (2) chemicals, (3) wood products, (4) textiles, (5) paper, (6) automotive, (7) industrial pollution control, (8) medicine, and (9) cosmetics.[128] The GOC states that the use of urea within China mirrors that of urea's global uses as listed in the 9 industries above.[129] The GOC states that total urea consumption during the POI for industrial use was 12.5 million metric tons, while total agricultural consumption of urea amounted to 41.5 million metric tons.[130] Based upon this information, we find that the record evidence does not support a finding of specificity with regard to the provision of urea for LTAR within the meaning of section 771(5A)(D) of the Act. Because we preliminarily find that the provision of urea is not specific, we preliminarily determine that this program is not countervailable. While Petitioners commented that the GOC's use of urea may not be the same as the global use of urea, the GOC stated in its response that use of urea in China mirrors the global use of urea. Thus, this is a verification issue.

F. *Programs Preliminarily Determined Not to Be Used During the POI*

The Department preliminarily determines that the following programs were not used by Jiheng or Kangtai during the POI:

1. *Land and Land Usage for Foreign Invested Enterprises ("FIEs") in National Economic and Technological Zones at Preferential Rates*
2. *"Two Free/Three Half" Program for FIEs*
3. *Income Tax Benefits for FIEs Based on Geographic Location*

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125 *See* the GOC's January 31, 2014, submission at Exhibit S1-7.
126 *See* the GOC's December 20, 2013, submission at 17-21; *see also* the GOC's January 31, 2014, submission at 21-22.
127 *See* the GOC's December 20, 2013, submission at 19-20 and Exhibit E1-2.
128 *Id*.
129 *Id.*
130 *Id.*

4. *Value Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries*
5. *VAT refunds for FIEs on purchases of Chinese-made equipment*
6. *Preferential direct tax treatment on purchases of domestically produced equipment for FIEs*
7. *Policy Loans under the Chlor-alkali Industry Second Five Year Plan*
8. *Stamp Tax exemption on share transfers under Non-Tradable Share Reform*
9. *State Key Technology Renovation Project Fund*
10. *Shareholder loans (debt forgiveness)*
11. *Discounted Loans for Export-Oriented Enterprises*
12. *VAT rebate on domestically produced equipment*
13. *VAT exemption on imports by encouraged industries*
14. *Preferential lending for industrial readjustment*
15. *Export credit insurance from China Export and Credit Insurance Corporation*
16. *Preferential loans provided by the Export-Import Bank "Going-out" for Outbound Investments*
17. *Foreign Trade Development Fund*
18. *"Famous Brands" program*
19. *Preferential policies to attract foreign investment in Jiangsu Province*
20. *Outline of light industry restructuring and revitalization plan in Jiangsu Province*
21. *Jiangsu province grants for legal fees in foreign trade remedy proceedings*
22. *Shandong Province: grants to enterprises exporting key product*
23. *Grants for export credit insurance*
24. *Special Fund for Energy Saving Technology Reform*
25. *The Clean Production Technology Fund*
26. *Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies*

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted by the GOC, Jiheng, the Jiheng Group, Baikang, and Kangtai.

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓

Agree Disagree

Paul Piquado
Assistant Secretary
for Enforcement & Compliance

11 FEBRUARY 2014
Date